

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**ATLAS FERTILIZER CORPORATION,
EDUARDO J. SORIANO, and JOSELITO
C. PALAPAL,**

Petitioners,

-versus-

**G.R. No. 120030
June 17, 1997**

**NATIONAL LABOR RELATIONS
COMMISSION, HECTOR S. PAYOT, and
MARISSA A. VILLANUEVA,**

Respondents.

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DECISION

DAVIDE, JR., J.:

Assailed in this Petition under Rule 65 of the Rules of Court are the 27 April 1994 Decision^[1] and the 19 December 1994 Order^[2] of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 00-07-03805-92. The former reversed the 12 March 1993 Decision^[3] of Labor Arbiter Raul T. Aquino and ordered the petitioners to reinstate the private respondents to their previous position with back wages limited to three years. The latter denied petitioners' motion for reconsideration.

The pertinent facts, as culled from the records, are as follows:

Private respondent Marissa A. Villanueva commenced working with petitioner Atlas Fertilizer Corp. (hereinafter AFC) on 1 August 1987 as Market Researcher. Two years after, she was promoted as Buyer I and assigned at the Central Purchasing Office (CPO) of AFC. Private respondent Henry S. Payot, on the other hand, was employed by AFC on 16 August 1989 as Buyer I and assigned also at the CPO. As buyers, they were responsible for "the timely procurement of raw materials required for AFC operations, as well as traded goods for marketing by the Chemicals Division, at optimum cost and quality and quantity specifications."^[4] Each of them acted as checker of the other's purchases.

The private respondents' predicament started in March 1992 when an audit of the procurement activities of the Makati CPO for the period September 1991 to February 1992 was conducted by the Internal Audit Department. The audit showed as follows:

- (1) 90% of the transactions have not undergone formal bidding or canvassing;
- (2) 15% of the transactions, mostly for office supplies, did not match the quantities reflected in the requisition slips with the quantities shown on the corresponding Purchase Orders (POs);
- (3) The specifications on 3% of the POs did not match those on the Delivery Receipts; and
- (4) 70% were issued POs only after delivery.^[5]

On 23 April 1992, petitioner Eduardo J. Soriano, the Chairman and Chief Executive Officer of AFC, issued an inter-office memorandum^[6] placing the private respondents on preventive suspension pending investigation and requiring them to explain in writing and under oath why they should not be dismissed for serious misconduct and willful disobedience of company rules.

On 27 April 1992, private respondents' immediate superior, then Purchasing Manager Simplicio Endaya, submitted a Reply in defense of the private respondents without being required to do so. In that same Reply, he tendered his resignation, which was accepted by the petitioner company.

On 4 May 1992, the private respondents submitted their written explanation.^[7] Subsequently, respondent Villanueva sent another letter bolstering her claim of innocence of the charges against her.

On 25 May 1992, their preventive suspension was lifted. Nevertheless, the investigation was continued.

Meanwhile, AFC filed with the Regional Trial Court of Makati a civil action against the private respondents for damages with application for a writ of preliminary attachment.^[8]

On 1 July 1992, petitioner Joselito C. Palapal, Manager of the Human Resource and Purchasing Departments of AFC, issued an inter-office memorandum informing the private respondents of the termination of their employment effective 2 July 1992.^[9] This prompted the latter to file with the NLRC a complaint for illegal dismissal with prayer for reinstatement,^[10] which was subsequently amended to include illegal suspension and claims for backwages, moral and exemplary damages, attorney's fees, and separation pay in lieu of reinstatement.^[11]

After the submission by the parties of their respective position papers and other pleadings, the Labor Arbiter rendered a decision^[12] dismissing for lack of merit the complaint. He ruled that private respondents' preventive suspension was valid as a measure of self-protection for the petitioner company. So was their dismissal from the service. He found that indeed majority of the purchases made by

the private respondents were effected without canvassing or bidding. Worse, there was overpricing by favored suppliers. Their explanation on some transactions was belied by the documentary evidence on record; and as to the other transactions, the private respondents offered no justification. Their acts or omissions, according to the Labor Arbiter, constituted grave transgression of the company's established policies and procedures and were enough for the petitioner company to lose its trust and confidence in them. The private respondents' dismissal was, therefore, valid.

On appeal by the private respondents, the NLRC set aside the decision of the Labor Arbiter and rendered a new one directing the reinstatement of the private respondents to their former position with back wages limited to three years.^[13] It relied heavily on the Reply submitted by the private respondents' immediate superior which stated among other things: "[A]ny deviations from, or exceptions to, the procedures as contained in the Manual, should not be interpreted as having been intended to violate the Manual, but rather to satisfy the corporate needs given the resources available."

The NLRC held that the private respondents' preventive suspension was improper and unreasonable, considering that the Audit Report which was made the basis thereof did not make any specific finding that private respondents' presence in the company's premises posed a serious and imminent threat to AFC's property. Neither is private respondents' dismissal justified, for the accusations levelled against them were not substantiated by evidence and were purely conjectural.

Their motion for reconsideration having been denied,^[14] the petitioners elevated the case to this Court contending that the NLRC gravely abused its discretion (1) in ruling that the preventive suspension imposed on the private respondents was improper and unreasonable, (2) in reversing the factual findings of the Labor Arbiter and principally relying on the self-serving explanation of private respondents' immediate superior, and (3) in ruling that the evidence adduced before the Labor Arbiter is not substantial to warrant the dismissal of the private respondents and in ordering their reinstatement with back wages.

The private respondents and the Office of the Solicitor General (OSG) are one in saying that the preventive suspension was not proper; for the fact that the petitioners allowed the private respondents access to company records in the preparation of their answers only shows that the private respondents' presence in the company premises would not pose a serious threat to the property of AFC. They also agree with the NLRC in treating as significant the Reply of Simplicio Endaya.

As to the third assigned error, the private respondents contend that the petitioners miserably failed to substantiate the charges of misconduct; hence, their dismissal based on loss of trust and confidence cannot be upheld.

The OSG, on the other hand, submits that the alleged violations of the procurement procedures in the Purchasing Manual cannot be characterized as willful breach of trust because the existence or effectivity of such manual appears "dubious." Besides, the alleged irregular transactions were duly approved by the top management. Moreover, the private respondents were overburdened with overlapping and multifarious duties and responsibilities. The petitioner company should have provided additional manpower to its Purchasing Department whose original staff numbered eleven in 1989 and unduly reduced to only four during the retrenchment program in 1990. Finally, the OSG prays that the private respondents be awarded separation pay, in lieu of reinstatement, at the rate of one month pay for every year of service, and backwages from the date of receipt of the Notice of Termination until the finality of the decision in this case less earnings obtained during the said period.

Preventive suspension is a disciplinary measure for the protection of the company's property pending investigation of any alleged malfeasance or misfeasance committed by the employee.^[15] Section 3, Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code provides:

Sec. 3. Preventive Suspension. — The employer may place the worker concerned under preventive suspension if his continued employment poses a serious threat to the life or property of the employer or of his co-workers.

Nothing in this rule requires that the report upon which the preventive suspension was based should make a specific finding that the employee's continued employment poses an imminent threat to the property of the employer. It is enough that such fact can be gleaned from the circumstances of the case.

The cases cited by the respondent Commission, viz., *Rural Bank of Baa vs. NLRC*^[16] and *Global Inc. vs. Atienza*,^[17] are not on all fours with the instant case. In the former, it was not shown that the audit report revealed, at the least, any clue that the employee's continued presence would be a threat to the operations or assets of the employer. In the latter case, the grounds for preventive suspension were absenteeism and tardiness, which obviously would not pose a threat to the life or property of the employer or of the co-workers. Thus, in both cases, the preventive suspension was not sustained.

In the present case, the audit showed that the transactions entered into by the private respondents were tainted with irregularities. Considering such irregularities and the undisputed fact that the purchases made by the respondent employees amounted to approximately P600 million annually, there can be no shred of doubt that the respondents' continuance in the service would pose a serious threat to the property of petitioner AFC. As feared by the petitioners, the respondent employees were in "a position to cause substantial prejudice to petitioners arising from their misconduct, such as their continuous disregard of the purchasing policies resulting in the unauthorized delivery of goods in the absence of the required purchase orders, confirmation of other questionable transactions and the opportunity to change and manipulate records to suit their personal objectives."^[18]

In a nutshell, the private respondents' preventive suspension was necessary for the protection of petitioner AFC's assets and operations pending investigation of the alleged irregularities committed by them. The private respondents capitalize on the fact that they were given access to company records, which, according to them, was an indication that their presence did not pose a threat to petitioner AFC's property. They seem to be unmindful of the fact that such privilege was accorded them to enable them to explain the charges against them. Besides, the exercise of such privilege was under the

supervision of the company's audit personnel. The order of suspension thus reads:

During the period of your preventive suspension, you are allowed access to company records only in the presence of the Auditor or his representative to enable you to prepare your Answer.

We now come to the second and third assigned errors, which boil down to the issue of whether the petitioners' loss of trust and confidence in the private respondents was founded on facts established by substantial evidence. The Labor Arbiter resolved this issue in the affirmative; while the NLRC, in the negative.

Deeply embedded in our jurisprudence is the rule that the findings of facts of quasi-judicial bodies like the NLRC are accorded great respect and, at times, even finality. There are, however, exceptions, among which is when there is a conflict between the factual findings of the NLRC and the Labor Arbiter.^[19] We are more in accord with the findings of the Labor Arbiter.

The basic premise for dismissal on the ground of loss of confidence is that the employee concerned holds a position of trust and confidence.^[20] In the instant case, the private respondents are purchasers of materials and supplies needed for petitioner AFC's operations. Concededly, the transactions they entered into involved a gargantuan amount of money, i.e., more or less P600 million annually. Their Job Identification requires "integrity and confidentiality."^[21] Hence, there can be no denying that the respondents' position is vested with a high degree of trust and confidence.

As a general rule, employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions which by their nature require the employers' full trust and confidence.^[22] Mere existence of basis for believing that the employee has breached the trust of the employer is sufficient and does not require proof beyond reasonable doubt.^[23] Thus, when an employee has been guilty of breach of trust or his employer has ample reason to distrust him, a labor tribunal cannot deny the employer the authority

to dismiss him.^[24] This brings us to the issue of whether the petitioners' loss of trust and confidence in the respondent employees rested on some basis.

While there was a Draft Purchasing Manual at the time the respondent employees entered into the questioned transactions, the same was apparently not approved yet. Nevertheless, the private respondents admit that canvassing or bidding was part of the purchasing procedure handed down by their predecessors in the procurement of materials and supplies. In fact, among the duties and responsibilities set forth in their Job Identification^[25] were as follows: (1) the canvassing and sourcing of raw materials and traded goods, (2) the sending out of requests for quotation and purchase orders (POs) to respective suppliers, and (3) the preparation and conduct of bidding according to company policies and procedures.

Yet, most of the transactions entered into by the respondent employees from September 1991 to February 1992 lacked canvass or bidding. They tried to justify such lack by claiming that some of the transactions were emergency in nature. But, the records reveal that only a very few of the requisitions were marked urgent.

The private respondents explained the absence of canvass or bidding by also saying that the end-users had specified a particular brand which was available only from one supplier or distributor. Respondent Villanueva referred to PO Nos. 1625 and 1657 and claimed that the end-user preferred Fujitsu Printer of which Microcircuits was the alleged sole distributor. In this instance, she was caught in a lie, for the purchase requisitions (PRs) showed requests for a computer printer without specifying any brand. Similarly, respondent Payot justified the lack of canvass or bidding in PO No. 91-1720 by asserting that the end-user preferred Detecto weighing scale which was obtainable from a sole distributor. The PR, however, did not specify a particular brand.

Anent the other transactions that did not undergo canvassing or bidding, the private respondents explained that the same were either repeat orders or requisitions for items involving small amount of money. They did not, however, offer any explanation for the rest of the questioned transactions.

It cannot be gainsaid that the failure of the private respondents to canvass or conduct bidding prevented the petitioner company from obtaining the best terms or the lowest prices available in the market. This holds true especially in those transactions where purchase orders were issued only after the delivery of the materials or supplies.

Moreover, as found by the Labor Arbiter, the private respondents favored certain suppliers, which undoubtedly worked to the prejudice of the petitioner company. More specifically, respondent Payot made purchases from Marne Enterprises in an aggregate amount of more than P2 million without canvassing or bidding. Worse, an independent comparative survey of prices showed that Marne's prices were twice or thrice higher than the prices quoted by other suppliers for the same items. Strangely, in almost all of such transactions, the POs were issued only after the delivery of the items. Just as amazing is that Marne Enterprises was not even an accredited supplier, and it started transacting with the private respondents one month after it was registered with the Bureau of Domestic Trade. One thing that added fuel to petitioners' suspicion that Marne was a dummy of the respondent employees is the fact that it closed shop when the said employees were dismissed from service.

Respondent Villanueva, on the other hand, appeared to have favored ATD Enterprises. All of the transactions she entered into with that entity was without canvassing or bidding. In her attempt to justify such transactions, she claimed that ATD's prices were the lowest. She could not, however, show how she came to that conclusion without conducting any canvass. She also averred that the purchases made with ATD were urgent. But only a very few of the PRs had the notation "ASAP" (as soon as possible); in fact, most of the PRs which she claimed to be urgent did not indicate a required date for purchase. Additionally, in almost all of her purchases from ATD, the POs were issued only after the delivery of the supplies.

These irregular acts, which have been proved by substantial evidence, constitute reasonable basis for the petitioners to lose their trust and confidence in the respondent employees.

The Reply submitted by the private respondents' immediate superior, which was given much credence and weight by the respondent Commission, pales in comparison with the documentary evidence on record. First, as pointed out by the petitioners, the act of Mr. Endaya of resigning after submitting the said Reply "created doubt as to the integrity of the explanations" contained therein. Second, while the said Reply stated exceptions to the rule requiring canvassing or bidding — to wit, transactions which are emergency in nature, or those involving small amount of money, or those requiring confirmation POs — it did not indicate which of the questioned transactions fell under the exceptions. Third, there was nothing in the Reply which refuted the finding of the Labor Arbiter that the private respondents favored certain suppliers, such as Marne Enterprises, whose prices were double or triple the prevailing market prices. In sum, Endaya's Reply is a slender thread to hang on.

The private respondents harp on the fact that the purchases were approved by the company's Senior Vice-President of Finance until 1991 and by petitioner Eduardo Soriano himself starting 1992. Such approval would not wash clean the irregularities committed by the respondent employees. It must be stressed that those purchases were endorsed by the then Purchasing Manager of AFC, Mr. Endaya. The top management had every right to presume that Endaya, as private respondents' immediate superior, had seen to it that the purchases were effected in accordance with the company's policies and regulations before endorsing the same. It was also justified in relying on the regular performance by the private respondents of their duties.

Premises considered, we find that the private respondents are indeed unfit to continue working for the petitioner AFC. We agree with the Labor Arbiter that it would be an act of oppression to compel the petitioners to retain the respondent employees. The law, in protecting the rights of the laborers, authorizes neither oppression nor self-destruction of the employer.^[26]

WHEREFORE, the instant petition is **GRANTED**, the 27 April 1994 Decision and 19 December 1994 Order of the National Labor Relations Commission are **ANNULLED** and **SET ASIDE**, and the 12 March 1993 Decision of the Labor Arbiter is **REINSTATED**.

SO ORDERED.

**Narvasa, C.J., Melo and Panganiban, JJ., concur.
Francisco, J., is on leave.**

- [1] Annex "A" of Petition; Rollo, 27. Per Commissioner Alberto R. Quimpo with Pres. Comm. Bartolome S. Carale and Comm. Vicente S.E. Veloso concurring.
- [2] Annex "B," Id.; Id., 46.
- [3] Annex "R," Id.; Id., 344.
- [4] Annex "C," of Petition; Rollo, 48.
- [5] Annex "D," Id.; Id., 50.
- [6] Annex "F," Id.; Id., 56.
- [7] Annex "E," Id.; Id., 52-55.
- [8] Annex "G," of Petition; Rollo, 57.
- [9] Annex "H," Id.; Id., 63.
- [10] Annex "I," Id.; Id., 65, 67.
- [11] Id.; Id., 64, 66.
- [12] Supra, note 3.
- [13] Supra, note 1.
- [14] Supra, note 2.
- [15] *Globe-Mackay Cable & Radio Corp. vs. NLRC*, 206 SCRA 701, 705 [1992].
- [16] 207 SCRA 444 [1992].
- [17] 143 SCRA 69 [1986].
- [18] Memorandum for the Petitioners, 12; Rollo, 498.
- [19] *Madlos vs. NLRC*, 254 SCRA 248, 256-227 [1996].
- [20] *Quezon Electric Cooperative vs. NLRC*, 172 SCRA 88, 94 [1989].
- [21] Annex "C" of Petition; Rollo, 49.
- [22] *Coca-Cola Bottlers Philippines, Inc. vs. NLRC*, 172 SCRA 751, 757 [1989].
- [23] *Kwikway Engineering Works vs. NLRC*, 195 SCRA 256, 529 [1991]. See also *CDCP Tollways Operation Employees Workers Union vs. NLRC*, 211 SCRA 58 [1992]; *Maranaw Hotel & Resort Corp. (Century Park Sheraton Manila) vs. NLRC*, 244 SCRA 375 [1995]; *Vallende vs. NLRC*, 245 SCRA 662 [1995].
- [24] *Del Carmen vs. NLRC*, 203 SCRA 245, 250 [1991].
- [25] Rollo, 89.
- [26] *Pacific Mills, Inc. vs. Alonzo*, 199 SCRA 617, 622 [1991]; *North Davao Mining Corp. vs. NLRC*, 254 SCRA 721, 730 [1996].