

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**GOLDEN DONUTS, INCORPORATED
and/or LEOPOLDO N. PRIETO, JR.,
*Petitioners,***

-versus-

**G.R. Nos. 105758-59
February 21, 1994**

**NATIONAL LABOR RELATIONS
COMMISSION, SECOND DIVISION and
BONIFACIO C. GUEVARRA, JR.,
*Respondents.***

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DECISION

PADILLA, J.:

Golden Donuts, Incorporated and Leopoldo N. Prieto, Jr. filed this Petition for *Certiorari* under Rule 65 of the Rules of Court, seeking to set aside the Decision of the National Labor Relations Commission (2nd Division) dated 29 April 1992 dismissing petitioners' appeal and

affirming Labor Arbiter Eduardo J. Carpio's Decision dated 23 May 1991 which found petitioners to have illegally dismissed private respondent Bonifacio C. Guevarra, Jr.

Golden Donuts, Incorporated (GDI) is a corporate entity duly organized, registered, and operating under Philippine laws, with Leopoldo N. Prieto, Jr. as GDI President and General Manager. GDI is engaged in the processing and merchandizing of doughnuts and allied flour products. It is the exclusive licensee of Dunkin Donuts International.

In April 1984, GDI hired the services of Bonifacio C. Guevarra, Jr. (hereafter, Guevarra) His first job assignment was at GDI's Dunkin Donuts Recto II shop in Manila. On 28 February 1989, he was appointed by GDI as Branch Manager of its Baclaran Branch.

On 09 August 1990, the GDI Internal Audit Group headed by Rex Constantino conducted an audit of the Dunkin Donuts Baclaran I shop. Thereafter, an Audit Report was accomplished. On 05 September 1990, GDI officer Renato Villanueva sent a memo to GDI President Leopoldo Prieto, Jr. advising him of alleged irregularities committed by Bonifacio Guevarra concerning alleged questionable overtime allowances which he approved for himself.^[1]

On 08 September 1990. GDI Officer Renato Villanueva called a meeting. Guevarra was asked to attend the meeting which was also attended by GDI officers Renato Villanueva, Rex Constantino, Dan Elayda, and Secretary Marian Santos. Dan Elayda started the meeting by asking Guevarra about the irregularities in the latter's overtime allowance. Dan Elayda pointed out the alleged discrepancies between the Time/Attendance Record accomplished by Guevarra and the Security Guards' logbook. After Guevarra explained the alleged discrepancies, Dan Elayda hinted at a possible friction between Guevarra and the Baclaran I shop security guards.

Thereafter, Rex Constantino enumerated a list of alleged complaints against Guevarra, as follows:

1. Unclaimed salaries of casual employees.

2. Baclaran I shop employee Melchor Magbojos found in Shakey's Taft premises. (sic)
3. Misappropriation of Bereavement Assistance to Baclaran I shop employee Manny Claveria.
4. GMA meal allowance (P300.00 tampered receipt).
5. Film shooting meal allowance (P500.00 no receipt).
6. Use of rank-and-file tips for meals.
7. Melchor Magbojos reporting at Baclaran I shop. (sic)
8. Unclaimed salaries used for personal loans approved by Cora Ocular.^[2]

Immediately after informing Guevarra of the alleged complaints, Rex Constantino advised Guevarra that he was being placed under preventive suspension so that an impartial and uninterrupted investigation may be conducted. Guevarra questioned the propriety of the preventive suspension claiming that he did not want to become idle, and questioning the possible impact of the suspension on his performance record. It was at this point that another GDI officer, a certain Mr. Larrazabal, joined the meeting.

Dan Elayda briefed Mr. Larrazabal as to what had transpired, Mr. Larrazabal assuaged Guevarra that preventive suspension is necessary because the Baclaran I shop employees were allegedly intimidated by his (Guevarra's) presence. Also, he assured Guevarra that every complaint has to be investigated and proved, and that the preventive suspension was not an indication of guilt. Moreover, Mr. Larrazabal said that the maximum period of preventive suspension is just thirty (30) days, and could be less depending on the pace of the investigation. Thereafter, the meeting was adjourned.

On 09 October 1990, Guevarra received a Notice of Termination from GDI dated 08 October 1990.^[3] The Notice of Termination contained findings of violations of company policies as follows: (1) Breach of Trust and Confidence based on written complaints of the Baclaran I

shop employees concerning his malfeasances and misfeasances: (2) Breach of Trust and Confidence based on written complaints by the same Baclaran I shop employees concerning highly questionable withholding of their salaries and misappropriation of unclaimed salaries, tips, and allowances of the same employees, committed by Guevarra; and (3) Diminishing Efficiency and Diligence in work performance as a result of instances of unauthorized undertime, sleeping while on duty, and cutting of working hours.

Guevarra refused to acknowledge the Notice of Termination sent by GDI^[4] as he was still awaiting the investigation that GDI promised to conduct to determine his responsibility for the alleged misfeasances and malfeasances.

On 17 October 1990. Guevarra filed a complaint for illegal dismissal before the National Labor Relations Commission Arbitration Branch.^[5] Both Guevarra and GDI were summoned by Labor Arbiter Eduardo Carpio in order to effect an amicable settlement of the controversy. When the parties failed to reach an amicable settlement. Arbiter Carpio required both parties to submit their respective Position Papers.

In his Position Paper, Guevarra contended that his termination from employment was illegal because GDI's claim of Breach of Trust and Confidence was unfounded and that his right to procedural due process was violated when GDI failed to conduct an investigation wherein the complaining Baclaran I shop employees should have aired their complaints against him and he, in turn, could have refuted, if not explained away, the said complaints. He also contended that the written complaints of some of the Baclaran I shop employees were just trumped-up charges concocted by said employees who were disgruntled with his strict and disciplined management of the Baclaran I shop.^[6] GDI, on the other hand, maintained in its Position Paper that the termination of Guevarra's employment was valid and carried out after due process.

Based on the parties' Position Papers, Labor Arbiter Carpio rendered a decision dated 23 May 1991 ruling in favor of Guevarra; declaring GDI guilty of illegal dismissal; and ordering GDI to reinstate Guevarra to his former position without loss of seniority rights and

other benefits appertaining thereto, with full backwages from the time of his illegal termination on 08 October 1990 until his actual or payroll reinstatement at the rate of P6,000.00 per month. Attorney's fees of 10% of the total monetary award was likewise adjudged in his favor.^[7]

On 14 June 1991, GDI interposed an appeal to the National Labor Relations Commission (NLRC) seeking to set aside the findings of the Labor Arbiter. In its appeal, GDI denounced the admission by the Labor Arbiter of the unverified Position Paper of Guevarra. GDI also maintained that the Labor Arbiter erred in not considering as a just cause for Guevarra's dismissal GDI's loss of trust and confidence in him. Finally, GDI contended that the basis for the just cause in such loss of trust and confidence in Guevarra was established by sufficient evidence in the form of documented declarations of the Baclaran I shop employees which were never rebutted and disproved by Bonifacio Guevarra.

On 29 April 1992, the NLRC promulgated its resolution affirming the decision of the Labor Arbiter and dismissing GDI's appeal for lack of merit. The NLRC adopted the findings of the Labor Arbiter and declared that there was indeed an illegal dismissal. The NLRC was of the opinion that the basis for the loss of trust and confidence in Guevarra was not properly and sufficiently established. And as regards the admission by the Labor Arbiter of Guevarra's unverified Position Paper, the NLRC brushed aside GDI's attack thereon by adopting the doctrine of liberal application of the rules of procedure in administrative cases for the purpose of speedy and efficient administration of justice. It further ruled that the fact that Guevarra's Position Paper was not verified was inconsequential inasmuch as the original complaint for illegal dismissal filed by Guevarra was under oath.^[8]

GDI filed its Motion for Reconsideration and/or New Trial dated 22 May 1992. The NLRC resolved to deny said Motion on 11 June 1992. Hence, this petition.

In this petition, petitioners pose as issues the following:

I

RESPONDENT COMMISSION GRAVELY ABUSED ITS DISCRETION AND, CONTRARY TO LAW, JUSTICE AND EQUITY, ANOINTED PRIVATE RESPONDENT WITH REINSTATEMENT AND BACKWAGES DESPITE HIS DOCUMENTED MALFEASANCES WHICH HE NEVER DISPROVED.

II

DESPITE PETITIONER GDI'S DOCUMENTED NOTIFICATION, TWO INVESTIGATIONS AND WRITTEN TERMINATION TO, AND DESPITE PRIVATE RESPONDENT GUEVARRA'S ADMISSION, DISREGARDED THE FOREGOING AND WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION, RESPONDENT COMMISSION HELD THE DISMISSAL AS EFFECTED WITHOUT DUE PROCESS.

In fine, petitioners pray that this Court declare as grave abuse of discretion NLRC's affirmance of the decision of Labor Arbiter Carpio who ruled that petitioner GDI was guilty of illegal dismissal.

There is no dispute as to the fact that private respondent Guevarra is a managerial employee. It is a fact petitioners insist on. Such insistence is not without significance. It is a major premise in the argument of the petitioners that Guevarra, as are all managerial employees, should be subject to dismissal due to management's loss of trust and confidence in him.

We are not prepared to sustain this contention without qualifications. This court has already ruled that managerial employees are no less entitled to tenurial security as are other regular employees^[9] as well as probationary employees subject to the restriction provided by the Labor Code.^[10]

Since managerial employees are, as a general rule, entitled to security of tenure, we now test the validity of Guevarra's dismissal from employment.

In an attempt to turn the tide in their favor, petitioners insist on the sufficiency of the 09 August 1990 audit and the 08 September 1990 meeting as full compliance with the requirements of due process. Moreover, petitioners argue that Guevarra's breach of trust and confidence became indubitable when he failed to disprove the alleged complaints against him by his co-workers. Citing as proofs of the weakness of Guevarra's case, petitioners harp on what they still claim as erroneous admission by the Labor Arbiter of Guevarra's unverified Position Paper, and the conspicuous absence in the records of any rebuttal from Guevarra of the complaints against him.

In rejecting petitioners' contentions, Labor Arbiter Eduardo Carpio ruled thus:

“In this very case under consideration, we find it very difficult to declare that complainant herein was validly terminated. While evidence for the respondent tends to prove that complainant's termination was for a valid cause(s) yet we cannot help but entertain serious doubts as to its credibility. The witnesses whose unsworn reports and letters implicating complainant to so many infractions and violations of company rules and regulations and which were later on made the basis of the latter's termination, were not even presented to attest under oath to the truth of their allegations nor were presented to the complainant for confrontation during the alleged investigation conducted. It is thus basic that evidence must not only be credible in itself but must be derived from credible ones. To consider these pieces of evidence in justifying or declaring the termination of herein complainant as valid would amount to opening the door for respondent or any other employers for that matter, to abuse its prerogative by simply collating reports from its employees to be used against an employee whose services it is intending to terminate in utter disregard of complainant's right to due process. We are persuaded that the dismissal of herein complainant on the basis of these unverified reports of misfeasances and malfeasances in the performance of his work

coming from his co-employees and other witnesses without any formal investigation was arbitrary and unwarranted and therefore illegal.^[11]

Likewise unconvinced, the NLRC agreed with the Labor Arbiter and resolved that:

“The only evidence offered by the respondent which purportedly show that it observed the above-cited requirement of due process is the ‘minutes of meeting, re audit conducted last August 9, 1990, subject Bonifacio Guevarra Jr.’ dated September 8, 1990 consisting of 6 short pages taken by a Ms. Marian Santos. The law is very clear. There should have been a written notice stating the particular acts committed by the complainant. He should have been given a reasonable period or time from receipt of such notice to answer the charges or allegations, after which he should have been afforded ample opportunity to be heard and to defend himself with the assistance of his representative.” (Emphasis supplied)

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Moreover, the evidence submitted by respondent-appellant which consists mostly of handwritten reports of narration of alleged offenses of the complainant by some employees and security guards, and the Joint Affidavit of TSG Leonardo de la Rosa and CIC Eduardo Padilla of the defunct PC (page 50 – record), fail to impress us. We have observed that these handwritten reports were all made during the month of September, 1991 while the alleged ‘sins’ of the complainant happened as early as December 1989, March 1990, July 1990 and so forth. These reports were all made after September 8, 1990 when the complainant was already under preventive suspension. This is highly suspicious.”^[12]

We agree with the above observations.

As correctly ruled by the NLRC:

“The law is very clear. There should have been a written notice stating the particular acts committed by the complainant. He should have been given a reasonable period or time from receipt of such notice to answer the charges or allegations, after which he should have been afforded ‘ample opportunity to be heard and to defend himself with the assistance of his representative.’”^[13] (Emphasis supplied)

Moreover, the insistence by the petitioners on the weakness of Guevarra’s case is erroneous. This Court has ruled on several occasions that, in illegal dismissal cases, the case for the employer must stand or fall on its own merits. The employer carries the burden of proof in showing just cause for terminating the services of an employee.^[14]

After a finding of illegal dismissal, it would have followed for the Court to require both reinstatement of the worker, without loss of seniority rights, and with full backwages from the time of his illegal termination, pursuant to R.A. No. 6715 amending the Labor Code.

We, however, have grave doubts on the propriety of an order of reinstatement in the case at bench. Guevarra’s culpability with respect to the alleged malfeasances and misfeasances was never settled. He might have established his innocence if not for petitioners’ failure to accord him full due process. And proof of innocence would have been sufficient to merit reinstatement. However, as we have held in *Divine Word High School vs. NLRC*:^[15]

“Nonetheless We hesitate ordering the reinstatement of private respondent Luz Ballano Catenza as a high school teacher in the petitioner high school, which is a Catholic institution, serving the educational and moral needs of its Catholic studentry. While herself innocent, the continued presence of Mrs. Catenza as a teacher in the school may well be met with antipathy and antagonism by same sectors in the school community.”

But most of all, being a branch manager of one of petitioners’ main shops, Guevarra clearly holds a key position in petitioners’ business. Such position requires the full trust and confidence of the employer in every exercise of discretion and judgment on the part of the branch

manager at least insofar as they affect the profitability and efficiency of the branch; and ultimately the entire business of the employer.

In fine, the conclusion of this case has left both parties with less than full trust and faith in each other. And this prevents the Court from ordering Guevarra's reinstatement to the sensitive position of branch manager in petitioners' organization.

As we stated in *Asiaworld Publishing House, Inc. vs. Ople*:^[16]

“If the respondent had been a laborer, clerk, or other rank and file employee, there would be no problem in ordering her reinstatement with facility. But she was a Vice President for Marketing of Asiaworld. An officer in such a key position can work effectively only if she enjoys the full trust and confidence of top management.”

Likewise, in *Sealand Services, Inc. vs. NLRC*:^[17]

“For the same reason stated in said cases, that is to prevent further delay in the execution of the decision to the prejudice of private respondent and to spare him from the agony of having to work anew with the petitioners under the atmosphere of antagonism, and so that the latter do not have to endure the continued services of private respondent in whom they have lost confidence, private respondent should be awarded separation pay as an alternative to reinstatement.”

ACCORDINGLY, the Petition is **DISMISSED**. The Resolution of the respondent NLRC dated 29 April 1992 is hereby **AFFIRMED** with the following modifications:

1. Petitioners are ordered to pay private respondent (Guevarra) his full backwages at the rate of P6,000.00 per month, from 09 October 1990 when he received the Notice of Termination up to the date of the finality of this decision.
2. Petitioners are ordered to pay private respondent his separation pay (in lieu of reinstatement), computed at the

rate of one-half month's basic salary for every year of service until the finality of this decision.

3. Attorney's fees of 10% of the total monetary award is adjudged in favor of private respondent.

SO ORDERED.

Narvasa, C.J., Regalado, Nocon and Puno, JJ., concur.

[1] Rollo, pp. 33-34.

[2] Rollo, p. 38.

[3] Rollo, p. 43.

[4] Ibid.

[5] Rollo, p. 88.

[6] Rollo, p. 89.

[7] Rollo, p. 105.

[8] Rollo, p. 133.

[9] *Baguio Country Club vs. NLRC*, G.R. No. 102397, 04 September 1992, 213 SCRA 664; *Colegio de San Agustin vs. NLRC*, G.R. No. 87333, 06 September 1991, 201 SCRA 398; *Hellenic Philippine Shipping, Inc. vs. Siete*, G.R. No. 84082, 13 March 1991, 195 SCRA 179; *Cruz vs. Medina*, G.R. No. 73053, 15 September 1989, 177 SCRA 656; *Batongbacal vs. Associated Bank*, No. 72977, 21 December 1988, 168 SCRA 600; *D.M. Consunji vs. NLRC*, No. 71459, 30 July 1986, 143 SCRA 204; *General Bank and Trust Co., vs. CA*, No. L-42724, 09 April 1985, 135 SCRA 569; *St. Luke's Hospital, Inc. vs. NLRC*, Nos. L-54068 and L-54142, 30 August 1982, 116 SCRA 240; *Coca Cola Bottlers Philippines, Inc. vs. NLRC*, G.R. No. 82580, 25 April 1982.

[10] Labor Code, Article 281. Probationary employment — . . . The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement.

[11] Rollo, pp. 104-105.

[12] Rollo, pp. 128, 130-131.

[13] Rollo, pp. 128-129.

[14] *Samahang Manggagawa ng Rizal Park vs. NLRC*, G.R. No. 94372, 21 June 1991, 198 SCRA 480; *Offshore Industries, Inc. vs. NLRC*, G.R. No. 83108, 29 August 1989, 177 SCRA 50; *Hernandez vs. NLRC*, G.R. No. 84302, 10 August 1989, 176 SCRA 267; *Philippine Associated Smelting and Refining Corp. vs. NLRC*, G.R. Nos. 82866-67, 29 June 1989, 174 SCRA 550.

[15] G.R. No. 72207, 06 August 1986, 143 SCRA 346, 350.

[16] G.R. No. L-56398, 23 July 1987, 152 SCRA 219, 227.

[17] G.R. No. 90900, 05 October 1990, 190 SCRA 347.

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