

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

MA. LIZA DE GUZMAN,
Petitioner,

-versus-

**G.R. No. 130617
August 11, 1999**

**NATIONAL LABOR RELATIONS
COMMISSION and REX BOOKSTORE,
INC.,**

Respondents.

X-----X

DECISION

DAVIDE, JR., C.J.:

Assailed in this Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court is the Decision^[1] of public respondent National Labor Relations Commissions (NLRC) of 20 May 1997, which affirmed with modification the Decision of the Labor Arbiter of 17 December 1996. The subsequent Resolution^[2] of the NLRC of 10 July

1997, denying petitioner's partial motion for reconsideration is likewise impugned.

Petitioner Ma. Liza de Guzman (hereafter DE GUZMAN) was employed by private respondent Rex Bookstore, Inc. (hereafter REX) on 17 April 1989 as cashier. On 18 September 1995 DE GUZMAN was dismissed for alleged dereliction of duty in violation of REX's rules and regulations. At the time of her dismissal, she was receiving a daily wage of P164.25.

De GUZMAN's dismissal stemmed from an incident on 5 August 1995 when she made a double payment to a book agent. Instead of paying the agent the amount of two thousand seven hundred sixty pesos (P2,760.00) for a single transaction, she paid the amount of five thousand five hundred twenty pesos (P5,520.00). Thus, in its memorandum of 12 August 1995, REX ordered DE GUZMAN to explain within 48 hours why she should not be penalized for dereliction of duty pursuant to Section 1A, Article III of REX's rules and regulations and suspended her for thirty (30) days beginning 14 August 1995 pending the investigation of the case against her.^[3]

In compliance with the aforesaid memorandum, DE GUZMAN submitted to REX her explanation dated 14 August 1995.^[4] She alleged therein that since she was hired in 1989 it has been the company's procedure in paying its freelance agents that the sales clerk will make two copies of the unofficial receipt of payments, one given to REX and the other to the agent. However, on 5 August 1995 the sales clerk, Emmie Idio, issued to a sales agent two unofficial receipts for the same transaction. Both receipts bore the identical amount of two thousand seven hundred sixty pesos (P2,760.00). The agent then presented both receipts to DE GUZMAN. Noting the two receipts, DE GUZMAN asked the agent whether he made two deliveries on that day. When the agent answered in the affirmative, DE GUZMAN paid the agent five thousand five hundred twenty pesos (P5,520.00) corresponding to the total amount of the receipts. She claimed that she failed and did not have the opportunity to verify from Emmie Idio about the issuance of the two receipts because on that day there were many customers.

DE GUZMAN contended that she cannot be held responsible for the overpayment as she merely followed the usual procedure in the company. It should be the sales clerk, Emmie Idio, who should be held responsible for the issuance to the agent of two receipts.

Not satisfied with her explanation, REX, through Roque C. Solomon of its Personnel Department, served on DE GUZMAN on 18 September 1995 a confidential memorandum informing her of the termination of her services. The memorandum reads:

The decision on your case has been released under RBS-PRES 95-001 dated September 14, 1995 the dispositive portion of which reads as follows:

“Management is left with no alternative but to affirm the recommendation of the Fact Finding Committee not only to dismiss her (referring to Miss Liza de Guzman) from the Company but to seek recovery of the amount of P2,760.00 if not intentionally misappropriated.”

By copy of this memo, the concerned supervisors shall ensure that the liquidation of accountability and the proper turnover of responsibilities are carried out to protect the interest of the company.

Please be guided accordingly.^[5]

Earlier, on 5 August 1995, a day after she was placed under preventive suspension, DE GUZMAN filed a complaint for illegal suspension with the National Capital Region-Arbitration Branch of the NLRC. The case was docketed as NLRC NCR Case No. 00-08-05777-95.^[6]

Immediately after her dismissal from the service, DE GUZMAN amended her complaint to include illegal dismissal and claims for thirteenth-month pay and attorney's fees.^[7] The complaint was further amended on 18 September 1995 and 10 October 1995 to include claims for payment of actual, moral and exemplary damages.^[8]

In its Answer to the complaint, REX alleged that the purported defect in the disbursement procedure as claimed by DE GUZMAN cannot be

used by her as an excuse for her negligence and that the payment made to the agent without proper authorization from the supervisor violated REX's standard operating policy that "no disbursement of fund may be made by a cashier without the approval of his/her immediate supervisor."

On 17 December 1996, Labor Arbiter Salimathar B. Nambi rendered a Decision^[9] in favor of DE GUZMAN, the dispositive portion of which reads:

Accordingly, respondent is hereby adjudged to reinstate complainant without loss of seniority rights and other privileges and to pay complainant her full back wages inclusive of allowances, computed from the time of her termination (September 14, 1995) up to the time of her actual reinstatement.

Respondent is likewise ordered to pay complainant her 13th month pay for the year 1995 and 1996. Further, respondent is ordered to pay complainant P10,000.00 by way of attorney's fees. The claim for actual, moral and exemplary damages are hereby dismissed for lack of merit since there were [sic] no evidence presented and submitted in support thereto.

SO ORDERED.

REX appealed the Decision to the NLRC.

On 20 May 1997, the NLRC rendered a decision^[10] affirming with modification the decision of the Labor Arbiter by ordering the payment of separation pay in lieu of reinstatement and deleting the award of back wages and attorney's fee. The decretal portion of the decision reads:

PREMISES CONSIDERED, the Decision dated December 17, 1996 is hereby MODIFIED by ordering respondent to pay complainant the amount of thirty four thousand one hundred sixty four pesos (P34,164.00) as separation pay. Respondent's motion for Issuance of Temporary Restraining Order and Writ of preliminary Injunction is hereby DISMISSED for having been rendered moot and academic.

SO ORDERED.

In deleting the award of back wages, the NLRC rationalized as follows:

We disagree with the Labor Arbiter's finding that respondent failed to substantiate complainant's negligence. As correctly argued by respondent, complainant herself admitted that she failed to inquire the veracity of the two unofficial receipts (Annexes "B" and "B-1") of respondent's position paper. (Records, p. 37) which were presented to her for payment by the agent. Prudence dictates that she should have verified the veracity of said receipts considering the fact that they reflected identical transactions. In fact, she admitted disbelief thereof. (Annex "O" of Complainant's Position Paper, Records, p.23). That, there were many customers on that day is not a valid excuse for her not to verify said receipts from the sales clerk who issued the same or from her immediate supervisor.

However, while we find that complainant was negligent it cannot be considered gross as to warrant her termination from the service. As the facts of the case show, the error committed was not the fault of the complainant alone. The sales clerk who issued two (2) unofficial receipts to the agent, contrary to the usual procedure of the company, is also partly to be blamed in the incident. Further, the agent also made misrepresentation to the complainant.

Taking into consideration the factual circumstances of the case, the period within which complainant was out of work shall be considered as her penalty. Stated differently, she is not entitled to backwages.^[11]

In a Partial Motion for Reconsideration, DE GUZMAN asked for a modification of the decision to include payment of back wages. The NLRC denied the motion in its Resolution of 10 July 1997.^[12]

DE GUZMAN then filed the instant special civil action. She asserts that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it modified the Labor Arbiter's decision by deleting the grant of back wages as penalty for her negligent act despite the affirmance of the Labor Arbiter's finding that her

dismissal was illegal. Such finding entitled her not only to separation pay but also to back wages and that the deletion of the latter as penalty is too harsh and grossly disproportionate to the infraction she committed.

We find merit in this petition.

The general rule is that where there is a finding of illegal dismissal, an employee is entitled to reinstatement and to receive back wages from the date of his dismissal up to the time of his reinstatement.^[13]

The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and, secondly, the payment of back wages corresponding to the period from his illegal dismissal up to actual reinstatement. The rationale therefor is clearly obvious. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, i.e., to his status quo ante dismissal, while the grant of back wages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies of reinstatement and payment of back wages make whole the dismissed employee, who can then look forward to continued employment. These two remedies give meaning and substance to the constitutional right of labor to security of tenure.^[14]

However, the two remedies are distinct and separate. Though the grant of reinstatement commonly carries with it an award of back wages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non-availability of the other.^[15] Reinstatement is a restoration to a state from which one has been removed or separated. On the other hand, the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal.^[16] The award of one is not a condition precedent to an award of another. Back wages may be ordered without ordering reinstatement; conversely, reinstatement may be ordered without payment of back wages.^[17]

Thus, in a number of cases,^[18] the Court, despite its order of reinstatement or award of separation pay in lieu of reinstatement

deemed it appropriate not to award back wages as penalty for the misconduct or infractions committed by the employee.

In the case at bar, we hold that the factual circumstances obtaining in the case at bar do not warrant exception to the general principle that an employee is entitled to reinstatement and to receive back wages where there is a finding of illegal dismissal.

There is here no deliberate intent on the part of DE GUZMAN to prejudice the company. It can be safely said that at most, DE GUZMAN committed merely an error of judgment in paying the sales agent without verifying the authenticity of the receipts. Contrary to the claim of REX, there was no standard operating policy that “no disbursement of fund may be made by a cashier without the approval of his/her immediate supervisor.” REX’s own witness, Emmie Idio, the clerk who issued the receipts, stated in her affidavit that “it has always been the procedure at REX Bookstore, Recto Branch, that when an outside sales agent does not have a receipt of his own, the Bookstore, through its sales clerk prepares two (2) identical copies of an unofficial receipt evidencing the payment of the books; one copy to be retained by the Bookstore and the other to be issued to the agent upon payment by the cashier.”^[19] Therefore, it is clear that in the payment of outside sales agent prior approval of immediate superior is not required.

More importantly, this was the first time that DE GUZMAN made an overpayment. Such an infraction which was the only one she had ever committed should not be heavily taken against her. Besides, as correctly observed by respondent NLRC, she was not solely responsible for the said incident. The fact of overpayment was primarily attributable to the sales clerk who issued two unofficial receipts to the sales agent in violation of standard company policy, as well as the misrepresentation committed by the book agent that the two receipts covered two separate transactions.

DE GUZMAN’s good faith is further buttressed by the fact that the two unofficial receipts which served as basis for payment were retained in the company’s file together with the receipts of payment and were both marked as paid.^[20] In fact, on the basis of those documents and the testimonies of the clerk and DE GUZMAN, the

REX can demand from the book agent, who is a regular client, the return of the overpaid amount.

The previous offense that DE GUZMAN had committed on 3 July 1993 for willful refusal to perform one's assigned work or to comply with instruction of supervisor, for which she had been administered a sufficient disciplinary sanction of six days suspension, could no longer be utilized to aggravate the present offense.^[21] Her previous offense was an entirely separate and distinct violation of company rules. The correct rule is that previous infractions may be used as justification for an employee's dismissal from work in connection with a subsequent similar offense.^[22]

In determining the penalty to be imposed on an erring employee, due consideration must be given to the employee's length of service and the number of violations he committed during his employ.^[23] In a similar case, the Court ruled that dismissal is too harsh a penalty for the inefficiency of an employee where the offense was the first to be committed by an employee and she did not do it with malice, aside from the fact that she was not solely responsible for the incidents. The suspension of the employee would have sufficed.^[24]

On the basis of the foregoing, the conclusion is inevitable that the total withholding of full back wages is too harsh and severely disproportionate to the offense committed by DE GUZMAN. In all cases where punishment of any sort is imposed, the penalty shall be commensurate with the nature and gravity of the offense charged, taking into consideration the varying circumstances surrounding each particular case. The offender shall, however, be given the benefit of all doubts that may exist as to his responsibility for the offense charged. This dictum is in consonance with the policy of the State, as embodied in the Constitution, to resolve doubts in favor of labor.^[25]

The employer's prerogative to discipline its employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding.^[26] While an employer has the inherent right to discipline its employees, we have always held that this right must always be exercised humanely, and the penalty it must impose should be commensurate to the offense involved and to the degree of its infraction.^[27] The employer should bear in mind that,

in the exercise of such right, what is at stake is not the employee's position but her livelihood as well.^[28] The law regards the workers with compassion. Even where a worker has committed an infraction, a penalty less punitive may suffice, whatever missteps maybe committed by labor ought not to be visited with a consequence so severe. This is not only the law's concern for the workingman. There is, in addition, his or her family to consider. Unemployment brings untold hardships and sorrows upon those dependent on the wage-earner.^[29]

Finally, it must not be forgotten that the Constitution affirms labor as a primary social economic force.^[30]

As to the back wages, settled is the rule that the amount thereof to be awarded to an illegally dismissed employee must be computed from the time the compensation was withheld up to the time of actual reinstatement, without deduction of earnings derived elsewhere pending the resolution of the case.^[31] But since in this case, separation pay was awarded in lieu of reinstatement, the back wages must be computed from the time of DE GUZMAN's illegal dismissal until the finality of this decision.^[32]

IN VIEW WHEREOF, the assailed Decision and Resolution of the NLRC are hereby **AFFIRMED** with **MODIFICATION**. REX is ordered to pay DE GUZMAN full back wages from the time of her dismissal until the finality of this decision.

No pronouncement as to costs.

SO ORDERED.

Puno, Kapunan, Pardo and Ynares-Santiago, JJ., concur.

[1] Rollo, 18-26. Per Javier, L.C., Pres. Comm., with Bernardo, I.B., and Tanodra, J.A., Comms., concurring.

[2] Id., 28.

[3] Annex "A," of Complainant's Position Paper, Rollo, 44.

[4] Annex "B," of Complainant's Position Paper, Id., 45.

[5] Annex "C," of Petition, Rollo 46.

- [6] Original Record (OR), 2.
- [7] *Id.*, 6.
- [8] *Id.*, 7.
- [9] Rollo, 81-86.
- [10] *Id.*, 18-26.
- [11] NLRC Decision, 6-7, Rollo, 23-24.
- [12] Rollo, 28.
- [13] *Flores, et al. vs. Funenaria Nuestro, et al.*, 160 SCRA 568, 572 (1988).
- [14] *Santos vs. NLRC*, 154 SCRA 166, 171,172 (1987).
- [15] *Ibid.*, See also *Medina vs. CBS*, 222 SCRA 707 (1993).
- [16] *Escareal vs. NLRC*, 213 SCRA 472 (1992).
- [17] See *Callanta vs. Carnation, Phil., Inc., et al.*, 145 SCRA 268 (1986).
- [18] In *Pepsi Cola vs. NLRC, et al.*, 247 SCRA 386 (1995), an employee filed a leave of absence for one day after he suffered stomachache. Upon the advice of the doctor he took a rest for 25 days without prior leave. When he reported for work, he was told he had been dismissed for being absent without leave. It was held that while he was at fault, the employee could not be dismissed. He was ordered reinstated but he was denied back wages. Also in the case of *Yupangco Cotton Mills, Inc. vs. NLRC*, after finding that the employee was illegally dismissed but finding him guilty of misconduct the Court finds no grave abuse of discretion in the resolution of the NLRC meeting the penalty of suspension only without backwages. (G.R. 94156, 30 July 1990, First Division, Minute Resolution). Similarly, the dismissal of an employee of a mining firm who was apprehended for stealing ores with high gold content was considered drastic and unwarranted considering that he had rendered twenty three years of service without previous derogatory record and he was prematurely suspended during the pendency of the case; reinstatement without backwages would serve the ends of justice. (*Itogon Suyoc Mines, Inc. vs. NLRC*, 117 SCRA 532 [1982]).
- [19] Par. 4 of the Affidavit; OR, 53.
- [20] Annex “B,” “B-1,” “B-2,” of respondent’s Position Paper, OR, 40.
- [21] Appendix “B” of Memorandum on Appeal, *Id.*, 84.
- [22] *Filipro, Inc. vs. Ople, et al.*, 182 SCRA 1, as cited in *Stellar Industrial Services, Inc. vs. NLRC*, 252 SCRA 323, 333 (1996).
- [23] *Bonotan vs. NLRC, et al.*, 237 SCRA 717 (1994); *Sampang vs. Inciong*, 137 SCRA 56 (1985).
- [24] *Tumbiga vs. NLRC, et al.*, 274 SCRA 338 (1997).
- [25] *Gelmart Industries Phils., Inc. vs. NLRC*, 176 SCRA 303 (1989).
- [26] See *Maglutac vs. NLRC, et al.*, 189 SCRA 767 (1990); *Santos vs. NLRC, et al.*, *supra* note 14.
- [27] *Pioneer Texturing Corp., et al. vs. NLRC*, 280 SCRA 806, 816 (1997), citing *Solmac Marketing, Inc., et al., vs. NLRC*, G.R. No. 116574, Feb. 12, 1996.
- [28] *Pioneer Texturing Corp. vs. NLRC*, *supra*.
- [29] *Meracap vs. International Ceramics Manufacturing Co., Inc., et al.*, 92 SCRA 412 (1979); see also *Michael Inc., et al. vs. NLRC, et al.*, 256 SCRA 461 (1996); *Almira vs. B.F. Goodrich Phils. Inc., et al.*, 58 SCRA 120 (1974).

[30] Section 18, Article II.

[31] PLDT vs. NLRC, 276 SCRA 462 (1997); Reformist of Union of R.B. Liner, Inc. vs. NLRC, 266 SCRA 713 (1997); Bustamante vs. NLRC, 255 SCRA, 145 (1996).

[32] Rasonable vs. NLRC, et al., 253 SCRA 815 (1996); Labor vs. NLRC, 248 SCRA 205 (1995); Gaco vs. NLRC, 230 SCRA 260 (1994).

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