

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**ASSOCIATED LABOR UNIONS – TUCP
and RENATO FELIZARDO,**
Petitioners,

-versus-

**G.R. No. 120450
February 10, 1999**

**NATIONAL LABOR RELATIONS
COMMISSION, REPUBLIC FLOUR
MILLS, GROUP OF COMPANIES and/or
SELECTA ICE CREAM CORPORATION
and BEN T. MAKIL,**
Respondents.

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D E C I S I O N

MENDOZA, J.:

This is a Petition for *Certiorari* to annul the Decision of the National Labor Relations Commission in NLRC NCR 00-09-06075-93 on the ground that it was rendered with grave abuse of discretion.

Petitioner Renato Felizardo was employed at respondent Republic Flour Mills-Selecta Ice Cream Corporation as jet printer operator on November 16, 1991. He was dismissed from employment on September 13, 1993 for dishonesty and theft of company property. He

and petitioner Associated Labor Union-TUCP, of which he is the secretary, filed a complaint for illegal dismissal, unfair labor practice, and non-payment of 13th month pay against respondent company. He was ordered reinstated without backwages by the Labor Arbiter, but the NLRC reversed the said decision and dismissed his complaint. Hence, this petition.

The facts are as follows:

On September 12, 1993, at around 7 o'clock in the morning, petitioner was apprehended by a security guard manning respondent company's gate while bringing out a pair of boots, one (1) piece of aluminum container, and fifteen (15) pieces of hamburger patties. During the investigation conducted the same day by the company's security services, he gave the following statement written in Filipino:^[1]

SA KINAUKULAN:

Ako po si G. Renato Felizardo, 22 anyos at kasalukuyang nakatira sa Cainta, Rizal.

Ako po ay isang regular employee ng SELECTA Production Dept.

Ako po ay nahulihan ng isang coloring container, 15 pirasong patties hamburger dito sa SELECTA Gate kasama ang isang pair na boots. Ang mga nabanggit na kagamitan ay walang kaukulang dokumento o papel subalit ito ay batid ni Mr. Orpilla na ilalabas ko ang mga ito. Ako po ay nasita ni Sg. Manolito Ojana bandang 7:45 ng umaga, 12 Setyembre 1993 dito sa SELECTA Gate.

Ang pag-aming ito ay kusang loob kong inihayag kay Sg. Richard M. Torino.

(Sgd.)
R. FELIZARDO

On September 13, 1993, he was placed under preventive suspension pending investigation of the incident by the company. On the same

day, he wrote a letter to his supervisor, D.M. Orpilla, Jr., asking for forgiveness. The letter, written in Filipino, reads:^[2]

BOSS. Pasensya na kayo, alam ko magagalit kayo sa akin pero hindi ko rin kagustuhan ito, iuuwi ko sana 'yong Bota ko kasi baha sa aming saka 'yong coloring container, saka iyong konting natira na patties pero nasita ako ng Guardia. Kaya sinabi ko 'yong patties eh, nakuha ko lang sa Janitor eh, itatapon na kaya iuuwi ko sana. Eh, gusto yata ng Guardia eh makausap kayo para maayos.

Boss, kakasuhan yata ako kaya nagmamakaawa ako sa inyo Boss tulungan ninyo ako. Hindi ko naman ito gustong mangyari naenganyo lang ako. Eh, gusto yata ni Capt. Molina eh kayo makausap.

Boss, ngayon lang ako sa inyo magmamakaawa alam ko maiintindihan ninyo rin ako saka kayo lang ang alam kong makakatulong sa akin sana maunawaan ninyo ko. Hindi ko na kayo nahintay dahil wala pa kong tulog since Sunday morning dahil dito. Kaya nasulat ko na lang.

Ang nagmamakaawa,

FELIZ

However, D.M. Orpilla, Jr., in his memorandum to respondent company's management, recommended petitioner's dismissal from employment for the following reasons:^[3]

Stated below are the circumstances regarding the attempt of Renato Felizardo (Production Weigher) to take out of the company premises the following:

1. Fifteen (15) pcs. Hamburger Patties
2. One (1) pc. of White Boots
3. One (1) pc. Aluminum Container (empty)

I. BACKGROUND

Based on the memo issued by Lt. E.G. Bienes, Detachment Commander dated 13 September 1993, R. FELIZARDO was caught by S.G. Manolito Ojana attempting to take out of the company premises the above items. According to the written statement of R. Felizardo (which he has submitted to the Security Dept.) that D.M. Orpilla, Jr. gave him the blessing to take out of the premises the said items which is totally not true. Neither did D.M. Orpilla gave him the alleged blessing nor did he give permission for him to bring the said items out.

II. AGGRAVATING CIRCUMSTANCES

1. Subject tried to get out of the mess by dragging D.M. Orpilla's name which he is not aware of.
2. Based on the statement of his co-employees (Agnes Bautista, GAD Technician; Leonil Santos, FG Whse, Foreman), they both warned him against doing it.

III. MITIGATING CIRCUMSTANCES

R. Felizardo admitted that he did it based on a handwritten note (see attached) that he sent D.M. Orpilla thru N. Sta. Ana, morning of September 13, 1993.

IV. VIOLATION COMMITTED

Based on the existing SDPI Company Rules and Regulations, R. Felizardo violated Company Rules and Regulations 11, Section 15 stated as:

<u>Violation</u>	<u>Penalty</u>
Dishonesty, stealing from the Company or stealing from others	Termination

V. RECOMMENDATION

The subject having committed the above violation is worse but dragging other people's name to justify commission of such an act is even worst.

We are recommending the termination of Mr. Renato Felizardo.

On September 27, 1993, petitioner was dismissed for dishonesty for theft of company property, effective September 13, 1993.

The Labor Arbiter found that with the exception of the pair of boots, the articles which petitioner took from the company were mere scraps which were of no value to respondent company. He ruled that dismissal was too harsh a penalty to be imposed on a first-time offender and that his unemployment for about eleven (11) months was sufficient penalty for what he had done. Accordingly, the Labor Arbiter ordered petitioner's reinstatement without backwages.

On appeal, the NLRC reversed, stating:^[4]

A careful examination of the record of the case reveals that complainant was found guilty of theft for stealing a pair of company boots, 15 pieces of hamburger patties, and 1 piece of aluminum container.

Humanitarian consideration weighs heavily against harsh punishment but the offense which complainant is admittedly guilty of is specifically defined both under Article 282 of the Labor Code, as amended, and the company rules and regulations as a just cause for dismissal. And while it is true that a worker should be more favored in law, it is equally true that the employer should not be required to continuously employ someone who has betrayed its trust and confidence.

In relation with the defenses put up by complainant-appellee, it was aptly observed by the respondents-appellants that the defense of prior knowledge of the company through complainant-appellee's immediate supervisor is belied by the contents of his written explanation (p. 19, Records) in

connection with his letter to Mr. M. Orpilla, his supervisor, where he practically admitted his attempt to cart away the said items had it not been timely foiled by the security guard manning the gate (p. 20, Records).

As to whether or not complainant acted with intent to gain, suffice it to say, that in Criminal Law, intent to gain is presumed from the unlawful taking of personal property belonging to another, and in the case at bar the taking of company property was without the permission or knowledge of the company. Moreover, it is not necessary that there was real or actual gain on the part of the offender. It is enough that on taking them, he was then actuated by the desire or intent to gain (People vs. Mercado, 65 Phil. 665).

PREMISES CONSIDERED, the appeal is hereby granted and the Decision of the Labor Arbiter dated 22 August 1994 is hereby SET ASIDE, and a new Order is hereby entered DISMISSING the complaint for lack of merit.

Petitioners contend that the NLRC committed grave abuse of discretion in setting aside the decision of the Labor Arbiter and upholding petitioner's dismissal from employment. They claim that the NLRC erred in finding that petitioner was guilty of stealing company property.

The Labor Arbiter did not really find petitioner Felizardo innocent of the charge against him. Consequently, the NLRC is not guilty of setting aside the factual findings of the Labor Arbiter. To the contrary, he found that in the morning of September 12, 1993, petitioner was trying to take out of the company premises a pair of boots, a drinking container, and fifteen (15) pieces of hamburger patties but was foiled by the security guard. However, on humanitarian grounds, the Labor Arbiter ordered the reinstatement of petitioner pointing out that except for the pair of boots, the other articles, i.e., the aluminum container and the hamburger patties, were mere scraps without any value. There is no question, therefore, as to petitioner's guilt. The only question is whether dismissal is an appropriate penalty to impose on petitioner.

There is no question that the employer has the inherent right to discipline, including that of dismissing its employees for just causes. This right is, however, subject to reasonable regulation by the State in the exercise of its police power.^[5] The finding of the NLRC that an employee violated the company rules and regulations is subject to scrutiny by the Court to determine if the dismissal is justified and, if so, whether the penalty imposed is commensurate to the gravity of his offense.^[6]

In this case, we agree with the Labor Arbiter that dismissal would not be proportionate to the gravity of the offense committed by petitioner considering the value of the articles he pilfered and the fact that he had no previous derogatory record during his two (2) years of employment in the company. The Labor Arbiter is certainly mistaken in regarding the articles taken to be mere scraps and hence without value to the company. They were of some value but not enough to warrant dismissal.

Moreover, it should also be taken into account that petitioner is not a managerial or confidential employee in whom greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected.^[7] It is easy to see why an unfaithful employee who is holding a position of trust and confidence in a company poses a greater danger to its security than a mere clerk or machine operator like petitioner.

There is another reason why violations by non-confidential, employees of company rules and regulations such as that involved in this case are considered minor. Such employees are generally mere wage earners whose dismissal from employment can have severe financial consequences on their families especially at a time like the present when unemployment is quite high. Consequently, whatever missteps may have been committed by them ought not to be visited with a consequence so severe as dismissal. The polestar of adjudication in this area is still Justice, later Chief Justice, Enrique M. Fernando's statement of the rule in *Meracap vs. International Ceramics Mfg. Phil., Inc.*:^[8]

It is not only because of the law's concern for the workingman. There is, in addition, his family to consider. Unemployment

brings untold hardships and sorrows on those dependent on the wage-earner. The misery and pain attendant on the loss of jobs then could be avoided if there be acceptance of the view that under all the circumstances of this case, petitioners should not be deprived of their means of livelihood. Nor is this to condone what had been done by them. For all this while, since private respondent considered them separated from the service, they had not been paid. For the strictly juridical standpoint, it cannot be too strongly stressed, to follow Davis in his masterly work, Discretionary Justice, that where a decision may be made to rest on informed judgment rather than rigid rules, all the equities of the case must be accorded their due weight. Finally, labor law determinations, to quote from Bultmann, should be not only *secundum rationem* but also *secundum caritatem*.

This case is similar to *Gelmart Industries Phils., Inc. vs. NLRC*,^[9] in which this Court affirmed the reinstatement of an employee who had taken out of the employer's premises one (1) plastic container filled with about 16 ounces of used motor oil. Reiterating the ruling in *Meracap*, we held:^[10]

Considering that private respondent herein has no previous derogatory record in his fifteen (15) years of service with petitioner GELMART, the value of the property pilfered (16 ounces of used motor oil) is very minimal, plus the fact that petitioner failed to reasonably establish that non-dismissal of private respondent would work undue prejudice to the viability of their operation or is patently inimical to the company's interest, it is more in consonance with the policy of the State, as embodied in the Constitution, to resolve all doubts in favor of labor.

As already stated, dismissal as a measure to protect the interests of respondent company is unwarranted under the facts of this case. Suspension would have sufficed. Without deciding for how long the suspension should be in cases such as this, considering that petitioner has been prevented from working in respondent company since September 13, 1993, we hold that, for all purposes, he has served a reasonable period of suspension commensurate to the gravity of his offense.

Consequently, the Labor Arbiter's order of reinstatement of petitioner without backwages may be considered appropriate.

WHEREFORE, the instant Petition is **GRANTED**. The Decision of the National Labor Relations Commission is hereby **SET ASIDE** and that of the Labor Arbiter is **REINSTATED**.

SO ORDERED.

Bellosillo, Puno, Quisumbing and Buena, JJ., concur.

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- [1] Reply to Respondents' Position Paper, p. 2, Annex D, Petition; Rollo, p. 29.
 - [2] Reply to Respondents' Position Paper, p. 2, Annex D, Petition; Rollo, p. 29.
 - [3] *Id.*, pp. 3-4; pp. 30-31.
 - [4] Decision of the NLRC, dated Nov. 28, 1994, pp. 4-6, Annex A, Petition; Rollo, pp. 18-20.
 - [5] *Philippine Long Distance Telephone Company vs. NLRC*, 276 SCRA 1 (1997); *Gelmart Industries Phils., Inc. vs. NLRC*, 176 SCRA 295 (1989); *Manila Electric Company vs. NLRC*, 175 SCRA 277 (1989); *Euro-Linea Phils., Inc. vs. NLRC*, 156 SCRA 78 (1987); *Philippine Air Lines, Inc. vs. Philippine Air Lines Employees Association*, 57 SCRA 489 (1974); *Manila Trading and Supply Co. vs. Zulueta*, 69 Phil. 485 (1940).
 - [6] See *Pioneer Texturizing Corp. vs. NLRC*, 280 SCRA 806 (1997); *Yap vs. NLRC*, 278 SCRA 272 (1997); *Brew Master Int'l., Inc. vs. National Federation of Labor Unions*, 271 SCRA 275 (1997).
 - [7] See *Metro Drug Corp. vs. NLRC*, 143 SCRA 132 (1986).
 - [8] 92 SCRA 412, 417 (1975).
 - [9] 176 SCRA 295 (1989).
 - [10] *Id.*, p. 303.