

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**ELIZALDE INTERNATIONAL  
(PHILIPPINES) INC. and WILLIAM F.  
DALAND, JR.,**

*Petitioners,*

*-versus-*

**G.R. No. L-40553  
February 26, 1981**

**HONORABLE COURT OF APPEALS and  
CELESTINO GALAN (Deceased),  
substituted by his widow, FELICISIMA  
GALAN and his surviving legitimate  
children, namely: EDUARDO GALAN,  
MARILOU GALAN ECHARRE,  
CYNTHIA GALAN, MARILYN GALAN  
del GALLEGO, LYDIA GALAN  
OSMEÑA, and CRADGET GALAN,**

*Respondents.*

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**DECISION**

**MELENCIO-HERRERA, J.:**

The pivotal issue raised in the present Petition for Review on *Certiorari* is the validity, under the Termination Pay Law (Rep. Act

No. 1052 as amended by Rep. Act No. 1787), of the dismissal of Celestino Galan as Sales Representative of petitioner Corporation.

In March 1955, Celestino Galan was employed by Elizalde & Co., Inc. (simply called Corporation) as Sales Representative on a basic monthly salary of P210.00 plus sales commission of 2% for all sales production, which as later modified, became 1% for the first P125,000.00 worth of production sales and 2% for the balance, with vacation and sick leave benefits. There was no written contract nor any fixed period of employment.

Sometime in June 1964, Elizalde & Co., Inc. continued doing its business under the new firm name of Elizalde International (Phils.) Inc. (hereinafter referred to as petitioner), but with the same management, building, office equipment, location and personnel. The products sold, directives, sales instructions, etc., which before came from Elizalde & Co., Inc., this time came from petitioner. Celestino did not receive any new appointment nor a notice of such change of name.

On March 27, 1968, petitioner, through its Branch Manager, William F. Daland, Jr., dismissed Celestino Galan as salesman. The letter of dismissal, dated March 27, 1968 (Exhibit "B"), was received by Celestino on April 2, 1968 but the fact of dismissal was published the day before, April 1, 1968, in the CEBU ADVOCATE, a newspaper of general circulation in that province. According to petitioner, Celestino Galan refused to receive the letter, which was being handed to him personally by the Branch Manager, so that it was sent by registered mail, and that for the information of the company's customers and the public in general, it published the fact of dismissal in a local daily. Celestino Galan claims, on the other hand, that his dismissal was without prior notice and without just cause.

Petitioner maintains that Celestino Galan was dismissed for just cause because he was selling, through an entity with a firm name of "C.G. Enterprise" which, according to Mr. Daland, was owned and operated by Celestino, "TDY RHUM" of the Mabuhay Distillery, Inc., a competitive product of the "Tanduay Rhum", which was being distributed by petitioner. Thereby, petitioner claims, Celestino had shown unfaithfulness to petitioner's interests.<sup>[1]</sup>

On March 4, 1969, because of his dismissal, Celestino Galan filed before the Court of First Instance of Cebu, Branch XI, an action for recovery of separation pay, vacation and sick leave pay, compensatory and moral damages, and attorney's fees against petitioner and its Branch Manager, William F. Daland, Jr. (Civil Case No. N-11082)

In its Answer, petitioner (as defendant in that case) reiterated essentially that Celestino was dismissed for just cause, that proper inquiry and investigation had been made, and that he was notified personally of his dismissal by the Branch Manager.

The Trial Court rendered judgment, dated August 28, 1970, ordering petitioner to pay Celestino Galan the amount of P23,584.33 as termination pay for more than 13 years of continuous service to the Corporation, with legal rate of interest from the date of filing of the complaint until fully paid, and to pay the costs. The Trial Court, however, denied Celestino's claim for the cash equivalent of his vacation and sick leave benefits, moral damages, and attorney's fees, for the reason that there was not enough evidence and reason to support their grant; dismissed for lack of merit the counterclaims of the Corporation; and relieved William F. Daland Jr. of any civil liability for having acted merely in his representative capacity as the Cebu Branch Manager of the Corporation. The Trial Court reasoned out that: "even assuming arguendo, that the plaintiff owned and operated and managed this establishment and sold products other than those of the defendant Corporation, although said 'C.G. Enterprise' was owned and operated and managed by Jose Roma, as shown by the evidence on record, yet this alone cannot be considered a just and sufficient cause for plaintiff's dismissal without previous notice because as admitted by defendant, William F. Daland Jr. there was no 'standing policy' of defendant Corporation and, in fact, according to Mr. Daland Jr., he dismissed the plaintiff out of 'common sense.'"<sup>[2]</sup>

On appeal, the Court of Appeals<sup>[3]</sup> affirmed the Trial Court's judgment in a Decision promulgated on January 27, 1975. The Appellate Court concurred in the Trial Court's finding that Celestino Galan was dismissed from his employment without justifiable cause and agreed with the Trial Court's computation of the award.

Upon denial by the Court of Appeals of their Motion for Reconsideration, petitioner filed before this Court the present Petition for Review reiterating the assignment of error it raised before the Appellate Court, listed below, on the ground that the Decision of the Court of Appeals “merely adopted and copied verbatim the findings of the trial Court and did not in any manner determine and decide squarely the issues:”

“First: The Court a quo erred in declaring that the plaintiff-appellee was dismissed on March 27, 1968, without previous inquiry or investigation and without just, valid and sufficient cause when the preponderance of the evidence shows that he was dismissed with just cause and was not entitled to any notice.

“Second: The Court a quo erred in not holding that the plaintiff-appellee was dealing and selling ‘TDY RHUM’ of the Mabuhay Distillery, Inc., thru his entity with the business name of ‘C.G. Enterprise’ which was in competition with the ‘Tanduay Rhum’ of the defendant-appellant Elizalde International (Phil.) Inc., and such act constituted a just cause for his dismissal.

“Third: The Court a quo erred in declaring that the plaintiff-appellee was entitled to termination notice under Republic Act No. 1052 as amended by Republic Act No. 1787 and in adjudicating in his favor the sum of P23,584.33 for separation pay.

“Fourth: The Court a quo erred in dismissing the counterclaim of the defendants-appellants containing two causes of action, the first for moral damages knowing that the plaintiff-appellee’s complaint is clearly unfounded, and the second for recovery of the unpaid account amounting to P153.08.”<sup>[4]</sup>

In its Brief, petitioner alleged that the Trial Court and the Court of Appeals disregarded its documentary and testimonial evidence that Celestino Galan had been dealing with and selling a competitive product which was precisely the just cause for Celestino’s dismissal. Petitioner also claimed that the Court of Appeals erred in concurring

with the computation of award made by the Trial Court for separation pay for a period of 13 years from March 1955 to March 1968 because Celestino Galan was employed as salesman of petitioner only for a period of 3 years and 9 1/2 months, from June 16, 1964 when petitioner opened its Cebu Branch Office until Celestino's termination on March 27, 1968; and that before June 16, 1964, Celestino was the employee of the Corporation, Elizalde & Co., which is a distinct and separate entity from petitioner. Finally, petitioner argued that the failure of The Trial Court and the Court of Appeals to decide their counterclaim for (a) moral damages grounded on the fact that Celestino's complaint was clearly unfounded and intended solely to discredit and damage the business prestige and commercial standing of petitioner, and was a direct assault to the good name, integrity, reputation and social standing of Mr. Daland, Jr., and for (b) payment of P153.08 representing the balance of the credit line for merchandise taken by Celestino, was not only erroneous but violative of constitutional due process.

During the pendency of the case before us, Celestino Galan died and was substituted by his widow and children.

1. Section 1 of the Termination Pay Law (RA No. 1052, as amended by RA No. 1787), then the applicable statute, provides as follows:

“SECTION 1. In cases of employment without a definite period, in a commercial, industrial, or agricultural establishment or enterprise, the employer or the employee may terminate at any time the employment with just cause; or without just cause in the case of an employee by serving written notice on the employer at least one month in advance, or in the case of an employer, by serving such notice to the employee at least one month in advance or one-half month for every year of service of the employee, whichever is longer, a fraction of at least six months being considered as one whole year.

“The employer, upon whom no such notice was served in case of termination of employment without just cause may hold the employee liable for damages.

“The employee, upon whom no such notice was served in case of termination of employment without just cause shall be entitled to compensation from the date of termination of his employment in an amount equivalent to his salaries or wages corresponding to the required period of notice.

“x x x”

The applicability of the provision to the case at bar is beyond question. Celestino Galan’s employment was without a definite period. His employment was in commercial enterprise.

The issue to be resolved is whether or not Celestino Galan was dismissed for just cause. If there be just cause, the employer is not required to serve any notice of discharge nor to disburse termination pay to the employee. If the dismissal be without just cause, the employer must serve timely notice to the employee. It is only when the employer fails to serve such notice that it is obliged to give termination pay.<sup>[5]</sup>

To our minds, there is no question that no advance notice of dismissal was given by petitioner to Celestino Galan because the letter of dismissal clearly read:

“You are hereby notified that effective today you are dismissed with just cause and your services terminated as Salesman.”  
(Emphasis supplied)

It is obvious that petitioner believed that dismissal was with just cause so that it served no written notice in advance on Celestino Galan. Crucial to petitioner’s position, therefore, is the determination of the existence of just cause. The latter part of section 1 of the Termination Pay Law enumerates instances of just cause as follows:

“x x x

“The following are just causes for terminating an employment without a definite period:

1. By the employer —

- a. The closing or cessation of operation of the establishment or enterprise, unless the closing is for the purpose of defeating the intention of this law;
- b. Serious misconduct or wilful disobedience by the employee of the orders of his employer or representative in connection with his work;
- c. Gross and habitual neglect by the employee of his duties;
- d. Fraud or wilful breach by the employee of the trust reposed in him by his employer or representative;
- e. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family, or representative; and
- f. Other causes analogous to any of the foregoing.

“x x x”

It is petitioner’s submission that Celestino Galan’s acts of dealing and selling “TDY RHUM” of the Mabuhay Distillery, Inc., a product which competes with the “Tanduay Rhum” being distributed by petitioner, through his business enterprise known as “C.G. Enterprise”, constituted “adverse or disloyal interest of employee”, hence “an implied breach of trust of the contract of employment.”<sup>[6]</sup>

There is merit in petitioner’s contention.

“One who asserts an interest, or performs acts adverse or disloyal to one’s employer commits a breach of an implied condition of the contract of employment which may warrant discharge, as, for example, where one secretly engages in a business which renders him

a competitor and rival of his employer”<sup>[7]</sup> (Emphasis supplied). “Aside from any duties expressly imposed upon or undertaken by the employee in the contract of employment, the law implies various obligations and undertakings by an employee in entering into a contract of employment. An employer has the right to expect loyalty from his employees<sup>[8]</sup> as long as the employment relationship continues.”<sup>[9]</sup> “Implicit in the contract of employment is the undertaking that the employee shall be faithful to the interest of the employer during the term of the employment. When an employee deliberately acquires an interest adverse to his employer, he is disloyal, and his discharge is justified.<sup>[10]</sup> And where an employee engages in a business which necessarily renders him a competitor and rival of his employer, no matter how much or how little time and attention he may devote to it, he is deemed to have an interest which conflicts with his duty to his employer, and for this cause may be dismissed.<sup>[11]</sup> In the absence of a specific provision, the employee must be deemed to have been rightfully discharged where it appears that his activities tended to injure or endanger the business of his employer.<sup>[12]</sup> On the other hand, where an occupation or business is conducted by a servant out of the hours of service, and is not inconsistent with his duties to the master or antagonistic to or competitive with the master’s business furnishes no ground for the discharge of the servant.”<sup>[13]</sup>

Celestino Galan’s act of engaging in a business in competition with petitioner was not only an act of disloyalty but more specifically a wilful breach of the trust reposed in him by petitioner as his employer, which is a just cause for termination under Section 1(d) of the Termination Pay Law. “Trust”, which in its general signification is the “firm belief or confidence in the honesty, integrity, reliability, justice, etc. of another person or thing” (Webster’s New World Dictionary of the American Language, Second College Edition), is an essential element in the relationship of employer and employee, and a wilful breach thereof entitles the employer to discharge the guilty employee. As Sales Representative of petitioner, it was the duty of Celestino Galan to promote and sell the products of petitioner, which duty is incompatible with his undisclosed ownership of a company, found to be the source of the new product with the label “TDY RHUM” manufactured by the Mabuhay Distillery Inc., distributed and sold in Cebu, in competition with the “Tanduay Rhum”

distributed by petitioner. It was an act inimical to his employers' interest and, therefore, a just cause for dismissal.<sup>[14]</sup>

“An employer cannot legally be compelled to continue with the employment of a person who admittedly was guilty of misfeasance or malfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interest. The law in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer.”<sup>[15]</sup>

“The law implies an agreement on the part of the servant or employee to faithfully serve and be regardful of the interest of his employer during the term of his service, (and) carefully discharge his duty to the extent reasonably required by the relation of employer and employee” (NLRB vs. Montgomery Ward & Co. (CA8), 317 F2d 239, and other cases cited in 55 Am. Jur. 2d & 97).

The Trial Court and the Court of Appeals disregarded petitioner's overwhelming evidence that Celestino Galan was the owner and proprietor of the “C.G. Enterprise”. Jose Roma, in whose name the enterprise was registered, was receiving a monthly salary of P150.00, which was paid by Celestino Galan through personal checks drawn against the First Insular Bank of Cebu under checking account No. 125 and covered by vouchers.<sup>[16]</sup> The other employees of the “Enterprise,” namely, Dominador Yray, Delia Mahusay and Annie Estillore were also paid their monthly salaries by Celestino Galan.<sup>[17]</sup> On March 15, 1967, Celestino Galan purchased “TDY RHUM” valued at P1,745.00 for which he paid with his FIBC Checks Nos. 03854 and 03855,<sup>[18]</sup> covered by voucher No. 0061 of the “C.G. Enterprise,”<sup>[19]</sup> and evidenced by Provisional Receipt No. 1002 of the Mabuhay Distillery Inc. dated March 15, 1967.<sup>[20]</sup> Celestino Galan provided his employee, Dominador Yray, with a Volkswagen Panel to peddle “TDY RHUM” within the City and Province of Cebu.<sup>[21]</sup> It was also Celestino Galan who paid the account of “C.G. Enterprise” with petitioner which was the subject of Civil Case No. 12709 wherein Celestino Galan was intervenor.

In the light of such overwhelming evidence, we are constrained to hold that the Trial Court and the Court of Appeals erred in finding that Celestino Galan was illegally dismissed for lack of prior notice because, under the law then existing, no notice is required if the ground of termination is for a just cause. By the same token, dismissal having been for just cause imputable to his fault, Celestino Galan is not entitled to the separation pay provided for by RA No. 1052, as amended.

This is one instance where a recognized exception to the general rule that the Appellate Court's findings on matters involving appreciation of evidence are conclusive, will have to be applied, the inference that said Court had made from the facts presented having been manifestly mistaken.<sup>[22]</sup>

2. There is no need for us to rule on the other issues raised, namely, the correctness of the computation of the award, and whether or not the Corporation and the petitioner herein are separate and distinct entities in view of our finding that Celestino Galan was dismissed for just cause and was not entitled to termination pay.

3. As to the counterclaims of petitioner for moral damages and alleged balance of credit line for merchandise taken by Celestino Galan, we find no sufficient basis in evidence for such an award.

**WHEREFORE**, we hereby reverse the judgment of the Court of Appeals in CA-G.R. No. 49683-R, which affirmed the Court of First Instance Decision in Civil Case No. R-11082, and dismiss the complaint of Celestino Galan for lack of merit.

Without pronouncement as to costs.

**SO ORDERED.**

**Teehankee, C.J., (Chairman), Makasiar, Guerrero and De Castro, JJ., concur.**  
**Fernandez, J., took no part.**

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[1] Record on Appeal, pp. 74-78.

- [2] Record on Appeal, pp. 78-80.
- [3] Ninth Division, composed of Justices Ramon C. Fernandez, Efren I. Plana and Venicio Escolin.
- [4] Petition, p. 4.
- [5] Philippine Refining Co. vs. Garcia, 18 SCRA 107 (1966).
- [6] Petitioner's brief, p. 19.
- [7] Perfection Mattress & Spring Co vs. Dupree, 113 So. 74, 216 Ala. 303, cited in 56 C.J.S. & 42 (e).
- [8] Coker vs. Wesco Materials Corp., 368 SW2d 883.
- [9] Community Counselling Service, Inc. vs. Reilly, 317, F2d, 239; United Board & Carton Corp. vs. Britting, 164 A2d 824, mod on other grounds, 160 A2d 660, see 53 Am Jur 2d, Master and Servant, & 97.
- [10] Re Burris, 140 SE2d 408.
- [11] W.H. Kirkland Co. vs. King, 29, So2d 141; Hamilton Depositors Corp. vs. Browne, 136 SW2d 1031; Dawson vs. Clark, 358 P2d 591; Wing vs. Flournoy vs. Kernaghan 101 SE 811 vs. Roger J. Sullivan Co., 131 NW 521.
- [12] Mattingly vs. Manhattan Oil Co., 148 NW 938.
- [13] Jaffray vs. King 34 Md 217; Miller Agency Co. vs. Greene, 177 NE 534, cited in 53 Am Jur 2d, Master and Servant, 57.
- [14] Lopez vs. Chronicle Publications Employees Ass'n.; 12 SCRA 694 (1964).
- [15] Management of El Hogar, Fil. Mutual Bldg. & Loan Assn., et al vs. Bldg. Employees Assn., et al, 107 Phil. 473 (1960), citing San Miguel Brewery vs. Nat. Labor Union, et al, 97 Phil 378 (1955); Manila Trading & Supply Co. vs. Phil. Labor Union, 71 Phil. 124 (1940), citing Manila Trading & Supply Co. vs. Zulueta. et al., 69 Phil. 485 (1940).
- [16] Exhibits "40", "40-A", "40-B", and "40-B-1".
- [17] Exhibits "32", "32-A", "32-B", "32-B-1", "32-C", "36", "36-A", "39" and "42".
- [18] Exhibits "6-A", "7", "7-A", "28-A", "28-", "28-A-1", "28-B", "28-B-1"
- [19] Exhibits "9".
- [20] Exhibits "8" and "29".
- [21] Exhibits "31" and "31-A".
- [22] Luna vs. Linatoc, 74 Phil. 15 (1942), cited in Ramos vs. Court of Appeals, 63 SCRA 331, 336 (1975; Chinese Young Men's Christian Association vs. Ching, et al, 71 SCRA 460 (1976); Perido vs. Perido, 63 SCRA 98 (1975).