

BILAYON, EDGAR P.

Re: Falsification of Official Document;
Conduct Prejudicial to the Best Interest
of the Service; Appeal

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RESOLUTION NO. 020830

Edgar P. Bilayon, Engineering Assistant, Philippine National Railways (PNR), through counsel, appeals from the Resolution dated January 16, 2002 of the Board of Directors, PNR, whereby he was dismissed from the service for Falsification of Official Document and Conduct Prejudicial to the Best Interest of the Service.

As grounds for his appeal, Bilayon raised the following:

"I. THE PHILIPPINE NATIONAL RAILWAYS ERRED IN FINDING APPELLANT GUILTY OF THE CHARGES AGAINST HIM.

"II. THE PHILIPPINE NATIONAL RAILWAYS ERRED IN DISMISSING AND SUSPENDING APPELLANT WITHOUT DUE PROCESS.

In support thereof, Bilayon argues, as follows:

"Whether or not appellant is guilty of the charges against him and was dismissed for cause

"It must be stated at the outset that appellant is not guilty of the charges against him.

First, as alleged and admitted by Sarasola, the University of the East had issued a Certification dated August 26, 1987, signed by the then Asst. registrar, Mr. Ludovino S. Dalupan, stating that appellant had completed all the requirements for the degree of Bachelor of Science in Electronics and Communication Engineering (BSECE).

"Said certification became the basis in filling up the blanks of appellant's personal data

sheets on September 28, 1997 and September 28, 1998.

"It must be emphasized, however, that prior to the issuance of the Registrar's certification above-mentioned, appellant had stated in his personal data sheet on October 30, 1985 that he was a 5th year BSECE student.

"In other words, when appellant mentioned in his 1987 and 1988 personal data sheets that he was a graduate, he was just acting in good faith with no intention to falsity (sic)

"While UE may have indicated in the Request for Release of student's school Records, a privileged and confidential document, indicating that appellant did not finish his course, no evidence was ever presented to prove that the University's Certification dated August 26, 1987 was falsified. Besides, appellant was never a party to it.

"There may be two (2) scenarios that can be deduced from these seeming inconsistency.

"First, there may have been a change in the BSECE curriculum where additional units or subjects were incorporated therein rendering the appellant to be lacking in some units or subjects. Or some subjects taken from other school may have been discredited. Appellant was a transferee from the PATS School of Aeronautics.

"Second, the above-mentioned certification was issued based on the old curriculum for 1979-1980.

"As to the claim that the personal data sheets and certification were issued by appellant in taking the career service professional examination and in processing his appointment to the position of Engineering Assistant, suffice it to say that the said position does not require a college degree and professional civil service eligibility.

"It would have been futile on the part of appellant to falsify something not important or necessary to his position.

"This alone negates the claim of falsification and dishonesty.

"Consequently, the dismissal of appellant is illegal.

"And even assuming for the sake of argument that there was an untruthful claim is (sic) the personal data sheets of appellant, the Civil Service Commission has this to say, "As such, the untruthful claim in her PDS that she was a BSBE graduate is not material to such appointment.

Thus, she cannot be held liable for Dishonesty but only for the lesser offense of Simple Misconduct. The reason being, the failure to disclose the truth in an official document, such as the PDS, is a clear transgression of the norms and standards expected of her as a Public servant (CSC Resolution No. 99-0489 dated February 19, 1999).

"Whether or not appellant was accorded due process when he was dismissed and suspended from office.

"Appellant, however, was removed without cause.

"Besides, he was not accorded due process.

"Take note that when the administrative proceeding was commenced, appellant was then on official leave from October 11 to October 26, 2001.

"On October 19, 2001, appellant was recommended for dismissal and suspended for ninety (90) days from said date.

"In addition, the Sarasola Committee tasked to investigate appellant's case was partial against the latter and its members served upon the will of the General manager.

"And the General manager himself was bias against appellant which started with the unconsented transfer of the latter from the Communication and Signaling Division to Rolling Stock maintenance Department as a prelude to his plan to dismiss appellant.

"Even the dismissal of appellant was done with undue haste.

"In Villa vs. Lazaro, 189 SCRA 34, the Supreme Court said, "Administrative due process is required to include (a) the right to notice, be it actual or constructive of the institution of the proceedings that may affect a person's legal right; (b) reasonable opportunity to appear and defend his right, introduce witnesses and relevant evidence in his favor, (c) a tribunal so constituted as to give him reasonable assurance of honesty and impartiality, and one of competent jurisdiction; and (d) a finding or decision by the tribunal supported by substantial evidence presented at the hearing, or at least contained in the records or disclosed to the parties affected."

"Above-said doctrinal rules, however, are not present with the Sarasola Committee.

"Due process being absent, therefore, the dismissal and suspension of appellant were, plain and simple, illegal.

When requested to comment, Jose Ma. I. Sarasola, General Manager of the PNR, through counsel, states, as follows:

*"Appellees Were Correct
In Finding Appellant
Guilty of the Charges
Against Him*

"In paragraph 7 of his Appeal-Memorandum, appellant says in part, "Further, the Personal Data Sheet accomplished on September 28, 1997 (Annex "4" hereof) and September 28, 1998 (Annex "5" hereof) were based on the Certification dated August 26, 1987 issued by the University of the East. The said Certification (Annex "6" hereof) is likewise the evidence of PNR". But appellant knew that said certification was not stating the truth. The first person who could categorically say that he was a graduate in any given course is the graduate himself. Appellant knew that he was not actually a graduate in BSECE. Why did he state so in his Personal data Sheet? The act of appellant in knowingly stating a falsehood in his PDS was deliberate. he used his aforesaid PDS and the falsified certification in taking the Career Service Professional Examination, the PRC Board Exam in 1987 and as part of the requirements for the processing of his appointment as Engineering Assistant. Being in possession of a falsified document, and even used by him, appellant is deemed the author of the falsification.

"Under his arguments on the first ground, appellant further states: "In other words, when appellant mentioned in his 1987 and 1988 personal data sheets that he was a graduate, he was just acting in good faith with no intention to falsity". His acts, however, evince bad faith and criminal intent. he knew that what he stated in his aforesaid PDS were a falsity because he was not a graduate.

"Appellant went on to say: "While UE may have indicated in the Request for Release of Student's School Records, xxx indicating that appellant did not finish his course, no evidence was ever presented to prove that the University's Certification dated August 26, 1987 was falsified. Besides, appellant was never a party to it." This is precisely the evidence (SEE Annex "1", "1-A" hereof) proving that the appellant was not a graduate as he claimed; for how can he be a graduate if he did not finish his course? Appellant would disclaim authorship of the falsification by disowning participation to it. That would not save the day for appellant. Appellant never denied that he was in possession of, and actually filled up his falsified PDS of 1987 and 1988. He alone actually benefited from it by using the same PDS in taking the Career Service professional Examination

and as requirements for his appointment as Engineering Assistant, acts that appellant likewise never denied.

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"It is undisputed that appellant was not able to present controverting evidence to rebut the legal presumption.

"The alleged "two (2) scenarios that can be deduced from this seeming inconsistency" as advanced by the appellant in his Appeal-Memorandum does not lend comfort to him. He is only beclouding the main issue which is: whether or not he falsified his PDS of 1987 and 1988.

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"To justify his grave offense of falsification, appellant says: "The questionable entries in appellant's personal data sheets were brought about by his honest opinion on existing documents without any criminal intent". Again, this statement is self-serving and does not help appellant's defense. The afore-quoted ruling of the Supreme Court says that falsification is an act of dishonesty. And appellant should know that he was dismissed in an administrative, not criminal case. The quantum of proof in the two case is simply not the same. Only substantial evidence is needed to support a judgment in administrative proceedings, not proof beyond reasonable doubt (sic). The distinction is too familiar that jurisprudence is unnecessary. Moreover, the intent or lack of intent on the part of appellant is immaterial.

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"Appellant does not deny that he was required to file his answer to the formal charge against him; that he was also given the right to engage the services of counsel of his own choice and the right to a formal hearing; that he was warned that if he failed to submit his answer within the reglementary period, he is deemed to have waived the right to a formal investigation and the case would be deemed submitted for resolution on the basis of the evidence on record. Instead of filing an answer, his counsel filed a motion to dismiss which was denied by the committee. By failing to appear on the date set for hearing despite due notice, he was deemed to have waived his right to cross-examine the witness.

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*"Once More, Appellant
Made Untruthful*

*Statements; Is Guilty
Of Forum Shopping.*

"In his Verification and Certification of non-forum shopping (which is not notarized), appellant stated that "I have not commenced any action or proceeding involving the same issues of the instant appeal in the Supreme Court, the Court of Appeals, or different decisions (sic) thereof, or any other tribunal or agency xxx,

"Should I learn that a similar action or proceeding has been filed or is pending before xxx any other court, tribunal or agency, I will notify this Honorable Commission within five (5) days from notice.

"The stubborn fact, however, is that on November 9, 2001, the appellant filed in the RTC of Caloocan SCA Case No. C-678 for Certiorari, Prohibition, Injunction, Prayer of Temporary Restraining Order against appellee Sarasola and others (See Annex "12" hereof) wherein he also sought to annul and set aside the Resolution dated October 19, 2001 (Annex "10" hereof).

"The instant appeal and SCA Proc. NO. C-678 involves the same principal parties, the same material facts, the same principal issue, the same relevant evidence, and the same relief prayed for.

"The Order of the RTC of Caloocan Branch 131 in SCA No. C-678 dated December 20, 2001 (Annex "16" hereof) allowed petitioner therein and herein appellant's Notice of Appeal and directed that the record thereof be forwarded to the Court of Appeals. The said case is now pending proceedings in the Court of Appeals.

"The appellant's Verification and certification on Non-Forum Shopping in his Appeal memorandum is, therefore, another falsity perpetrated by the appellant, this time foisted upon this Honorable Commission. This make him guilty of forum shopping.

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Records show that this case arose when Tomas S. Mendoza, Division Manager, Personal Services Division, PNR sent a letter dated May 18, 2001 to Jose Ma. I. Sarasola, General Manager, PNR, informing him that Edgar P. Bilayon is not a graduate of Bachelor of Science in Electronic Communication Engineer (BSECE). In his letter, Mendoza stated that in connection with the streamlining program of the PNR, he verified Bilayon's 201 file and found out that in the 1985, 1987 and 1988 Personal Data Sheets (PDS) of Bilayon, the latter stated that he is a graduate of BSECE. Mendoza states further that attached to Bilayon's PDS is a certification from the University of the East (UE) signed by Ludivino S. Dalupan, Assistant Registrar of UE that Bilayon has completed all the requirements for the degree of BSECE. However, when he verified from the

Registrar of UE Caloocan, Mendoza alleged that Bilayon incurred academic deficiency. On July 6, 2001, Sarasola issued Office Order Number 027-2001 constituting a Committee to investigate the alleged falsification of official document/dishonesty against appellant.

On September 26, 2001, Bilayon was formally charged with the offense of Falsification of Official Document and Conduct Prejudicial to the Best Interest of the Service and was directed to file his answer under oath within five (5) days from receipt thereof and to indicate whether he elects a formal investigation. Bilayon was likewise advised of his right to be assisted by a counsel of his own choice.

Instead of filing his answer, Bilayon filed a motion to dismiss dated October 1, 2001. The prosecution, through Ruperto Gerona opposed the motion to dismiss on the ground that there exists a prima facie case against Bilayon and that there are material inconsistencies in Bilayon's PDS tantamount to dishonesty. Bilayon's dishonesty are substantiated by Mendoza's request for the release of Bilayon's school records from UE wherein Romeo Q. Armada, University Registrar, certified that Bilayon did not finish his course. In an Order dated October 11, 2001, the Committee denied the motion to dismiss and set the case for presentation of Bilayon's evidence on October 16, 2001.

Records, show that despite due notice, neither Bilayon and counsel appeared on October 16, 2001. The case, therefore, was submitted for resolution. Thus, on October 19, 2001, the Committee issued the Resolution dated October 19, 2001 finding Bilayon guilty of Falsification of Official Document and Conduct Prejudicial to the Best Interest of the Service and recommended his dismissal from the service. On even date, said Resolution was approved by Jose Ma. I. Sarasola II, General Manager of PNR. Said Resolution was also affirmed by the PNR Board of Directors on January 16, 2002. On February 8, 2002 Bilayon appealed to the Commission.

Records further show that on November 9, 2001, Bilayon filed with the Regional Trial Court (RTC) of Caloocan a Petition for Certiorari, Prohibition, Preliminary Injunction with a prayer that the Resolution dated October 19, 2001 of the Committee be set aside. Subsequently, on November 16, 2001, Bilayon filed in the same Court an Urgent Ex Parte Motion for Issuance of Temporary Restraining Order. Bilayon's petition for certiorari and his application for the issuance of the temporary restraining order are both docketed as SCA No. C-678. In an Order dated November 14, 2001, Judge Antonio Fineza of RTC Caloocan dismissed both petition filed by Bilayon. Thereafter, Bilayon filed a Notice of Appeal dated December 19, 2001 from the Order dated November 14, 2001 of Judge Fineza, which dismissed his petition.

The case is now docketed at the Court of Appeals as CA-G.R. SP No, 69194. In a Resolution dated February 20, 2002, the Court of Appeals required the parties to submit their respective memoranda within thirty (30) days from receipt of said resolution. The said case, therefore, is pending with the Court of Appeals.

As borne out by the records, Bilayon has a pending appeal with the Court of Appeals filed ahead of the instant appeal with the Commission. Hence, the Commission shall not delve on the merits of the case. It clearly appears that the case which is now pending with the Court of Appeals and the instant appeal before the Commission are founded on the same facts and

causes of action, same subject matter, parties and issues. Thus, the fact that Bilayon made a recourse to this Commission knowing fully that a case of the same nature is pending with another forum constitutes forum shopping defined in **Rule 1, Section 2, Paragraph m of the Uniform Rules on Administrative Cases in the Civil Service** as:

"m. FORUM-SHOPPING refers to the filing of an administrative action or complaint before another agency or any tribunal against the same party involving the same acts or causes of action and relief."

Since both actions indisputably raise identical causes of actions, subject matter and issues (**Valencia vs. CA, G.R. No. 111401, October 17, 1996**), there is a clear case of forum shopping which is a valid ground to dismiss the appeal. In **CSC Resolution No. 97-0195 dated January 9, 1997 re: Cembrano, Jose P. et al. citing the case of Silahis International Hotel, Inc. vs. NLRC (225 SCRA 94)**, the Commission ruled, thus:

"We have consistently ruled that a party should not be allowed to pursue simultaneous remedies in two different forums. x x x"

WHEREFORE, the appeal of Edgar P. Bilayon is hereby **DISMISSED**.

Quezon City, **JUN 18 2002**

(Signed)
KARINA CONSTANTINO-DAVID
Chairman

(O.B)
JOSE F. ERESTAIN, JR.
Commissioner

(Signed)
J. WALDEMAR V. VALMORES
Commissioner

Attested by:

(Signed)
ARIEL G. RONQUILLO
Director III

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