SUPREME COURT
FIRST DIVISION

WENIFREDO FARROL,
***Petitioner*,**

-versus-

G.R. No. 133259
February 10, 2000

The HONORABLE COURT OF APPEALS and RADIO COMMUNICATIONS of the PHILIPPINES INC. (RCPI),
***Respondents*.**
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D E C I S I O N

YNARES-SANTIAGO, *J.*:

Petitioner Wenifredo Farrol was employed as station cashier at respondent RCPI'S Cotabato City station. On June 18, 1993, respondent RCPI'S district manager in Cotabato City informed their main office that "Peragram funds"[1] from said branch were used for the payment of retirement benefits of five employees. On October 1, 1993, petitioner verified as correct RCPI's Field Auditor's report that there was a shortage of P50,985.37 in their branch's Peragram, Petty and General Cash Funds. Consequently, petitioner was required by the Field Auditor to explain the cash shortage within 24 hours from notice.[2] The next day, petitioner paid to RCPI P25,000.00 of the cash shortage.

On October 16, 1993, RCPI required petitioner to explain why he should not be dismissed from employment.[3] Two days thereafter, petitioner wrote a letter to the Field Auditor stating that the missing funds were used for the payment of the retirement benefits earlier referred to by the branch manager and that he had already paid P25,000.00 to RCPI. After making two more payments of the cash shortage to RCPI, petitioner was informed by the district manager that he is being placed under preventive suspension.[4] Thereafter, he again paid two more sums on different dates to RCPI leaving a balance of P6,995.37 of the shortage.

Respondent RCPI claims that it sent a letter to petitioner on November 22, 1993 informing him of the termination of his services as of November 20, 1993 due to the following reasons:

> "a) Your allegation that part of your cash shortages was used for payment of salaries/wages and retirement benefits is not true because these have been accounted previously per auditor's report;
>
> "b) As Station Cashier you must be aware of our company Circular No. 63 which strictly requires the daily and up-to-date preparation of Statistical Report and depositing of cash collections twice a day. But these procedures — more particularly on depositing of cash collections twice a day — was completely disregarded by you;
>
> "c) Deliberate withholding of collections to hide shortages/malversation or misappropriation in any form, as emphasized under Section No. 20 of our Rules and Regulations, is penalized by immediate dismissal;
>
> "d) The position of Station Cashier is one which requires utmost trust and confidence.[5]

Unaware of the termination letter, petitioner requested that he be reinstated considering that the period of his preventive suspension had expired.

Sometime in September 1995, petitioner manifested to RCPI his willingness to settle his case provided he is given his retirement benefits. However, RCPI informed petitioner that his employment had already been terminated earlier as contained in the letter dated November 22, 1993. The conflict was submitted to the grievance committee. Despite the lapse of more than two years, the case remained unresolved before the grievance committee, hence, it was submitted for voluntary arbitration.

After hearing, the Voluntary Arbitrator ruled that petitioner was illegally dismissed from employment and ordered RCPI to pay him backwages, separation pay, 13th month pay and sick leave benefits.[6] Aggrieved, RCPI filed a petition for certiorari before the Court of Appeals (CA), which reversed the ruling of the arbitrator and dismissed the complaint for illegal dismissal.[7] Upon denial of petitioner's motion for reconsideration by the CA,[8] he filed the instant petition for review on certiorari on the grounds that his dismissal was illegal because he was not afforded due process and that he "cannot be held liable for the loss of trust and confidence reposed in him" by RCPI.[9]

The Court is called upon to resolve the validity of petitioner's dismissal. In cases involving the illegal termination of employment, it is fundamental that the employer must observe the mandate of the Labor Code, i.e., the employer has the burden of proving that the dismissal is for a cause provided by the law[10] and that it afforded the employee an opportunity to be heard and to defend himself.[11]

Anent the procedural requirement, Book V, Rule XIV, of the Omnibus Rules Implementing the Labor Code existing at the time petitioner was discharged from work, outlines the procedure for termination of employment, to wit:

> "SECTION 1. Security of tenure and due process. — No worker shall be dismissed except for a just or authorized cause provided by law and after due process.
>
> "SECTION 2. Notice of Dismissal. — Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omissions constituting the grounds

for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

x x x x x x x x x

"SECTION 5. Answer and hearing. — The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representatives, if he so desires.

"SECTION 6. Decision to dismiss. — The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.

"'SECTION 7. Right to contest dismissal. — Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the Regional Branch of the Commission.

x x x x x x x x x

"SECTION 11. Report on dismissal. — The employer shall submit a monthly report to the Regional Office having jurisdiction over the place of work all dismissals effected by him during the month, specifying therein the names of the dismissed workers, the reasons for their dismissal, the dates of commencement and termination of employment, the positions last held by them and such other information as may be required by the Ministry (Department) for policy guidance and statistical purposes." *(Emphasis supplied)*.

As set forth in the foregoing procedures, the employer must comply with the twin requirements of two notices and hearing.[12] The first notice is that which apprises the employee of the particular acts or omissions for which his dismissal is sought, and after affording the employee an opportunity to be heard, a subsequent notice informing the latter of the employer's decision to dismiss him from work.[13]

As regards the first notice, RCPI simply required petitioner to "explain in writing why he failed to account" for the shortage and demanded that he restitute the same.[14] On the assumption that the foregoing statement satisfies the first notice, the second notice sent by RCPI to petitioner does not "clearly" cite the reasons for the dismissal, contrary to the requirements set by the above-quoted Section 6 of Book V, Rule XIV of the Omnibus Rules.

A perusal of RCPI'S dismissal notice reveals that it merely stated a conclusion to the effect that the withholding was deliberately done to hide alleged malversation or misappropriation without, however, stating the facts and circumstances in support thereof. It further mentioned that the position of cashier requires utmost trust and confidence but failed to allege the breach of trust on the part of petitioner and how the alleged breach was committed. On the assumption that there was indeed a breach, there is no evidence that petitioner was a managerial employee of respondent RCPI. It should be noted that the term "trust and confidence" is restricted to managerial employees.[15] It may not even be presumed that when there is a shortage, there is also a corresponding breach of trust. Cash shortages in a cashier's work may happen, and when there is no proof that the same was deliberately done for a fraudulent or wrongful purpose, it cannot constitute breach of trust so as to render the dismissal from work invalid.

Assuming further that there was breach of trust and confidence, it appears that this is the first infraction committed by petitioner. Although the employer has the prerogative to discipline or dismiss its employee, such prerogative cannot be exercised wantonly, but must be controlled by substantive due process and tempered by the fundamental policy of protection to labor enshrined in the Constitution.[16] Infractions committed by an employee should merit only the corresponding sanction demanded by the circumstances. The penalty must be commensurate with the act, conduct or omission imputed to the employee[17] and imposed in connection with the employer's disciplinary authority.

RCPI alleged that under its rules, petitioner's infraction is punishable by dismissal. However, employer's rules cannot preclude the State from inquiring whether the strict and rigid application or

interpretation thereof would be harsh to the employee. Petitioner has no previous record in his twenty-four long years of service — this would have been his first offense. The Court thus holds that the dismissal imposed on petitioner is unduly harsh and grossly disproportionate to the infraction which led to the termination of his services. A lighter penalty would have been more just, if not humane. In any case, petitioner paid back the cash shortage in his accounts. Considering, however, that the latter is about to retire or may have retired from work, it would no longer be practical to order his reinstatement.

Accordingly, in lieu of reinstatement, the award of separation pay computed at one-month salary for every year of service, with a fraction of at least six (6) months considered as one whole year, is proper.[18] In the computation of separation pay, the period wherein backwages are awarded must be included.[19]

WHEREFORE, in view of the foregoing, the assailed decision of the Court of Appeals is **REVERSED** and **SET ASIDE** and new one entered **REINSTATING** the decision of the Voluntary Arbitrator subject to the **MODIFICATION** that petitioner's separation pay be recomputed to include the period within which backwages are due. For this purpose, this case is **REMANDED** to the Voluntary Arbitrator for proper computation of backwages, separation pay, 13th month pay, sick leave conversion and vacation leave conversion.

SO ORDERED.

Davide, Jr., *C.J.*, Puno, Kapunan and Pardo, *JJ.*, concur.

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[1] Amounting to P232,250.83.
[2] Letter dated October 14, 1993 directed to Petitioner from RCPI's Field Auditor; (Rollo, p. 158).
[3] Annex "F"; Rollo, p. 107.
[4] Annex "H"; Rollo, p. 162.
[5] Annex "O"; Rollo, pp. 169-170.
[6] The dispositive portion of the Decision dated March 25, 1996 of Voluntary Arbitrator George C. Jabido reads:
"WHEREFORE PREMISES CONSIDERED, it is hereby ORDERED that Respondent Company, RADIO COMMUNICATION OF THE PHILIPPINES,

INC., (RCPI) is hereby ORDERED TO PAY Complainant worker WENIFREDO E. FARROL the following:

1.) BACKWAGES EQUIVALENT TO FIVE (5) MONTHS COMPUTED ON HIS LATEST SALARY RATE:

FOR: 5 Months = P3,038.83 x Months = P15,194.15

2.) SEPARATION PAY EQUIVALENT TO 24 DAYS FOR EVERY YEAR OF SERVICE COMPUTED ON HIS LATEST SALARY RATE:

= 24 days/year x 24 years x P3,038.83/month

$$= \frac{\text{P3,038.83} \times 12}{313}$$

= P116.50 per day

= 24 days/year x 24 years x P116.50/day

= P67,104.00

3.) UNPAID 13TH MONTH PAY FOR 1993:

$$= \frac{9.65 \text{ months} \times \text{P3,038.83}}{12}$$

= P2,443.73

4.) SICK LEAVE CONVERSION FROM JULY 1993 TO NOVEMBER 1993;

5.) UNUSED VACATION LEAVE FOR 1993 EQUIVALENT TO 12 DAYS;

SO ORDERED." (pp. 12-13; Rollo, pp. 50-51).

[7] The dispositive portion of the Court of Appeals Decision promulgated on October 23, 1997, penned by Justice Austria-Martinez with Justices Buena (now a member of this Court) and Salas, concurring, pp. 10-11; Rollo, pp. 61-62) states: "WHEREFORE, the Decision of Voluntary Arbitrator George C. Jabido dated March 25, 1996 is REVERSED and SET ASIDE and judgment is rendered DISMISSING VA Case No. AC-1185-RB-12-10-014-95.

"No costs.

"SO ORDERED."

[8] The dispositive portion of the CA Resolution promulgated March 26, 1998 reads: "Acting upon private respondent's motion for reconsideration together with petitioner's Comment thereto, and considering that the grounds alleged in the motion for reconsideration have already been passed upon and considered by this Court, and, finding no new and cogent ground that justifies a reconsideration of our Decision promulgated on October 23, 1997, we DENY the motion for lack of merit." (Rollo, p. 74).

[9] Petition, p. 14; Rollo, p. 22.

[10] Gonpu Services Corporation vs. NLRC, 266 SCRA 657 (1997).

[11] See Pono vs. NLRC, 275 SCRA 611 (1997); Pampanga Sugar Development Company vs. NLRC, 272 SCRA 737 (1997); Better Buildings vs. NLRC, 283 SCRA 242; Salaw vs. NLRC, 202 SCRA 7, 12 (1991).

[12] Premiere Development Bank vs. NLRC, 293 SCRA 49 (1998); Conti vs. NLRC, 271 SCRA 114 (1997).

[13] See Sections 2, 5 and 6 of Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code; Better Buildings vs. NLRC, 283 SCRA 242

(1997); Nath vs. NLRC, 274 SCRA 379 (1997); Philippine Savings Bank vs. NLRC, 261 SCRA 409, (1996); Pampanga II Electric Cooperative. Inc. vs. NLRC, 250 SCRA 31 (1995); Pepsi-Cola Bottling Co. vs. NLRC, 210 SCRA 277 (1992).

[14] Annex "D"; Rollo, p. 105.

[15] De la Cruz vs. NLRC, 268 SCRA 458 (1997).

[16] Section 19, Article II and Section 3, Article XIII, 1987 Constitution.

[17] Caltex Refinery Employees Association vs. NLRC, 316 Phil. 335 (1995).

[18] Jardine Davies, Inc. vs. NLRC, G.R. No. 76272, July 28, 1999 citing among others Mabesa vs. NLRC, 271 SCRA 670 (1997); Reformist Union of R.B. Liner, Inc. vs. NLRC, 266 SCRA 713 (1997); Bustamante vs. NLRC, (Resolution — en banc), 265 SCRA 66 (1996). See also Article 283 of the P.D. 442, as amended by R.A. No. 6715, otherwise known as The Labor Code of the Philippines.

[19] Guatson vs. NLRC, 230 SCRA 815, 824 (1994) cited in Jardine Davies vs. NLRC, supra.