



SUPREME COURT OF THE PHILIPPINES
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**Republic of the Philippines
Supreme Court
Manila**

SECOND DIVISION

**LEGAL RESEARCH AND
TECHNICAL STAFF,
SANDIGANBAYAN,**

Complainant;

- versus -

**SECURITY GUARD II
FERDINAND PONCE and
SECURITY GUARD I RONALD
ALLAN GOLE CRUZ, both of
THE SHERIFF AND SECURITY
SERVICES DIVISION,
SANDIGANBAYAN,**

Respondents.

**A.M. No. SB-22-001-P (Formerly
OCA IPI No. 15-34-SB-P)**

Present:

LEONEN, *S.A.J.*, Chairperson,
LAZARO-JAVIER,
LOPEZ, M.
LOPEZ, J., and
KHO, JR., *JJ.*

Promulgated:

JUN 20 2022

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DECISION

KHO, JR., J.:

This administrative matter arose from the Fact-Finding Investigation Report¹ dated October 25, 2013 (Investigation Report) conducted by complainant Legal Research and Technical Staff, Sandiganbayan (complainant) charging respondents Security Guard II Ferdinand Ponce (Ponce) and Security Guard I Ronald Allan Gole Cruz (Cruz; collectively, respondents), both of the Sheriff and Security Services Division, Sandiganbayan, with simple neglect of duty relative to the loss of one (1) unit of Motorola Handheld Radio with Serial Number 018TMC927 (subject radio).

¹ Rollo, pp. 6-19. Penned by Director III Atty. Mary Ruth M. Ferrer.

The Facts

Based on the statements of 1) various Sandiganbayan personnel, 2) the Memoranda of Security Officer II Ernesto R. Estrada and Security Officer I Darwin V. Trinidad, and 3) relevant CCTV footages, the Investigation Report alleged that on March 16, 2013, the subject radio was in the possession of Ponce, who was then assigned to guard the Sandiganbayan's COA Gate during the first and second shifts of that day, or from 7:00 a.m. until 11:00 p.m. Sometime between 6:00 p.m. to 6:30 p.m., Ponce left his post and went to the security office to get water. He noticed that the subject radio's battery was low, so he turned it over to Cruz, who in turn, placed it on top of a filing cabinet.²

The next day, it was discovered that the subject radio was missing. During the investigation, Cruz claimed that Ponce returned to the security office and retrieved the subject radio. On the other hand, Ponce denied Cruz's claim, asserting that he already entrusted the subject radio to Cruz for the proper turnover procedure to the shift-in-charge, Elberto Bautista (Bautista). The investigation further revealed that there was no actual surrender of the subject radio to an accountable officer, considering that the proper procedure therefor was not followed, *i.e.*, that the security guard having possession of the assigned radio shall, after their shift, turn over the same to the security guard assigned to the same post in the next shift.³

In light of the foregoing, the Investigation Report concluded that respondents were the security personnel responsible for the loss of the subject radio as they were the last persons in possession of the same.⁴

The Investigation Report was then forwarded to Sandiganbayan Associate Justice Oscar C. Herrera, Jr. (Justice Herrera) for a formal investigation. After due proceedings, Justice Herrera issued a Resolution⁵ dated June 15, 2015 recommending that respondents be found guilty of simple neglect of duty, and accordingly, be meted the penalty of suspension from the service for a period ranging from one (1) month and one (1) day to two (2) months, with a warning that a repetition of the same or a similar offense shall warrant a more severe penalty.⁶

During the investigation, Justice Herrera found that Ponce committed the aforementioned administrative offense when he failed to observe the proper turnover procedure of the subject radio to Bautista. According to Justice Herrera, the fact that Ponce recorded the turnover in his own record

² See *id.* at 13-14.

³ See *id.* at 14.

⁴ See *id.* at 15-19.

⁵ *Id.* at 148-156. Penned by Investigating Justice Oscar C. Herrera, Jr.

⁶ *Id.* at 156.

book does not exculpate him from liability because it is highly probable that he did so only as an afterthought when the subject radio had already been reported as missing. Furthermore, the fact that Ponce offered to replace the subject radio cannot likewise absolve him from any administrative liability, as such offer may be reasonably construed as an admission of fault for its loss.⁷

On the other hand, Justice Herrera found that Cruz's assertion that there was no proper turnover of the subject radio to him does not absolve him of administrative liability. As such, considering that his acceptance of the subject radio from Ponce shows that Cruz assented to its custody and safekeeping, he should be held equally liable for its loss.⁸

Given the foregoing facts, Justice Herrera concluded that respondents' failure to: (a) secure a government-issued property, *i.e.*, the subject radio; (b) observe existing procedures on the turnover of such radio which resulted in its loss; and (c) exercise due diligence and care required of them as security personnel to ensure the security and safety of the same, constitutes neglect of duty. Relatedly, Justice Herrera further concluded that the loss was not intentional but was rather due to carelessness and respondents' failure to observe vigilance. Hence, respondents should be held administratively liable for simple neglect of duty since their acts cannot be attributed to a flagrant and palpable breach of duty. However, Justice Herrera recommended that the minimum penalty be imposed on respondents due to the presence of the mitigating circumstance of first offense.⁹

Thereafter, the Sandiganbayan forwarded its records relative to the instant administrative matter to the Office of the Court Administrator (OCA) for proper action.

Meanwhile, during the pendency of this administrative matter, the Court promulgated a Decision in *Security and Sheriff Division, Sandiganbayan v. Cruz (A.M. No. SB-17-24-P)*,¹⁰ finding Cruz guilty of improper solicitation. Accordingly, Cruz was meted the penalty of dismissal from service with forfeiture of all retirement benefits except accrued leave credits and perpetual disqualification from employment in any branch of the government or any of its agencies or instrumentalities, including government-owned and -controlled corporations.¹¹

⁷ See *id.* at 153-154.

⁸ See *id.* at 154.

⁹ *Id.* at 155-156.

¹⁰ 813 Phil. 555 (2017).

¹¹ *Id.* at 567. See also *rollo*, p. 231.

KACM

The OCA Report and Recommendation

In a Memorandum ¹² dated November 29, 2019, the OCA recommended that respondents be found administratively liable for simple neglect of duty, and accordingly, be penalized as follows: (a) for Ponce, that he be meted the penalty of suspension for one (1) month and one (1) day without pay, with a stern warning that a repetition of the same act shall merit a more severe penalty; and (b) for Cruz, that he be meted instead the penalty of a fine in the amount of ₱5,000.00 payable within 30 days from notice, in lieu of suspension, considering that he could no longer be suspended on account of his supervening dismissal from the service.¹³

Mainly upholding the findings of the Investigation Report, as well as the Resolution of Justice Herrera, the OCA held that respondents committed the administrative offense of simple neglect of duty when they failed to secure the subject radio, a government-issued property, by disregarding the existing procedure for the proper turnover thereof to Bautista, thus resulting in its unwarranted loss. Moreover, the OCA opined that since this is respondents' first offense, the same shall be appreciated as a mitigating circumstance in their favor.¹⁴

The Issue Before the Court

The issue for the Court's resolution is whether or not respondents should be held administratively liable for the acts complained of.

The Court's Ruling

The Court adopts the findings of the OCA with certain modifications, as will be explained below.

I.

At the outset, it is important to note that on February 22, 2022, the Court *En Banc* unanimously approved A.M. No. 21-08-09-SC, entitled "*Further Amendments to Rule 140 of the Rules of Court*." On April 3, 2022, the publication requirement thereof was complied with;¹⁵ hence, Rule 140, as further amended (Rule 140), is already effective.

¹² *Rollo*, pp. 227-234. Penned by Court Administrator Jose Midas P. Marquez (now a Member of this Court).

¹³ *Id.* at 233-234.

¹⁴ *See id.* at 232-233.

¹⁵ Section 26 of Rule 140 reads:

SECTION 26. *Effectivity Clause.* – These Rules shall take effect following their publication in the Official Gazette or in two newspapers of national circulation. (Emphasis and underscoring supplied)

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In this relation, Section 24 of Rule 140 explicitly provides that the same will apply to all pending and future administrative disciplinary cases involving Members, officials, employees, and personnel of the Judiciary, to wit:

SECTION 24. *Retroactive Effect.* – **All the foregoing provisions shall be applied to all pending and future administrative cases involving the discipline of Members, officials, employees, and personnel of the Judiciary,** without prejudice to the internal rules of the Committee on Ethics and Ethical Standards of the Supreme Court insofar as complaints against Members of the Supreme Court are concerned. (emphasis and underscoring supplied)

In view of the foregoing, the Court shall resolve this case under the framework of Rule 140.

II.

In *Re: Complaint of Aero Engr. Reci Against CA Marquez and DCA Bahia Relative to Crim. Case No. 05-236956*,¹⁶ the Court elucidated on the administrative offense of neglect of duty, as follows:

Dereliction of duty may be classified as gross or simple neglect of duty or negligence. Gross neglect of duty or gross negligence “refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property.” It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable. In contrast, **simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a “disregard of a duty resulting from carelessness or indifference.”**

In this relation, it is settled that **the quantum of evidence necessary to find an individual liable for the aforesaid offenses is substantial evidence, or “that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.”** Substantial evidence does not necessarily mean preponderant proof as required in ordinary civil cases, but such kind of relevant evidence as a reasonable mind might accept as adequate to support a conclusion or evidence commonly accepted by reasonably prudent men in the conduct of their affairs.¹⁷ (emphases and underscoring supplied)

¹⁶ 805 Phil. 290 (2017).

¹⁷ Id. at 292-293; citations omitted.

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Given the foregoing jurisprudential guidance, the Court agrees with the findings of Justice Herrera, which is affirmed by the OCA, that respondents' acts which resulted in the loss of the subject radio should result in a finding of administrative liability against them. As succinctly found, respondents' failure to: (a) secure a government-issued property, *i.e.*, the subject radio; (b) observe existing procedures on the turnover of such radio which resulted in its loss; (c) exercise due diligence and care required of them as security personnel to ensure the security and safety of the same, constitutes neglect of duty. Furthermore, since the circumstances surrounding the loss of the subject radio show that such loss may be reasonably attributed to respondents' mere carelessness and their failure to observe vigilance, and hence, cannot be attributed to a flagrant and palpable breach of duty, they should be held administratively liable for simple neglect of duty only.

At this juncture, it bears pointing out that during the pendency of the instant administrative matter, Cruz was already meted the penalty of dismissal from the service with all its accessory penalties in *A.M. No. SB-17-24-P*. However, it is well to point out that this fact will not preclude the Court from determining his administrative liability herein, pursuant to Section 2 (2) of Rule 140, which provides that "once disciplinary proceedings have already been instituted, the respondent's supervening retirement or separation from service shall not preclude or affect the continuation of the same x x x." In this regard, case law instructs that "for the Court to acquire jurisdiction over an administrative proceeding, the complaint must be **filed during the incumbency** of the respondent public official or employee. This is because the filing of an administrative case is predicated on the holding of a position or office in the government service. However, once jurisdiction has attached, the same is not lost by the mere fact that the public official or employee was no longer in office during the pendency of the case."¹⁸ As such, Cruz's supervening dismissal from the service in *A.M. No. SB-17-24-P* will not preclude the Court from finding him administratively liable in this case, as above-discussed.

III.

Since the respective administrative liabilities of respondents for simple neglect of duty have now been established, the Court now goes into the proper imposable penalties on them.

Notably, both Justice Herrera and the OCA recommended that respondents be penalized under the framework of the Revised Rules on Administrative Cases in the Civil Service. However, in light of the retroactive application of Rule 140 as discussed above, the Court deems it appropriate to impose on respondents the penalties prescribed in the latter framework.

¹⁸ See *Office of the Court Administrator v. Fuensalida*, A.M. No. P-15-3290, September 1, 2020. See also *Baquerfo v. Sanchez*, 495 Phil. 10, 16-17 (2005).

Under Rule 140, simple neglect of duty – now denominated as “simple neglect of duty in the performance or non-performance of official functions” – is a less serious charge¹⁹ which is punishable by any of the following penalties: (a) suspension from office without salary and other benefits for not less than one (1) month nor more than six (6) months; or (b) a fine of more than ₱35,000.00 but not exceeding ₱100,000.00.²⁰

Furthermore, Section 19 of Rule 140 states that the Court may, in its discretion, appreciate the mitigating circumstance of “first offense.”²¹ In this relation, Section 20 of Rule 140 instructs that “[i]f one (1) or more mitigating circumstances and no aggravating circumstances are present, the Supreme Court may impose the penalties of suspension or fine for a period or amount not less than half of the minimum prescribed under this Rule.”

In this case, the Court agrees with both Justice Herrera and the OCA in appreciating the mitigating circumstance of first offense insofar as Ponce is concerned, as records are bereft of any showing that he incurred any other administrative offense prior to the one subject of the instant administrative matter. As such, and further noting that the Court, in several cases, has imposed the penalty of fine in lieu of suspension to prevent any undue adverse effect on public service,²² the Court imposes on Ponce the penalty of a fine in the amount of ₱18,000.00.

On the other hand, the Court could not appreciate the same mitigating circumstance in favor of Cruz, considering that he was previously found administratively liable and consequently penalized in *A.M. No. SB-17-24-P*. In this light, and further considering his supervening separation from the service, the Court imposes on him the penalty of a fine in the amount of ₱40,000.00.

Pursuant to Section 22 of Rule 140, respondents are mandated to settle the fines imposed on them within three (3) months from the promulgation of this Decision, to wit:

SECTION 22. *Payment of Fines.* — When the penalty imposed is a fine, the respondent shall pay it within a period not exceeding three (3) months from the time the decision or resolution is promulgated. If unpaid, such amount may be deducted from the salaries and benefits, including accrued leave credits, due to the respondent. The deduction of unpaid fines from accrued leave credits, which is considered as a form of compensation, is not tantamount to the imposition of the accessory penalty of forfeiture covered under the provisions of this Rule.

¹⁹ See Section 15 (b) of Rule 140.

²⁰ See Section 17 (2) of Rule 140.

²¹ See Section 19 (1) (a) of Rule 140.

²² See *Olympia-Geronilla v. Montemayor, Jr.*, 810 Phil. 1, 15 (2017).

As a final note, the Court hereby reminds all those in the Judiciary to “faithfully perform the mandated duties and responsibilities of their respective offices. The Court is ever aware that any act of impropriety on their part, be they the highest judicial officers or the lowest members of the workforce, can greatly erode the people’s confidence in the Judiciary. This, because their conduct, good or bad, necessarily reflects on the image of the Judiciary as the temple of justice and right. It is, therefore, the sacred duty of every worker in the Judiciary to maintain before the people the good name and standing of the courts.”²³


ACCORDINGLY, the Court rules as follows:

- (1) Respondent Ferdinand Ponce, Security Guard II of Sheriff and Security Services Division, Sandiganbayan, is hereby found **GUILTY** of simple neglect of duty. He is ordered to pay a **FINE** in the amount of ₱18,000.00; and
- (2) Respondent Ronald Allan Gole Cruz, formerly a Security Guard I of the Sheriff and Security Services Division, Sandiganbayan, is hereby found **GUILTY** of simple neglect of duty. He is ordered to pay a **FINE** in the amount of ₱40,000.00.

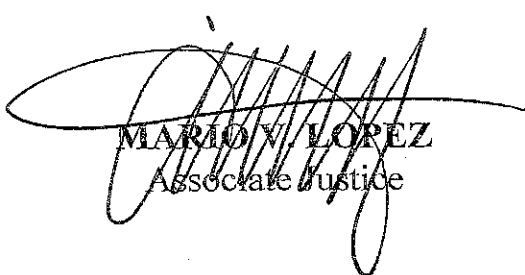
SO ORDERED.


ANTONIO T. KHO, JR.
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson


AMY C. LAZARO-JAVIER
Associate Justice


MARIO V. LOPEZ
Associate Justice

²³ See *Atty. Velasco v. Baterbonia*, 695 Phil. 769, 777 (2012), citing *Office of the Court Administrator v. Recio*, 665 Phil. 13, 31 (2011).



JHOSEP LOPEZ
Associate Justice