SUPREME COURT
THIRD DIVISION

GLORIA S. DELA CRUZ,
***Petitioner*,**

-versus-

G.R. No. 119536
February 17, 1997

NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER JOVENCIO MAYOR, JR., ELIN PHARMACEUTICALS, INC., and/or ANTONIO C. BAUTISTA,
***Respondents*.**
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D E C I S I O N

DAVIDE, JR., *J.*:

In his 17 May 1994 Decision[1] in NLRC-NCR Case No. 09-04790-92, public respondent Jovencio Ll. Mayor, Jr., Labor Arbiter of the National Labor Relations Commission (NLRC), National Capital

Region, dismissed the petitioner's complaint for illegal dismissal against private respondents Elin Pharmaceuticals and/or Antonio Bautista on the grounds that: (1) the temporary lay-off "was not without valid justification" due to the private respondents' adoption of a "cost-saving program;" and (2) there was "sufficient basis for respondents to find complainant guilty of committing an act of dishonesty resulting in the irreversible loss of trust and confidence reposed in her by the company, a just and valid cause" for the petitioner's dismissal.

Acting on the petitioner's appeal from the adverse decision, the NLRC (Third Division), in its 29 November 1994 Decision[2] in NLRC NCR CA No. 007072-94, affirmed the decision, but not on the ground of "dishonesty," but "for unauthorized possession of company property," which was also punishable by dismissal for the first offense. However, it directed the private respondents "to extend complainant financial assistance in the amount of twenty thousand pesos (P20,000.00)" considering that "complainant had been with respondent for seventeen (17) years" and "for humanitarian reasons."

Her Motion for Reconsideration[3] of the NLRC decision having been denied on 9 January 1995,[4] the petitioner commenced the instant special civil action for *certiorari* under Rule 65 of the Rules of Court alleging that:

> THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN UPHOLDING LABOR ARBITER JOVENCIO MAYOR, JR.'S FINDING THAT THE TEMPORARY LAY-OFF WAS IN ORDER DESPITE THE FOLLOWING FACTS:
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> A. IMMEDIATELY BEFORE THE LAY-OFF, THE COMPANY TEMPORARILY SUSPENDED THE AVAILMENT OF VACATION LEAVES AND SICK LEAVES COULD BE AVAILED OF ONLY WHEN THE SICKNESS OR INJURY OCCURRED INSIDE THE COMPANY PREMISES FOR THE REASON THAT THERE WAS THEN HUGE VOLUME OF WORK TO BE DONE.

B. THERE WAS NO EVIDENCE AS TO THE EXISTENCE OF THE ALLEGED COST-SAVING PROGRAM EXCEPT THE LAME ALLEGATION OF RESPONDENTS' LONE WITNESS WHO HAD BEEN COMPLETELY DISCREDITED DURING THE CROSS EXAMINATION.

C. COMPLAINANT WAS THE ONLY EMPLOYEE WHO WAS TEMPORARILY LAID OFF AND SHE WAS REPLACED DURING THE LAY- OFF.

D. EMPLOYEES ASSIGNED AT THE LABELING AND PACKAGING DEPARTMENTS WERE NOT LAID OFF DESPITE THE FACT THAT THE WORK THEY DO MUST FIRST PASS TO COMPLAINANT.

E. THE EMPLOYEES' WORK SCHEDULE WAS ADJUSTED BY THE COMPANY SUCH THAT NO EMPLOYEE WOULD BE REPORTING FOR WORK DURING BROWNOUTS WHICH WERE THEN SCHEDULED.

THE NLRC RULING IS CONTRARY TO LAW AS THE PROPERTY ALLEGEDLY POSSESSED WITHOUT AUTHORITY IS IN FACT A "RES NULLIUS" WHEN PETITIONER RETRIEVED THE SAME IN A GARBAGE CAN.

In their Comment, the private respondents contended that the NLRC did not commit grave abuse of discretion in upholding the Labor Arbiter. The private respondents argued that the temporary lay-off was warranted by the company's adoption of a cost-saving program as a measure of self-protection, pursuant to which, employees whose work was greatly affected by the long-drawn brownouts had to be temporarily laid-off upon the recommendation of the employee's section supervisor. Anent the issue of illegal dismissal, they disagreed with the NLRC's finding that the petitioner could only be held liable for unauthorized possession of company property, insisting that the Labor Arbiter did not err in his finding of dishonesty, which was likewise just cause for dismissal under Article 282 (c) of the Labor

Code. They then asserted that the award of financial assistance to the petitioner was improper, as such could be granted on ground of social justice only where the employee was validly dismissed for causes other than serious misconduct or those reflecting on his moral character. In the instant case, the petitioner's pronounced infraction of company rules and regulations amounted to serious misconduct.[5]

In lieu of the Comment for the public respondents, the Office of the Solicitor General filed a Manifestation and Motion wherein it disagreed with the decisions of both the Labor Arbiter and the NLRC, and thus recommended that this petition be given due course, the said decisions be set aside and the NLRC be given a reasonable time to file its own comment. The Solicitor General characterized the purported cost-saving program adopted by the private respondents (to justify the petitioner's temporary lay-off) as "but a camouflage of the true reason or intention of the company to eventually rid petitioner from the service," as borne out by the following circumstances:

First, when petitioner reported for work on July 1, 1992, she was barred from entering the workplace, the company guard handing to her a mere notice of company lay-off.

Second, it was only petitioner, out of the more than one hundred (100) employees of the Company, who was laid-off during the period covered by the supposed cost-saving program. Besides, Article VIII of the Collective Bargaining Agreement (CBA) provides for the procedure in the implementation of any lay-off or dismissal. Thus:

> Section 5. Lay-Off/Dismissal. — Lay-off or dismissal occasioned by the reduction in the COMPANY's requirement for employees as a consequence of mergers, department, closings, redundancy, retrenchment and technological changes shall be made in accordance with the following procedures:
>
> 1. Casual, contractual, probationary employees shall first be laid-off;

2. Affected permanent employees shall first be transferred to any vacancy available in the COMPANY without reduction of pay;

3. Where (2) above is not feasible or where a permanent employee refuses to be transferred to an available job, the least senior among the affected employees shall first be laid-off.

While it is true that the above provision envisages a permanent lay-off, the same procedure should also hold true for temporary-offs in the absence of any declaration or intention in the CBA to provide for the contrary.

Third, during all the time that petitioner was laid-off, her functions in the Production Department were taken over by a certain Manuel Arante and Joan Togano. And yet the Company strongly blamed the power crisis that plagued the country as disrupting and hindering petitioner's line of work.

Fourth, to remedy the situation, the Company changed or modified the work schedule of its employees in order that its production output would not be affected by the brownouts. Hence, there was no need for any temporary lay-off.[6]

Hence, the petitioner's dismissal was whimsical and illegal, and the "pre-frisking" incident was the culmination of the private respondents' grand design "to teach petitioner a poignant lesson" after her defiance of the former's directive. Finally, the Solicitor General highlighted the private respondents' failure to meet the standard of proof required in termination cases, even as they disregarded the petitioner's 17 years of untarnished service, thereby rendering the penalty of dismissal unduly harsh and grossly disproportionate to the offense allegedly committed.

Public respondents Labor Arbiter and NLRC then filed their Comment invoking this Court's limited *certiorari* jurisdiction in labor cases, which did not extend to a retrial of the various factual issues raised by the instant petition. Further, they disagreed with the petitioner that the subject "Pliva" bag was res nullius and claimed

that since the bag carried the company's trademark, it remained company property, appropriation of which without proper authorization was disallowed.

We resolved to give due course to the petition and required the parties to submit their respective Memoranda, which they did.

The factual antecedents in this case are succinctly summarized in the Manifestation and Motion of the Office of the Solicitor General, as follows:

> Petitioner Gloria de la Cruz was hired by respondent Company in 1975 as a laboratory aide. Prior to her dismissal, she was assigned at the Production Department where she was in charge of printing the product codes, labels and foils of the company products.
>
> On June 11, 1992, the management called a meeting where the employees were informed that due to heavy volume of work, availment of vacation leaves was being temporarily suspended and sick leaves could be availed of only if the sickness or injury occurred within company premises.
>
> Despite the above directive, petitioner went on sick leave from June 16 to 30, 1992. When petitioner reported for work on July 1, 1992, the Company's security guard barred her from entering the premises and handed to her a memorandum, signed by Antonio Bautista, apprising her of her temporary lay-off from July 1-15, 1992 allegedly due to continuous daily brownouts.
>
> On July 16, 1992, petitioner resumed her normal work. As she was preparing to go home, her immediate supervisor accosted her why she was keeping her folding umbrella in a bag marked "Pliva," which was exclusively used in packaging Pliva products being manufactured by respondent Company for a foreign client. Petitioner reasoned out that it was the bag she asked from a co-employee, Tessa Gajete.
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> In a Memorandum dated July 17, 1992, the Company's personnel officer directed petitioner to explain why she should

not be penalized for unauthorized possession of company property, equipment and supply punishable by outright dismissal.

In her letter explanation of July 24, 1994, petitioner alleged that: (1) she got the bag from a garbage can and had been using the same to contain her umbrella and/or company uniform; (2) at the time she was accosted by her immediate supervisor, the bag was not in her person but was placed on a table where the employees deposit their things and other belongings while working; (3) when she retrieved the bag from the waste can, the bag, according to her, contained broken glasses ("bubog").

On the same date, Tessa Gajete, her co-employee, also submitted her letter-explanation declaring that when petitioner asked her for a plastic bag, she instructed petitioner to get only the plastic bag with a "Mercury" marking, not the "Pliva" bags.

In the course of the administrative investigation, petitioner was placed under preventive suspension. When the investigation was completed, respondent Company terminated the services of petitioner, for violating the Company Code of Discipline, specifically the provision on dishonesty.

Consequently, petitioner filed a complaint against the Company and Antonio Bautista for illegal temporary lay-off, illegal dismissal with damages and attorney's fees, docketed as NLRC-NCR Case No. 09-04790-92.[7]

The paramount issue is whether the NLRC committed grave abuse of discretion in sustaining the validity of the petitioner's temporary lay-off and eventual dismissal from the service, which necessarily involves the action of the Labor Arbiter.

I.

We first take up the issue of the temporary lay-off.

A lay-off, used interchangeably with "retrenchment," is a recognized prerogative of management. It is the termination of employment

resorted to by the employer, through no fault of nor with prejudice to the employees, during periods of business recession, industrial depression, seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program, or the introduction of new methods or more efficient machinery, or of automation. Simply put, it is an act of the employer of dismissing employees because of losses in operation of a business, lack of work, and considerable reduction on the volume of his business, a right consistently recognized and affirmed by this Court.[8] The requisites of a valid retrenchment are covered by Article 283 of the Labor Code.

When a lay-off is temporary, the employment status of the employee is not deemed terminated, but merely suspended. Article 286 of the Labor Code provides, in part, that the bona fide suspension of the operation of the business or undertaking for a period not exceeding six months does not terminate employment.

The standard then by which to judge the validity of the exercise of this aspect of management prerogative is good faith. Thus, in San Miguel Brewery Sales Force Unit vs. Ople,[9] this Court held that so long as company prerogatives are exercised in good faith for the advancement of employers' interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, this Court will uphold them.

In the instant case, the petitioner was laid-off allegedly pursuant to the private respondent's "cost-saving program" brought about by the daily brownouts. Under the established facts summarized by the Office of the Solicitor General, which the private respondents were unable to refute, we agree with the former that the program was "but a camouflage of the true reason or intention of the company to eventually rid petitioner from the service." Indeed, if there was need to temporarily lay-off to save on costs due to the brownouts, this Court cannot understand why, first, the private respondents disallowed, due to heavy volume of work, the availment of vacation and sick leaves unless the sickness or injury occurred inside company premises; and second, only the petitioner out of more than 100 employees was laid-off. These alone showed beyond cavil that the so-

called cost-saving program was nothing but a sham and contrived as a belated defense.

II

On the issue of illegal dismissal, we likewise find for the petitioner.

In termination cases, the burden of proving just and valid cause for dismissing an employee from his employment rests upon the employer, and the latter's failure to do so results in a finding that the dismissal is unjustified.[10] This rule is designed to give flesh and blood to the guaranty of security of tenure granted the employees by the Constitution[11] and the Labor Code.[12]

The private respondents could only rely on the perceived conflicting explanations of the petitioner as to how she came into possession of the "Pliva" bag. They did not believe that it was taken from the garbage can and wanted to impress us that it was taken from the pile of said bags as testified to by one of its employees. The alleged weakness of the petitioner's defense cannot operate to relieve nor discharge the private respondents of their burden in termination cases. Akin to the prosecution in a criminal case, the employer's cause stands or falls on the strength of its evidence, not on the weakness of the employee's/accused's defense. Here, the private respondents were unable to convincingly refute the following observations of the Office of the Solicitor General in its Manifestation and Motion:

> In her explanation, petitioner maintained that she retrieved the bag from a garbage can, had been using the same to contain her umbrella and/or uniform for at least two (2) months prior to the incident, and was never accosted by the company guards. She additionally claimed that at the time of the alleged "pre-frisking" incident, the "Pliva" bag was not in her person but placed on a table where the employees deposit their things and belongings while working. If indeed petitioner came into possession of the bag in a fraudulent manner, her natural action would be to conceal or hide the bag and not to display it in full and plain view. Petitioner's conduct clearly belies any dishonest propensity. In fact, public respondent NLRC did not find her guilty of dishonesty, as concluded by the Labor Arbiter, but

> merely of unauthorized possession of company property (NLRC Decision, p. 7).[13]

Their evidence further disclosed that the petitioner did in fact ask permission from a Laboratory Aide to get a bag and that the latter told the petitioner to get a "Mercury" bag; however, the petitioner picked up a "Pliva" bag.[14] The "error" in choice can by no means be deemed dishonesty nor as breach of trust and confidence. The private respondents failed to deny the petitioner's claim that she had used it openly for two months as a container for her umbrella and uniform.

It is of course settled that an employer may terminate the services of an employee due to loss of trust and confidence. However, the loss must be based not on ordinary breach by the latter of the trust reposed in him by the former, but, in the language of Article 283[c] of the Labor Code, on willful breach. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Elsewise stated, it must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify earlier action taken in bad faith or a subterfuge for causes which are improper, illegal or unjustified. It has never been intended to afford an occasion for abuse because of its subjective nature.[15] There must, therefore, be an actual breach of duty committed by the employee which must be established by substantial evidence.[16]

With our finding above that the possession and use of the "Pliva" bag cannot be considered as an act of dishonesty, it was then error for the Labor Arbiter to consider it as such and to make it a basis for loss of trust and confidence. Besides, it was not shown that the petitioner was a managerial employee of the private respondents, the term "trust and confidence" being restricted to said class of employees.[17]

Even the NLRC disagreed with the Labor Arbiter on "dishonesty." However, the former committed another serious blunder by holding that the petitioner's taking of the "Pliva" bag constituted "unauthorized" possession of company property, which was

punishable by dismissal. Such a conclusion cannot be justified by the facts established in this case. Even assuming we accept the NLRC's characterization, the penalty of dismissal from service which it decreed therefor was unduly harsh and grossly disproportionate to the perceived cause. All told, the NLRC then committed grave abuse of discretion.

We thus rule that the petitioner's dismissal from employment was illegal. She is therefore entitled to reinstatement with full back wages from the time she was illegally dismissed until such reinstatement, pursuant to R.A. No. 6715 and the Resolution of this Court, en banc, of 28 November 1996 in Bustamante vs. National Labor Relations Commission.[18] However, considering the seemingly irreconcilable differences between the parties and the consequent strained relations between them, reinstatement may no longer be feasible nor prove to be expedient and practical. Reinstatement could only further exacerbate the tension between the parties and tempt vindictiveness.

Accordingly, in lieu of reinstatement, separation pay equivalent to one month's salary for every year of service may be awarded.[19]

WHEREFORE, the instant Petition is **GRANTED**. The challenged Decision of respondent National Labor Relations Commission in NLRC NCR CA No. 007072-94 of 29 November 1994 and that of respondent Labor Arbiter Jovencio Ll. Mayor, Jr., in NLRC-NCR Case No. 09-04790-92 are **SET ASIDE** and a new one is hereby rendered:

1. **DECLARING** illegal and void the temporary lay-off and dismissal from the service of the petitioner; and

2. **ORDERING** private respondents ELIN PHARMACEUTICALS, INC. and ANTONIO C. BAUTISTA to jointly and severally pay the petitioner: (a) full back wages from the time she was temporarily laid off until she is fully paid her separation pay, with interest at the legal rate; and (b) separation pay, in lieu of reinstatement equivalent to one month salary for every year of service, computed from the time she was first employed and until the finality of this decision.

Costs against private respondents.

SO ORDERED.

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

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[1] Annex "C" of Petition; Rollo, 35-45.
[2] Annex "B," Id.; Id., 26-34.
[3] Annex "I" of Petition; Rollo, 49-55.
[4] Annex "A," Id.; Id., 24-25.
[5] Citing PLDT vs. NLRC, 164 SCRA 671 [1988]; San Miguel Corp. vs. Ubaldo, 218 SCRA 293 [1993].
[6] Rollo, 101-103.
[7] Rollo, 97-99.
[8] Sebuguero vs. NLRC, 248 SCRA 532, 542 [1995].
[9] 170 SCRA 25, 28 [1989].
[10] Reno Foods, Inc. vs. NLRC, 249 SCRA 379 [1995].
[11] Section 3, Article XIII (Social Justice and Human Rights), 1987 Constitution provides that "The State shall afford full protection to labor, and promote full employment opportunities for all. It shall guarantee the rights of all workers to security of tenure."
[12] Article 279, Labor Code.
[13] Rollo, 104.
[14] Memorandum of the Private Respondents, 13; Id., 204.
[15] Tiu vs. NLRC, 215 SCRA 540, 547 [1992]; Falguera vs. Linsangan, 251 SCRA 364, 376 [1995].
[16] Labor vs. NLRC, 248 SCRA 183, 199-120 [1995]; Madlos vs. NLRC, G.R. No. 115365, 4 March 1996.
[17] Marina Port Services, Inc. vs. NLRC, 193 SCRA 420, 425 [1991].
[18] G.R. No. 111651. See also Reformist Union of R.B. Liner, Inc. vs. NLRC, G.R. No. 120482, 27 January 1997.
[19] Sealand Service, Inc. vs. NLRC, 190 SCRA 347, 356 [1990]; Global Mackay Cable vs. NLRC, 206 SCRA 701, 710 [1992].
