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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. P-11-2930. February 17, 2015]
(Formerly A.M. OCA IPI No. 10-3318-P)

LEAVE DIVISION – O.A.S., OFFICE OF THE COURT ADMINISTRATOR, *petitioner, vs.* **TYKE J. SARCENO,** *respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; PROLONGED AND UNAUTHORIZED ABSENCES AMOUNT TO HABITUAL ABSENTEEISM.— Administrative Circular No. 14-2002 provides that an employee in the Civil Service shall be considered habitually absent if he or she incurs "unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the law for at least three (3) months in a semester or at least three (3) consecutive months during the year." The OCA found that Sarceno had incurred absences totaling 92 days spread in the months of June, July, August, and September, all in 2009. Such absenteeism already merited the imposition of the penalty for habitual absenteeism. Still, Judge Legaspi reported that as of the writing of his letter to Atty. Bahia on September 8, 2010, Sarceno had incurred a total of 37 absences in 2010, 34 of which were in the months of July, August and September, all in 2010. The OCA observed that as of the writing of its AMFA on December 14, 2010, Sarceno had remained absent without official leave. The frequency and the number of Sarceno's absences rendered him

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guilty of habitual absenteeism, and indicated that he had thereby exceeded the allowable days of monthly leave credits.

2. ID.; ID.; ID.; AN EMPLOYEE'S PROLONGED AND UNAUTHORIZED ABSENCES ALSO CONSIDERED AS CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE PUBLIC SERVICE.— Sarceno was also guilty of conduct prejudicial to the best interest of the public service, yet another administrative offense. In *Loyao v. Manatad*, the Court considered a court employee's prolonged absence as conduct prejudicial to the best interest of the public service because of its adverse effect of inefficiency in the public service x x x. Conduct is prejudicial to the public service if it violates the norm of public accountability and diminishes – or tends to diminish – the people's faith in the Judiciary. By the habituality and frequency of his unauthorized absences, Sarceno did not live up to the degree of accountability, efficiency, and integrity that the Judiciary has required of its officials and employees. His position as Clerk III was essential and indispensable to the Judiciary's primary mandate of the proper administration of justice. This mandate dictated that he as a court employee should devote his office hours strictly to the public service, if only to repay and serve the people whose taxes were used to maintain the Judiciary. His habitual absenteeism severely compromised the integrity and image that the Judiciary sought to preserve, and thus violated this mandate.

3. ID.; ID.; ID.; HABITUAL ABSENTEEISM AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF PUBLIC SERVICE ARE PUNISHABLE WITH SUSPENSION FOR THE FIRST OFFENSE AND DISMISSAL FROM THE SERVICE FOR THE SECOND INFRACTION.— Section 52 of the Revised Uniform Rules on Administrative Cases in the Civil Service punishes habitual absenteeism and conduct prejudicial to the best interest of public service with suspension of six months and one day to one year for the first offense, and dismissal from the service for the second infraction. Although this was Sarceno's first offense, the OCA recommended that he should suffer the ultimate penalty of dismissal. The recommendation is appropriate and deserved. We must note that he had not been administratively charged with habitual absenteeism despite the strong recommendation by the OCA as early as in December

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2009. Had he been then so charged and found guilty, his penalty today would have been his second one.

4. ID.; ID.; ID.; ID.; THE HAND OF MERCY AND COMPASSION SHOULD BE DENIED TO THOSE WHO REFUSE TO REFORM DESPITE BEING GIVEN THE OPPORTUNITY TO DO SO.— [T]he Court has imposed dismissal from the service on court employees who had gone absent without leave (AWOL) even if the offenses were their first. x x x. As the OCA pointed out, Sarceno again went on AWOL in 2010 despite having expressed his "repentance with a resolve to correct his shortcomings." Indeed, according to him, the chance to remain employed in the public service would prejudice the public service. We would thereby be tolerating his lack of integrity and incompetence. The hand of mercy and compassion should be denied to those like Sarceno who refuse to reform despite being given the opportunity to do so. He thus deserves dismissal from the service, with forfeiture of benefits, except accrued leaves.

D E C I S I O N

***PER CURIAM*:**

We reiterate the long-standing proposition that the high standards that the Judiciary maintains require that all court employees devote their full working time to the public service. Hence, habitual absenteeism is considered prejudicial to the best interest of the public service because it makes a mockery of these standards, and, as such, should be curtailed.

As early as on December 4, 2009, the Office of the Court Administrator (OCA) recommended the bringing of an administrative complaint for habitual absenteeism against respondent Tyke J. Sarceno, Clerk III of the Regional Trial Court, Branch 31, in Manila.[1] The recommendation was based on a finding that Sarceno had incurred 92 days of unauthorized absences in the months of June 2009 to September 2009,

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[1] *Rollo*, p. 1.

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inclusive.[2] His unauthorized absences were called to his attention on January 14, 2010, with the Court requiring him to comment.[3]

In his comment,[4] Sarceno explained that he had been experiencing abdominal pains, high fever, and influenza in the latter part of May 2009;[5] that when the abdominal pain had become unbearable in the following month, he had applied for sick leave;[6] that he did not seek medical assistance but only resorted to self-medication, believing that he was only experiencing a common illness;[7] that due to this, he could not produce a medical certificate to support his application for sick leave;[8] that in July 2009, he had applied for vacation and sick leaves alternately to cover his absences;[9] that he had then sought medical assistance upon finding out that he was also suffering gonorrhea; that he had returned to work on August 14, 2009 to file the necessary leave application;[10] that he had applied for vacation leave to cover the whole month of September 2009 because the nature of his illness had required an extended time for recovery;[11] that he had harbored neither malicious intent nor bad faith in incurring his absences;[12] that he entreated that the medical certificate attached to his comment be accepted, confessing that he had belatedly filed it due to "embarrassment and threat of ridicule" brought about by his sickness;[13] and

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[2] *Id*. at 2.

[3] *Id*. at 4.

[4] *Id*. at 5-6.

[5] *Id*. at 5.

[6] *Id*.

[7] *Id*.

[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] *Id*. at 6.

[13] *Id*.

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that he was committing himself to "correct his shortcomings and serve with enthusiasm and excellence."[14]

Even so, Sarceno continued to incur unexplained absences. His continuing absenteeism was discovered by Atty. Caridad A. Pabello, Chief, Administrative Services of the OCA, who had meanwhile sent a telegram requesting Presiding Judge Germano Francisco D. Legaspi of Branch 31 of the Regional Trial Court in Manila to direct Sarceno to submit his bundy cards for July 2010 and August 2010 lest the OCA would recommend that Sarceno's salary be withheld;[15] and the latter had responded by letter dated September 8, 2010 addressed to then Assistant Court Administrator Thelma C. Bahia stating that he could not immediately and directly instruct Sarceno to submit his bundy cards due to Sarceno not having reported to work since July 28, 2010.[16] It appears that Judge Legaspi further informed the OCA that the records in his office showed that Sarceno had incurred 75 absences in 2009; and 37 absences in 2010, excluding the absences in relation to which Sarceno indicated in the logbook that he had been on sick or vacation leave;[17] that Sarceno did not apply for leave for the absences incurred in July 2010 and August 2010;[18] that the previous withholding of his salary had not moved Sarceno to change his ways; and that Sarceno's excessive absences indicated that he had already abandoned his duty to the detriment of public service.[19] Accordingly, Judge Legaspi recommended that Sarceno be dropped from the rolls, or, in the alternative, that appropriate administrative charges be brought against him for habitual absenteeism.[20]

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[14] *Id*.

[15] *Id*. at 9.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] *Id*.

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A tracer letter dated September 23, 2010 was soon dispatched to Sarceno's residence requiring him to submit his bundy cards and/or leave applications for July 2010 and August 2010, or else his name would be recommended for dropping from the rolls.[21] However, he did not respond.[22]

In its Administrative Matter for Agenda (AMFA) dated December 14, 2010,[23] the OCA submitted to the Court the following observations and recommendations, to wit:

> x x x Respondent Sarceno is undoubtedly liable for habitual absenteeism.
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> Under Section 22(q), Rule XIV, Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987), reiterated in Civil Service Commission (CSC) Memorandum Circular No. 4, series of 1991 and Civil Service Commission Resolution No. 97-1823 dated 11 March 1997, an officer or employee commits habitual absenteeism if he incurs unauthorized absences exceeding the allowable monthly leave credit of two and a-half (2.5) days under the leave law for at least three (3) months in a semester or at least three (3) consecutive months during the year.
>
> Memorandum Circular No. 41, series of 1998, also provides that applications for sick leave of absence for one full day or more shall be on a prescribed form and shall be filed immediately upon the employee's return from such leave. Application for sick leave in excess of five (5) days shall also be accompanied by a proper medical certificate.
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> The respondent was thus required to notify his immediate supervisor and or the agency head (his presiding judge or the branch clerk of court) of his prolonged absences. Under Administrative Circular No. 2-99 dated January 15, 1999, all officials and employees of the judiciary must be role models in the faithful observance of the constitutional canon that a public office is a public trust. Inherent in this mandate is the observance of prescribed office hours and the efficient use of every moment thereof for public service, if only

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[21] *Id*. at 11.

[22] *Id*.

[23] *Id*. at 10-12.

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to recompense the Government, and ultimately, the people who shoulder the cost of maintaining the Judiciary.

The evidence and the respondent's admission sufficiently establish his culpability. Under Section 52 A(17), Rule IV of CSC Memorandum Circular No. 19, Series of 1999 (Revised Uniform Rules on Administrative Cases in the Civil Service), habitual absenteeism or tardiness is a Grave Offense punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal for the second offense.

In Administrative Matter No. 00-06-09-SC (Re: Imposition of Penalty for Habitual Tardiness, 16 March 2004), the Court explicitly stated that *"moral obligation, performance of household chores, traffic problems, health conditions, and domestic and financial concerns are not sufficient reasons to excuse habitual tardiness."*

In the case of *Judge Iluminada Cabatu vs. Felix Centino, Process Server, Regional Trial Court, Branch 59, Baguio City (A.M. No. P-08-2572, November 19, 2008)* where the respondent was suspended for Habitual Absenteeism, the Court stresses that "to inspire public respect for the justice system, court officials and employees should at all times strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible."

Respondent's guilt may no longer be mitigated by his health problem and admission of guilt. He committed his mistake in 2009 and repeated a similar mistake this year [2010]. What happened to his sincere repentance, with a resolve *"to correct his shortcomings and serve with enthusiasm and excellence?"* He has not even complied with the latest directives of this [OCA] until now. How can we show mercy and forgiveness to a stubborn employee? While the Court has the discretion to temper the harshness of its judgment with mercy, it also has a duty to weed out undesirable employees who do not reform.

x x x In view of the foregoing, we respectfully submit for the consideration of the Honorable Court the following recommendations:

(1) The instant administrative matter be **RE-DOCKETED** as a regular administrative complaint for Habitual Absenteeism against Tyke J. Sarceno, Clerk III, RTC, Branch 31, Manila; and

(2) Respondent Sarceno be found **GUILTY** of Habitual Absenteeism and be meted the penalty of Dismissal from the service, with forfeiture

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of benefits except accrued leave credits and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or –controlled corporations."[24]

On February 22, 2012, the Court promulgated its resolution in A.M. No. 12-2-30-RTC (*Re: Dropping from the Rolls of Mr. Tyke J. Sarceno, Clerk III, Regional Trial Court, Br. 31, Manila*) dropping Sarceno's name from the rolls, and declaring his position as Clerk III of Branch 31 of the Regional Trial Court of the City of Manila as vacant,[25] without prejudice to the outcome of the present administrative matter.

Ruling

We adopt the findings and recommendation of the OCA, and hold Sarceno guilty of habitual absenteeism.

Administrative Circular No. 14-2002[26] provides that an employee in the Civil Service shall be considered habitually absent if he or she incurs "unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the law for at least three (3) months in a semester or at least three (3) consecutive months during the year."

The OCA found that Sarceno had incurred absences totaling 92 days spread in the months of June, July, August, and September, all in 2009.[27] Such absenteeism already merited the imposition of the penalty for habitual absenteeism. Still, Judge Legaspi reported that as of the writing of his letter to Atty. Bahia on September 8, 2010, Sarceno had incurred a total of 37 absences in 2010, 34 of which were in the months of July, August and September, all in 2010.[28] The OCA observed that as of the writing of its AMFA on December 14, 2010,

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[24] *Id*. at 11-12.

[25] *Id*. at 16-17.

[26] Issued on March 18, 2002 by the Court reiterating the Civil Service Commission's policy on habitual absenteeism (effective on April 1, 2002).

[27] *Rollo*, p. 2.

[28] *Id*. at 9.

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Sarceno had remained absent without official leave.[29] The frequency and the number of Sarceno's absences rendered him guilty of habitual absenteeism, and indicated that he had thereby exceeded the allowable days of monthly leave credits.

Sarceno was also guilty of conduct prejudicial to the best interest of the public service, yet another administrative offense. In *Loyao v. Manatad*,[30] the Court considered a court employee's prolonged absence as conduct prejudicial to the best interest of the public service because of its adverse effect of inefficiency in the public service, *viz.*:

> Respondent Manatad's habitual absenteeism has caused inefficiency in the public service. Time and again, this Court has made the pronouncement that any act which falls short of the exacting standards for public office, especially on the part of those expected to preserve the image of the judiciary, shall not be countenanced. Public office is a public trust. Public officers must at all times be accountable to the people, serve them with utmost degree of responsibility, integrity, loyalty and efficiency. A court employee's absence without leave for a prolonged period of time constitutes conduct prejudicial to the best interest of public service and warrants the penalty of dismissal from the service with forfeiture of benefits.[31]

Conduct is prejudicial to the public service if it violates the norm of public accountability and diminishes – or tends to diminish – the people's faith in the Judiciary.[32] By the habituality and frequency of his unauthorized absences, Sarceno did not live up to the degree of accountability, efficiency, and integrity that the Judiciary has required of its officials and employees. His position as Clerk III was essential and indispensable to the Judiciary's primary mandate of the proper administration of justice. This mandate dictated that he as a court employee should devote his office hours strictly to the public service, if only to

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[29] *Id*. at 10-12.

[30] A.M. No. P-99-1308, May 4, 2000, 331 SCRA 324.

[31] *Id*. at 329-330.

[32] *Consolacion v. Gambito*, A.M. No. P-06-2186, July 3, 2012, 675 SCRA 452, 463.

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repay and serve the people whose taxes were used to maintain the Judiciary.[33] His habitual absenteeism severely compromised the integrity and image that the Judiciary sought to preserve, and thus violated this mandate.

Section 52 of the Revised Uniform Rules on Administrative Cases in the Civil Service[34] punishes habitual absenteeism and conduct prejudicial to the best interest of public service with suspension of six months and one day to one year for the first offense, and dismissal from the service for the second infraction. Although this was Sarceno's first offense, the OCA recommended that he should suffer the ultimate penalty of dismissal.[35] The recommendation is appropriate and deserved. We must note that he had not been administratively charged with habitual absenteeism despite the strong recommendation by the OCA as early as in December 2009.[36] Had he been then so charged and found guilty, his penalty today would have been his second one.

Moreover, the Court has imposed dismissal from the service on court employees who had gone absent without leave (AWOL) even if the offenses were their first. In *Loyao v. Manatad*,[37] a court interpreter was dismissed from the service despite the lack of any indication of the employee having been previously charged and found guilty of any administrative offense. We ruled there that "[a] court employee's absence without leave for a prolonged period of time constitutes conduct prejudicial to the best interest of public service and warrants the penalty of dismissal from the service with forfeiture of benefits."[38] We reached a similar result in *Masadao v. Glorioso and Baldoz*.[39]

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[33] *Re: Frequent Unauthorized Absences of Ms. Nahren D. Hernaez*, A.M. No. 2008-05-SC, 561 SCRA 1, 11.

[34] CSC Memorandum No. 19, Series of 1999.

[35] *Rollo*, pp. 11-12.

[36] *Supra* note 1.

[37] *Supra* note 30.

[38] *Id*. at 330.

[39] A.M. No. P-96-1207, October 16, 1997, 280 SCRA 612.

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We deem it necessary and appropriate to take a similar stance here. As the OCA pointed out, Sarceno again went on AWOL in 2010 despite having expressed his "repentance with a resolve to correct his shortcomings."[40] Indeed, according to him, the chance to remain employed in the public service would prejudice the public service. We would thereby be tolerating his lack of integrity and incompetence. The hand of mercy and compassion should be denied to those like Sarceno who refuse to reform despite being given the opportunity to do so. He thus deserves dismissal from the service, with forfeiture of benefits, except accrued leaves.

As mentioned, Sarceno's name had been dropped from the rolls on February 22, 2012, and his position as Clerk III of Branch 31 of the Regional Trial Court of the City of Manila had been declared vacant. Such actions of the Court effectively amounted to his dismissal from the service. Accordingly, the Court, in the interest of the public service, declares him to be ineligible for public office hereafter.

WHEREFORE, the Court **FINDS** and **DECLARES TYKE J. SARCENO GUILTY** of **HABITUAL ABSENTEEISM** and **CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE PUBLIC SERVICE**; and **CONFIRMS** his **DISMISSAL FROM THE SERVICE**, with prejudice to re-employment in any government agency, including government-owned or government-controlled corporations, and with forfeiture of all retirement benefits, except accrued leave credits.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Jardeleza, J., on official leave.

Brion, J., on leave.

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[40] *Rollo*, p. 6.