

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**GRAND MOTOR PARTS  
CORPORATION,**  
*Petitioner,*

*-versus-*

**G.R. No. L-58958  
July 16, 1984**

**THE MINISTER OF LABOR, THE  
REGIONAL DIRECTOR, MINISTRY OF  
LABOR, REGION VI, and NARCISO  
BELICENA, JR.,**  
*Respondents.*

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**DECISION**

**GUERRERO, J.:**

This is a Petition for *Certiorari* assailing the Order of the Minister of Labor which affirmed the Decision of the Regional Director of Region VI dated November 27, 1980 directing the reinstatement of the private respondent Narciso Belicena, Jr. as Branch Manager of the petitioner, Grand Motor Parts Corporation, Iloilo Branch, Iloilo City, "with backwages from the time he was dismissed (August 31, 1980, the date complainant received the letter of termination) up to the time he is actually reinstated without loss of seniority rights, benefits, and other privileges under existing laws, decrees, and agreement,

verbal or written, entered into by the parties at the time of hiring.”

Since the above decision of the Regional Director was rendered purely on the basis of the position papers of the petitioner corporation and the private respondent, without hearing nor cross-examining the parties, and petitioner claims grave abuse of discretion committed in public respondents’ order for the reinstatement of the Branch Manager, We gather the antecedent facts from the respective position papers of the parties.

In the complaint filed by Narciso Belicena, Jr. against the Grand Motor Parts Corporation and Fred Cisneros as Personnel Manager dated September 4, 1980 filed with the Regional Office No. VI, Labor Relations Division, Ministry of Labor and Employment, the complainant charged respondents the following causes of action:

- “1. Illegal dismissal without justifiable reason or report from the Ministry of Labor & Employment — August 25, 1980;
2. Reinstatement with backwages — P3,000.00 — monthly salary;
3. Transportation allowance-as gasoline expenses — Total P300.00 at P100.00 per week since Aug. 18 to Sept. 5/80;
4. Non-payment of 13th month bonus — Total P1,250.00 for 5 mos. at P3,000.00 monthly salary;
5. 1% share in net profit at the end of the year — P25,000.00.”

According to the position paper submitted by Branch Manager Belicena, Jr., the “facts concerning (his) hiring and subsequent dismissal by the Grand Motor Parts Corp.” are:

“Just before Christmas of 1979, I met Mr. Alfredo Cisneros, who was introduced as the Acting Branch Manager of Grand Motor Parts Corporation, Iloilo Office. In the course of our conversation, he told me they need a man, preferable a CPA, to manage the Iloilo Office since he is really based in Cebu. When I told him that I am a CPA, he offered me the job. I said I will

seriously consider his offer. Then, he interviewed me. In all honesty, I told who I am.

1. That I am presently connected with Warner, Barnes & Co., Inc. — Iloilo Office.
2. That I joined Warner, Barnes in 1966 and rose from the rank of bookkeeper to Chief Accountant and to Finance Officer, the present position I am holding in a span of 14 years.
3. That I graduated from the University of the East in 1962 and had been working since I started college work.
4. That my present salary is P2,408.00 per month.
5. That my fringe benefits are as follows:
  - a. Provided with company car
  - b. No limit in gasoline
  - c. No limit in repair expense
  - d. Free medical, dental, hospitalization, medicines without limitation
  - e. That I am a practicing CPA with monthly retainer's fees of P350.00
  - f. That I hold unofficially the position of No. 2 man in the Branch and such is a signatory on all checks
  - g. That I have never been involved in any acts of dishonesty or disloyalty to the company in my fourteen (14) years of work

h. That they are free to make inquiries with Warner, Barnes as to the validity of the information I am giving him.

In March 1980, Mr. Cisneros followed up his offer and this time in a more official manner with the following benefits.

1. That I will be hired on a regular basis, not passing thru the probationary period since I more than qualify for the position
2. My monthly basic pay is P3,000.00.
3. My entertainment allowance is P1,000.00
4. Free car with unlimited gasoline and repair expenses
5. That I will also have free hospitalization, dental, medical and medicines without limit
6. That aside from the usual 13th month pay, I will also get a 1% share on the net profit of the Branch at the end of a 12-month operation. The Branch is averaging P600,000.00 as its net profit for a 12-month operation or at least P5,000.00 a month.
7. That I can only be terminated if in case I become grossly incompetent and dishonest.

With all these agreements and benefits, I accepted the offer and forsook my 14 years service with Warner, Barnes & Co., Inc.

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In April 1, 1980, I started working as Branch Manager of Grand Motor Parts Corporation and also of Grand Tire Recapping Plant, Iloilo Offices.

In April 22, 1980, I had a serious misunderstanding with Mr. Benito Uy. I was blamed for a misdemeanor by a probationary

salesman and for which I was not aware nor told about it. Since, I believed that I was judged rashly, I called Mr. Cisneros in Cebu and told him that I am leaving the company since I have now misgiving concerning management's maturity and intelligence in handling problems. But, he asked me to stay on since he will settle things with Mr. Uy in Bacolod. Since, I do not want to put Mr. Cisneros, the company in a bad light I stayed but intent on resigning upon Mr. Cisneros's arrival from Bacolod. Mr. Cisneros arrived on April 26, 1980 and told me that Mr. Uy understood the whole situation and I must understand the characters of my superiors. He prevailed me to stay on. He fired the erring salesman because the company would rather fire the salesman than lose me since it is hard to look for professional men. To show his sincerity, he followed me home. There, he told my wife that she should not feel insecure since I am now working with a very stable and fraternal company. That, again, I will never be terminated unless I am highly incompetent and dishonest. So, I stayed on.

X X X

On August 18, 1980, after Mr. N. Garcia and company left Iloilo, I was relieved of some of my rights and privileges as Branch Manager of GMPC and GTRC, Iloilo Offices. Mr. A. Cisneros executed these relief.

On August 31, 1980 came the letter of termination signed by Mr. Alfredo Cisneros, now the Personnel Manager. It was not signed by Mr. N. Garcia, the President.”

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On the other hand, the position paper submitted by the Grand Motor Parts Corporation through counsel, states the following:

“There were several persons who applied as manager, including the complainant herein. Mr. Cisneros chose the complainant to take over the Iloilo Branch, subject to certain terms and conditions as herein discussed.

The respondent is award that complainant in his fourteen years of service with Warner Barnes and being a Certified Public Accountant failed to get a promotion to the rank of Manager.

As a measure of protection, considering the responsibility and the amount of the investments attached to the job, the respondent gave the complainant a 4 to 6 months probation or observation period. This period of time was expressly agreed upon by the complainant and Fred Cisneros to determine the standard of complainant's managerial ability, competency and excellence. It was spelled out to the complainant that he may not qualify for the job based on his performance during the 4 to 6 months period running the risk of not being able to qualify for the job and lose employment in the process.

Mr. Cisneros clarified to the complainant that if within the observation or probation period he failed to qualify as branch manager he will be refused final appointment and the respondent will be forced to terminate him. It was precisely for this reason that complainant could not produce any written appointment because the permanency of his position is still to be determined by the respondent corporation after the lapse of the six months probationary period.

As a matter of fact, complainant as of April 1980 has not yet resigned from Warner Barnes hoping that in the event of his disqualification from the respondent, he will have an opportunity to return to his job at Warner Barnes, as Accountant or Finance Officer.

Within the said probation period, Fred Cisneros was the one in charge in the supervision of the complainant's performance. Mr. Cisneros has to stay in Iloilo to give management advice to the complainant, insuring that proper managerial policies are laid down.

## II. Incidents after April 1, 1980:

A. Sometime in the month of May, 1980, a salesman of the respondent named Hernaldo Porquez figured in a vehicular

collision causing damage to the respondent's delivery 'pick-up' vehicle. This incident was brought to the attention of the Cebu main office through the cashier of the Iloilo Branch three days after the incident. The incident has caused damage to the respondent corporation assessed to more than Two Thousand Pesos (P2,000.00).

When Benito Uy, a member of the Board of Directors and Treasurer of the said respondent corporation, inquired from the complainant as to the details of the vehicular incident and the remedy or measures taken by the Iloilo Branch, the complainant claimed lack of knowledge about the incident. The complainant likewise failed to promptly provide administrative discipline to the erring employee.

The posture of ignorance adopted by the complainant has shocked the Cebu head office. For a manager ignorant of what happened to the activities of his erring personnels causing damage to the property of the company place the business operation of the company in grave jeopardy.

On account of this incident, the complainant was reprimanded by the Cebu Head Office and Fred Cisneros has to go back to Iloilo to enable the complainant manage the Iloilo Branch satisfactory to the head office. As noted, this incident occurred during the observation period as previously mentioned.

### III. Complainant's resignation with Warner Barnes:

Even as of May, 1980 while complainant was the performing his duties as Branch Manager, he was still connected with Warner Barnes where he was employed as some sort of Accountant or Finance Officer. He informed Mr. Cisneros that just in case he could not qualify he will go back to Warner Barnes. Unfortunately, Warner Barnes pressed the complainant to finally decide whether he will stay with Warner Barnes or to resign and join the respondent corporation. Thus facing the risk of not being qualified he chose to stay with the respondent. After all, the benefits and privileges that he enjoys is much better than that of Warner Barnes.

With that decision, the complainant tendered his resignation with Warner Barnes, willing to assume the risk in connection with his new job as manager.

IV. Complainant repeatedly failed to follow company policies and instructions from Head Office:

In the course of complainant's operation, he was required to submit promptly a monthly Income or Loss Statement and Comparative Projection and Actual Sales Report. The prompt submission of these reports are mandatory considering that his performance should be closely monitored while under probation.

These two reports were not submitted promptly to the Head Office of respondent Corporation, to the extent that on several occasions, he was warned of his apparent neglect and inability to comply with this basic instructions. Considering his lack of managerial experience, the respondents could not yet afford to leave everything to the complainant the Iloilo Branch without the closest supervision on his managerial ability.

In spite of series of reminders to prepare and submit the said documents, he miserably failed to submit the same. Finally he was called by Nemesio Garcia, the President of the respondent corporation, to come to the head office in Cebu in order to evaluate his performance and to produce the latest monthly Income and Loss Statement and Comparative Projection and Actual Sales Report. He was likewise instructed to bring with him the Iloilo Branch Accountant, who will provide the basic information on the operation of the Iloilo Branch. He was specifically informed by Mr. Cisneros that he will be ready to present facts relative to average monthly expenditures, sales, collection, account receivables, minimum and maximum inventory and all other matters related to the operation of the Iloilo Branch.

The meeting took place in the presence of the President and two Vice-President. When complainant was asked basic information

about company operations of the Iloilo Branch, the complainant failed to provide accurate and necessary answers and could not produce the necessary data available. The President and two Vice-President were so disappointed that they walked out of like conference. Mr. Cisneros was then called up and he was made to explain to the President why the complainant selected as probable manager could not provide basic information as to the operation of Iloilo Branch, inspite of his stature as Certified Public Accountant.

The President and the members of the Board of Directors began to feel apprehensive that they are taking big risk in entrusting a multi-million peso investment to a man who could not comply simple routinary information vital to management.

Again in August, 1980, when the President and the Vice-President went to Iloilo in an inspection trip, supervising the operation of the Iloilo Branch, the complainant could not present the business condition of the Iloilo Branch. Information sought by the President such as Sales, Cash and Charges Collection, Budgeted and Actual Sales, Projection, Accounts Receivables could not be obtained and no datas to this effect were provided. Facts and reports were in disarray.

#### V. The Performance of the Complainant:

In the Comparative Performance Report dated July 8, 1980, on the operation of Iloilo Branch for the month of June and May, 1980, the cash sales of the Iloilo Branch went down to P91,318.41 for June, 1980 as compared to the sales for the month of May, 1980 in the sum of P174,697.77. The lowering of the sales could have been averted had the necessary reports been submitted on time to assess the performance of the complainant. This sudden dip in the sales of the Iloilo Branch was not properly explained by the complainant.

Extension of personal accounts, were committed by the complainant in blatant violation of company policy. It was repeatedly stressed to the complainant that no personal accounts will be extended by the Iloilo Branch unless served

with clearance from the Head Office in Cebu, considering the unpaid collections accumulated by the former manager of the Iloilo Branch.

The personal accounts extended by the complainant were as follows:

(List omitted.)

As of November 6, 1980, these personal accounts extended by the complainant produce delinquent accounts amounting to P18,435.80.”

Subsequently attached to the above position paper of the Grand Motor Parts Corporation is the letter of termination addressed to the complainant Branch Manager which reads:

“25 August 1980

Mr. Narciso Belicena, Jr.  
Grand Motor Parts Corporation  
Iloilo City

Dear Nonong:

When you applied for the position of Branch Manager, our understanding was clear that you will be on provision (sic) for a period of between four to six months, within which, you may quit with either verbal or formal notice if you should not desire to continue.

Likewise, the Management reserves the right to terminate your services, if, upon observation, the same is not satisfactory. It was emphasized that you were taking the risk of possibly losing your job.

Management’s observation indicate that you do not qualify for the position. It is with regret that based on our agreement upon employment, we have to terminate your services effective immediately.

Upon receipt of this formal notice, kindly turn over to Mr. Sammy Gang the Iloilo Branch.

Very truly yours,

GRAND MOTOR PARTS CORPORATION  
(SGD.) FRED CISNEROS  
Personnel Manager”

On November 13, 1980, complainant Branch Manager filed his answers to the position paper of the corporation, reiterating that he was hired as Branch Manager but not on an acting capacity and on the terms and conditions recited in his original position paper; that his resignation from Warner Barnes took effect on May 1, 1980 and he started working with Grand Motor Parts Corporation on April 1, 1980 as he was on a 30-day vacation/sick leave from Warner; that the mishap involving the company's vehicle which was used without his permission and knowledge could not be blamed upon him; that the alleged reports which he failed to send were not reminded to him, verbally or in writing; that his sales for the period April to August, 1980 is higher compared to that for the same period in 1979; that the alleged accounts remaining unpaid as of November 6, 1980 would have been collected in full if he were still the Manager; that if ever there was no written contract on his employment on a regular basis, it was because he was now a regular employee and contracts are given only to those who will pass the probationary period and the rank-and-file employees, not to those managerial ones.

He further stated and We quote: “I trusted management. Besides, if I will pass through the probationary period, I will reject the offer. Furthermore, I was employed, very secure and happy in my job when Mr. Cisneros offered me the job. I had a very nice, comfortable, secure and well-paying job at Warner, Barnes and enjoying certain privileges and fringe benefits which other companies in Iloilo City does not offer. Mr. Fred Cisneros ‘pirated’ me from Warner, Barnes.”

To further support his stand, Belicena submitted: (1) Letter of Warner, Barnes & Co., Inc. dated April 28, 1980 accepting his resignation effective May 1, 1980; (2) Letter of transmittal dated

August 19, 1980 of all the reports as discussed thoroughly with Mr. Fred Cisneros on August 18, 1980; (3) Letter of April 29, 1980 requesting for written instructions. This was not answered; (4) Letter of July 7, 1980 from head office addressing him as Manager; (5) Certification from BF Goodrich, Bacolod City; and (6) Profit and Loss Statement of Grand Motor Parts Corp. for the period April to June, 1980 showing net profit of P196,267.85 for three months operation of P65,422.63 per month.

As earlier indicated, the Regional Director, Nazareno Q. Bedia, ruled in favor of the Branch Manager, ordering his reinstatement to his former position with backwages without loss of seniority rights, benefits and other privileges under existing laws, decrees and agreements, verbal or written, entered into by the parties at the time of hiring. He held that “(f)rom the quantum of evidence, We are of the opinion, and so hold that complainant’s appointment was permanent in nature. Complainant was ‘pirated’ so to speak. He was persuaded to leave his position as the No. 2 official of Warner, Barnes Co., Inc., Iloilo Branch, where he has already served for 14 years. For complainant to leave an already lucrative position for another job which is not permanent would be highly incomprehensible. The argument by respondent that complainant was motivated by the fact that he wants to be No. 1 in the office is pure conjecture. Complainant rose from the ranks to the No. 2 position. It is safe to assume that in the ordinary course of events he would rise to the No. 1 position in the office where he was employed.”

On the issue whether complainant was dismissed for cause or not, the Regional Director held that there were no such acts or omissions committed or omitted by the complainant as charged by the corporation; that the assertion of respondent corporation that complainant could not prepare the financial reports promptly is unbelievable considering that complainant is a financial officer of a marketing firm, Warner Barnes & Co., Inc.; that as regards his sales performance, complainant’s assertion is explicit in that his sales for the period of his employment is bigger than the sales in the previous year covering the same period; that the alleged extension of credit against company policy is not backed up by even an iota of evidence since no policy, which was made known to complainant was presented; that complainant was not neglectful nor incompetent in

respect to the wrong doing of a personnel of the Iloilo Branch who later tendered his resignation and the incident settled.

The Grand Motor Parts Corporation appealed the decision of the Regional Director to the Ministry of Labor and in his order dated October 22, 1981, the Deputy Minister, Vicente Leogardo, Jr., by authority of the Minister, affirmed the order appealed from and dismissed the appeal of the Corporation for lack of merit.

According to the Deputy Minister's order now under review, respondent's contention that complainant was hired on a temporary or probationary basis for a period of four to six months and as such, his services could be terminated anytime and that his dismissal on the main is premised on his failure to qualify for the job of manager and inability to manage the branch, "is without merit. The fact that complainant was enticed and pirated by respondent from the Warner Barnes Co., Inc. and given higher pay and benefits is an eloquent proof of respondent having recognized complainant's technical qualification and experience, which exempt him from the probationary provisions of the Labor Code. The grounds for dismissal cited by respondent are in the nature of generalizations and do not constitute justifiable causes which should be substantiated by proof of specific acts of managerial incompetence. Considering that complainant was hardly four months in the service, we are more inclined to believe that any shortcoming on his part perceived by the respondent was attributable to his newness on the job for which a reasonable time for orientation and adjustment must be permitted, considering the magnitude of his duties and responsibilities as Branch Manager."

Petitioner now comes to Us and assails the order of the Deputy Minister of Labor on the ground that:

- I. The petitioner was denied due process when it was ordered to reinstate private respondent with backwages without hearing with opportunity to cross-examine and submit evidence on the basis merely of position papers, inspite of an agreement by the parties that summary investigation will be conducted thereafter; and

II. Grave abuse of discretion was committed against petitioner when it was ruled that private respondent cannot be dismissed during the period of probation and on the fifth month he was dismissed for failing to pass probation, and the Labor Minister admitted in his order that private respondent had shortcomings.

The more important and substantial issue that We must first resolve is whether private respondent's employment as Branch Manager was temporary or probationary, and not regular and permanent.

It is quite significant and very striking at the outset that Belicena, private respondent herein, did not and could not present any written proof of his appointment or employment as regular and permanent Branch Manager of petitioner corporation, which he assumed as of April 1, 1980. It is admitted by him that it was only on April 28, 1980 that he resigned from his previous position as Finance Officer of Warner, Barnes & Co., Inc. effective May 1, 1980, which fact lends strong support to petitioner's contention that the hiring of Belicena was probationary for a period of four to six months. For otherwise, Belicena, if his appointment was regular and permanent as of April 1, 1980, would have resigned immediately from Warner, Barnes & Co. on April 1, 1980 because by then, he was assured of a permanent tenure. But he had to send his resignation letter on April 28, 1980, hence, it is only logical and reasonable to conclude that before April 28, 1980, he was not yet sure of his status in the petitioner corporation, whether he would qualify for the job as Manager and thus be hired permanently, or not.

Private respondent's claim that if there was no recent contract on his employment on a regular basis, it was because he was now a regular employee and contracts are given only to those who will pass the probationary period and the rank-and-file employees, not to those managerial ones, is not only unsupported by the evidence but also contrary to the usual and customary business practices, especially in multi-million enterprises as the petitioner corporation herein. And considering the magnitude of its sales and operations, petitioner corporation must have taken the necessary precautions to test the qualifications, ability and performance of its Branch Manager through a probation period before he is hired permanently and given

liberal terms and benefits, including 1% of the net annual proceeds in sales. Moreover, private respondent is a CPA, Finance Officer, and No. 2 man in Warner, Barnes & Co. For the security of his tenure in his new position, it was his duty, at least he owed it to himself, to have insisted on a written contract of regular and permanent employment as Branch Manager, but he did not. The conclusion is inevitable that his hiring was temporary.

We find merit in the contention of the petitioner that “private respondent had not been hired as manager of any firm before his employment with petitioner. The highest previous position he attained was that of Finance Officer. His position with petitioner’s Iloilo Branch was his first as Manager. Moreover, Warner, Barnes & Co., private respondent’s previous employer, and petitioner are engaged in different kinds of business. Managing petitioner’s Iloilo Branch was an entirely new experience for private respondent. It was, therefore, necessary for private respondent to undergo a period of probation to test his qualifications, skill and experience.” Indeed, the employer has the right or is at liberty to choose as to who will be hired and who will be declined. It is within the exercise of this right to select his employees that the employer may set or fix a probationary period within which the latter may test and observe the conduct of the former before hiring him permanently. “The right of a laborer to sell his labor to such persons as he may choose is, in its essence, the same as the right of an employer to purchase labor from any person whom it chooses. The employer and the employee have thus an equality of right guaranteed by the Constitution. ‘If the employer can compel the employee to work against the latter’s will, this is servitude. If the employee can compel the employer to give him work against the employer’s will, this is oppression.’” (Mills vs. United States Printing Co., 99 App. Div., 605; 91 N.Y.S. 185, 189-192, cited in Pampanga Bus Company, Inc. vs. Pambusco Employees’ Union, Inc., 68 Phil. 541).

The finding of both the Regional Director and the Deputy Minister of Labor that private respondent was “pirated” is not supported by the evidence on record. On the contrary, the records disclose that Belicena applied for the position as Branch Manager on March 13, 1980 as shown in his application marked Annex “F” to the petition, pp. 41-43, rollo, wherein he stated that the starting salary desired was P3,250.00. Even assuming that he was induced to work with the

petitioner corporation, the inducement is a normal and legitimate practice in business circles and concerns in the face of stiff competition to net more sales and increase the market for their products.

The next issue to be resolved is whether private respondent, being a probationary Branch Manager, was terminated for just cause. It is petitioner's contention that Belicena was terminated during his probationary period because (a) he failed to submit promptly the monthly Income and Loss Statement, Comparative Projections & Actual Sales Report; (b) the Comparative Performance Report dated July 8, 1980 on the operation of the Iloilo Branch for the month of June and May, 1980, the Cash Sales of the Iloilo Branch went down to P91,318.41 for June, 1980, as compared with the sales for the month of May, 1980 in the sum of P174,697.77; (c) Belicena in violation of company policy and without clearance from the head office in Cebu, extended personal accounts in favor of 15 persons which as of November, 1980 produced delinquent accounts amounting to P18,435.80; and (d) Belicena claimed lack of knowledge of the vehicular accident caused by a subordinate and failed to provide prompt administrative disciplinary action against the erring employee.

The answers of Belicena to the above charges submitted in his position papers dated October 22, 1980 and November 13, 1980 hereinabove cited, indicate, to Our mind, inadequacy, if not inefficiency in the discharge of his duties as Branch Manager. His letter dated August 19, 1980 to the President of petitioner corporation enclosing (1) Actual Sales and Collection for GMPC from Jan.-July, 1980; (2) Cash and Charge Sales for GMPC from Jan.-July, 1980 compared to Budget, (3) GMPC – Financial Statement from January to June 1980, (4) GMPC Trial Balance as of June 30, 1980; (5) Monthly breakdown of our expenses from January to June 1980; (6) Our GTRC Report on actual sales and collection, January-July 1980; (7) Our GTRC report on Charge and Cash Sales as compared to Budget, clearly prove and demonstrate his failure to submit monthly reports. The reports submitted by him in the cited letter are for the seven months period of January to July, 1980. That a monthly report of operations is essential to the business of the petitioner cannot be

evaded or ignored by a Branch Manager, for the viability of its business life may well depend on these monthly reports.

Again, private respondent's letter-request dated April 29, 1980 requesting "a. My specific jobs and responsibilities and limitations, as well; b. Our company's accounting policies and procedures and the monthly reports and deadlines; c. Our company's policies and procedures in the extension of CREDIT and approval of CREDIT LIMITS," simply shows that after being on the job as Branch Manager for nearly a month (he joined the corporation on April 1, 1980), Belicena has not shown any effort or initiative to familiarize himself with his duties and obligations, although petitioner corporation submits that a copy of the company brochure containing the requested data was given him (See Annex "1", pp, 106-131, rollo). Further, the fact that the erring salesman involved in the vehicular accident resigned afterwards does not absolve the Branch Manager for his failure to exercise supervision over his subordinates and to impose discipline over him. Neither can he escape responsibility for extending personal accounts to some 15 individuals in violation of a company policy by citing the letter of the Vice President/General Manager of petitioner corporation (Annex "K", rollo, p. 133) which refers to the corporate account of Asturias Sugar Central to the corporation.

The records further disclose that petitioner's Vice President/General Manager called the attention of Branch Manager Belicena in his letter dated July 7, 1980 (Annex "K" to the petition, records, p. 133) that "(h)is June sales is only about 50% of our target. Can we not improve that performance this duly?" This in effect proved that the Branch Manager was not discharging his duties to the satisfaction of the management.

In fine from the documentary evidence on record, We hold that petitioner has clearly and convincingly established that the private respondent failed to pass the probationary period for the position of Branch Manager, and for lack of confidence, petitioner was justified in terminating or dismissing private respondent herein. As the respondent Deputy Minister of Labor has admittedly confirmed in the assailed Order, the "shortcoming on his (Belicena) was attributable to his newness on the job."

Recent decisions of this Court on the dismissal of managerial employees have laid down the doctrine that under Policy Instructions No. 8 of the Secretary of Labor “the employer is not required to obtain a previous written clearance to terminate managerial employees in order to enable him to manage effectively.” (Associated Citizens Bank vs. Ople, L-48896, Feb. 24, 1981, cited in Bondoc vs. People’s Bank & Trust Company, 103 SCRA 599). In St. Luke’s Hospital, Inc. vs. Minister of Labor, 116 SCRA 240, We held that “it looks to Us more practical and proper to leave things as they are instead of compelling petitioner to reinstate in a sensitive position one whose attitude could per chance spell not only more financial difficulties to petitioner but also possible inadequacies in the required dietary standards it has to maintain for its patients. Petitioner does not have to wait ‘for one more serious act of insubordination and disrespect to express instructions of management — (which would warrant or) mean forfeiture of [her] right to employment with petitioner.’”

Under the law, Article 282 of the Labor Code, a probationary employee may be terminated after six months for a just cause or when he fails to qualify as a regular employee, to wit:

“ARTICLE 282. Probationary Employment. — Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. 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 at the time of his engagement. An employee who is shown to work after a probationary period shall be considered a regular employee.”

It is true that mere allegation of loss of confidence by employer on his employee is not sufficient cause for his dismissal. But loss of confidence is a valid ground for dismissing an employee, and proof beyond reasonable doubt of the employee’s misconduct is not required to dismiss him of this charge. It is sufficient if there is some basis for such loss of confidence. (Central Textile Mills, Inc. vs. National Labor Relations Commission, 90 SCRA 9). While a

managerial employee may be dismissed merely on the ground of loss of confidence, the matter of determining whether the cause for dismissing an employee is justified on ground of loss of confidence, cannot be left entirely to the employer. Impartial tribunals do not rely only on the statement made by the employer that there is “loss of confidence” unless duly proved or sufficiently substantiated. (De Leon vs. National Labor Relations Commission, 100 SCRA 691).

In the case at bar, We are satisfied that petitioner has valid grounds to charge its Branch Manager with loss of confidence by reason of the overall performance he has demonstrated within the probationary period which showed that he is not qualified to be the regular or permanent Branch Manager of petitioner corporation in Iloilo City. His dismissal does not appear to Us as arbitrary, fanciful or whimsical. In the last and ultimate analysis, the prerogative and judgment to hire employees under terms and conditions designed to achieve success in its business activities belongs to management which may not be unduly impaired, limited or restricted. We, therefore, rule that public respondents committed grave abuse of discretion in ordering the reinstatement of private respondent without substantial evidence in support thereof.

With the resolution of the issue under consideration in favor of the petitioner corporation, We deem it unnecessary to discuss and resolve the assailment of the petitioner that it was denied due process in the proceedings before the Regional Director.

**WHEREFORE, IN VIEW OF ALL THE FOREGOING**, the Order of the Deputy Minister of Labor dated October 22, 1981 is hereby **REVERSED** and **SET ASIDE**. No costs.

**PETITION GRANTED.**

**SO ORDERED.**

**Makasiar, Aquino, Concepcion, Jr., Abad Santos, Escolin and Cuevas, JJ., concur.**