

MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 119

**IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE ON
ROGELIO I. RAYALA, CHAIRMAN, NATIONAL LABOR RELATIONS
COMMISSION (NLRC)**

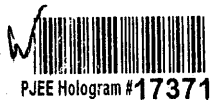
This resolves the complaint filed on November 18, 1998 by Ma. Lourdes T. Domingo, Stenographic Reporter II of the National Labor Relations Commission (NLRC) against Rogelio I. Rayala, Chairman of the same Office, for sexual harassment under Republic Act (RA) No. 7877 or the Anti-Sexual Harassment Act of 1995.

The acts constitutive of the charge are stated in complainant's affidavit-complaint, essentially alleging that on November 9, 1998, the respondent held, squeezed the complainant's shoulders, while taking dictation, run his fingers on her neck and ear, and made sexually offensive remarks.

The complaint was filed before the Office of the Secretary of Labor. Acting thereon, the Secretary of Labor sought guidance from this Office, the respondent being a presidential appointee. Upon order of this Office, through the Executive Secretary, to initiate the necessary investigation on the complaint and to create a committee for the purpose, the Secretary of Labor issued on December 4, 1998 Administrative Order No. 280, Series of 1998, constituting a Committee on Decorum and Investigation ("Committee") pursuant to the provisions of RA No. 7877. The Committee was directed to conduct the hearings as expeditiously as possible and to submit a Report and Recommendation after the conclusion of the investigation.

Upon order of the Committee, complainant appeared before it and swore to the truth of the allegations made in her complaint. On his part, respondent, instead of submitting his answer as directed, filed a Counter-Affidavit *Ad Cautela*, stating his defenses, albeit with a reservation to question the composition of the Committee.

In an attempt to stop the proceedings of the Committee, respondent filed before the Office of the Secretary of Labor a petition, assailing the composition of the Committee for being contrary to law. He also moved to dismiss the case on ground of forum shopping as complainant appeared to have filed a similar complaint before the Civil Service Commission (CSC). The Secretary of Labor, however, denied/dismissed said petition and motion.



Discontented, respondent elevated the matter to the Court of Appeals *via* a Petition (with Prayer for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction) but failed to obtain a favorable judgment. After dismissal of his petition, respondent manifested his intention not to pursue his case, hence, the proceedings before the Committee proceeded with both parties presenting their evidence to substantiate their respective stand.

Meanwhile, the complaint before the CSC was dismissed in an Order dated April 16, 1999, which stated, among other things, that the CSC has no jurisdiction over the respondent considering that he is a presidential appointee.

Coming now to the case, the records disclose that the Committee has gathered the following:

“EVIDENCE FOR THE COMPLAINANT

Complainant alleges that in the course of her employment with the respondent, she experienced sexual harassment detailed in paragraphs 17 and 18 of her affidavit complaint. She related these incidents to her friends Agnes Magdaet, Maribel Fajardo-Herrera, the Acting Executive Clerk Perlita B. Velasco and Acting Director Carolina G. de Leon of the Management and Administrative Department (MAD).

Complainant emphasizes that, as the respondent is her immediate superior and the highest official of the NLRC, he has moral ascendancy, influence and authority over all the subordinate personnel of the entire Commission.

Complainant points out that respondent's acts of holding, squeezing her shoulders, running his fingers on her neck and ear and sexually offensive remarks as well as other behaviors, caused her to be scared and agitated.

She related these acts to some NLRC officers and staff as these were, according to her, producing unbearable and hostile environment. Thereupon, she requested for transfer of assignment and leave of absence.

Corroborating her on this point, witnesses Agnes Magdaet, Maribel Fajardo-Herrera, Perlita Velasco and Carol de Leon testified.

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As to the amount of P3,000.00, complainant claimed that respondent gave her the money without asking for it and, returning it was her way of saying no without offending her superior.

Further, complainant claimed that very personal questions asked of her made her uncomfortable. The same questions were not asked from other staff who worked under him allegedly because he knows they have husbands, as in fact all who testified for the respondents are married.

EVIDENCE FOR THE RESPONDENT

Respondent, on the other hand, disputes complainant's allegation claiming that from the acts complained of he has not demanded, requested or otherwise required expressly or impliedly, a sexual favor from the complainant; that he had no such intention; that it is the complainant attributing sexual content and maliciousness to the purported acts based on her perception; that this perception must, according to Carl Roger's theory, be tested against the perceptions of other persons situated in the same environment called the "external reality."

To prove that it is only the complainant who gave malicious color to certain actuations of the respondent, the latter presented his female staff members among other witnesses who attested to his familiar treatment, friendliness, paternalistic attitude toward his employees, like tousling the hair, and generosity by extending financial assistance. These witnesses claimed they have never seen any malicious or lascivious intent in the aforesaid acts.

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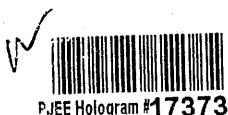
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As to the matter of inquiring into complainant's personal circumstances, respondent explains that he was targeting her for the sensitive position of personal secretary for which he felt he needed to get to know complainant more.

As regards the offering of a sum of money to complainant, respondent states that the offer came as a result of their conversation about her family and studies and that complainant implied to him that she needed the money for her tuition fee.

As to the incident on November 9, 1998, respondent denied making any sexual advances, testifying that he was in angry mood when he was giving dictation to complainant due to the failure of Region VI to attain its "zero backlog" target."



After carefully evaluating and weighing the evidence submitted by both parties in support of their respective position, the Committee, on March 2, 2000, issued a Report and Recommendation finding respondent guilty of the offense charged, and recommending the imposition of the penalty provided for in RA 7877 in the minimum on the strength of the following premises:

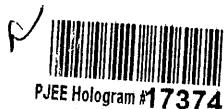
“From the recitation of facts, the acts complained of, albeit denied by the respondent, have been sufficiently established. The witnesses were employees of the NLRC who had everything to lose in case their testimonies were perjured. Moreover, it had been indicated that one of the witnesses, Acting Director Carol de Leon had been effectively removed from her post and re-assigned to another post after her testimony. Moreover, no less than respondent’s witness, Rizza Ocampo, in her Karagdagang Sinumpaang Salaysay (Exh. 6) declared:

“1. Hindi totoong sinabi sa akin ni Lourdes Domingo noong ika-9 ng Nobyembre, 1998 ang mga salitang, “Hinawakan niya ang aking balikat habang ito ay kanyang pinipisil, pagapang sa aking leeg. Kiniliti niya ang tainga ko.” Ang sinabi sa akin ni Lourdes Domingo ay “Hinawakan si Sir ang balikat ko, ang tainga ko. Nakiliti ako.” Kaya sinabi ko sa kanya na “Ikaw naman, Lot. Hindi ka na nasanay. Ganyan lang si Sir.” Iyon ang naging reaksiyon ko sa sinabi niya dahil natural kay Sir na paminsan-minsan na inilalagay ang kamay niya sa balikat ng ibang tao at walang malisya iyon.”

By what norm must the conduct complained of be measured? The Committee resorted to AO 250, which contains in Annex A thereof Guidelines on Proper Decorum. Using these parameters, the Committee finds that the acts attributed to the respondent were improper. They were unwelcomed by the complainant because they connoted a sexual overtone.

By offering justification for such acts, by way of defense, respondent wants to convey that nothing of the sort as perceived by the complainant have been intended.

At the outset, it must be stressed that RA 7877, otherwise known as the Anti-Sexual Harassment Act of 1995, is a special law. All forms constitutive therefor of the act are considered *mala prohibita*. As such, intention is not essential for the commission of the offense. Thus, in the Senate deliberations of the bill, Senator Lina, who was one of the sponsor, clarified:



“The policy that we want to establish here is employer’s hands off. Whether one is provoked, titillated or there is a stimuli, the employer should keep his hands to himself. That is the policy that we want to establish here.”
(CP-Senate, tsp October 17, 1994)

Likewise, the defense of the respondent that this is just part of the conspiracy to oust him was mere speculations and was not pursued. Mere speculations and probabilities cannot substitute proof required to establish a conspiracy. Basic is the rule that it must be proved through clear and convincing evidence and not by mere conjectures.

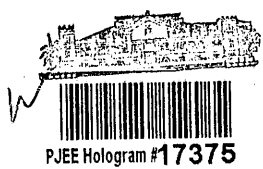
Lastly, complainant’s letter requesting for transfer, coupled by her applications for leave of absence, and ultimately filing the instant case evidently show the hostility around her working environment which is sought to be prevented by the law.”
(Underscoring ours).

On March 3, 2000, the Secretary of Labor submitted a copy of said Report and Recommendation to this Office, with clarification that the recommended penalty is suspension for six (6) months and one (1) day only, considering that it is respondent’s first offense applying the schedule of penalties stated in Section 8 of Administrative Order (AO) No. 250 (Rules and Regulations Implementing RA 7877 in the Department of Labor and Employment).

Upon a careful scrutiny of the evidence on record, I concur with the findings of the Committee as to the culpability of the respondent, the same having been established by clear and convincing evidence. However, I disagree with the recommendation that respondent be meted only the penalty of suspension for six (6) months and one (1) day considering the circumstances of the case.

What aggravates respondent’s situation is the undeniable circumstance that he took advantage of his position as the superior of the complainant. Respondent occupies the highest position in the NLRC, being its Chairman. As the head of said office, it was incumbent upon respondent to set an example to the others as to how they should conduct themselves in public office, to see to it that his subordinates work efficiently in accordance with Civil Service Rules and Regulations, and to provide them with healthy working atmosphere wherein co-workers treat each other with respect, courtesy and cooperation, so that in the end the public interest will be benefited (City Mayor of Zamboanga vs. Court of Appeals, 182 SCRA 785 [1990]).

What is more, public service requires the utmost integrity and strictest discipline (Gano vs. Leonen, 232 SCRA 99 [1994]). Thus, a public servant must exhibit at all times the highest sense of honesty and integrity, and “utmost devotion and dedication to duty”



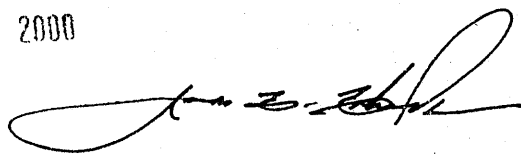
(Sec. 4(g), RA 6713), respect the rights of others and shall refrain from doing acts contrary to law, and good morals (Sec. 4(c)). No less than the Constitution sanctifies the principle that a public office is a public trust, and enjoins all public officers and employees to serve with the highest degree of responsibility, integrity, loyalty and efficiency (Section 1, Article XI, 1987 Constitution).

Given these established standards, I see respondent's acts not just a failure to give due courtesy and respect to his co-employees (subordinates) or to maintain good conduct and behavior but defiance of the basic norms or virtues which a government official must at all times uphold, one that is contrary to law and "public sense of morality." Otherwise stated, respondent - to whom stricter standards must apply being the highest official in the NLRC - had shown an attitude, a frame of mind, a disgraceful conduct, which renders him unfit to remain in the service.

WHEREFORE, in view of the foregoing, respondent Rogelio I. Rayala, Chairman, National Labor Relations Commission, is found guilty of the grave offense of disgraceful and immoral conduct and is hereby **DISMISSED** from the service effective upon receipt of this Order.

SO ORDER.

Manila, Philippines, MAY 08 2000



By the President:



RONALDO B. ZAMORA
Executive Secretary

12

