

NORONA, NELDA, Q.

Re: Query; Leave

X-----X

RESOLUTION NO. 991879

Dr. Nelda Q. Norona, General Services Officer, Office of the City General Services, Calbayog City, requests clarification as to the following issues:

1. Whether or not an employee who had been arrested and subsequently detained in jail may be declared on AWOL;

1)

1. Whether or not, in the event such employee is exonerated from the charges against him, he may claim salary and wages for the duration of his detention, as well as earn leave credits; and

1)

1. Whether or not said employee can apply for terminal leave while still detained.

6.

Pertinent portions of said request read as follows:

"This office would like to seek your legal opinion relative to one of our employees who is presently detained at the city jail awaiting for the final promulgation of his case.

"This employee was appointed to the position as Laborer I under a permanent status from March 9, 1992 to date. Last July 25, 1998, he was arrested and subsequently detained in jail. On July 26, 1998, he filed an application for leave which this office cancelled his application as per advised (sic) by CSC Field Officer, on the basis of CSC Resolution No.

94-2795 and Gov't Accounting and Auditing Manual, Sec. 226. Last September 16, 1998, he sent a communication to this office, informing of his willingness to report to work but constrained due to his detention and requesting for the reconsideration of his absence for humanitarian reason.

"As per record in this office, a memorandum was issued to him last October 15, 1997 Re: Absence Without Leave, of which his reason of absence was reconsidered through the approval of his application for leave."

Records show that an unnamed employee was appointed Laborer I under permanent status on March 9, 1992. On July 25, 1998, he was arrested and subsequently detained in jail. On July 26, 1998, he filed an application for leave which was cancelled by the agency pursuant to the CSC Resolution No. 94-2795. On September 16, 1998, he informed the Office in writing of his willingness to report for work but he was barred to do so because of his detention. Thus, he requested reconsideration of the disapproval of his leave application for humanitarian reasons.

As to the first issue, the Commission had earlier ruled on a similar one in the case of **VARGAS, Cenon A. CSC Resolution No. 94-2795 dated May 19, 1994**, as follows:

"The records show that, Mr. Vargas was appointed to the position of Utility Worker on January 2, 1989 under a permanent status. From then, Vargas served as such until January 28, 1991 when he was arrested and subsequently detained in jail for drug pushing and possession of illegal drugs. On January 29, 1991, Vargas filed a vacation leave of absence with pay up to March 15, 1991. However, due to the fact that he was detained, he was not able to file the necessary leave of absence up to the time that he was acquitted and subsequently released from jail on October 13, 1992. On October 14, 1992, Vargas reported back to his post. However, the Municipality of Makati did not act on his request to allow him to reassume his former position. Hence, this instant request.

X X X

"After a circumspect review of the records, the Commission finds the instant request meritorious.

"When Mr. Vargas was in jail, his services were considered automatically suspended. He could not be expected to file his corresponding application for leave of absence, because whether he likes it or not he could not possibly report to work. He is considered on automatic leave of absence for the period of his detention in jail." (Emphasis supplied)

It should be pointed out that the service of an employee who is being detained for failure to put up bail or for non-bailable crime, or for some other reasons, is automatically suspended from office, hence, there could be no basis to declare him on absence without official leave (AWOL). Moreover, in a criminal case, the accused is deemed innocent until proven guilty after due proceedings.

The second issue should be answered in the negative. Well-settled is the rule that an employee may validly claim compensation for the period he actually rendered services to the government or in case of termination of service which has been declared illegal, so much so that the employee is considered by legal fiction as being in the service. Similarly, the rule applies in cases of exoneration in disciplinary cases. However in this case where the employee is actually detained, therefore, there can be no occasion for him to perform actual work during the period. Obviously, it is physically impossible for him to do so. From all indications, detention in effect is equivalent to an indeterminate preventive suspension. Therefore, there is no basis for the payment of his salary corresponding to the period of his detention. The doctrine on "no work, no pay" applies in this case. Consequently, he could not earn leave credits, considering that his services are suspended for such period.

As to the issue of terminal leave benefits, the detained employee need not apply since he is not considered separated from the service, only that, his services are automatically suspended. In point is Section 28 of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 (Executive Order No. 292). It reads as follows:

"Any officer/employee of the government who retires, voluntarily resigns or is separated

from the service through no fault of his own, and who is not otherwise covered by special law, shall be entitled to the commutation of all his leave credits exclusive of Saturdays, Sundays and holidays without limitation and regardless of the period when the credits were earned x x x "

However, in the event that said employee, resigns and thereafter files an application for terminal leave, his terminal leave benefits cannot be withheld by the agency on the ground of the pendency of a criminal case.

WHEREFORE, the Commission hereby rules that:

1. An employee who was arrested and subsequently detained in jail may not be declared on AWOL, on the ground that his services are automatically suspended during the period.
2. Said employee may not validly claim salaries nor earn leave credits during the period of his detention; and
3. Said employee need not apply for terminal leave while on detention, but in the event he severs his relationship with the government by voluntary resignation or by any other mode of separation which is not disciplinary in nature, the money value of his accrued leave credits shall be paid to him.

Quezon City, **AUG 23 1999**

CORAZON ALMA G. DE LEON
Chairman

THELMA P. GAMINDE
Commissioner

JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

ARIEL G. RONQUILLO
Director III

TPG/rm
NLA/FPG/SI7/A8-norona(win-29)
0-98-0281