

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**ALEX A. FALGUERA,
*Petitioner,***

-versus-

**G.R. No. 114848
December 14, 1995**

**HON. LABOR ARBITER CORNELIO L.
LINSANGAN, NATIONAL LABOR
RELATIONS COMMISSION,
PHILIPPINE REFINING CO. (PRC) or
UNILEVER-PRC, and JESUS
JAVELONA,**

Respondents.

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DECISION

DAVIDE, JR., J.:

This is a Special Civil Action for *Certiorari* seeking the reversal of the Decision^[1] of public respondent National Labor Relations Commission (NLRC) in NLRC NCR Case No. 00-10-05993-91, which affirmed in toto the Decision^[2] of public respondent Labor Arbiter Cornelio L. Linsangan dismissing the petitioner's complaint but awarding him the sum of P7,000.00 which is equivalent to his one-month salary as a sanction against the private respondent.

The pleadings disclose the following factual and procedural antecedent.

The petitioner was an employee of private respondent Philippine Refining Co., Inc., now known as Unilever Philippines (PRC), Inc. (hereinafter Company). He was hired in 1977 as a craftsman helper. During his employment, he was twice promoted – first, as mechanic and then as warehouseman, which was his position at the time he was terminated from employment. As a warehouseman, he received a salary of P340.00 a day and reported to work five times a week.^[3]

Among his duties and responsibilities were the custody and safekeeping of the engineering stores' stock of materials for the exclusive use of the Company; the signing of the materials and requisition forms (hereinafter MRs); the release of materials duly requisitioned; the forwarding of the original MRs to the accounting department; and the acceptance of new stocks in replenishment of those which have been requisitioned.^[4]

The normal procedure^[5] in the requisition of materials is as follows:

- (1) An MR is filled up and approved by the department manager of the requisitioning department for the release of supplies or materials. The MR comes in triplicate copies: the white, which is the original and is eventually forwarded to the accounting department; the green, which is retained by the requisitioning department; and the yellow, which is given to the issuing department, the engineering stores.
- (2) The MR, in triplicate, is presented to the engineering storeman of the engineering stores for the release of the requisitioned materials as specified therein. He and the representative of the requisitioning department duly sign the MR to confirm the release of the materials, with the latter retaining the green copy of the MR for the files of the requisitioning department.
- (3) The engineering storeman retains the yellow copy for the files of the engineering stores and, thereafter, delivers the original white copy of the MR to the accounting

department, which in turn places an order of the materials requisitioned with the Company supplier. The original MR is separately filed and recorded in the stock cards of the accounting department.

- (4) The ordered materials are directly delivered by the Company supplier to the engineering storeman, who acknowledges receipt thereof.

Sometime in August 1991, the assistant soapery engineer of the Company observed an unusual increase in the reported requisitions by the soapery department of Parker packing materials for the month of June. Upon his examination of the green copies of the MRs of the soapery department, he discovered that P27,025.00 worth of Parker packing materials chargeable to his department could not be accounted for and were not reflected in the said copies. He therefore sought the original white copies of the MRs from the accounting department. A meticulous scrutiny disclosed that while the original MRs contained entries of the packing items worth P27,050.00, they, however, showed alterations, superimpositions, and erasures.^[6]

The anomaly was duly reported to the Company's engineering department manager, herein private respondent Jesus Javelona. Upon his request, an investigation was conducted by the Company's internal audit section. Two particular MRs were in question: (1) MR No. 449727, which had an erasure and contained an insertion of 5 kgs. of 5/8" Parker packing materials worth P12,075.00 in the original copy; and (2) MR No. 449748, which contained an insertion of 5 kgs. of 5/16" Parker packing materials worth P14,950.00, also in the original copy.^[7] The audit team concluded that the insertions were made with the connivance of at least two employees after the approval of the MRs by the manager of the soapery department.

A second investigation was made, wherein MRs issued from January to June 1991 were examined and certain employees were interviewed, specifically the issuing engineering storemen and the area mechanics who had received the requisitions recorded in the questioned MRs.^[8]

On 22 August 1991, the petitioner was placed under preventive suspension pending the investigation of the anomaly.^[9]

On 26 August 1991, the audit team submitted its memorandum which contained its findings and conclusion. In summary, it found that eight original MRs^[10] were tampered by two engineering storemen, in particular, the petitioner and Felipe Viado. The latter admitted having tampered one MR and offered to testify against the petitioner in case the matter would be brought to court. The total loss suffered by the Company amounted to P104,225.00.^[11]

The following month, the petitioner was summoned by private respondent Javelona and the Company's Industrial Relations Manager, Bernardo Jambolos III. He was informed that the Company was filing charges against him for tampering with its documents, resulting in its loss of P105,225.00. The petitioner was shown the file on the investigation and was asked to explain his side.

In his defense, he claimed that he only released what written in the original copy of the MRs in question.^[12]

On 23 September 1991, the petitioner received a letter signed by private respondent Javelona informing him that the Company was terminating his employment for loss of confidence and breach of trust, effective as of the time he was placed under preventive suspension.^[13]

On 2 October 1991, the Company's rank-and-file union, Bisig ng Manggagawa, intervened. But, after being apprised of the evidence against the petitioner and Felipe Viado, the union requested that in lieu of dismissal, the said employees be allowed to avail of retirement benefits, considering their length of service.^[14]

On 10 October 1991, the petitioner filed with the NLRC Regional Arbitration Branch a complaint for illegal dismissal and damages with prayer for attorney's fees against the Company, private respondent Javelona, and the Company's president, Cesar Bautista.^[15] The complaint was docketed as NLRC-NCR-Case No. 00-10-05993-91.

After a full-blown trial, respondent Labor Arbiter Cornelio L. Linsangan rendered on 25 June 1993 a Decision^[16] disposing as follows:

WHEREFORE, judgment is hereby rendered dismissing the above-entitled complaint for lack of merit. However, by way of sanction the respondent is ordered to pay complainant the sum of P7,000.00 which is equivalent to his one month salary.^[17]

The Labor Arbiter held that the petitioner occupied a position of trust and confidence, as he had in his custody and care certain company properties. The loss of goods in the amount of P105,225.00 while in the petitioner's custody was sufficient basis for the Company to lose its trust and confidence in the petitioner. His dismissal was, therefore, justified.^[18]

Nevertheless, the Labor Arbiter found that the Company "did not observe the procedure for terminating employment as provided for in paragraph (b) of Article 272 [sic] of the Labor Code."^[19] Accordingly, and pursuant to this Court's ruling in *Wenphil Corporation vs. National Labor Relations Commission*,^[20] reiterated in subsequent cases, the Labor Arbiter resolved to impose upon the Company a sanction, in an amount equivalent to the petitioner's one-month salary, for its failure to observe the due process requirements of notice and hearing.

The petitioner appealed the decision to the NLRC which, however, sustained the Labor Arbiter in its 29 October 1993 Decision.

Hence, this petition wherein the petitioner contends that the public respondents committed grave abuse of discretion and serious error in law (a) in finding just cause for his dismissal on mere allegation of loss of trust and confidence, (b) in applying the *Wenphil* case, and (c) in not awarding him damages.^[21]

The petitioner submits that he was dismissed on mere suspicion as there was even no proof that the Company actually suffered loss of goods worth P105,225.00 or that he actually tampered with the questioned MRs. In support of this contention, he cites portions of the transcripts of stenographic notes where: (1) Teodoro Lopez,

manager of the Internal Audit Section of the Company, admitted that the actual physical count of the inventory tallied with the stock records and that the tampering of the original MRs resulted in over usage of the materials; 22 (2) private respondent Javelona admitted that no theft or pilferage in the warehouse where the petitioner worked was reported by the Company security;^[23] and (3) Crismon Castro Igtiben, a Company auditor, disclosed that the original recommendation of the investigating committee was the petitioner's retirement or transfer.^[24]

The petitioner also claims that he was a mere rank-and-file employee whose position was not reposed with trust and confidence. And considering that he had rendered fourteen years of service to the company, dismissal was too harsh a penalty. Moreover, he was virtually deprived of his retirement benefits.

It is further asserted that the assailed decision went beyond what was originally claimed by the private respondents. The loss originally imputed to him was only P69,000.00, yet he was ultimately blamed for the alleged loss of P105,225.00.

For their part, the private respondents contend that the petitioner raises questions of fact which may no longer be entertained by this Court. In any event, he was entrusted with the issuance, receipt, and custody of the lost materials. His position required a high degree of trust and confidence, and his breach thereof justified his dismissal.

The Solicitor General debunks the petitioner's claim that there was no evidence of loss. The two investigations undeniably disclosed the petitioner's active participation in the questioned MRs. Also, the lengthy testimonies cited by the petitioner were all taken out of context. The physical count or inventory of the packing items tallied with the stock records because the latter were based on the tampered MRs.^[25] No theft was reported by the security force, since the loss was attributed to an inside job. And the fact that the investigating team recommended either the petitioner's retirement or transfer instead of dismissal bolstered the claim that the petitioner had indeed committed the anomalies.

We see no merit in the instant petition.

The petitioner's basic grievance is the findings of fact of the public respondents. It is settled that the factual findings of quasi-judicial agencies, such as the NLRC, which have acquired expertise in the matters entrusted to their jurisdiction are accorded by this Court not only respect but even finality if they are supported by substantial evidence,^[26] or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.^[27]

As disclosed in the decision of respondent Labor Arbiter, the search for the facts in this case was not solely confined within the position papers of the parties. He conducted "a full-blown trial"^[28] with the petitioner presenting as hostile witnesses respondent Jesus Javelona, Teodoro Lopez, and Crismon Castro Igtiben, who are, respectively, the Manager of the Engineering Department, Manager of the Internal Audit Section, and Auditor of the latter section of the Company. The petitioner found it convenient not to testify. On the other hand, the Company presented Teodoro Lopez and submitted the affidavits of private respondent Jesus Javelona and the other officials of the Company, namely, Renato Amancio, Manager of the Oil Mill Engineering Department; Jerry Casino, Manager of the NSD Powder Engineering Department; Gerardo Parungao, Manager of the Soapery Engineering Department; and Antonio Ronquillo, Manager of Foods Engineering Department.^[29] The Labor Arbiter had the further advantage of personally observing the deponent of the witnesses while they were testifying. It is doctrinally entrenched that the evaluation of the testimony of witnesses by the one who personally receives the testimony and has the direct opportunity to observe them on the witness stand is received by an appellate court with the highest respect and is even binding upon that court in the absence of a clear showing that the evaluation was reached arbitrarily.^[30]

It is not disputed that the petitioner is a rank-and-file employee. Ordinarily, a rank-and-file employee is not reposed with a high degree of trust and confidence expected of a supervisory or managerial employee. It must, however, be noted that the petitioner served as a warehouseman and was in charge of the custody, safekeeping, and release of the Company's materials. The nature of his work and the scope and special character of his duties, therefore, involved utmost trust and confidence.

The Labor Arbiter found that the evidence sufficiently established the following:

- (1) Petitioner signed all copies of the questioned MRs 449727 and 449748;
- (2) Petitioner released the items covered by the said MRs;
- (3) There were discrepancies in the MRs — the quantity indicated in the white (original) copy exceeded that in the green and yellow copies;
- (4) The white copies contained erasures and insertions;
- (5) The discrepancies amounted to P27,025.00; and
- (6) The total amount of discrepancies of the MRs issued from January to July, 1991 amounted to P105,225.00.^[31]

The two detailed audit reports by the Internal Audit Section^[32] were made the basis for the conclusions of the Labor Arbiter, which were likewise adopted by the NLRC. The reports indicated that there were eight questionable MRs with erasures and insertions and that the petitioner was the issuing warehouseman in five of these tampered MRs as shown by his signature therein. The interviews conducted with the personnel in the Company's different divisions revealed that the recipients received less than what were stated in the tampered MRs.

It must be emphasized that the petitioner did not deny his signatures in the questioned MRs. And when confronted with the reports of the anomalies, he offered no explanation or theory which could account for the loss. What remains significant is that the warehousemen involved in the said MRs were either the petitioner or Felipe Viado, with the former answerable to five of eight tampered MRs. The loss to which the petitioner is accountable to is in the amount of P69,000.00. This is too much of a coincidence to ignore, considering that his position is one reposed with trust and confidence.

This case is analogous to *Segismundo vs. National Labor Relations Commission*^[33] where the charge of pilferage against two rank-and-file employees was supported by the thorough investigation conducted by the employer. We ruled that the dismissal of the employees was with just cause. In the said case, the documentary evidence pointed to the culpability of the dismissed employees and prevailed over the latter's self-serving denials. While there was no direct evidence to prove that they actually committed the pilferage, we nonetheless ruled that substantial proof and not clear and convincing evidence or proof beyond reasonable doubt is sufficient as basis for their dismissal. The standard of substantial evidence is satisfied where "the employer has reasonable ground to believe that the employee is responsible for the misconduct, and his participation therein renders him unworthy of the trust and confidence demanded by his position."^[34]

Among the just causes or valid grounds for termination of employment by the employer is "fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative."^[35] Ordinary breach will not suffice; it must be willful and without justifiable excuse; there must be basis therefor, and it must be supported by substantial evidence and not merely by the whims or caprice of the employer.^[36]

In the instant case, we find no difficulty in agreeing with the public respondents that the petitioner committed willful breach of the trust and confidence reposed in him by the Company.

We also uphold the finding of both the Labor Arbiter and the NLRC that the petitioner was not accorded the due process requirements prescribed in paragraph (b), Article 277 of the Labor Code. It is not enough that the petitioner was apprised of the results of the investigations and asked to explain his side. This, definitely, is not the kind of notice contemplated by the Labor Code.

The twin requirements of notice and hearing are indispensable for a dismissal to be validly effected.^[37] Failure to observe these requirements does not, however, operate to invalidate or nullify the dismissal for a just and valid cause. A distinction should be made between the legality of the act of dismissal and the legality of the

manner by which the act of dismissal was performed. The first refers to dismissal under the grounds provided for under Article 282^[38] of the Labor Code. The second involves the observance of the procedural due process requirements.^[39] It is now settled that where the dismissal of an employee is proven to be for a just and valid cause but he is not accorded his right to procedural due process, the dismissal shall be upheld but the employer must be sanctioned for non-compliance with the requirements of due process. The sanction, which is in the nature of indemnification or penalty, depends on the facts of each case and the gravity of the omission committed by the employer and ranges from P1,000.00^[40] to P10,000.00.^[41] More recently in *Worldwide Papermills, Inc. vs. National Labor Relations Commission*,^[42] the sum of P5, 000.00 was awarded to the employee as indemnification for the employer's failure to comply with the requirements of procedural due process.

That the Company must be sanctioned and ordered to indemnify the petitioner is inevitable. However, the indemnity must be in conformity with the above decisions. We thus reduce it from P7,000.00 to P5,000.00.

WHEREFORE, the Decision of the National Labor Relations Commission in NLRC NCR Case No. 00-10-05993-91 is hereby **AFFIRMED** subject to the modification of the sanction for the violation of the due process requirements of notice and hearing by private respondent Philippine Refining Co., Inc. or Unilever Philippines (PRC), Inc., which is hereby reduced from 7,000.00 to 5,000.00.

SO ORDERED.

Padilla, J., (Chairman), Bellosillo, Kapunan and Hermosisima, Jr., JJ., concur.

[1] Annex "B" of Petition; Rollo, 42-49. Per Rayala, R., Comm., with Bonto-Perez, E., and Zapanta, D., concurring.

[2] Annex "A," Id.; Id., 32-40.

[3] Rollo, 6.

[4] Id., 63.

- [5] Id., 73-74.
- [6] Rollo, 63-64.
- [7] Id., 65-66.
- [8] Rollo, 66.
- [9] Id.
- [10] MRS Nos. 442691, 438942, 439056, 438964, 439069, 449727, 449748, and 439080, Id , 67.
- [11] Id., 67-68.
- [12] Rollo, 69.
- [13] Id., 69-70.
- [14] Id., 70.
- [15] Id., 32.
- [16] Id., 32-40.
- [17] Rollo, 40.
- [18] Citing *Ocean Terminal Services, Inc. vs. NLRC*, 197 SCRA 491 [1991].
- [19] The applicable provision is paragraph (b), Article 277 of the Labor Code of the Philippines, which provides:
- Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of the notice under Article 283 of this Code the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes of termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. x x x.
- [20] 170 SCRA 69 [1989].
- [21] Rollo, 3.
- [22] Id., 14, 20-21.
- [23] Id., 16.
- [24] Id., 15.
- [25] Rollo, 108-110.
- [26] *Aboitiz Shipping Corp. vs. Dela Serna*, 199 SCRA 568 [1991]; *Rabago vs. NLRC*, 200 SCRA 158 [1991]; *Tiu vs. NLRC*, 215 SCRA 540 [1992]; *Five J Taxi vs. NLRC*, 235 SCRA 556 [1994].
- [27] Section 5, Rule 133, Rules of Court; *Rase vs. NLRC*, 237 SCRA 523 [1994].
- [28] A formal trial or hearing is allowed under Section 4, Rule V of the New Rules of Procedure of the NLRC.
- [29] Rollo, 32-33.
- [30] *National Power Corp. vs. Court of Appeals*, 223 SCRA 649 [1993].
- [31] Rollo, 37.
- [32] The first report was dated 12 August 1991, and the second report was submitted on 26 August 1991; Rollo, 34.
- [33] 239 SCRA 167 [1994].
- [34] *Segismundo vs. NLRC*, supra note 33 at 171, citing *Riker vs. Ople*, 155 SCRA 85 [1987].

- [35] Paragraph (c), Article 282, Labor Code.
- [36] Tiu vs. NLRC, supra note 26.
- [37] Tiu vs. NLRC, supra note 26; Segismundo vs. NLRC, supra note 33.
- [38] Formerly Article 283.
- [39] Primero vs. Intermediate Appellate Court, 156 SCRA 435 [1987]; Shoemart, Inc. vs. NLRC, 176 SCRA 385 [1989]; Aurelio vs. NLRC, 221 SCRA 432 [1993].
- [40] Wenphil Corp. vs. NLRC, supra note 20; Seahorse Maritime Corp. vs. NLRC, 173 SCRA 390 [1989]; Shoemart, Inc. vs. NLRC, supra note 39; Rubberworld (Phils.), Inc. vs. NLRC, 183 SCRA 421 [1990]; Pacific Mills, Inc. vs. Alonzo, 199 SCRA 617 [1991]; Aurelia vs. NLRC, supra note 39.
- [41] Reta vs. NLRC, 232 SCRA 613 [1994]; Alhambra Industries, Inc. vs. NLRC, 238 SCRA 232 [1994].
- [42] G.R. No. 113081, 12 May 1995.