

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

MARILYN L. BERNARDO,
Petitioner,

-versus-

G.R. No. 105819.
March 15, 1996

**THE NATIONAL LABOR RELATIONS
COMMISSION (2ND DIVISION), HON.
JOSE G. DE VERA, in his capacity as
Labor Arbiter, UNIVET
AGRICULTURAL PRODUCTS, INC., and
CONRADO S. BAYLON,**
Respondents.

X-----X

DECISION

MENDOZA, J.:

This is a Petition for Certiorari to Annul the Decision of the National Labor Relations Commission (Second Division) in NLRC-NCR CA No. 4-016-89 which after finding the penalty of dismissal imposed on petitioner by private respondent to be too severe, instead denied her backwages as penalty for violation of the company's rules. Private respondents were ordered to give separation pay, with option to reinstate petitioner in lieu thereof. The NLRC thus modified the

decision of the Labor Arbiter which completely dismissed the petitioner's complaint for illegal dismissal.

The facts of this case are as follows:

Petitioner Marilyn Bernardo was employed at the Univet Agricultural Products, Inc., a division of United Laboratories, on February 14, 1977. Starting as general clerk, she rose in 1980 to the position of administrative clerk, which she held until March 18, 1989 when she was dismissed for dishonesty.

It appears that in January 1989, the Manufacturing Department of the Univet Agricultural asked for two filing cabinets. Accordingly, petitioner prepared the Capital Appropriations Request (CAR) for the purchase of two filing cabinets. The request was signed by Dr. Salvador P. Cajilog, department head, and later approved by five other officers of Univet Agricultural. Before the CAR was transmitted to the purchasing department for the procurement of the office equipment, it was discovered that petitioner had included in the order the acquisition of one executive swivel chair.

On February 18, 1989, the following memorandum was issued to petitioner, requiring her to explain within 48 hours why no disciplinary action should be taken against her.^[1]

FROM : Univet Manufacturing Department
TO : Mrs. Marilyn L. Bernardo
SUBJECT : Violation of Company House Rules & Labor Code
DATE : February 18, 1989

Please explain within 48 hours from receipt of this memo why no disciplinary action be imposed against you for unauthorized insertion of one (1) executive swivel chair as indicated per CAR # 89-053 dated January 26, 1989, which constitute violations of the Company House Rules and Labor Code.

Company House Rules:

1. Any form or act of dishonesty. Article 1, Paragraph 11, page 9;

2. Falsification of records furnishing false data with deliberate intent to defraud the company of cash, stocks or other company properties. Article 1, Paragraph 13, page 9; and
3. Any act or omission, conduct of behavior or offense not specifically mentioned on these House Rules which are pre-judicial to the interest of the company shall be also punishable. The penalty to be imposed will depend upon the gravity of the offense as may be determined by the Division Gen. Manager. Article 1, page 10.

Labor Code:

1. Art. 282. Termination by employer. An employer may terminate an employment for any of the following causes:
 - a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his works.

Kindly give this matter your immediate attention.

(Sgd.) SALVADOR P. CAJILOG

Petitioner admitted making the insertion in the Capital Appropriations Request but explained that she had done so in good faith. In her letter^[2] to the company, she explained:

SUBJECT: VIOLATIONS OF COMPANY HOUSE RULES AS
PER MEMO DATED FEBRUARY 18, 1989

Dear Sir:

In reference to the above-subject below are my explanations:

1. I inserted one (1) swivel chair as per CAR #89-053 dated January 26, 1989 for the simple reason that the

budgeted amount of CAR (exec. swivel chair included)
will not exceed the budgeted amount of 8,000 pesos:

1.a.	Budgeted amount	P8,000 pesos
1.b.	Less: Actual cost of CAR as per survey	7,860 pesos
	BALANCE	<u>140 pesos</u> =====

2. I just acted in good faith. I thought that what I was doing would benefit the department.
3. The CAR went to the usual channel or normal procedure.
4. It was never delivered nor stolen.
5. It was intended for the use of manufacturing personnel and not for my personal use.
6. It didn't occur to me that my actions would be misinterpreted since my intention is purely for the good of the department.
7. I have no intention to defraud the company of cash, etc.

Sir, if you can still recall, the insertion was not really hidden from you, I have mentioned to you that with the budgeted amount there is still around 4,000 pesos balance which would suffice to but swivel chairs for the department. I was not told to refrain from doing that.

Then after a day or two, you mentioned to me that we will make a supplemental budget for office chairs since our existing chairs are similar to the one being used at Mayflower canteen. You told me that I should remind you about it.

After that day, I changed my mind and instead type executive swivel chair. To be honest with you Sir, I want that chair for you as my simple way of thanking you for being so fair and just with your subordinates. You are one of the few managers in Univet whom I respect because of your tactfulness and being so “malaming” to us.

In fact, when somebody (unfortunately I forgot his name) from the office of one of the approving department (UL) called up and asked me about it. I told him that the chair is intended for you because your existing chair is already going out of style. Gusto ko noon sorpresahin ko kayo, kaya lang ako ang nasorpresa ninyo.

With all my earnestness my motive then was merely to surprise you with that swivel chair.

In view of the above-explanations, I would like to take this opportunity to apologize for whatever shortcoming I have made.

Thank you for your attention and understanding on this matter.

Respectfully yours,

(Sgd.) MARILYN L. BERNARDO
Univet Marketing

Apparently, petitioner’s explanation was considered not satisfactory, because on March 18, 1989, she was given notice of the termination of her employment. The notice read:^[3]

TO : Mrs. Marilyn L. Bernardo
FROM :Univet Personnel Committee
SUBJECT :Violation of Company House Rules and Labor Code
DATE :March 18, 1989

Investigation of the charges against you have been completed. We exhaustively delved on all the facts and evidences of this case. The pertinent documents which includes among others,

your written explanation dated February 21, 1989, the explanation and recommendation of your immediate supervisor were thoroughly considered.

After series of lengthy and exhaustive deliberations, you were found to have violated Company House Rules and Labor Code.

COMPANY HOUSE RULES:

1. Any form or act of dishonesty. Article 1, Paragraph 11, page 9;
2. Falsification of records furnishing false data with deliberate intent to defraud the company of cash, stocks or other company properties. Article 1, Paragraph 13, page 9; and
3. Any act or omission, conduct of behavior or offense not specifically mentioned on these House Rules which are pre-judicial to the interest of the company shall be also punishable. The penalty to be imposed will depend upon the gravity of the offense as may be determined by the Division General Manager. Article 1, page 10.

LABOR CODE:

Art. 282. Termination by employer. An employer may terminate an employment for any of the following causes:

- a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his works.
- b. Gross and habitual neglect by the employee of his duties.
- c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

In view of the foregoing, your services with the company is hereby terminated effective March 18, 1989.

FOR UNIVET PERSONNEL COMMITTEE:
(Sgd.) WINSTON T. YOUNG

Petitioner wrote Dr. Delfin Samson, president of United Laboratories, Inc., asking for a "fair investigation." Getting no favorable response, she filed on April 7, 1989 a complaint for illegal dismissal against Univet Agricultural Products, Inc.

Petitioner alleged that she made the intercalation in the CAR in good faith, without any intention of defrauding the company, because she intended the chair for the manager of her department, Dr. Salvador Cajilog. She claimed that what she did was made with the knowledge of Dr. Cajilog. Petitioner alleged that she was dismissed because she had exposed the involvement of two company officers, Conrado Baylon and Dr. Benedicto Santiago, in the rival company, Biomass Corp. of the Philippines.

Due to delays and postponements of her case in the Labor Arbiter's office, petitioner filed with the NLRC a petition for reinstatement pending resolution of her claim. When her petition was denied, she filed a petition for certiorari in this Court (G.R. No. 93958). In its resolution of December 10, 1990, this Court dismissed the petition but directed the Labor Arbiter to resolved petitioner's case within 30 days.

On February 21, 1991 the Labor Arbiter rendered a decision dismissing petitioner's complaint for lack of merit. The Labor Arbiter found petitioner guilty of dishonesty and serious misconduct, warranting dismissal from the service.

On appeal the NLRC, while finding petitioner liable to disciplinary action, thought that the penalty imposed by the company was too severe. Accordingly, it set aside the decision of the Labor Arbiter and ordered the petitioner reinstated and paid backwages for one year of P84,164.72 (P7,014.56 x 12) and attorney's fees equivalent to 10% of the award or P8,416.47.

Petitioner filed a motion for clarification, while private respondent Univet Agricultural filed a motion for reconsideration. On March 13, 1992, the NLRC modified its decision and deleted the award of backwages and, instead of reinstatement, simply ordered petitioner to be paid separation pay equivalent to 1/2 month's pay for every year of service based on her salary at the time of dismissal, unless the company opted to reinstate her.

Petitioner moved for reconsideration but her motion was denied on May 20, 1992. Hence, this petition alleging that the NLRC gravely abused its discretion. Her petition raises the following issues:

- I. WHETHER OR NOT PETITIONER WAS DISMISSED WITHOUT DUE PROCESS OF LAW;
- II. WHETHER OR NOT THERE WAS VALID GROUND TO DISMISS PETITIONER; AND
- III. WHETHER OR NOT PETITIONER IS ENTITLED TO THE AWARD OF MORAL DAMAGES.

I. Before discussing the merits of the petition, we shall first consider the objection of private respondents that the petition in this case does not comply with this Court's Circular No. 28-91,^[4] which as originally promulgated,^[5] required parties in the Court of Appeals or in the Supreme Court (1) to indicate in the caption of every petition the docket number of the case in the court below and (2) to submit a certification that no case involving the same or similar parties and issues is pending in any other court or tribunal.

While it is true that the docket numbers of the case in the Labor Arbiter's office and in the NLRC are not indicated in the caption of the petition, the fact is that the numbers appear in the affidavit of service.^[6] This failure to comply strictly with the requirement may be excused on the ground that there was nevertheless substantial compliance by petitioner indicating the docket numbers in the affidavit of service which is a part of her petition. In any event the informality may be overlooked in view of the fact that this requirement was subsequently removed by

the amendment of Circular No. 28-91 by Circular No. 4-94, which took effect on April 1, 1994.

As to the second requirement pertaining to certificates of non-forum shopping, the record shows that the certification in this case was incorporated in the petition. As in the case of the first requirement regarding docket numbers, there was substantial compliance in this case. Indeed, while the requirement as to certificate of non-forum shopping is mandatory, nonetheless the requirements must not be interpreted too literally and thus defeat the objective of preventing the undesirable practice of forum-shopping.^[7]

II. Private respondents accuse petitioner of forum-shopping, citing the petition for certiorari which petitioner filed in G.R. No. 93958. They claim that our decision in that case^[8] constitutes *res judicata* in the present case.

The petition in G.R. No. 93958 was filed when this case was still pending before the Labor Arbiter's office. It was for reinstatement, pending determination of the case by the Labor Arbiter on the ground that there was undue delay in the disposition of the case. As already stated, the petition was dismissed and the Labor Arbiter was instead ordered to expedite the resolution of petitioner's case by deciding it within 30 days. On the other hand, the present petition, although seeking the reinstatement of petitioner, is based on petitioner's claim that the decision of the NLRC was rendered with grave abuse of discretion and therefore is void. The two actions, therefore, involve different causes of action. For the principle of *res judicata* to apply, the following must be present: (a) a decision on the merits; (b) by a court of competent jurisdiction (c) the decision is final; and (d) the two actions involve identical parties, subject matter and causes of action. The last element is absent in this case.

Nor may petitioner be accused of forum-shopping, which exists when, as a result of an adverse decision rendered in a case, the losing party seeks a favorable decision in another forum other

than by appeal or certiorari.^[9] The present certiorari is not a separate case but a review of the decision of the NLRC.

III. Having cleared the way of procedural obstacles, we now reach the merits of the case.

A. Petitioner claims that without giving her the right to be heard, private respondents found her guilty of violating company rules for having inserted in the approved requisition request an order for an executive swivel chair and for other violations of company rules allegedly committed in the past. With respect to the first ground (inserting an additional item in the approved request for purchase), we hold that no formal hearing was necessary considering that petitioner admitted responsibility for the unauthorized insertion. It was sufficient that she was informed of the findings of management and the basis of its decision to dismiss her.^[10] With regard to the second ground, it appears that, in recommending petitioner's dismissal, the company's personnel committee also took into account other violations of company rules allegedly committed by her. As the NLRC found, however, these other alleged violations had not been proven and could not be taken into consideration. As they cannot be the basis of any disciplinary action against petitioner, it is now immaterial to consider whether with respect to them, petitioner was not given a hearing by the company. It is sufficient for our purpose, that the action taken against her on the first ground (making an unauthorized intercalation in the approved requisition form), as to which there is no question that petitioner was duly heard.

B. The NLRC found that petitioner's dismissal was for cause but, although her offense was a ground for disciplinary action, it was not serious enough to warrant her dismissal. Hence the NLRC denied her claim for backwages but awarded to her separation pay, with option given to private respondent to reinstate petitioner instead of giving her separation pay.

We agree with the finding that the insertion of an additional item in the request for purchase, after this had been approved, was a violation of company rule but it was not of such gravity as to warrant petitioner's outright dismissal. On the other hand, considering the offense committed, an award of backwages and order of reinstatement cannot be justified.

Petitioner's claim that the insertion was with the knowledge of the department head, Dr. Salvador P. Cajilog, is belied by her own allegation that Dr. Cajilog was merely thinking of buying chairs and told her to remind him about the matter. If this latter claim is true, then it would appear that instead of waiting for Dr. Cajilog to decide, petitioner simply took it upon herself to include in the approved request the executive swivel chair. Dr. Cajilog precisely told petitioner to remind him about the matter so that a supplemental budget could be prepared because it was wrong to intercalate an item in the CAR after it had been approved by the officers of the company.

Petitioner submitted in evidence the affidavit of Gloria Cajilog who claimed that when Dr. Salvador P. Cajilog was asked about the additional item for swivel chair, he allegedly replied, "Kay Mayeen mo tanungin iyan, iha, siya ang nakakaalam niyan basta be within the budget, okay lang."^[11] Gloria Cajilog stated, however, the she only heard this from one Susan Rodriguez. Her affidavit is therefore hearsay and should be received with caution.

Petitioner claims that she did not consult Dr. Cajilog because she wanted to surprise him since it was for his use that the swivel chair was to be purchased. This is contrary to her other claim that what she did was with the knowledge of her superior. She could not have surprised him with the chair if the latter had authorized its purchase.

Petitioner attributes her dismissal to the fact that in June 1988, she reported two Univet officials to the management for alleged activities in a rival company, Biomass Corp. of the Philippines. One of these officials was Conrado Baylon who later became a member of the Personnel Committee which recommended petitioner's dismissal.

Petitioner claims that she was transferred from the Product Development Department under Dr. Benedicto Santiago to the

Manufacturing Department headed by Dr. Salvador Cajilog, because Dr. Santiago was the other Univet official whose activities in the rival Biomass Corp. of the Philippines petitioner reported to the management of the company.

To be sure this point, although raised before Labor Arbiter and the NLRC, was not passed upon by either one. Both the Labor Arbiter and the NLRC found that there was sufficient ground for holding petitioner subject to disciplinary action for having made an unauthorized intercalation in the approved Capital Appropriations Request. Both concluded that she committed a violation of company rule, although they differed as to the propriety of outright dismissal as penalty.

We hold that petitioner's transfer from Product Development Department to the Manufacturing Department was made in the legitimate exercise of management prerogative. As petitioner herself admitted, her previous cordial relationship with Dr. Benedicto Santiago turned cold and in fact she had a heated exchange of words with Dr. Santiago. Petitioner's transfer was made after her expose. It was done to restore peace in the troubled department.^[12]

At all events, whatever may have been the motive of some committee members in recommending the dismissal of petitioner, the fact is that what she did constitutes misconduct. Her explanations as to why she made the insertion in the approved purchase order are contradictory. Under no circumstance was her misconduct excusable. The NLRC correctly held her subject to disciplinary action.

Considering, however, that the insertion of the additional order did not caused damage to the company in the sense that the cost of the chair, even if purchased, would not make the total amount to be expended exceed the amount of budget, and that in all probability petitioner was simply motivated by a desire to curry favor with the head of her department rather than gain materially, we agree with the NLRC the outright dismissal would be out of proportion to the gravity of her offense.

The question is what penalty is reasonable under the circumstances. Petitioner, while not deserving of outright dismissal as a penalty is not entitled to reinstatement either.

Considering that petitioner has been in the service for twelve years and that her performance was rated “excellent” and “superior,” she is, in our opinion, entitled to separation pay at the rate of one-half month’s pay for every year of service, based on her salary at the time of dismissal from February 14, 1977 to March 18, 1989.

Petitioner’s claim for moral damages is without merit. Not only was she guilty of misconduct, there is no showing that the company acted in bad faith or fraud or in a manner which is contrary to morals, good customs or public policy,^[13] in dismissing petitioner. Univet Agricultural was acting in the legitimate protection of its interest in seeing to it that its employees were performing their jobs with honesty, integrity and fidelity.

For the same reason there is no basis for an award of attorney’s fees. Under Art. 2208(2) of the Civil Code, the award of such fees is to be justified if the claimant is compelled to litigate with third persons or incur expenses to protect his interest by reason of an unjustified act of the party against whom it is sought.^[14]

WHEREFORE, the decision of the NLRC is **MODIFIED** and private respondents are **ORDERED** to **PAY** petitioner separation pay at the rate of one-half pay for every year of service based on her salary at the time of her dismissal, for the period February 14, 1977 to March 18, 1989.

SO ORDERED.

Regalado, Romero and Puno, JJ., concur.

[1] Petition, pp. 15-16, Rollo, pp. 17-18.

[2] Petition, pp. 16-18, Rollo, pp. 18-20.

[3] Petition, pp. 18-19, Roll, pp. 20-21.

- [4] ADDITIONAL REQUISITES FOR PETITIONS FILED WITH THE SUPREME CURT AND THE COURT OF APPEALS TO PREVENT FORUM SHOPPING OR MULTIPLE FILING OF PETITIONS AND COMPLAINTS.
- [5] The Circular was amended by Circular 4-94 on April 1, 1994 which deleted the first requirement under Circular No. 28-91.
- [6] Rollo, p. 2.
- [7] Gabionza vs. Court of Appeals, 234 SCRA 192 (1994).
- [8] Res., G.R. 93958, Dec. 10, 1990.
- [9] Silahis Int'l. Hotel vs. NLRC, 225 SCRA 94 (1993).
- [10] Pampanga Electric Cooperative, Inc. vs. NLRC, G.R. No. 107541, November 16, 1995.
- [11] Petition, p. 27, Rollo, p. 29.
- [12] Cf. Philippine Japan Active Carbon Corp. vs. NLRC, 171 SCRA 164 (1989).
- [13] Zamboanga Electric Cooperative vs. Buat, 243 SCRA 47 (1995).
- [14] Valiant Machinery and Metal Corp. vs. NLRC, G.R. No. 105877, January 25, 1996.