

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**CEBU FILVENEER CORPORATION
and/or CARLO CORDARO,**
Petitioners,

-versus-

**G.R. No. 126601
February 24, 1998**

**NATIONAL LABOR RELATIONS
COMMISSION (Fourth Division) and
JESSIELYN VILLAFLO,**
Respondents.

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DECISION

PUNO, J.:

This Petition for *Certiorari* and Prohibition^[1] seeks to nullify the April 30, 1996 Decision^[2] and the August 28, 1996 Resolution^[3] of the National Labor Relations Commission (Fourth Division) declaring illegal the dismissal of Jessielyn Villaflor and holding Cebu Filvener Corporation and Carlo Cordaro solidarily liable for separation pay, backwages, moral damages and attorney's fees.

On November 16, 1991, the private respondent was hired as chief accountant of petitioner Cebu Filvener Corporation. Ms. Rhodora M. Guillermo served as her accounting clerk. The top executives of

petitioner corporation were Italians: Mr. Carlo Cordaro, President; Mr. John Chapman Kun, General Manager; and, Mr. Renato Marinoni, Production Manager.

On January 21, 1992, Mr. Kun informed Mr. Cordaro of his desire to resign as general manager effective March 1, 1992. He requested for the liquidation of his investment in the company in the sum of P125,000.00.

On February 7, 1992, Mr. Kun secured one blank check and blank check voucher from Ms. Guillermo. Ms. Guillermo failed to immediately inform the private respondent of the blank check and voucher taken by Mr. Kun. Private respondent, however, noticed the missing check voucher on February 10, 1992. She asked Ms. Guillermo about the check voucher and was told that it was with Mr. Kun. Mr. Kun was able to prepare the check in the amount of P125,000.00, had it signed by Mr. Marinoni and encashed on February 12, 1992.

Private respondent learned of Mr. Kun's act and forthwith informed Mr. Cordaro who was then in Italy. Mr. Cordaro suspended Mr. Kun and designated Mr. Marinoni and the private complainant as responsible persons for the company funds. He also directed the private complainant to assist the company lawyer in filing a criminal case against Mr. Kun. On her part, the private complainant wrote to the PNB MEPZ Branch demanding the return of the encashed check.

On February 15, 1992, Mr. Marinoni confronted the private respondent and charged her with complicity in Mr. Kun's irregular disbursement of company funds. On February 17, 1992, the private respondent reported for work late and was prevented entry by the security guards. A Restriction Order has been issued against her by Mr. Marinoni upon authority of Mr. Cordaro. Mr. Marinoni also caused the forcible opening of private respondent's table and the vault inside her office. The private respondent reported the incident to the MEPZ PNP Station.

On February 18, 1992, the private respondent complained to the MEPZ Labor Relations Officer. The next day, Mr. Marinoni issued a memorandum suspending the private respondent for thirty (30) days

without pay effective February 17, 1992 for failure to report to office for half a day. On February 19, 1992, the private respondent filed a case against the petitioners for illegal dismissal.^[4] On February 20, 1992, Mr. Marinoni issued another memorandum preventively suspending her for thirty (30) days effective the next day pending investigation on her involvement in the unauthorized encashment by Mr. Kun of company funds. The petitioner also published a newspaper advertisement of its need for an accountant.

On March 5, 1992, Atty. Julius Neri notified the private respondent that her investigation would start March 12, 1992. Private respondent failed to attend the investigation so it was reset to March 28, 1992. On said date, the private respondent appeared thru Atty. Godofredo Parawan, Jr. who objected to the conduct of the investigation on the ground that his client had already filed a complaint for illegal dismissal with the labor arbiter. Nonetheless, Atty. Neri proceeded with the investigation ex parte. On April 6, 1992, on the basis of Atty. Neri's recommended action, petitioner dismissed the private respondent on two grounds: (1) failure to report the blank check and voucher which Mr. Kun secured from Ms. Guillermo; and (2) overpaying herself P7,000.00 as 13th month pay for the year 1991.^[5]

On November 22, 1994, Labor Arbiter Ernesto F. Carreon decided in favor of the private respondent whom he found to have been illegally dismissed. He ordered petitioners to pay solidarily the private respondent P24,000.00 as separation pay; P265,315.05 as backwages; P20,000.00 as moral damages and P30,931.50 as attorney's fees or a total sum of P340,246.55.

Petitioners appealed to the public respondent NLRC.^[6] On April 30, 1996, the public respondent affirmed the Decision with the modification that from the backwages of private respondent should be deducted the amount she earned as income during the pendency of the case.

In this petition, petitioners contend:

“THE RESPONDENT COMMISSION GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN FINDING THAT THERE WAS ILLEGAL DISMISSAL FOR

WHICH PRIVATE RESPONDENT SHOULD BE ENTITLED TO SEPARATION PAY, BACKWAGES, MORAL DAMAGES AND ATTORNEY'S FEES, DESPITE THE CLEAR PRESENCE OF BREACH OF TRUST, GROSS NEGLIGENCE AND ACTS INIMICAL TO THE CORPORATION.

EVEN ASSUMING ARGUENDO THAT THERE WAS AN ILLEGAL DISMISSAL, THE RESPONDENT COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN FAILING TO EXCLUDE THE PERIOD THAT PRIVATE RESPONDENT RESIGNED FROM CATTLEYA TRAVEL TO STAY IN THE UNITED STATES IN ORDER TO TAKE CARE OF HER PARENTS. MOREOVER, THE RULING OF ILLEGAL DISMISSAL WOULD NOT WARRANT THE PAYMENT OF SEPARATION PAY AND MORAL DAMAGES CONSIDERING THAT THE PRIVATE COMPLAINANT CANNOT BE ENTIRELY DECLARED WITHOUT FAULT.

THE RESPONDENT COMMISSION GRAVELY ABUSED ITS DISCRETION IN MAKING PETITIONER CORDARO SOLIDARILY LIABLE WITH THE PETITIONER CORPORATION.”

We affirm with modification.

We uphold the ruling of the public respondent that petitioners have no ground to dismiss the private respondent for breach of trust or gross negligence. Under Article 282 of the Labor Code, 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 work;
- (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;

- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- (e) Other causes analogous to the foregoing.”

In labor-management relations, there can be no higher penalty than dismissal from employment. Dismissal severs employment ties and could well be the economic death sentence of an employee. Dismissal prejudices the socio-economic well being of the employee's family and threatens the industrial peace. Due to its far reaching implications, our Labor Code decrees that an employee cannot be dismissed, except for the most serious causes. The overly concern of our laws for the welfare of employees is in accord with the social justice philosophy of our Constitution.

Prescinding from these premises, petitioners' insistence that they legally dismissed the private respondent for loss of trust stands on quicksand. At the very most, petitioners were only able to prove that private respondent failed to inform immediately her superiors of the act of Mr. Kun in getting a blank check and blank voucher from Ms. Guillermo. The omission of the private respondent can hardly be described as "willful" to justify her dismissal. For one, the omission did not last for long. For another, the subsequent actions of the private respondent upon learning of the encashment of the unauthorized check by Mr. Kun negate any implication that she willfully or intentionally defaulted in reporting to prejudice petitioners. Indeed, she reported the matter to petitioner Cordaro and wrote to the PNB MEPZ Branch to retrieve the encashed check. A breach is willful if it is done intentionally, knowingly and purposely. Petitioners merely proved the omission of the private respondent but there is no evidence whatsoever that it was done intentionally.

Nor are we prepared to agree with petitioners that the private respondent was grossly or habitually negligent in the performance of her duties. The records reveal that the private respondent has not been remiss in the past in the performance of her duties, hence, she cannot be charged with habitual negligence. We cannot also characterize private respondent's negligence as gross in character.

Gross negligence implies a want or absence of or failure to exercise slight care or diligence or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.^[7] In the case at bar, the evidence does not show that the private respondent has any reason to distrust Mr. Kun. Mr. Kun was petitioner's general manager and appears to have conducted himself well in the performance of his duties in the past. There was not the slightest reason to suspect that Mr. Kun would commit any illegal act. At the most, the trust misplaced by the private respondent constitutes error of judgment but not gross negligence.

Anent petitioners' claim that the private respondent overstated her 13th month pay, suffice to quote the findings of the public respondent, viz.:

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“On the accusation of gross dishonesty relative to the disbursement by the complainant in her favor of the amount of P8,000.00 as 13th month pay for the year 1991, the complainant claimed this is part of the compensation package agreed to be granted to her, and this remains unrefuted on record. More telling than this is the fact that the said disbursement had already passed in audit and was not discredited by the company president Mr. Carlo Cordaro. At most, this charge of dishonesty against the complainant is an afterthought resorted to by the respondents to justify their intention to and eventual dismissal of the complainant.”^[8]

Petitioners' demand that the backwages should be reduced in view of the time she spent in the United States deserves scant attention. In *Bustamante, et al. vs. NLRC*,^[9] we held:

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“On 21 March 1989, Republic Act No. 6715 took effect, amending the Labor Code. Article 279 thereof states in part:

‘ART. 279. Security of Tenure. — An employee who is unjustly dismissed from work shall be entitled to

reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation is withheld from him up to the time of his actual reinstatement.’ (emphasis supplied)

“In accordance with the above provision, an illegally dismissed employee is entitled to his full backwages from the time his compensation was withheld from him (which, as a rule, is from the time of his illegal dismissal) up to the time of his actual reinstatement. It is true that this Court had ruled in the case of *Pines City Educational Center vs. NLRC* (G.R. No. 96779, 10 November 1993, 227 SCRA 655) that “in ascertaining the total amount of backwages payable to them (employees), we go back to the rule prior to the *Mercury Drug* rule that the total amount derived from employment elsewhere by the employee from the date of dismissal up to the date of reinstatement, if any, should be deducted therefrom.” The rationale for such ruling was that, the earnings derived elsewhere by the dismissed employee while litigating the legality of his dismissal, should be deducted from the full amount of backwages which the law grants him upon reinstatement, so as not to unduly or unjustly enrich the employee at the expense of the employer.

“The Court deems it appropriate, however, to reconsider such earlier ruling on the computation of backwages as enunciated in said *Pines City Educational Center* case, by now holding that conformably with the evident legislative intent as expressed in Rep. Act No. 6715, above-quoted, backwages to be awarded to an illegally dismissed employee, should not, as a general rule, be diminished or reduced by the earnings derived by him elsewhere during the period of his illegal dismissal. The underlying reason for this ruling is that the employee, while litigating the legality (illegality) of his dismissal, must still earn a living to support himself and family, while full backwages have to be paid by the employer as part of the price or penalty he has to pay for illegally dismissing his employee. The clear legislative intent of the amendment in Rep. Act No. 6715 is to give more benefits to workers that was previously given them

under the Mercury Drug rule or the “deduction of earnings elsewhere” rule. Thus, a closer adherence to the legislative policy behind Rep. Act No. 6715 points to “full backwages” as meaning exactly that, i.e., without deducting from backwages the earnings derived elsewhere by the concerned employee during the period of his illegal dismissal. In other words, the provision calling for “full backwages” to illegally dismissed employees is clear, plain and free from ambiguity and, therefore, must be applied without attempted or strained interpretation. *Index animi sermo est.*”

We hold that public respondent should not have awarded moral damages and attorney’s fees in favor of the private respondent. To be sure, the private respondent was negligent when she did not immediately inform her superior about the blank check and voucher taken by Mr. Kun, although, as aforesaid, it is not the specie of negligence that will justify dismissal. Thus, petitioners should not and cannot be made to pay moral damages and attorney’s fees for their dismissal of the private respondent was not motivated by bad faith or malice.

Finally, we hold that Mr. Cordaro cannot be made solidarily liable with petitioner corporation for the illegal dismissal of the private respondent. In dismissing the private respondent, he acted as President of petitioner corporation and he did so in good faith. His act as an officer of the corporation cannot result in his private liability. This is too fundamental a rule to deserve further discussion.

IN VIEW WHEREOF, the April 30, 1996 Decision and August 28, 1996 Resolution of the public respondent are affirmed subject to the modification deleting the award of moral damages and attorney’s fees and absolving petitioner Carlo Cordaro from liability. No costs.

SO ORDERED.

Regalado, Melo, Mendoza and Martinez, JJ., concur.

[1] Rollo, pp. 5-32.

[2] Rollo, pp. 36-50.

- [3] Rollo, pp. 148-150.
- [4] NLRC Case No. RAB VII-02-0185-92.
- [5] Allegedly, private respondent only worked for 1 1/2 months in 1991, hence, she was only entitled to P1,000.00 and not P8,000.00, her monthly salary.
- [6] NLRC Case No. V-0081-95.
- [7] Citibank, N.A. vs. Gatchalian, 240 SCRA 212.
- [8] NLRC Decision, pp. 12-13.
- [9] G.R. No. 111651, November 28, 1996.