

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**ROBERTO GONZALES,
*Petitioner,***

-versus-

**G.R. No. 131653
March 26, 2001**

**NATIONAL LABOR RELATIONS
COMMISSION, PEPSI COLA
PRODUCTS, PHILIPPINES, INC.,
*Respondents.***

X-----X

D E C I S I O N

DE LEON, JR., J.:

Before us is a Petition for Certiorari^[1] seeking nullification of the Decision^[2] and Resolution^[3] of the National Labor Relations Commission (NLRC), dated June 26, 1997 and August 12, 1997, respectively, reversing the Decision^[4] dated October 15, 1996 of the Labor Arbiter who found and declared that petitioner Roberto Gonzales was illegally dismissed by private respondent Pepsi Cola Products, Philippines, Inc., (PCPPI, for brevity) and ordered his reinstatement with payment of full backwages.

The pertinent facts are as follows:

Petitioner Roberto Gonzales was an employee of private respondent PCPPI since July 25, 1989.^[5] In 1990 he was promoted to the position of Route Manager with a post at PCPPI Northbay Sales Office located in Northbay Boulevard, Manila. As Route Manager, he was tasked with the supervision and coordination of the activities of salesmen servicing the area under his jurisdiction. His service with the respondent company was abruptly interrupted on October 6, 1993 when he was served a notice of termination of his employment. At that time he was earning a monthly salary of P9,970.00.

His dismissal stemmed from alleged irregularities attributed to him as Route Manager and concurrently as dealer of Pepsi Cola products. His dealership contract with PCPPI started in 1990. Under the said contract, petitioner was extended by PCPPI a credit line of P300,000.00^[6] payable in thirty (30) days. As concessionaire or dealer, petitioner was entitled to a “concession” which is the cash equivalent of the value of empty bottles and its contents given to a dealer who met the monthly quota requirements in the sale of Pepsi Cola products. Petitioner operated under the business name of RR Store.

On November 25, 1992, petitioner as proprietor of RR Store purchased Pepsi Cola products on credit amounting to P116,182.00. The credit transaction was covered by Charge Invoice No. 365508. To cover this transaction, petitioner Gonzales issued a post-dated check in the amount of P116,182.00 payable on December 25, 1992. Petitioner calculated that his receivables from respondent PCPPI by way of “concession” amounted to P109,766.00.

On December 22, 1992 or three (3) days before his said post-dated check for P116,182.00 became due and payable, petitioner issued in favor of respondent PCPPI another post-dated check, to mature on January 4, 1993, to cover the outstanding total debt of P116,182.00.^[7] With the issuance of the new post-dated check, petitioner ordered Mr. Gerry Alhambra, PCPPI salesman servicing RR Store, to issue an official receipt^[8] in the amount of P116,182.00 to cover his account. However, issuance of official receipt for post-dated checks is contrary to respondent

PCPPI's company policy which requires that its official receipt shall be issued only for cash sales and/or currently dated checks. Nonetheless, Gerry Alhambra acceded to his superior, herein petitioner, and issued the official receipt.

When salesman Alhambra attempted to settle his account, the settlement clerk noticed that there was a discrepancy between the cash amount declared by Alhambra and the sum actually remitted. Based on the official receipt, Alhambra declared a cash collection of P116,182.00, but the amount he actually remitted was only P3,128.66. Asked to explain the said discrepancy, Alhambra admitted that petitioner Gonzales pressured him to issue the official receipt. Alhambra could not likewise present the post-dated check issued by respondent Gonzales for the reason that under the company rules and regulations, any post-dated check must be covered by a post-dated check receipt (PDCR), duly signed by Mr. Andy Roxas, the Sales Office Manager.^[9]

In another vain effort to undo the damage he had done, petitioner on December 31, 1992 issued a third post-dated check dated January 15, 1993, now covered with the supposed post-dated check receipt which, however, was signed by the petitioner himself and not by the Sales Office Manager who has the sole authority to issue the same.

In January 1993, petitioner's request for payment of his "concession" was approved, but only up to the extent of P91,000.00. Hence, petitioner paid PCPPI the following:

	Particulars	Official Receipt No.	Date	Amount
1.	Check	70945	Jan. 14, 1993	P5,000.00
2.	Cash	70945	Jan. 14, 1993	196.00
3.	Concession	70945	Jan. 14, 1993	91,000.00
4.	Empties	85430	Jan. 06, 1993	10,660.00 ^[10]
5.	Empties	85437	Jan. 10, 1993	12,400.00 ^[11]

			Total payment	P119,256.00
				=====

Upon payment of his liability, having been settled the same with an excess of P3,074.00, petitioner demanded for the return of his post-dated check from the Cashier's Department on January 15, 1993.

In view of the alleged irregularities in the above transaction, petitioner was subjected to an administrative investigation, conducted on April 16, 1993 and June 25, 1993, wherein petitioner was given the opportunity to explain his side and to defend himself.^[12]

Petitioner claimed that from the time he became a dealer in 1991, he consistently met his monthly sales quota, and that notwithstanding, he was not able to receive his "concession". As of December 1992, petitioner's concession, as per his own computation, already amounted to P109,766.00. Petitioner allegedly proposed to Mr. Efren Marquez, District Manager, that he be allowed to pay his liability of P116,182.00 using his concession in the amount of P109,766.00 plus cash money for the balance. Mr. Marquez allegedly approved petitioner's request, subject to the final approval of his unpaid "concession" by a certain Mr. Dino of PCPPI, and that he must issue a post-dated check as security or collateral, in the event his "concession" is disapproved. Petitioner then complied and accordingly, he issued a post-dated check in the amount of P116,182.00.

Private respondent PCPPI averred that petitioner's allegation that he was entitled to concessions worth P109,766.00 and that there was an agreement that the same would supposedly be credited to his outstanding account is baseless and self-serving. PCPPI declares that trade concessions are given in goods (softdrink full and empties), and not in the form of cash or credit arrangement. Thus, the post-dated check issued by petitioner was in payment of his previous purchases which had become due and demandable and not in any way related to his alleged entitlement of any concession.^[13]

In a letter dated September 30, 1993,^[14] petitioner was notified of his termination from employment on the ground of loss of confidence and of having violated the company rules and regulations, to wit:

"Group III — Frauds and Acts of Dishonesty

4. Engaging in fictitious transactions, fake invoicing, deals padding and other sale malpractices. ...

8. Breach of trust and confidence.”

Aggrieved, petitioner instituted a case of illegal dismissal, backwages, damages and attorney fees^[15] before the Department of Labor and Employment (DOLE), National Capital Region (NCR), Regional Arbitration Branch in Quezon City, and the case was assigned to Labor Arbiter Ramon Valentin C. Reyes.

On October 15, 1996, the Labor Arbiter found and declared that petitioner was denied due process when no written notice of the charges against him was received by petitioner prior to his receipt of the notice of termination. Furthermore, there was no justifiable reason for the termination of the employment of petitioner, the Labor Arbiter concluding that the imputation against petitioner was committed by the latter not as an employee but as a concessionaire of private respondent PCPPI, and that there is no showing that private respondent PCPPI suffered damage as a consequence thereof. The dispositive portion of the decision of the Labor Arbiter reads:

WHEREFORE, premises all considered, judgment is hereby rendered finding the dismissal illegal and ordering respondent to:

1. Reinstate complainant to his former position without loss of seniority rights and other benefits;
2. Pay complainant backwages from date of termination up to his actual reinstatement;
3. Dismissing the complaint against Florante Manalo for lack of merit.

All other claims are dismissed for lack of merit.

The Research and Information Unit, this Commission, is hereby directed to effect the necessary computation shall form part of this decision.

SO ORDERED.

Private respondent PCPPI then appealed the decision of the Labor Arbiter to the public respondent NLRC, and it was assigned to the Second Division. The NLRC, in its Decision, reversed the decision of the Labor Arbiter and dismissed the complaint for illegal dismissal for lack of merit. In its Order dated August 12, 1997, it denied petitioner's motion for reconsideration. The petitioner now challenges the correctness of the said Decision and Order of the NLRC in the instant petition.

Petitioner contends that public respondent NLRC gravely abused its discretion in reversing the factual findings and conclusions of the Labor Arbiter.

The factual findings and conclusions of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence. Only when the factual findings and conclusion of the Labor Arbiter and NLRC are clearly in conflict with each other is this Court behooved to give utmost attention to and thoroughly scrutinize the records of the case, more particularly the evidence presented, to arrive at a correct decision.^[16] Nowhere in the record does it show that public respondent NLRC grossly abused its discretion in arriving at its challenged Decision.

Under the Labor Code, as amended, the requirements for the lawful dismissal of an employee by his employer are two-fold, namely: (1) the procedural, and (2) the substantive. Not only must the employee be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense,^[17] but that the dismissal must be for a valid or authorized cause as provided by law.^[18]

Procedural due process requires, for validity of the employee's dismissal, that an employer must furnish the employee sought to be dismissed with two (2) written notices before termination may be validly effected. They are: (a) a notice apprising the employee of the particular acts or omission for which his dismissal is sought and; (b) a

subsequent notice informing the employee of the decision to dismiss him.^[19]

In the instant case, the evidence on record shows that contrary to the finding of the Labor Arbiter, petitioner was given ample opportunity to present his side and to defend himself against the charges. In a letter dated April 14, 1993, petitioner was directed by private respondent PCPPI to report to the Security Office on April 16, 1993 for administrative investigation. The letter reads:

TO : RM ROBERTO C. GONZALES
FROM : A.B. ESPINO
DATE : April 14, 1993
SUBJ : NOTICE OF ADMINISTRATIVE
INVESTIGATION

Cc: DRD/DRFD/FLM/TYZ/FYS/201 FILE/FILE

During the administrative investigation of Slm. Gerry Alhambra on this date at the Security Office, he alleged that sometime December 1992, you handed a piece of paper and written therein a breakdown of different packages for him to issue OR No. 85418 amounting to P116,182.00 and Charge Inv. No. 365524 amounting to P109,766.00 to be included in his loadsheet.

He further alleged that you issued on that day a UCPB check No. AUB 278849 post-dated 4 January 1993 amounting to P116,182.00 while the amount in words is One Hundred Sixteen Thousand One Hundred Eighty Two Pesos for transmittal to the Cashier.

Likewise, said above check was shown to us today when it supposedly should have been entered in our Cashier's register last January 4, 1993 and he allegedly said you handed this to him last night (April 13, 1993) to be presented during the investigation.

In view thereof, you are hereby directed to report to the Security Office at 9:00 a.m., 16 April 1993 for an administrative

investigation so that you may avail of due process and present your side with reference to the above allegation of Slm. Alhambra which is a violation of our existing Company Rules and Regulations to wit:

Group III-4: “Engaging in fictitious transactions, false invoicing, deals padding and other sales malpractices”

Group III-8: “Breach of Trust and Confidence”

Failure on you part to attend the scheduled investigation on the said time, date and place shall be construed as a waiver of your right to be heard and your case will be decided based on available evidence at hand.

A.B. ESPINO

While the letter does not show on its face that the petitioner acknowledged receipt thereof, it is undisputed that petitioner freely, voluntarily and actively participated in the administrative investigation on the charges filed against him, as evidenced by his signature affixed on each page of the minutes of the hearings conducted on April 16, 1993 and June 25, 1993. After the said investigation, petitioner received on October 6, 1993 a notice of dismissal dated September 20, 1993. Under these circumstances, we find no basis for the Labor Arbiter’s ruling that private respondent PCPPI breached legal procedure prior to the termination of the petitioner’s employment.

Substantive due process, for validity of the petitioner’s dismissal, has likewise been met by private respondent PCPPI. As aptly found by the NLRC, petitioner was separated or terminated by private respondent PCPPI from his employment due to loss of trust and confidence, which is a just and valid cause for dismissal under Article 282(c) of the Labor Code. We find the evidence adduced in this case contrary to petitioner’s claim that the questionable credit sale transaction he was charged with was in connection with his being a dealer or concessionaire of PCPPI and not as an employee thereof, and thus, there was allegedly no just and valid cause to dismiss him.

Records show that maneuvers and machinations on the questionable credit sale transaction could not have been consummated by the petitioner if he was not equipped with the knowledge, as a route manager, of how the respondent company processes these kinds of transactions. It was highly inconceivable for a mere dealer to have done what petitioner did.

First, petitioner gave himself a credit extension without proper authorization. Three (3) days before the post-dated check which he issued as payment for the purchases on credit on November 25, 1992 was about to mature on December 25, 1992, petitioner issued another post-dated check dated January 4, 1993. The second post-dated check was defective inasmuch as the amount written thereon (P116,182.00) did not match the sum written in words, that is, "ONE HUNDRED SIXTEEN THOUSAND ONE HUNDRED EIGHTY PESOS ONLY". This scheme was a definite ploy to circumvent the policy against unauthorized credit extension inasmuch as the November 25, 1992 purchase on credit was due 30 days after the delivery or on December 25, 1992.

Second, petitioner, as route manager prevailed upon salesman Alhambra, his subordinate, over whom he exercises moral and professional ascendancy to carry out his machination. Petitioner ordered and pressured salesman Alhambra in issuing Official Receipt No. 85418, for the December 22, 1992 post-dated check to cover his account. As route manager, petitioner knew fully well that the same was not sanctioned by company policy inasmuch as official receipts are issued only for cash payment and/or currently dated checks. Had that official receipt which he caused to be prepared escaped the scrutiny of and were accepted by the settlement clerk, petitioner would have evaded payment of his debt or account payable to private respondent PCPPI amounting to P116,182.00.

Third, upon the discovery by the settlement clerk of the fraudulent official receipt, petitioner issued on December 31, 1992 another post-dated check dated January 15, 1993 together with a post-dated check receipt (PDCR) signed by petitioner himself although he was not authorized to do so. A post-dated check receipt can only be issued by the Sales Office Manager of PCPPI whenever payment is made by

post-dated check. Petitioner's scheme was discovered because, as route manager, he was not authorized by respondent company to issue post-dated check receipts.

These acts of petitioner are patently dishonest and militate against the rules and regulations of his employer, herein private respondent company. Hence, the loss of trust and confidence in him by private respondent PCPPI.

Under Article 282(c) of the Labor Code, an employer can terminate the employment of the employee concerned for "fraud or willful breach by an employee of the trust reposed in him by his employer or duly authorized representative." The loss of trust and confidence must be based on the willful breach of the trust reposed in the employee by his employer. Ordinary breach will not suffice. A breach of trust is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.^[20] Loss of confidence, as a just cause for termination of employment, is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence. He must be invested with confidence on delicate matters such as the custody, handling, care and protection of the employer's property and/or funds. But in order to constitute a just cause for dismissal, the act complained of must be "work-related" such as would show the employee concerned to be unfit to continue working for the employer.^[21]

In the present case, petitioner is not an ordinary rank-and-file employee. He is a Route Manager, a managerial level position as we settled in the case of United Pepsi-Cola Supervising Union (UPSU) vs. Laguesma.^[22] The test of managerial status has been defined as an authority to act in the interest of the employer, which authority is not merely routinary or clerical in nature but requires independent judgment.^[23] As managerial employee, petitioner is tasked to perform key and sensitive functions, and thus he is bound by more exacting work ethics.^[24]

As a general rule, employers are allowed a wide latitude of discretion in terminating the employment of managerial personnel or those who, while not of similar rank, perform functions which by their

nature require the employer's full trust and confidence. Proof beyond reasonable doubt is not required. It is sufficient that there is some basis for loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.^[25] This must be distinguished from the case of ordinary rank-and-file employees, whose termination on the basis of these same grounds requires a higher proof of involvement in the events in question; mere uncorroborated assertions and accusations by the employer will not suffice.^[26]

Private respondent PCPPI has sufficiently shown that petitioner has become unworthy of the trust and confidence demanded of his position. Petitioner betrayed his employer's trust and confidence when he instigated the issuance by his subordinate salesman of an official receipt for his post-dated check on December 22, 1992 whereby he (petitioner) could have evaded payment to private respondent PCPPI of his debt amounting to P116,182.00. These acts committed by petitioner adversely reflected on his integrity. As Route Manager he disregarded the private respondent company's rules and regulation prohibiting the issuance of official receipt for post-dated check payment unless the same is done by the Sales Office Manager.

The fact the private respondent PCPPI ultimately suffered no monetary damage as petitioner subsequently settled his account is of no moment. This was not the reason for the termination of his employment in the respondent company but the anomalous scheme he engineered to cover up his past due account, which constitutes a clear betrayal of trust and confidence.

Premises considered, we find that the petitioner is indeed unfit to continue working for private respondent PCPPI. We therefore hold that public respondent NLRC committed no grave abuse of discretion in reversing the decision of the Labor Arbiter and in dismissing the complaint for illegal dismissal.

WHEREFORE, the petition is hereby **DISMISSED** for lack of merit, and the assailed Decision and Resolution of public respondent National Labor Relation Commission dated June 26, 1997 and August

12, 1997, respectively, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

**Bellosillo, Mendoza and Buena, JJ., concur.
Quisumbing, J., is on leave.**

- [1] Under Rule 65 of the 1997 Revised Rules of Court.
- [2] Penned by Commissioner Rogelio I. Rayala and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay in NLRC NCR CA No. 012839-97; Rollo, pp. 15-25.
- [3] Rollo, p. 26.
- [4] Penned by Labor Arbiter Ramon Valentin C. Reyes, NLRC, NCR, Regional Arbitration Branch, Quezon City in NLRC-NCR-00-10-06686-93, pp. 28-36.
- [5] In his pleadings, petitioner Gonzales alleged that private respondent PCPPI hired him on September 1985. However, private respondent PCPPI averred that it was incorporated only on July 25, 1989 and prior to that date and beginning March 1985, Pepsi-Cola Distributor of the Philippines was the franchisee and before the latter's dissolution, each and every employee was awarded separation pay.
- [6] Later reduced to P150,000.00.
- [7] The amount indicated in the post-dated check did not match the sum written in words. Annex "I" of Position Paper for Respondent, Original Records, p. 26.
- [8] Annex "2" of Position Paper for Respondent, Original Records, p. 27. As claimed by private respondent, Official Receipts are issued only for cash sales and/or currently dated checks.
- [9] Original Records, pp. 15-19.
- [10] Annex "D" of Complainant's Position Paper; Original Records, p. 61.
- [11] Annex "C" of Complainant's Position Paper; Original Records, p. 61.
- [12] Original Records, pp. 30-38.
- [13] Original Records, pp. 80-86.
- [14] Original Records, pp. 39-40.
- [15] NLRC NCR Case No. 00-10-06686-93, Original Records, p. 2.
- [16] *San Miguel Corporation vs. NLRC*, Third Division, 297 SCRA 277, 281 (1998).
- [17] *Favila vs. National Labor Relations Commission*, 308 SCRA 303, 315 (1999).
- [18] Under Article 282 of the Labor Code, as amended.
- [19] *Legahi vs. National Labor Relations Commission*, 318 SCRA 446, 453 (1999).
- [20] *Atlas Consolidated Mining & Development Corp. vs. NLRC*, 290 SCRA 479, 488 (1998).
- [21] *Sanchez vs. National Labor Relations Commission*, 312 SCRA 727, 735 (1999).

- [22] 288 SCRA 15 (1998).
- [23] Magos vs. National Labor Relations Commission, 300 SCRA 484, 490 (1998).
- [24] Del Val vs. National Labor Relations Commission, 296 SCRA 283, 289 (1998).
- [25] Deles vs. National Labor Relations Commission, G.R. No. 121348, March 9, 2000.
- [26] Coca-Cola Bottlers Philippines Incorporated vs. NLRC, 172 SCRA 751, 757 (1989).

Philippine Copyright © 2005
ChanRobles Publishing Company
www.chanrobles.com