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EN BANC

[A.M. No. 01-1-01-SC. May 23, 2001]

IN RE: LOSS OF THE RECORDS OF G.R. NO. 126468 ENTITLED SONIA *LLAMAS-TAN v. COURT OF APPEALS, ET AL.*

SYNOPSIS

Respondents Cesar Barroso, Utility Worker II of the Judicial Records Office, and Melquiades Briones, Clerk III of the Office of the Clerk of Court, were charged with dishonesty and conduct prejudicial to the interest of the service. The two employees of the Court were implicated in the loss of the rollo of G.R. No. 126468 entiled *Sonia Llamas-Tan vs. Court of Appeals, et al.* Respondent Barroso admitted in a sworn statement that he took the *rollo* of the case and gave it to respondent Briones in exchange for ₱100. According to Barroso, Briones borrowed the *rollo* in order to photocopy its contents but did not return it. Respondent Briones, on the other hand, denied the charges against him and alleged that he never transacted any business with respondent Barroso regarding the said case. After an investigation, the Complaints and Investigation Division of the Office of Administrative Services recommended the dismissal from service of the two employees.

The Supreme Court found respondent Cesar Barroso guilty of misconduct in office and ordered his dismissal from the service with forfeiture of all retirement benefits. According to the Court, Barrosos's act of taking the *rollo* of G.R. No. 126468 in consideration of a sum of money constitutes misconduct, as it is an intentional wrongdoing that is directly connected with the performance of his duties as an employee of the Court. The fact that he did it upon the request of another person is not a valid defense. By failing to course such a request though the proper channels, he deliberately violated the standard of behavior expected of him as a Court employee.A utility worker like him has no authority to release court records. The Court, however, dismissed the case against respondent Melquiades Briones for insufficiency of evidence. Briones cannot be held administratively liable based on the sworn statement of Barroso who failed to appear during investigation and therefore could not be examined by the Court.

Supreme Court E-Library

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; MISCONDUCT IN OFFICE; LEGAL DEFINITION.**— Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is misconduct such as affects an employee's performance of his duties as an officer and not such only as affects his character as a private individual. Misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have a direct relation to and be connected with the performance of official duties, amounting to either maladministration or willful intentional neglect and failure to discharge the duties of the office.

2. **ID.; ID.; ID.; ID.; RESPONDENT'S ACT OF TAKING THE *ROLLO* OF G.R. NO. 126468 IN CONSIDERATION OF A SUM OF MONEY CONSTITUTES MISCONDUCT; A UTILITY WORKER HAS NO AUTHORITY TO RELEASE COURT RECORDS.**— In this case, Barroso admitted taking the rollo of the civil case with G.R. No. 126468 in consideration of a sum of money. Such act constitutes misconduct, as it is an intentional wrongdoing that is directly connected with the performance of his duties as an employee of the Court. The fact that he did it upon the request of another person is not a valid defense. By failing to course such a request through the proper channels, he deliberately violated the standard of behavior expected of him as a Court employee. A utility worker like him has no authority to release court records. Furthermore, the records show that Barroso has been absent from office without official leave since July 25, 1997. The absence without official leave of a respondent during the investigation of an administrative case against him is indicative of his guilt, just like flight in a criminal case.

D E C I S I O N

***PER CURIAM*:**

This refers to a complaint against respondents Cesar Barroso, Utility Worker II of the Judicial Records Office, and Melquiades Briones, Clerk III of the Office of the Clerk of Court, for dishonesty and conduct prejudicial to the interest of the service.

Supreme Court E-Library

In his letter-complaint dated July 24, 1997 to Atty. Luzviminda Puno, Clerk of Court, Jose G. Ang, Chief Judicial Staff Officer of the Judgment Division of the Judicial Records Office of this Court, reported the loss of the *rollo* in G.R. No.126468, entitled *Sonia Llamas-Tan vs. Court of Appeals, et al.*[1] The case, as can be shown by photocopied records, was a petition for the review of the decision of the Court of Appeals affirming the decision of the trial court in a civil case for rescission and damages filed by private respondents Carolina and Remedios Gonzales.[2]

It appears that on November 13, 1996, the Third Division of this Court denied the petition, on the ground that the issues raised were factual and the petitioner failed to show that a reversible error had been committed by the appellate court.[3] On December 9, 1996, the Third Division resolved to note without action an urgent manifestation and motion to admit the supplemental document (verification), dated November 19, 1996, filed by counsel for petitioner.[4] On February 17, 1997, the Third Division noted the entry of appearance filed by Attys. Daniel Gutierrez and Santiago Angelo Kapunan of Soo Gutierrez Leogardo and Lee as collaborating counsel for petitioner. Petitioner's counsel filed a motion for reconsideration, dated December 24, 1996, and her collaborating counsel filed a supplemental motion for reconsideration, dated February 12, 1997. The Court resolved to deny the two motions for lack of merit, noting that they merely reiterated arguments already raised.[5] Finally, on April 28, 1997, the Court resolved to deny petitioner's motion for leave to file a second motion for reconsideration of the resolution of November 13, 1996 which denied the petition for review on *certiorari* and the second motion for reconsideration and to grant private respondents' motion for entry of judgment and for remand of the records of the case.[6]

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[1] Complaint pp. 1-4; *Rollo*, pp. 2-5.

[2] Photocopy of Petition for Review, pp. 1-13; *Id.*, pp. 32-44.

[3] Photocopy of Resolution, November 13, 1996; *Id.*, p. 45.

[4] Photocopy of Resolution, December 9, 1996; *Id.*, p. 46.

[5] Photocopy of Resolution, February 17, 1997; *Id.*, p. 47.

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Ang said Cesar Barroso, Utility Worker II of the Judicial Records Office, and other Court employees were responsible for the loss of the *rollo*. He also gave a chronological narration of events leading to the discovery of the theft or loss:[7]

Sometime during the first week of June, a representative of Carolina and Remedios Gonzales, private respondents in the civil case, inquired about its status and asked for a copy of the Entry of Judgment. Cesar Miral, processor of cases in the Third Division, took out the *rollo* to check whether it could already be remanded. Miral requested Cayetano de la Pisa, assisting processor, to look for the return cards since he wanted to make sure that the resolution in the case had already been served upon the parties. After finding out that this was not so, Miral placed the *rollo* on his desk.

On Monday, June 9, 1997, de la Pisa found the registry numbers assigned to counsel for petitioner in the master list of mailed resolutions. On June 11, 1997, a representative of respondents again inquired about the civil case. Miral told the representative that he would send a letter to the Postmaster of Baguio City asking about the date when counsel for petitioner received the resolution of April 28, 1997, in view of the fact that his office had not received the corresponding return card. It was during this time that Miral discovered the loss of the *rollo* which he had placed on his desk. It had been replaced with the *rollo* of another case.

On June 30, 1997, Ang sent a memorandum to Miral and de la Pisa instructing them to update him on their search for the missing *rollo*. He also asked a certain Diosdado Samson to reconstitute it and to prepare the Entry of Judgment, if warranted.

In July of that year one of the employees in the Judicial Records Office informed Ang that Cesar Barroso, Utility Worker II, together with other Court employees, may have been responsible for the loss of *rollo*.

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[6] Photocopy of Resolution, April 28, 1997; *Id.*, p. 48.

[7] Complaint, pp. 1-4; *Id.*, pp. 2-5.

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Ang noted that this was not the first time the *rollo* of a case got lost. Considering the importance of the lost documents in the instant case, he claimed that this was not an ordinary case of negligence or carelessness and recommended the dismissal of employees found responsible therefor on the ground of dishonesty and conduct prejudicial to the best interest of the service.

In a *Sinumpaang Salaysay* dated August 14, 1997, respondent Barroso stated:[8]

Ako, si Cesar Magculang Barroso, *[ay] namamasukan [bilang] empleyado [sa] ilalim ng pamumuno ni Mr. Jose G. Ang. Isang araw [noong] Hunyo, 1997, bago nagkaroon ng anibersaryo ang* Supreme Court, *ako po ay kinausap ng isang tao na nagngangalang [Melquides "Dading"] Briones. Noong una, ang sabi niya sa akin ay siya'y may [hihiraming] rollo at ipapa-xerox lamang [niya ito], at ako ay binigyan niya ng halagang [isang daang piso (₱100.00)]. Tinanggap ko po ito sa kanya. Nang sumunod na araw ay hiniram niya ulit ito sa akin at sinabi sa akin na hihiramin niya uli ito at gustong makita ng taong kausap niya sa labas. Bago ko ito [ibinigay] sa kanya, sinulat ko ang G.R. No. nito. Ito po ay G.R. No.126468 na [naka-assign] sa 3rd* Division. *Nalaman ko na malapit na pala itong malagyan ng entry kaya sinako agad sa kanya ito. Nag-alok ulit siya sa akin ng pera ng halagang [limang libong piso (₱5,000.00)] kada-buwan na tatakbo [habang] hindi nalalagyan ng* entry of judgment. *Tinanggap ko ito sa dahilang natatakot na rin akong isauli ito sa* file *at baka may makakita sa akin, kaya pumayag na lang ako sa alok niya sa akin [sa] pag-aakalang hindi na ipahahanap ang nawawalang rollo. Mula noon pinabayaan ko na lang ito nang hindi nagtatanong sa kanya, pero nang napag-usapan uli ito minsan sa opisina at ipinahahanap ni Mr. Joseph Ang, agad ko itong tinanong sa kanya (Dading), at sinabi niya na sinunog na raw ito sa harap [ng] kausap niyang tao. Mula noon ay hindi na po ako nakipagkita sa kanya o nakipag-usap at hindi na rin po ako nakatanggap [ng] kahit na magkano sa kanya, hanggang isang araw ay pinatawag niya ako sa en banc sa kanyang la mesa, at doon ay tinanong niya ako kung ano na raw ang nangyari at bakit daw nagkaroon ng* "entry of judgment" *nang hindi ko sinasabi sa kanya, kaya raw po hindi na niya ako nabigyan ng pera na pangako niya sa akin, ay nag-away daw sila [ng] kausap niyang tao sa Baguio, kaya [hindi siya] binigyan ng pera nito.*

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[8] *Rollo*, pp. 7-8.

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Mula noon ay hindi na kami nagkausap tungkol dito.

This above statement was executed before Atty. Puno. In a memorandum dated July 14, 2000, Barroso was directed to answer in writing the complaint of Ang which charged him with dishonesty and conduct prejudicial to the best interest of the service.[9] Briones was also directed to answer the complaint of Ang, together with the attached Sinumpaang Sanaysay of Barroso implicating him in the loss of the subject *rollo*.[10] Barroso never complied with the directive of the Office, despite service on him of the complaint and statement as shown by the registry return card no. 1687.[11] Briones, on the other hand, submitted his Answer, dated July 24, 2000, in which he alleged:[12]

1. That the undersigned was directed to submit an answer to the allegation of his supposed complicity in the loss of the *rollo* of G.R. No. 126468 made by Cesar Barroso;

2. That on August 15, 1997, the undersigned had executed an AFFIDAVIT regarding the matter. The undersigned affirms and reiterates the averments that he had made in the aforementioned Affidavit, which has been made a part of the record of this case;

3. That the undersigned had never transacted any business with Cesar M. Barroso regarding the case that is docketed in the Honorable Court as G.R. No. 126468;

4. That the undersigned denies that he had borrowed the *rollo* of G.R. No. 126468 from Cesar M. Barroso or from anybody else;

5. That the allegation [that] the undersigned had borrowed the said *rollo* from Cesar M. Barroso is false. Mr. Barroso is not the custodian of the *rollo* and this fact is known to the undersigned. If the undersigned had a need to borrow any record or document, he knows that the right person to talk to is the custodian of the same;

6. That the allegation that the amount of five thousand pesos (₱5,000.00) each month was offered to Cesar M. Barroso by the undersigned is hereby denied.

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[9] *Id*, p. 11.
[10] *Id.*, p. 15.
[11] *Id.*, p. 13.
[12] *Id.*, pp. 18-21.

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The undersigned has no interest whatsoever in the case docketed in the Supreme Court as G.R. No. 126468, or its outcome that he would go to the extent of offering the sum of ₱5,000.00 to anybody. And, certainly not to Mr. Barroso who is not in any position to influence the result of the case;

7. That the other allegations of Barroso contradict each other. According to Barroso, the undersigned borrowed the *rollo* twice. The first time was for the purpose of having the *rollo* xeroxed and the second time was for the objective of showing the same to a companion who was waiting outside. Likewise, Barroso claimed that he was offered the monthly sum of ₱5,000 to delay the preparation of the Entry of Judgement. And, for this reason, Barroso stated that "*kaya sinako agad sa kanya ito.*"

Thereafter, according to Barroso, he accepted the offer of financial reward because "*natatakot na rin akong isa-uli ito sa file, at baka may makakita sa akin.*" After the lapse of a span of time, the matter of the loss of the records was brought up by Mr. Joseph Ang. And, when confronted, the undersigned, according to Barroso, informed the latter that the *rollo* was burned in front of the contact person of the undersigned.

If it is true that the undersigned was able to destroy the *rollo,* how come that Barroso was still in a position to return the same, after the second time that the *rollo* was borrowed? This shows the Barroso was in the possession of the *rollo* and this fact belies the assertion that the undersigned was able to destroy the *rollo* in front of the contact person;

8. That the undersigned denies having called Barroso to castigate him about an entry of judgment having been made in G.R. No. 126468;

9. That the allegations implicating the undersigned [in] the loss of the *rollo* in G.R. No. 126468 are bare of any evidence that would show the participation of the undersigned in the loss of the said *rollo.* Mere allegation is not evidence and is not synonymous with guilt;

10. That the assertion that the undersigned gave Barroso the sum of ₱100.00 to have the *rollo* xeroxed is a falsehood. There was no need for the undersigned to give the said amount to Barroso. If the undersigned had wanted to have the *rollo* xeroxed, all he had to do was bring the *rollo* to his place of work of assignment where there are xerox machines. Thereafter, the undersigned can have any portion of the *rollo* reproduced without anybody else knowing about it.

Supreme Court E-Library

On August 1, 2000, the Complaints and Investigation Division conducted an investigation during which Briones denied the charges against him and affirmed the allegations in his answer.

On September 18, 2000, Emmanuel Bumanglag, Clerk III of the Complaints and Investigation Division, Office of Administrative Services, sought to personally deliver to Barroso at his last known address a notice for him to appear in the Complaints and Investigation Division for investigation. He failed to do so, however, since Barroso had already moved to another place. Later, Bumanglag was able to locate Barroso's new residence, but the latter's househelp refused to accept the same. Bumanglag, therefore, asked Edgardo Esguerra, President of the Homeowners' Association, to deliver the notice to Barroso. On September 22, 2000, Bumanglag returned to Bacoor, Cavite and asked Esguerra if he had already given the notice to Barroso. Esguerra said, without showing any proof, that he had already served it. Barroso, however, has not appeared before the Office of Administrative Services up to the present time.[13]

To further establish the identity of the persons responsible for the loss of the subject *rollo*, the Office of Administrative Services requested Ang, and Briones's officemates, Onofre Cuento and Peter Aquino, to appear at an investigation. Ang affirmed the contents of the report which he submitted to the Clerk of Court. He testified that Barroso admitted to the latter's father and brother that he was responsible for the loss of the *rollo*. On the other hand, Cuento and Aquino said that they did not know Barroso and were thus not in any position to state whether Barroso ever talked to or visited Briones.[14]

The records filed in the Leave Division, Office of Administrative services disclose that Barroso has been absent without leave since July 24, 1997. Letters were sent to him asking him to explain why he should not be dealt with administratively for such absence, but he did not reply to any of them.[15] for this reason, Atty. Edwin

[13] Affidavit of Service, pp. 1-2; *Rollo*, pp. 27-28.

[14] *Rollo*, pp. 60-76.

[15] *Id.*, pp. 50-56.

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B. Andrada of the Complaints and Investigation Division submitted the following recommendation to the Office of the Chief Justice:[16]

> Premises considered, the undersigned most respectfully recommends that Mr. Cesar Barroso, Utility Worker I, JRO, and Mr. Melquiades Briones, Process Server, OCC, be DISMISSED from the service for gross misconduct prejudicial to the best interest of the service with forfeiture of all retirement benefits if there is any and with prejudice to reemployment in the government or in any government owned and controlled corporation.

Except for its conclusion that Briones is guilty of gross misconduct, the report of the Complaints and Investigation Division is well taken.

The liability of Barroso stems from the Revised Administrative Code of 1987,[17] specifically, the provisions on the Civil Service Commission (CSC) which treats him as court personnel.[18] Section 46 (b) of Chapter 6, Subtitle A, Title I, Book V of the said Code makes misconduct a ground for disciplinary action.[19]

Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is misconduct such as affects an employee's performance of his duties as an officer and not such only as affects his character as a private individual. Misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have a direct relation to and be connected with the performance of official duties, amounting to either maladministration or willful intentional neglect and failure to discharge the duties of the office.[20]

In this case, Barroso admitted taking the *rollo* of the civil case with G.R. No. 126468 in consideration of a sum of money.[21]

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[16] Memorandum of Atty. Andrada dated December 18, 2000, p. 6.

[17] Executive Order No. 292, s. of 1987.

[18] *Macalua vs. Tiu, Jr.*, 275 SCRA 320 (1997).

[19] *Id.*

[20] *Unknown Municipal Councilor of Sto. Domingo, Nueva Ecija vs. Alomia, Jr.*, 212 SCRA 330 (1992).

[21] *Sinumpaang Salaysay*, pp. 1-2; *Rollo*, pp. 7-8.

Supreme Court E-Library

Such act constitutes misconduct, as it is an intentional wrongdoing that is directly connected with the performance of his duties as an employee of the Court. The fact that he did it upon the request of another person is not a valid defense. By failing to course such a request through the proper channels, he deliberately violated the standard of behavior expected of him as a Court employee. A utility worker like him has no authority to release court records.[22]

Furthermore, the records show that Barroso has been absent from office without official leave since July 25, 1997.[23] The absence without official leave of a respondent during the investigation of an administrative case against him is indicative of his guilt, just like flight in a criminal case.[24]

The Constitution provides:[25]

> Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

The conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with a heavy burden of responsibility.[26] The employee's actions at all times must be characterized by propriety and decorum and be above suspicion.[27] Barroso failed to discharge his responsibility in such a manner as to protect the integrity of the judiciary and public confidence therein. Having committed grave misconduct, and not dishonesty nor mere conduct prejudicial to the service, he is liable for dismissal with forfeiture of retirement benefits and

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[22] *Macalua vs. Tiu, Jr.*, 275 SCRA 320 (1997).

[23] *Rollo*, pp. 50-56.

[24] *Casal vs. Concepcion, Jr.*, 243 SCRA 369 (1995).

[25] Art. XI, Sec. 1.

[26] *Quiroz vs. Orfila*, 272 SCRA 324 (1997); Re: Ms. Teresita S. Subido, 242 SCRA 432 (1995).

[27] *Quiroz vs. Orfila, supra*; *Office of the Court Administrator vs. Yambao*, 221 SCRA 77 (1993); *Del Rosario vs. Bascar, Jr.*, 206 SCRA 678 (1992); *Callejo, Jr. vs. Garcia*, 206 SCRA 491 (1992).

Supreme Court E-Library

disqualification for reemployment in the government service, pursuant to Sections 8, 9, and 23, Rule XIV of the Omnibus Rules Implementing Book V of Administrative Code of 1987 (E.O. No. 292).[28]

With respect to Briones, however, the evidence is insufficient to support the conclusion that he knew about and participated in the taking of the *rollo*. The Complaints and Investigation Division correctly noted that Briones failed to present evidence showing why Barroso would point to him as the one who borrowed the *rollo* and gave him money, considering the fact that there are hundreds of Court employees. It is also true that, in his affidavit and comment, as well as during the investigation, Briones simply denied all the allegations which Barroso stated in his Sinumpaang Salaysay.[29] Nonetheless, the evidence to this effect is insufficient to hold Briones liable and to warrant his dismissal from the service.

The Complaints and Investigation Division asserts, "It would appear however that in the investigation conducted, Mr. Briones admitted having borrowed the *rollo* and xeroxed the same." Such a conclusion cannot be supported by the statements made by Briones during the investigation:[30]

Q: during the first week of June, Mr. Barroso alleged that you approached him for the purpose of borrowing a *rollo?*

A: *Hindi ako napunta sa kanya para manghiram ng rollo.*

Q: For xeroxing?

A: A . . . for xeroxing . . .

Q: Did you pay him ₱100.00?

A: No.

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[28] Promulgated and approved by the Civil Service Commission on December 27, 1991 which was modified by the Uniform Rules on Administrative Cases in the Civil Service promulgated and approved on August 31, 1999].

[29] *Rollo*, pp. 9-10, pp. 18-25.

[30] *Id.*, pp. 22-25.

Supreme Court E-Library

Q: The next day, you again approached him to borrow the same *rollo* for the purpose of showing it to a certain person?

A: I deny also the allegation that I borrowed *again* the *rollo*.

. . . . . .

The statement, "A . . . for xeroxing," is ambiguous and cannot be taken as an admission that he took or borrowed the *rollo*.

Neither can Briones be held administratively liable based on the sworn statement of Barroso, who failed to appear during investigation and therefore could not be examined by the Court. The rights of a party cannot be prejudiced by an act, declaration, or omission of another.[31] One exception to this rule of evidence is an admission by a co-conspirator, but only after the conspiracy is shown by evidence other than such act or declaration.[32] No such conspiracy has been shown in this case.

WHEREFORE, for gross misconduct, Cesar Barroso, Utility Worker II of the Judicial Records Office, is *DISMISSED* from the service, with forfeiture of all retirement benefits if there are any and with prejudice to re-employment in the government. On the other hand, the case against Melquiades Briones, Clerk III of the Office of the Clerk of Court, is *DISMISSED* for insufficiency of evidence.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and *Sandoval-Gutierrez, JJ.*, concur.

Bellosillo, Melo, and *Kapunan, JJ.*, on leave.

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[31] Sec. 28, Rule 130, Rules of Court.

[32] Sec. 30, Rule 130, Rules of Court.