

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**JO CINEMA CORPORATION and
MICHAEL JO,**
Petitioners,

-versus-

**G.R. No. 132837
June 28, 2001**

**LOLITA C. ABELLANA and NATIONAL
LABOR RELATIONS COMMISSION,**
Respondents.

X-----X

D E C I S I O N

BUENA, J.:

The Decision^[1] dated November 26, 1997 of respondent National Labor Relations Commission (NLRC) in NLRC Case No. V-0170-97, is being impugned in this present petition for certiorari. The assailed decision affirmed the findings of the Labor Arbiter that private respondent Lolita Abella was illegally dismissed from the service and ordered petitioner to pay complainant the amount of P115,420.79 representing separation pay and full backwages.

Petitioner is a duly organized corporation engaged in the movie business. Sometime in September 1997, private respondent was employed as theater porter.

On November 11, 1994, petitioner issued a Memorandum^[2] reminding all ticket sellers not to encash any check from their cash collections and to turn-over all cash collections to the petitioner.

On August 4, 5, 6 and 7, 1995, private respondent encashed, on behalf of her friend Luzviminda Silva, four (4) Banco del Norte Checks^[3] amounting to P66,000.00, with Emperatriz Ynrig, ticket seller of petitioner, assigned at Ultra Vistarama and Seven Arts Theater. When the said checks were deposited to the account of the petitioner, they were dishonored for insufficiency of funds.

Consequently, on August 15, 1995, private respondent was sent a show-cause memorandum requiring her to explain why no disciplinary action should be taken against her relative to the checks in question,^[4] which she failed to comply. She was likewise placed under preventive suspension for a period of twenty (20) days or until September 4, 1995.^[5]

On August 22, 1995, petitioner directed private respondent to appear and present her side at the administrative investigation scheduled on August 26, 1995.^[6] Private respondent attended the said investigation where she admitted to have encashed the checks without petitioners' permission.^[7]

While the case was being deliberated upon by the petitioners, private respondent on September 1, 1995, filed a pro forma complaint^[8] for illegal dismissal and non-payment of benefits before the Regional Arbitration Board No. VII of the NLRC, Cebu City, which was docketed as RAB-VII-09-0938-95. Private respondent claims that on the day she was suspended, Atty. Tito Pintor, Jr., original counsel for petitioners, summoned her to his office and was advised to resign and pay the bounced checks' amount which respondent vehemently protested. On that very same day she was told that she was dismissed from the service.^[9]

Petitioners denied the allegations and argued that private respondent was not dismissed but merely preventively suspended for twenty (20) days. It added that even assuming that private respondent was dismissed, the dismissal was for a valid cause. Private respondent

violated a company policy prohibiting the encashment of checks without her employer's permission.^[10]

On February 15, 1997, Labor Arbiter Dominador A. Almirante rendered judgment in favor of private respondent, the dispositive portion of which reads:

“WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Jo Cinema Corporation to pay complainant the total amount of One Hundred Fifteen Thousand Four Hundred Twenty Pesos and 79/100 (P115,420.79) representing separation pay and full backwages, as hereinbelow computed by our Labor Arbitration Associate, to wit:

“COMPUTATION

“I. Separation Pay: Sept. 1979-Aug. 15, 1995

(15 yrs. 11 mos. & 15 days)
P119.60/day x 26 days =
P3,109.60/mo. x 16 yrs. = P49,753.60

“II. Backwages: Aug. 15, 1995-Feb. 15, 1997
(1 yr. & 6 mos.)

“a Aug. 15, 1995 to Dec. 31, 1995 =
4 mos. and 15 days
P3,109.60/mo. x 4 mos. P12,438.40
P119.60/day x 15 days 14,232.40

“b Jan. 1/96-June 30/96
P131.00/day x 26 days =
P3,406.00/mo. x 6 mos. 20,436.00

“c July 1/96-Sept. 30/96
P136.00/day x 26 days =
P3,536.00/mo. x 3 mos. 10,608.00

“d Oct. 1/96-Feb. 15, 1997

P141.00/day x 26 =
P3,666.00/mo. x 4 = P14,664.00
P141.00/day x 15/day = 2,115.00 16,779.00

“Total Salary (backwages) P62,055.40

“SERVICE INCENTIVE PAY: 1 YEAR

P141.00/day x 5 days P705.00

“13th MONTH PAY: Aug. 15, 1995-Feb. 15, 1997

- a Aug. 15/95-Dec. 31/95
(4 mos. & 15 days)
P3,109.60/yr. 12 =
P283.87/mo. x 6 mos. 1,036.52
- b Jan. 1/96-June 30/96 (6 mos.)
P3,406.00/yr. 12 =
P259.13/mo. x 4 mos. 1,703.04
- c July 1/96-Sept. 30/96
P3,536.00/mo. 12 =
P294.66/mo. x 3 mos. 883.98
- d Oct. 1/96-Feb. 15, 1997 = (4 mos. & 15 days)
P3,666.00/yr. 12 =
P305.50/mo. x 4 mos. P1,222.00
P11.75/day x 15 days 176.25

P1,398.25

“Total 13th month pay 5,021.79

“Total Backwages: P115,420.79

“SO ORDERED.”^[11]

In ruling for the private respondent, the labor arbiter ratiocinated in this wise:

“No matter if complainant was not actually told that she was dismissed from the service the environmental circumstances of this case would establish that at the very least complainant was already constructively dismissed at the time she filed her complaint on September 1, 1995. While there may be no outright or open termination from the service of the complainant there is no reason to believe that respondent did not want her to continue in the service anymore. Such is the obiter in Valiant Machinery and Metal Corporation vs. NLRC, G.R. No. 105677, January 25, 1996.

“x x x

“In the case at bench, the evidence on record shows that respondents were decided on making complainant pay the face value of the four (4) checks of Luzviminda Silva that bounced totaling the amount of P66,000.00. For the complainant to continue in the service with respondents under the prevailing situation would be impossible, unreasonable and unlikely. Hence, she was compelled to file this case.”^[12]

On appeal, respondent NLRC affirmed the aforesaid decision notwithstanding its findings that at the time the complaint was instituted, private respondent has no cause of action against petitioner as she was merely placed on preventive suspension.^[13] Worse still is its affirmance of the benefits awarded by the Labor Arbiter to private respondent based on obviously erroneous computations. Petitioner moved for a reconsideration but was denied on February 12, 1998.^[14]

Petitioners now come to this Court arguing that the NLRC committed grave abuse of discretion —

I

IN HOLDING THAT THE RESPONDENT WAS ILLEGALLY DISMISSED DESPITE OF ITS OWN FINDING THAT RESPONDENT WAS ONLY PLACED UNDER PREVENTIVE SUSPENSION;

II

IN GRANTING FULL SEPARATION PAY AND BACKWAGES TO THE RESPONDENT WHO IS NOT IN ANYWAY FAULTLESS;

III

IN NOT HOLDING THAT THERE IS SUFFICIENT BASIS FOR THE COMPANY TO LOSE TRUST AND CONFIDENCE WITH THE RESPONDENT ASSUMING THAT THE RESPONDENT WAS DISMISSED;

IV

IN NOT DEDUCTING FROM THE SEPARATION PAY AND BACKWAGES ASSUMING THAT RESPONDENT IS ENTITLED THERETO, HER OUTSTANDING VALE AND THE AMOUNT SHE FRAUDULENTLY OBTAINED FROM THE COMPANY.

The first issue to which we shall first address ourselves, and which is really the vital point in the case, is whether or not private respondent was illegally dismissed from the service.

Dismissal connotes a permanent severance or complete separation of the worker from the service on the initiative of the employer regardless of the reasons therefor.^[15]

Based on the aforesaid definition, it is clear that private respondent was not dismissed from the service but was merely placed under preventive suspension. Her suspension cannot be construed as a dismissal since the cessation from work is only temporary. Moreover, private respondent could not have been dismissed on August 15, 1995 because a formal investigation was still being conducted. In fact, she even attended said investigation on August 26, 1995 where she admitted having encashed the checks. If she was indeed dismissed on said date, as she claims, petitioners would not have continued with the investigation. Undoubtedly, private respondent pre-empted the

outcome of the investigation by filing a complaint for illegal dismissal. The observation of respondent NLRC is worth stressing:

“(F)rom the foregoing circumstance, We could not readily decipher whether the complainant had pre-empted the respondent’s dismissing her, among others, or is it the other way around?

“It would seem from the foregoing that at the time she filed the complaint, there is (sic) as yet no cause of action against the respondent a she was merely placed on preventive suspension. And, looking at the evidence submitted by the respondents at first glance, the same would be sufficient to establish the just and legal ground for the complainant’s termination considering that the position paper of the complainant is bereft of any statement of factual circumstances relative to her alleged dismissal.”^[16] (*Emphasis Supplied*)

The findings of the labor arbiter that private respondent was constructively dismissed by the petitioner is likewise erroneous.

A constructive discharge is defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving demotion in rank and a diminution in pay.^[17]

Private respondent was not demoted nor suffered any diminution of pay, neither was she prevented from returning for work. As discussed earlier, private respondent was suspended from work for twenty (20) days for violating company rules. Petitioners stance to oblige private respondent to pay the amount of the checks is just fair and reasonable considering that she indorsed the subject checks. As an endorser, private respondent undertook to pay the amount of the dishonored checks.^[18] The payment of said amount is not discriminatory, impossible, and unreasonable to foreclose any choice on the part of the private respondent to forego her continued employment. It was private respondent who signified her intention not to report for work when she filed the instant case.

Having thus determined that private respondent was not dismissed from the service, the payment of separation pay and backwages are

not in order. It must be emphasized that the right of an employee to demand for separation pay and backwages is always premised on the fact that the employee was terminated either legally or illegally. The award of backwages belongs to an illegally dismissed employee by direct provision of law and it is awarded on grounds of equity for earnings which a worker or employee has lost due to illegal dismissal. Separation pay, on the other hand, is awarded as an alternative to illegally dismissed employees where reinstatement is no longer possible.^[19]

In fine, based on the foregoing discussion, it is clear that respondent NLRC gravely abused its discretion when it affirmed the decision of the labor arbiter.

WHEREFORE, the assailed decision of respondent National Labor Relations Commission is hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

Bellosillo, Mendoza, Quisumbing and De Leon, Jr., JJ., concur.

[1] Annex "16", Rollo, pp. 93-98.

[2] Annex "2", Ibid., p. 35.

"TO ALL TICKET SELLERS
ULTRA VISTARAMA & SEVEN ARTS
Legaspi St., Cebu City
Re: REMITTANCES

"This is to remind you again, that you are not authorized to in (sic) cash/exchange any check.

"Since customers pay in cash, you should also remit/endorse to the office in cash.

"STRICT COMPLIANCE IS REQUESTED.

"From: JO CINEMA CORP."

[3] Checks Nos. 1933, 1934, 1935 and 1936, Annexes "3-6", Rollo, pp. 36-39.

[4] Memorandum, Annex "7", Ibid., p. 40.

[5] Ibid.

[6] Annex "8", Rollo, p. 41.

[7] Annex "9", Ibid., p. 42.

[8] Records, p. 1.

[9] Pp. 106-110, Ibid.

- [10] Position paper, pp. 18-40, Ibid.
- [11] Annex “14”, pp. 58-59, Rollo.
- [12] Ibid., pp. 53-54, Rollo.
- [13] Annex “16”, pp. 93-98, Rollo.
- [14] Annex “18”, p. 120, Ibid.
- [15] Philippine Law Dictionary, Moreno, 1982 Ed. p. 182.
- [16] NLRC Decision, Rollo, pp. 4-5, Annex “16”.
- [17] Valiant Machinery and Metal Corporation vs. NLRC, 252 SCRA 369, 377 [1996] citing Gaco vs. NLRC, 230 SCRA 260 [1994].
- [18] Section 66 of the Negotiable Instruments Law.
- [19] Marck Roche International vs. NLRC, 313 SCRA 356, 364 [1999].

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