

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

FELIX ESMALIN,
Petitioner,

-versus-

G.R. No. 67880
September 15, 1989

**NATIONAL LABOR RELATIONS
COMMISSION (3rd Division) and CARE
PHILIPPINES,**

Respondents.

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D E C I S I O N

FERNAN, C.J.:

Before Us is a Petition for Review by *Certiorari*^[1] of the Decision^[2] of the National Labor Relations Commission, Third Division, declaring the petitioner's dismissal from private respondent, CARE Philippines, justified.

As gathered from the records, the facts of this case are as follows:

The petitioner, Felix Esmalin has been employed by CARE Philippines for almost six (6) years, three (3) years of which as warehouseman of the company, assigned at Transcon Warehouse in Bacood, Sta. Mesa, Manila. Among his duties and responsibilities

were: to expedite dispatch of all CARE supplied commodities through monitoring delivery orders; to dispatch and correct bag count; to coordinate with the shipping clerk on all details concerning arriving shipments, and to make a report on all arrivals at TRANSCON. As found by the NLRC, Esmalin was occupying a position of trust.[3]

The private respondent, CARE Philippines, is a non-profit organization whose primary purpose is to facilitate and maximize voluntary gifts or reliefs, rehabilitation and reconstruction materials and other needed commodities, by individuals and organizations outside of the Philippines, to individuals and organizations in the Philippines, designated by the donors.[4]

In a series of thefts involving a total of 17,731 bags of relief goods consisting of soy fortified flour (SFF) and corn soya milk (CSM) belonging to the U.S. government and stored at the TRANSCON Bodega of respondent Company, the alleged participation of Esmalin, CARE OIC of said bodega, was summarized by the Tanodbayan, as follows:

“Felix Esmalin was the CARE OIC of TRANSCON Bodega. He cooperated with John Dupree in retesting in MIT laboratory and in taking samples even not at random until the original test result of being ‘unfit for human and unfit for animal’ was changed to ‘unfit for human but fit for animal.’ Thereafter, Letter Orders were made by John Dupree but only to be applied to CSM and SFF deposited in TRANSCON, Sta. Mesa bodega. However, he caused withdrawal in favor of Oliver C. Reyes one truck of good order milk (CSM) from Pasig Warehouse and brought them to Biñan. As OIC Warehouseman, he should see to it that in every delivery of relief goods to ASF, BAI, Alabang he must at the return of every trip, take back a copy of the DCR and from there he could easily detect where the goods were brought and who received them. But he did not comply with that duty, and his unjustified failure facilitated the diversion, a conduct emphasizing cooperation in the execution of his role in the conspiracy.

“Esmalin reported at first a small quantity of damaged SFF and CSM; however, with the tolerance (sic) of Orlando Cabrega, who

is the USAID Program Specialist and godfather of Efren C. Reyes in marriage, and without the benefit of inspection, check or reclassification, he jacked up the number of damaged CSM and SFF and reported/advised same as due for donation in order not to contaminate the good order relief goods coming from 'SS Thomas Nelson.'

“Such act manifest (sic) intent for gain to cooperate with the scheme to divert good order relief goods in big quantities and Cabrega played the leading role in that respect.”^[5] (Emphasis supplied.)

The report on the loss of company commodities as well as the involvement of Esmalin therein was transmitted by the Criminal Investigation Services (CIS), Armed Forces of the Philippines, on March 9, 1981 to the Tanodbayan^[6] which in turn found a prima facie case against the suspects including Esmalin.

On April 29, 1981, a clearance application for the preventive suspension of Esmalin, leading to his termination from employment was filed by CARE PHILIPPINES on the ground that the continued presence of the former poses a serious or imminent danger to the property of the latter. Thus, on the same day petitioner received from private respondent, a letter signed by its director, Mr. Henry R. Richards, the pertinent portion of which reads:

“This is to inform you that today we are filing with the Ministry of Labor and Employment an application for clearance to place you under preventive suspension.

“Considering that there is an ongoing investigation being conducted by the Criminal Investigation Service of the Philippine Constabulary involving anomalies in the movement of CARE food commodities; because these investigations have resulted in strong reasonable suspicion that you are party to these anomalies; considering that as warehouseman you occupy a sensitive position in relation to the subject of this investigation, CARE is constrained to place you under preventive suspension pending final termination of the CIS Investigation.

“You are therefore relieved of your duties and responsibilities as warehouseman effective immediately.”^[7]

The reason for the clearance application to suspend and terminate Esmalin was loss of trust and confidence.^[8]

On May 4, 1981, petitioner Esmalin opposed the clearance applied for by private respondents to place him under preventive suspension, stating that he is not a threat to the life and property of his employers and co-employees; nor is he a threat to the normal operations of the company, considering that his job is ministerial and that the on-going investigation conducted on the reported anomalies has no bearing upon him.

In an Order dated October 22, 1981, the Ministry of Labor, through Director Francisco Estrella denied the clearance for preventive suspension sought by CARE Philippines and ordered the latter to immediately reinstate Esmalin to his former position with full back wages less his salary for two (2) months during which period he was considered to be under disciplinary suspension.^[9]

Private respondent appealed^[10] the Order of Director Estrella to the Ministry of Labor on December 14, 1981. The appeal was dismissed for lack of merit^[11] on May 24, 1982.

Not satisfied, CARE Philippines filed a Motion for Reconsideration and Opposition to the Motion for the Issuance of the Writ of Execution^[12] dated June 16, 1982. On September 23, 1982, Deputy Minister of Labor, Vicente Leogardo, Jr., issued an Order^[13] setting aside the Order of May 24, 1982 and remanding the case to the National Labor Relations Commission, Regional Arbitration Branch for compulsory arbitration.

The Labor Arbiter conducted a hearing and the parties agreed to submit their respective position papers and documentary evidence, after which the case was deemed submitted for decision. On April 8, 1983, Labor Arbiter, Manuel B. Lorenzo, rendered a Decision^[14] in favor of petitioner, the pertinent portion of which reads:

“In the case at bar, there is no showing that complainant had cooperated and conspired with the several accused charged before the Tanodbayan and consequently with the Sandiganbayan. True to the incorruptible saying ‘that the innocent is as bold as a lion while the wicked fleeth even no one pursueth.’ (sic) The complainant had shown his boldness by pursuing relentlessly his bid for justice because it was very clear that complainant, Felix Esmalin is not involved in the irregularities.

“In view of the foregoing, this Office cannot close his (sic) eyes from the glaring evidence of the complainant’s innocence, hence, we hold that request for clearance to terminate is DENIED and respondent is hereby ordered to reinstate the complainant, Felix Esmalin immediately with full backwages and other benefits attached to his former position without loss of seniority rights and privileges.

“SO ORDERED.”

CARE Philippines appealed the decision of the Labor Arbiter to the National Labor Relations Commission (NLRC). On February 14, 1984, the NLRC promulgated its Decision^[15] setting aside the decision of the Labor Arbiter and declaring the dismissal of petitioner, Felix Esmalin, justified. The ratiocination of the NLRC is stated in its decision, the pertinent portion of which reads:

“We find complainant’s dismissal proper. It cannot be denied that Esmalin was occupying a position of trust in respondent company. As warehouseman, he had access to the property of his employer. The latter therefore had every reason to expect from him at all times utmost fidelity and diligence in dealing with its property. So that, with the finding by the CIS and the Tanodbayan that Esmalin was involved in a series of thefts of company property, and his subsequent indictment therefor, one cannot say that there was no justifiable cause for the company’s loss of trust and confidence in complainant. In the instant case, the complainant, occupying a position of trust, has been charged in the Sandiganbayan on two counts for theft of company property worth hundreds of thousands of pesos, and

the evidence against him appears to be strong. His guilt beyond reasonable doubt or innocence that may be found later by the Sandiganbayan cannot be the determinative gauge in the final adjudication of the instant case. It is enough that sufficient substantial evidence has been established, as this Commission has found, that complainant violated the trust and confidence reposed in him by his employers, that a justified dismissal can be pronounced. We cannot, therefore, in conscience compel the respondent company to take him back for We cannot guarantee his good behavior in the future.”

Felix Esmalin filed a Motion for Reconsideration of the above Decision, but it was denied. Hence the instant Petition for Review by *Certiorari*^[**] wherein petitioner sets forth the following issues:

- “1. Whether or not public respondent committed grave abuse of discretion in finding that petitioner’s dismissal was justified;
- “2. Whether or not public respondent decided a question of substance in a way not in accordance with law and applicable decisions of the Supreme Court;
- “3. Whether or not petitioner was denied “due process of law” when he was arbitrarily relieved of his employment on April 29, 1981.”^[16]

all of which may be synthesized into one single issue, that is, whether or not Esmalin’s dismissal is justified.

Before going into the merits of this case, an important point to consider is the finality of the assailed order of the Director of Labor dated October 22, 1981 which was the subject of review by the National Labor Relations Commission whose decision is now before this Court.

The records show that despite reconsideration of the Order of Deputy Minister of Labor Vicente Leogardo, Jr. dated May 24, 1982 which affirmed the Order of the Director, National Capital Region dated October 22, 1981 and dismissed respondent’s appeal relative thereto,

the findings of the Office of the Minister on the untimeliness of the filing of the appeal memorandum are still as follows: (1) that the Order of the Regional Director appealed from was received and signed by counsel of record on October 31, 1981 and by respondent itself on November 5, 1981; (2) that from November 5, 1981, respondent was given ten (10) working days within which to appeal the said Order; (3) that before the expiration of said period, respondent filed an urgent motion for extension of time to file appeal memorandum on November 16, 1981 praying for 15 days from November 18, 1981 within which to file an appeal memorandum and another extension from December 4, 1981 to December 13, 1981; and (4) that since December 13, 1981 falls on Sunday, respondent's appeal memorandum was filed on December 14, 1981, which allegedly is within the reglementary period.^[17]

It is well established that a motion for reconsideration and/or an appeal from a decision, award or order of the Labor Arbiter must be filed within ten (10) working days from receipt of such decision, award or order, pursuant to the Labor Code.^[18] In implementation thereof, Section 6, Rule VIII of the Revised Rules of the NLRC provides: "No extension of period. No motion or request for extension of the period within which to perfect an appeal shall be entertained." Hence, the Revised Rules of the National Labor Relations Commission are clear and explicit and leave no room for interpretation, that the subject Order of the Director of Labor appealed to the Deputy Minister of Labor has already become final and executory and can no longer be subject to appeal.^[19] Accordingly, the decision of the National Labor Relations is null and void for lack of jurisdiction and for the same reason, not within the jurisdiction of this Court to review.

However, even on the merits, a careful review of the records failed to yield a cogent reason to disturb the assailed Order of Director Estrella dated October 22, 1981.

The bone of contention in this case is the alleged participation of Esmalin, as conspirator in the theft of a large number of relief goods belonging to the U.S. and intended for delivery to Alabang Stock Farm, Bureau of Animal Industry, Alabang, Rizal, which were in fact diverted and delivered to Biñan, Laguna.

CARE submits that as warehouseman, Esmalin has full knowledge of the irregularity and the fact that the incident took place, only shows that he connived with the other inditees and expected profit from the transaction if disposed, which in fact was so disposed. CARE also pointed out that Esmalin was physically present as warehouseman-representative when the goods subject of the CIS investigation were taken out of the Transcon Bodega, yet he allowed goods of excellent condition to be mixed with alleged damaged commodities.^[20]

On the other hand, Esmalin taking exception to aforesaid charges, maintained that the PC-CIS investigation itself clearly shows that withdrawals from the Transcon bodega were covered with the letter-orders from the American officers of CARE and gate passes prepared by Transcon warehouseman/supervisors. He insists that said withdrawals were witnessed by CARE and Transcon officers. In fact, there were three (3) letter-orders submitted covering the delivery of the disputed goods and 35 gate passes thereof. For this reason, he contends that if there was any “switching of food commodities” it was not of his own making. According to him, it was a co-employee Mrs. Adelina Caday who, upon instruction by a superior, prepared the authorization and D-3 and were the same documents presented to him for his signature.

Briefly stated, the Regional Director’s findings and conclusions read:

“Based on the foregoing set of facts, we find that Esmalin’s involvement in the irregularity cited as ground for dismissal has not been clearly and satisfactorily established. Even the report of the CIS on the incident happened through the presentation and flow of papers and documents. Esmalin had only ministerial participation in them. These papers, which are usually letter-orders and gate passes are not prepared by Esmalin; certainly, he is not to account for the impropriety of its contents, nor can stop the flow of goods. He therefore, had no direct hand in the switching much more in the flow of CARE commodities. Therefore, as the participation of Esmalin in the irregularity is not sufficiently established, the clearance application, perforce cannot be sustained. However, for affixing his signature on a document which he should have studied

carefully and which he did not, he should be meted some kind of penalty. His suspension for two (2) months appears to be appropriate.”^[21]

In fact, even after compulsory arbitration in the National Labor Relations Commission, Regional Arbitration Branch, the findings in favor of Esmalin remained unaltered. Labor Arbiter Manuel B. Lorenzo gave stress on the glaring evidence of the petitioner’s innocence and arrived at the same conclusion, to deny the request for clearance to terminate and grant full back wages and other benefits to Esmalin. More importantly, in a resolution dated August 17, 1984, the Sandiganbayan, First Division, acquitted Esmalin of the accusations filed against him.^[22]

In addition, in a letter dated April 29, 1981, and signed by Director Henry R. Richards of CARE Philippines, informing petitioner Esmalin that he shall be placed under preventive suspension pending the final termination of the CIS investigation, CARE alleged that it conducted its own investigation as early as July 1980, one (1) year before petitioner was placed under preventive suspension. But on February 24, 1981 or sixty-four (64) days before petitioner’s suspension, the same Director Richards sent Esmalin a Memorandum^[23] increasing his salary to P1,285.00 per month effective January 1, 1981, in recognition of his continued good work and efforts in behalf of CARE.

If indeed, petitioner was under formal investigation with regard to his alleged participation in the anomaly, then the action of CARE Philippines in giving petitioner a merit increase is undoubtedly inconsistent with the said investigation.

Undisputedly, CARE Philippines did not conduct its own investigation on the petitioner but relied only on the CIS investigation which is in contravention of the ruling set forth in the case of De Leon vs. NLRC, 100 SCRA 691 [1980], wherein this Court held:

“The act of respondents in dismissing petitioner without first conducting a formal investigation is arbitrary and unwarranted. The right of an employer to dismiss an employee differs from and should not be confused with the manner in which such

right is exercised. It must not be oppressive and abusive since it affects one's person and property.”

While it is true that suspension is different from dismissal and that it is only in cases of dismissal wherein a formal investigation and a prior clearance from the Ministry of Labor is required, it can be discerned from the records of the case as well as from the actions taken by CARE Philippines, that indeed they sought not only the suspension of petitioner Esmalin but also his dismissal.

This can be gleaned from the memorandum submitted to Us by private respondent, which mentioned “an application for Clearance for the termination of the employment of the petitioner with the Ministry of Labor.”^[24] Furthermore, although the letter dated April 29, 1981 speaks of “preventive suspension,” its tenor clearly indicates dismissal. The pertinent portion of the same reads:

“You are therefore relieved of your duties and responsibilities as Warehouseman effective immediately.

“Please arrange with the Accounting Office for a proper computation of any amounts due you from CARE by way of unpaid salaries as of this date, and for a proper turnover of records and documents in your custody, including your CARE identification card.”

“In addition, said letter refers to an enclosure which is the “Clearance to Dismiss Employee.”^[25]

Thus, the letter preventively suspending petitioner is in reality a dismissal, considering that on the same day, private respondent filed with the Ministry of Labor an application for clearance to dismiss the petitioner.

The Rules and Regulations implementing the Labor Code of the Philippines or P.D. 442^[26] then enforced,^[***] clearly states that no employer may dismiss an employee without a prior clearance secured from the Ministry of Labor. A dismissal without said clearance shall be conclusively presumed a termination without a just cause.

According to the case of *Bachiller vs. NLRC*, 98 SCRA 393 [1980]:

“Dismissal of an employee without requisite prior clearance from the Ministry of Labor is equivalent to arbitrary dismissal.”

Verily, it is the prerogative of management to employ the services of a person and likewise to discharge him. But this is not without limitations and restrictions. The dismissal of an employee must be done with just cause and without abuse of discretion. It must NOT be done in an arbitrary and despotic manner. To hold otherwise would render nugatory the security of tenure clause enshrined in the Constitution.

The right to labor is a constitutional as well as a statutory right. Every man has a natural right to the fruits of his own industry. A man who has been employed to undertake certain labor and has put into it his time and effort is entitled to be protected. “The right of a person to his labor is deemed to be property within the meaning of constitutional guarantees. That is his means of livelihood. He cannot be deprived of his labor or work without due process of law.”^[27]

Dismissal of an employee must be done without abuse of discretion. The right of an employer to freely select or discharge his employees is regulated by the State, because the preservation of the lives of the citizens is a basic duty of the State, more vital than the preservation of corporate profit. The protection to labor and social justice provisions of the Constitution and the labor laws and rules and regulations are interpreted in favor of the exercise of labor rights.^[28]

From the records of the case, it can be discerned that reinstatement is no longer viable in view of the strained relations between petitioner-employee and private respondent-employer. This is very evident from the vehement and consistent stand of CARE Philippines in refusing to accept back petitioner Esmalin. Instead, petitioner should be awarded separation pay as an alternative for reinstatement.

In the case of *City Trust Corporation vs. NLRC*, 157 SCRA 87 [1988], WE said:

“However, in this case, there is no doubt that the relationship of employer to employee is so strained and ruptured as to preclude a harmonious working relationship should reinstatement of private respondent be decreed. Instead, private respondent should be afforded the right to separation pay so that he can be spared the agony of having to work anew with petitioner under an atmosphere of antipathy and antagonism and the petitioner does not have to endure the continued services of private respondent in whom it has lost confidence.”

This principle was formulated in *Balaguezon EWTU vs. Zamora* (97 SCRA 5) and subsequently reiterated in *Asiaworld Publishing Inc. vs. Ople* (152 SCRA 219, G.R. No. 56398, July 23, 1987) and *Bautista vs. Inciong*, (158 SCRA 665 [1988]), wherein it was stated that: “a monetary award is to be paid to the employee as an alternative to reinstatement which can no longer be effected in view of the long passage of time or because of the realities of the situation.”

WHEREFORE, in view of the foregoing, the Decision appealed from is hereby set aside, and the decision of the Director of Labor is hereby affirmed with the modification that in lieu of reinstatement, petitioner shall be given separation pay equivalent to one-half month pay for every year of service. No costs.

SO ORDERED.

Bidin and Cortes, JJ., concur.
Gutierrez, Jr., J., concur in the result.
Feliciano, J., is on leave.

[1] Rollo, p. 3.

[2] Rollo, pp. 117-124; promulgated on February 14, 1984 by the NLRC, Third Division, composed of Guillermo C. Medina, Presiding Commissioner; Gabriel M. Gatchalian and Miguel B. Varela, Commissioners.

[3] Rollo, pp. 117-118.

[4] CARE means Committee on Aid for Relief Everywhere, a recognized outlet of relief goods administered by the U.S. Aid for International Development (USAID).

[5] Rollo, pp. 128-129.

[6] Rollo, pp. 106-107.

- [7] Rollo, p. 39.
- [8] Rollo, p. 107.
- [9] Rollo, p. 71.
- [10] Rollo, pp. 72-74.
- [11] Rollo, pp. 75-76.
- [12] Rollo, pp. 77-79.
- [13] Rollo, pp. 153-155.
- [14] Rollo, pp. 100-103.
- [15] Rollo, pp. 117-124.
- [**] should be petition for *certiorari*.
- [16] Rollo, pp. 291-292.
- [17] Rollo, pp. 153-154.
- [18] *Insular Life Assurance Co. Ltd. vs. NLRC*, 156 SCRA 741 (1987).
- [19] *Rizal Empire Insurance Group vs. NLRC*, 150 SCRA 568, 569 (1987).
- [20] Rollo, p. 68.
- [21] Rollo, p. 75.
- [22] Rollo, p. 334.
- [23] Rollo, p. 6.
- [24] Rollo, p. 219.
- [25] Rollo, p. 39.
- [26] Rule XIV: Section 1. Requirement for shutdown or dismissal. — No employer may shut down his establishment or dismiss any of his employees with at least one year of service during the last two years, whether the service is broken or continuous, without prior clearance issued therefore in accordance with this Rule.
- Section 2. Shutdown or dismissal without clearance. — Any shutdown or dismissal without prior clearance shall be conclusively presumed to be a termination of employment without a just cause. (Foz, Labor Code of the Philippines, 1981 Edition).
- [***] Amended on September 4, 1981 by Rules Implementing BP 130, Rule XIV, Termination of Employment.
- [27] *Philippine Movie Pictures Workers' Association vs. Premiere Productions, Inc.*, 92 Phil. 844 cited in de Leon, Textbook on the New Philippine Constitution 1983 Ed.
- [28] *Euro-Linea, Philippines, Inc. vs. NLRC*, 156 SCRA 78 (1987).