

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**ASIA PACIFIC CHARTERING
(PHILS.) INC.,**

Petitioner,

-versus-

**G.R. No.151370
December 4, 2002**

**MARIA LINDA R. FAROLAN,
*Respondent.***

X-----X

DECISION

CARPIO MORALES, J.:

Before this Court is a Petition for Review under Rule 45 of the 1997 Rules of Civil Procedure assailing the Court of Appeals 1) June 28, 2001 Decision^[1] which set aside the decision of the National Labor Relations Commission (NLRC) reversing that of the Labor Arbiter, and 2) January 9, 2002^[2] Resolution denying a reconsideration of its decision.

Petitioner Asia Pacific Chartering (Phils) Inc. was, until 1996, the general sales agent (GSA) of the Scandinavian Airline System (SAS), an off-line international airline company with license to do business in the Philippines. As GSA, petitioner sold passenger and cargo spaces for airlines operated by SAS.

Respondent Maria Linda R. Farolan was on December 16, 1992 hired

as Sales Manager of petitioner for its passenger and cargo GSA operations for SAS, following her conformity to a December 10, 1992 letter-offer of employment^[3] from petitioner through its Vice President/Comptroller Catalino Bondoc. The pertinent portion of the letter-offer reads:

“Dear Ms. Farolan:

Confirming our previous discussions, ASIA-PACIFIC CHARTERING PHIL., INC. is pleased to offer you the position of Sales Manager of its Passenger and Cargo Operations for SCANDINAVIAN AIRLINES SYSTEM in the Philippines, commencing on December 16, 1992 on the following terms:

| | Monthly |
|---|-----------------|
| Basic Pay | PhP22, 000.00 |
| Housing Allowance | 4,000.00 |
| Transportation Allowance (200 liters of gas) | Cash Equivalent |
| Meal Allowance | 750.00 |

Please affix your signature below if you find the foregoing acceptable and return to us a signed duplicate. Meanwhile, we certainly look forward to your joining us and rest assured of our fullest support.

(Sgd) Maria Linda R. Farolan
Conforme:” (*Emphasis supplied*).

It is gathered that Leslie Murray, the then Sales Manager of petitioner, talked to respondent into accepting the position after *verbally* briefing her on the nature of the position.

Soon after respondent assumed her post, she participated in a number of meetings/seminars^[4] including a Customer Service Seminar in Bangkok, Thailand, a Regional Sales Meeting on the

technical aspects of airline commercial operations in February 1993, and a course on the highly technical airline computer reservations system called “Amadeus”, all geared towards improving her marketing and sales skills.

In September of 1993, respondent, upon instruction of Bondoc, submitted a report^[5] “RE: OUR COMMENTS AND ACTIONS BEING TAKEN CONCERNING SAS’ POOR P & L PERFORMANCE FOR JANUARY - JULY 1993” the pertinent portions of which read:

“1 January to July 1993 Sales

| | 1993 | 1992 | CHANGE |
|-----------------|------|------|--------|
| Seaman | 233 | 423 | (190) |
| Expats/Tourists | 503 | 716 | (213) |
| PTAs | 346 | 196 | 150 |
| Refugees/IOM | 53 | 864 | (811) |

Explanations.

1. International Organization for Migration (IOM)-both Vietnam and Scandinavian Governments have terminated projects for refugees; hence the tremendous decrease (94%).
2. Seaman’s Fares-Rates not competitive enough.
3. Expats/Tourists-In a market where on-line carriers were dropping rates drastically, we were losing passengers to said carriers.

The present Market:

1. As SAS is off-line, we have no control over space and to an extent our rates are higher because of proration with delivering carriers.
2. On-lines do not prorate with other carriers therefore can dive fares.

I have convinced Mr. Jespersen to bring down the fares to be more competitive. The reason he did not do so earlier was because low-yield fares are low in priority for confirming seats. But now that SAS is considering increasing their frequencies ex-Hongkong before year-end, this will be advantageous to boosting our sales.

A. Measures to take remainder of 1993 and for 1994:

1. We have negotiated a lower fare for seamen (effective September) which is competitive. We are already getting positive response from agents. Since this(sic) low-yield sales, Hongkong did not adjust fare accordingly first half of 1993 because of space constraints.
2. As SAS still prefers high-yield sales, we have offered incentives to Ameco as Asian Development Bank (ADB) (effective 1st June for one year) with Mr. Jespersen's approval.

In addition, ADB itself is willing to consider proposals we submit to them in the case of cost-savings. In exchange, they can endorse to SAS a relevant share of their Europe travel.

3. We have also negotiated a lower net fare for Economy Class. This rate is also competitive and is in force.
4. Incentive Program for Agents-Using the points system similar to PAL's promo (PALs Smiles), to stimulate sales. We are at present fine-tuning mechanics for Hongkong's approval which we intend to launch before Christmas. This promo is self-sustaining (no significant expenses to be incurred)
5. We are currently pushing sales for Baltic area/Russia as we have the best rates. We have identified the agents who have passengers to these destinations and we are focusing on them." (*Emphasis and underscoring supplied*).

As reflected in respondent's report, there was a drop in SAS' sales revenues which to her was attributable to market forces beyond her

control.

Noting the marked decline in SAS' sales revenues, petitioner directed its high ranking officer Roberto Zozobrado in January 1994 to conduct an investigation on the matter and identify the problem/s and implement possible solutions.

Zozobrado thus informally took over some of respondent's marketing and sales responsibilities, albeit respondent retained her title as Sales Manager and continued to receive her salary as such.

By petitioner's claim, Zozobrado found out that respondent did not adopt any sales strategy nor conduct any sales meeting or develop other sources of revenue for SAS, she having simply let her sales staff perform their functions all by themselves; in 1994, Soren Jespersen, General Manager of SAS in Hongkong, Southern China, Taipei and the Philippines, came to the Philippines to assess the statistics on SAS' sales revenues and SAS was convinced that respondent was not fit for the job of Sales Manager; and in view of the changes introduced by Zozobrado, SAS-GSA sales operations drew positive results.

On May 21, 1994, respondent received a message^[6] from Jespersen reading:

“Dear Linda and Bob [Zozobrado],

First of all congratulation to your sale result in April. You reached and exceeded the target by 50% In C/class (Fantastic!!!) and 1% In M/class. This is the second month in a row (and the last 2 first in more than a year) and hopefully the beginning of a new and positive trend.

As you can see May looks very good.

With the agreed focus on selling the M/class and all the activities initiated, I'm sure that the rest of the period will pick very soon.” (*Underscoring supplied; Quoted verbatim*).

On July 18, 1994,^[7] respondent received another message from

Jespersen reading:

“Dear Linda,

The sales report for June 1994 did unfortunately not reach target in C/class but in M/class you managed very well. Totally 9% below target.

The pre bookings eff. 14 July looks very good and encouraging and with 2 weeks to go July should not be a problem. (enclosed)

Please send my regards to all the girls and tell them to keep up the good work.

Just for reason of clarification. Enclosed to your action list is a production report for Jan-May 1994. The figures I send to you is only your long-haul sales and do not include European sectors. The correct figure for the period will be 436,000 USD in target for long-haul (actual 362 TUSD) and 642 TUSD total with 514 TUSD achieved.

Please be so kind and inform Bob accordingly.

On even date, however, petitioner sent respondent a letter of termination^[8] on the ground of “loss of confidence.” The letter reads:

“This confirms our (‘Bob’ Zozobrado and myself) July 4, 1994 verbal advice to you regarding Management’s decision to terminate your Services as our GSA Manager for SCANDINAVIAN AIRLINES SYSTEM’s Offline Operations in the Philippines, thirty (30) days upon receipt of this Notice, due to our loss of confidence in your Managerial and Marketing capabilities. As explained to you by Mr. Zozobrado and myself, records will show that under your Management (or lack of it), our SAS-GSA performance is, as follows:

A. 1993 vs. 1992

Gross Revenue - 29 % shortfall

| | | |
|--------------------|---|---------------|
| Operating Expenses | - | 2% over |
| Net Cash Flow | - | 79% shortfall |

B. JAN-APR '94 vs. JAN-APR '92

| | | |
|--------------------|---|---------------|
| Revenues | - | 34% shortfall |
| Operating Expenses | - | 6% over |
| Net Cash Flow | - | 94% shortfall |

Several times in the past, we have made you aware in the need to improve your sales performance and gain the respect of your staff which have openly expressed their concern on their lack of direction under your management. Even our principal (SAS) had negative comments about the way you handle urgent requirements of the Regional Office. SAS was also alarmed by the aforementioned dismal overall Performance of APC/SAS. All these prompted us to decide to replace you as our SAS GSA Manager to save the situation and our representation of the SAS-GSA in the Philippines.” (*Quoted verbatim; Emphasis supplies*).

Thus spawned the filing by respondent of a complaint for illegal dismissal against petitioner, Bondoc, Zozobrado and one Donald Marshall (the record indicates that he had ceased to be connected with petitioner when the case was pending before the Labor Arbiter), with prayer for damages and attorney’s fees. In her complaint petitioner alleged that Bondoc and Zozobrado had asked her to tender her resignation as she was not the person whom SAS was looking for to handle the position of Sales Manager^[9] but that she refused, hence, she was terminated by the letter of July 18, 1994 letter.^[10]

The Labor Arbiter, after a detailed analysis of the evidence for both parties, found for respondent upon the following issues:

1. Whether or not complainant was validly terminated for cause;
2. Whether or not due process was observed when complainant was terminated; and

3. Whether or not any of the parties are entitled to damages, and disposed in his decision^[11] as follows:

“WHEREFORE, finding the dismissal of the complainant Ms Linda Farolan to be without just cause, effected with malice, ill will and bad faith, respondent Asian Pacific Chartering Philippine, Inc. is hereby ordered to pay her separation pay of Forty Four Thousand Pesos (P44,000.00), and all the benefit that would have been due her under the premises. Asian Pacific Chartering is likewise ordered to pay complainant moral damages in the amount of One Million Five Hundred Thousand Pesos (P1,500,000.00) and exemplary damages in the amount of Seven Hundred Fifty Thousand Pesos (P750,000.00), nominal damages of Five Thousand Pesos (P5,000.00) and the equivalent of 25% of the total award as attorney’s fees.”

On appeal, the NLRC, by Decision of March 22, 1999,^[12] reversed the Labor Arbiter’s decision, it recognizing the right of petitioner as employer to terminate or dismiss employees based on loss of trust and confidence, the right being a management prerogative.

Respondent’s Motion for Reconsideration of the NLRC Decision having been denied, she brought her case to the Court of Appeals via Certiorari.^[13]

By Decision of June 28, 2001,^[14] the Court of Appeals, as stated early on, reversed the NLRC decision and disposed as follows:

“WHEREFORE, premises considered, the challenged decision dated March 22, 1999 and the Resolution dated July 16, 1999 of public respondent National Labor Relations Commission (Second Division) are hereby set aside for having been issued with grave abuse of discretion amounting to lack or in excess of jurisdiction. The decision dated September 17, 1998 of Labor Arbiter Romulus S. Protacio is hereby upheld with modifications that the award of attorney’s fees shall only be equivalent to ten percent (10%) of the total monetary award. In addition, the award for nominal damages is deleted for lack of

basis.” (*Underscoring supplied*).

Petitioner filed a motion for reconsideration^[15] of the Court of Appeals decision but it was denied, hence, the present Petition for Review on Certiorari^[16] anchored on the following grounds:

“I

THE CA DEFIED THE WELL-ESTABLISHED RULE THAT APC, AS EMPLOYER, HAS THE MANAGEMENT PREROGATIVE TO REPLACE A SALES MANAGER WHOM IT HAS REASONABLE GROUNDS TO BELIEVE CANNOT EFFECTIVELY DISCHARGE THE DUTIES DEMANDED BY SUCH POSITION.

II

THE CA DECISION WAS PREMISED ON LACK OF EVIDENCE TO DISPROVE RESPONDENT’S THEORY THAT THE POOR SALES PERFORMANCE OF SAS WAS DUE TO MARKET FORCES BEYOND HER CONTROL. YET, THE EVIDENCE ON RECORD SHOWED THE CONTRARY. NO LESS THAN SAS CONFIRMED THAT RESPONDENT WAS NOT FIT FOR THE POSITION OF MANAGER AND, THAT NO SPECIAL CIRCUMSTANCES SUFFICIENT TO TRIGGER THE SHARP DECLINE IN SALES SUPERVENED IN THE PHILIPPINE MARKET.

III

IN AWARDING MORAL AND EXEMPLARY DAMAGES, THE CA ACTED WITH GRAVE ABUSE OF DISCRETION. EVEN ASSUMING, THAT RESPONDENT’S TERMINATION WAS ‘WITHOUT JUST CAUSE’, APC IS NOT LIABLE TO PAY DAMAGES [MILLARES vs. NLRC, 328 SCRA 79 (2001)] COROLLARILY, APC IS PRESUMED TO HAVE ACTED IN GOOD FAITH [GONZALES vs. NLRC, G.R. NO. 131653-26 March 2001]. THE CA, HOWEVER, REVERSED THE PRESUMPTION. IT PRESUMED-WITHOUT ANY EVIDENCE WHATSOEVER-THAT APC ACTED IN BAD FAITH IN

TERMINATING RESPONDENT 'WITHOUT DUE REGARD TO THE HARSH CONSEQUENCES' OF THE TERMINATION

The issue in the main is whether or not respondent's dismissal was legal.

A statement of the requisites for a valid dismissal of an employee is thus in order, to wit: (a) the employee must be afforded due process, i.e., he must be given opportunity to be heard and to defend himself; and (b) dismissal must be for a valid cause as provided in Article 282 of the Labor Code or any of the authorized causes under Article 283 and 284 of the same Code.^[17]

As regards the first requisite, the following substantiated findings of the Labor Arbiter, which were adopted by the Court of Appeals, reflect respondent's deprivation of due process:

“[W]e find that the manner by which complainant was dismissed violated the basic precepts of fairness and due process. First, without any semblance of, or written authority whatsoever (TSN dated January 30, 1996, pp. 46 - 48), respondent Zozobrado took over the functions of complainant. Complainant claims that she has been told it was upon the will of respondent Marshall that she be replaced. Although respondent Zozobrado may have been merely giving pointers and suggestions to the staff of complainant, the appearance of authority was unpleasantly conspicuous. Later, respondent Bondoc summoned complainant and told her to tender her resignation or face termination. Complainant, not having been given a justifiable ground, refused to resign. Thereafter, she was finally terminated, without being afforded the opportunity to be heard and to present evidence in her defense. She was never given a written notice stating the particular acts or omission constituting the grounds for her dismissal as required by law.”^[18]

As regards the second requisite, the rule is settled that in termination cases, the employer bears the *onus* of proving that the dismissal is for just cause failing which the dismissal is not justified and the employee is entitled to reinstatement.^[19]

Petitioner claims that respondent failed to live up to management's expectation in light of her failure to adopt sales and marketing strategies to increase sales revenues of SAS, which failure is reflective of her incompetence and inefficiency, thus resulting to loss of revenues in 1993 and 1994.

Petitioner adds that had it not been through Zozobrado's efforts, SAS sales revenues could not have recovered.

Petitioner further claims that Jespersen was the one who initiated the termination of respondent because of her "dismal performance" in handling its operations.

And petitioner reiterates the principle that the right to dismiss a managerial employee is a measure of self-preservation, it citing the cases of *Grand Motor Parts Corp. v. Minister of Labor et al.*,^[20] and *Buiser et al. v. Legardo*.^[21]

Before passing on petitioner's position, this Court deems it imperative to discuss the nature of respondent's job as sales manager of petitioner. It is not disputed that her job description, and the terms and conditions of her employment, with the exception of her salary and allowances, were never reduced to writing.

Recent decisions of this Court distinguish the treatment of managerial employees from that of rank and file personnel insofar as the application of the doctrine of loss of trust and confidence is concerned.^[22]

"Thus with respect to rank and file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal." (*Underscoring supplied*)

As enunciated in *Samson v. NLRC*, 330 SCRA 460.

“Before one may be properly considered a managerial employee, all the following conditions must be met:

- (1) Their primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof;
- (2) They customarily and regularly direct the work of two or more employees therein;
- (3) They have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to the hiring and firing and as to the promotion or any other change of status of other employees are given particular weight. *Section 2(b), Rule I, Book III of the Omnibus Rules Implementing the Labor Code*. (Emphasis Supplied).

By respondent’s claim, her function, as verbally explained to her by Murray, dealt mainly with servicing of existing clientele.^[23] Bondoc, however, described respondent’s functions and duties as critical.^[24]

The following ruling of this Court in *Paper Industries Corp. of the Philippines v. Laquesma*^[25] is instructive:

“Managerial employees are ranked as Top Managers, Middle Managers and First Line Managers. The mere fact that an employee is designated “manager” does not ipso facto make him one-designation should be reconciled with the actual job description of the employee for it is the job description that determines the nature of employment.” (*Underscoring Supplied*).

The absence of a written job description or prescribed work standards, however, leaves this Court in the dark.

Even assuming, however, that respondent was a managerial employee, the stated ground (in the letter of termination) for her dismissal, “loss of confidence,” should have a basis and determination

thereof cannot be left entirely to the employer.

Loss of trust and confidence to be a valid ground for an employee's dismissal must be based on a willful breach and founded on clearly established facts.^[26] A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.^[27]

Respondent's detailed REPORT dated September 8, 1993, quoted above, relative to SAS profit and loss for 1993, which was closely examined and analyzed by the Labor Arbiter, contains an explanation of what brought about the decline in sales revenues. And it contains too a number of recommended measures on improvement of sales for the remainder of 1993 and for 1994.

As did the Labor Arbiter and the Court of Appeals, this Court finds respondent's explanation in her Report behind the decline in sales revenues as due to market forces beyond respondent's control plausible. In any event, there is no showing that the decline is reflective of any willful breach of duties by respondent.

The two letters sent by SAS to respondent in 1994 in fact negate willful breach of her duties by respondent. The first (received on May 21, 1994) congratulated her and Zozobrado for exceeding "sale (sic) result in April" 1994. Petitioner's argument that respondent could not invoke these letters in her favor as they were intended for Zozobrado fails. The letters were addressed to respondent and Zozobrado. The second letter (received on July 18, 1994) which was addressed to respondent, while noting that the sales for June 1994 did not reach the target in "C/class", noted that in "M/class" she "managed very well". And it went on to state that "[t]he pre-bookings eff. 14 July looks (sic) very good and encouraging and with 2 weeks to go July should not be a problem." In fact it requested respondent to "send regards to all the girls and tell them to keep up the good work."

While petitioner attributes the improvement of sales in 1994 to Zozobrado, the fact remains that respondent was still the Sales Manager up to July 1994, in charge of those "sales meetings" during which pertinent market strategies were developed and utilized to

increase sales.

In another vein, petitioner attributes loss of confidence to respondent's alleged "gross inefficiency and incompetence," it citing, as earlier stated, the cases of *Grand Motor Parts Corp. (supra)* and *Buiser et al. (supra)*.

The *Grand Motors* case, however, involved a probationary employee-manager who failed to, among other things, submit required monthly reports and violated company policy, clearly mirroring his insubordination and disrespect to express instructions of management.

While this Court, in the *Buiser* case (*supra*), held that "failure to observe prescribed standards of work, or to fulfill reasonable work assignments due to inefficiency" may be just cause for dismissal, petitioner has neither shown what standards of work or reasonable work assignments were prescribed which respondent failed to observe nor that if she did fail to observe any such, it was due to inefficiency.

Finally and at all events, given respondent's previous work experience as herein below indicated, to wit:

| "Period | Company | Position |
|-----------|---------------------------------------|--|
| 1960-1967 | Express Tours, Inc. | Clerk-Reservations & Ticketing |
| 1968-1970 | House of Travel, Inc. | Sales Manager |
| 1971-1973 | Super Travel | Manager, Administration |
| 1973-1978 | American Express, Inc. | Manager, World Health Organization Account |
| 1978-1983 | F.A.R. Travel Masters, Inc. | President & General Manager |
| 1983-1984 | Cebu Plaza | Director, Convention |
| 1985-1989 | American Express, Inc. | Manager-World Health Organization In-Plant Office Senior Manager-Asian Development Bank In-Plant Office |
| 1992-1994 | Asia Pacific Chartering Phil. Inc. | Sales Manager, Passenger & Cargo GSA Operations, Scandinavian Airlines System." |

(*Exhibit "A", p. 72, Court of Appeals Rollo*).

this Court is not prepared to find for petitioner. It bears noting that there is no showing that respondent represented herself as possessed of the highest degree of skill and care known in the trade. And it is not disputed that respondent was approached by petitioner's then Sales Manager Murray, and offered the position of Sales Manager. She thus could not just be unceremoniously discharged for "loss of confidence" arising from alleged incompetency.^[28]

"While an employee may be dismissed because of inefficiency, neglect or carelessness, the law implies a situation or undertaking by an employee in entering into a contract of employment that he is competent to perform the work undertaken and is possessed of the requisite skill and knowledge to enable him to do so, and that he will do the work of the employer in a careful manner. If he is not qualified to do the work which he undertakes, if he is incompetent, unskillful or inefficient, or if he executes his work in a negligent manner or is otherwise guilty of neglect of duty, he may lawfully be discharged before the expiration of his term of employment."^[29]

In fine, this Court finds that respondent had been illegally dismissed and is accordingly entitled to reinstatement to her former position without loss of seniority rights and payment of backwages.^[30] But as the matter of reinstatement is no longer feasible as the GSA contract between SAS and petitioner had been terminated in May of 1996, respondent is, as correctly held by the Court of Appeals, entitled to separation pay in an amount equivalent to one (1) month salary for every year of service, a fraction of six (6) months to be considered a year.

Having been hired on December 16, 1992 and terminated on July 18, 1994, respondent is considered to have worked for two (2) years for purposes of computing her separation pay.

Respondent is also entitled to the award of backwages computed from July 18, 1994 up to May of 1996.

As regards the award to respondent of moral and exemplary damages, petitioner assails it in this wise: "The award of damages in so far as the same was based solely on respondent's affidavit containing

general and uncorroborated statement that she suffered damages as a result of her termination is null and void [it being] insufficient to overcome the presumption of good faith.”

The following pertinent portions of petitioner’s Affidavit which Affidavit was submitted as part of her testimony are self-explanatory, however.

“8. On July 4, 1994, Messrs. Bondoc and Zozobrado summoned me and without any clear explanation, ordered me to submit a letter of resignation; they informed me that I was not the person whom SAS was looking for to handle the position of Sales Manager; even as I was deeply hurt, shocked, and humiliated, I declined to resign from my position as I strongly believed that the instruction for me to resign was unjust and violative of my rights; during the conference, I was never given the chance to know precisely why I was being asked to resign or to explain my position; furthermore, I was informed then that Mr. Donald Marshall was the one who decided and insisted on my termination.

9. On July 18, 1994, again without regard to the basic requirements of due process, I was given a notice of termination signed by Mr. Bondoc; the supposed ground for my termination was APC’s alleged ‘loss of confidence in my managerial and marketing capabilities due to the company’s alleged dismal performance during my term of office as GSA Sales Manager’; once more, I was never called to answer this charge; a copy of the notice of termination is hereto attached as Annex ‘E’;

10. The news of my termination circulated at once in the travel industry and as a result, I was and still am frequently asked by my friends and acquaintances in the industry about my termination from APC to my endless humiliation and embarrassment; this up to now causes me endless emotional pain that I even avoid my friends and acquaintances for fear that they might look at me differently after my termination from APC; my reputation as a professional has been totally shattered by the unjust act of APC;

11. Because of the extreme social humiliation, and serious anxiety over my now besmirched reputation in the travel industry, I decided to seek legal advise; on July 21, 1994, my counsel wrote APC demanding for my immediate reinstatement without loss of seniority rights and for damages; a copy of the letter-demand is hereto attached as Annex 'F';”

They need no amplification and/or corroboration. Indeed, petitioner was deprived of due process and denied “basic precepts of fairness” when she was terminated. Her resultant sufferings thus entitle her to an award of moral damages.

To warrant award of moral damages, it must be shown that the dismissal of the employee was attended to by bad faith, or constituted an act opposite to labor, or was done in a manner contrary to morals, good customs or public policy.^[31]

Award of moral and exemplary damages for an illegally dismissed employee is proper where the employee had been harassed and arbitrarily terminated by the employer.^[32]

In determining the amount of moral damages recoverable, however, the business, social and financial position of the offended party and the business or financial position of the offender are taken into account.^[33] Given petitioner’s business position or standing before and at the time of termination and petitioner’s business and financial position, this Court reduces the amount of moral damages awarded to P500,000.00 which it finds reasonable. The amount of exemplary damages awarded is accordingly reduced too to P250,000.00.

WHEREFORE, the decision of the Court of Appeals is hereby **AFFIRMED** with the **MODIFICATION** that the amount of moral damages and exemplary damages awarded to respondent, Ma. Linda R. Farolan, is hereby reduced to Five Hundred Thousand (P500,000.00) Pesos and Two Hundred Fifty Thousand (P250,000.00) Pesos, respectively.

Costs against petitioner.

SO ORDERED.

Panganiban, J., (Acting Chairman), Sandoval-Gutierrez and Corona, JJ., concur.

Puno, J., (Chairman), on official leave.

- [1] Rollo, p. 43 – 53.
- [2] Rollo, p. 53.
- [3] Record, p. 896.
- [4] Affidavit of Ms. Farolan, Record, p. 892, par. 4.
- [5] Records, pp. 78 – 79.
- [6] Record, p. 88.
- [7] Record, p. 81.
- [8] Record, p. 898.
- [9] Record, p. 51.
- [10] See footnote 8.
- [11] Decision of Labor Arbiter Romulus S. Protacio dated September 17, 1998, Rollo, pp. 112 – 137.
- [12] Record, pp. 26 – 45.
- [13] Record, p. 46.
- [14] Vide footnote 11.
- [15] Record, pp. 205 – 225.
- [16] Rollo, pp. 12 -42.
- [17] *Permex, Inc. v. NLRC*, 323 SCRA 121 (2000).
- [18] Decision of the Labor Arbiter, Rollo, pp. 133 – 134.
- [19] *Polymedic General Hospital v. NLRC*, 134 SCRA 420 (1985), cited in *Mabeza v. NLRC*, 271 SCRA 670 (1997).
- [20] 130 SCRA 436 (1984).
- [21] 131 SCRA 157 (1984).
- [22] *Caoile v. NLRC*, 299 SCRA 76.
- [23] TSN, July 12, 1995, p. 42, Records, p. 375.
- [24] TSN, January 16, 1997, p. 34, Records, p. 808.
- [25] 330 SCRA 295 (2000).
- [26] *Surigao del Norte Electric Cooperative v. NLRC*, 309 SCRA 233 (1999) cited in *National Bookstore, Inc. and Alfredo Ramos v. CA, et al.* G. R. No. 146741, February 27, 2002.
- [27] *Ibid.*
- [28] 35 Am Jur. 376.
- [29] 35 Am Jur. 376.
- [30] *De Guzman v. NLRC*, 312 SCRA 266 (1999) cited in *National Bookstore, Inc. and Alfredo Ramos v. CA, et al.*, G. R. No. 146741, February 27, 2002.
- [31] *Nueva Ecija I Electric Cooperative, Inc. v. NLRC*, 323 SCRA 86, 98 (2000).
- [32] *Cruz v. NLRC*, 324 SCRA 770 (2000).

[33] Nueva Ecija I Electric Cooperative, Inc. v. NLRC, supra, p. 99.

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