

CHANROBLES PUBLISHING COMPANY

[1]

**SUPREME COURT  
FIRST DIVISION**

**JRS BUSINESS CORPORATION,  
*Petitioner,***

***-versus-***

**G.R. No. 108891  
July 17, 1995**

**NATIONAL LABOR RELATIONS  
COMMISSION (Fifth Division) and  
ROBERT A. NACARIO,  
*Respondents.***

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**D E C I S I O N**

**QUIASON, J.:**

This is a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court to set aside the Resolution of the Fifth Division of the National Labor Relations Commission (NLRC) dated October 12, 1992 (which reversed the Decision dated September 20, 1989 of Labor Arbiter Conchita J. Martinez), and its Resolution dated January 18, 1993 (which denied petitioner's motion for reconsideration).

Petitioner employed private respondent on April 7, 1980. Subsequently, private respondent was promoted as Station Manager of petitioner's Davao branch office.

In September 1988, Fernando T. dela Cerna, petitioner's Internal Auditor, conducted an audit of its Davao office. The audit revealed a shortage totalling P145,564.33 arising from undeposited cash sales and unexplained cash shortages from charge sales (Rollo p. 67).

On the basis that it was the responsibility of petitioner to deposit the proceeds of sales with the office cashier, Milady J. Munoz, petitioner's Treasurer, called private respondent's attention to the cash shortage. He was directed to explain in writing within 72 hours from receipt of the notice why he should not be relieved from his position (Rollo, p. 70).

Four days later or on September 27, 1988, private respondent was informed by Ernesto A. Gonzales, petitioner's Personnel Manager, of the appointment of Fernando T. dela Cerna as officer-in-charge of the Davao office. He was further instructed to report to dela Cerna for his new duties pending petitioner's final decision regarding the result of the audit report (Rollo, p. 71).

On October 2, 1988, the employees of petitioner: namely, Elizabeth Paulino, the office cashier, her husband, Jaime, and Darwin Solis, signed statements which detailed the irregularities committed by private respondent and his wife (Rollo, p. 72).

On October 12, 1988, private respondent was directed by Ernesto A. Gonzales to go on leave without pay effective October 15, 1988 until further notice, in view of the on-going investigation (Rollo, p. 76).

On October 13, 1988, private respondent wrote petitioner a letter rebutting the allegations contained in the affidavits submitted against him. He alleged that he merely requested his wife to assist him in the preparation of reports as she was a former employee of petitioner. Furthermore, he denied any participation in the cash shortage (Rollo, pp. 79-80).

On November 17, 1988, private respondent and his wife received separate demand letters for the immediate restitution of the amount of P145,564.33 (Rollo, pp. 77-78).

On February 6, 1988, considering his indefinite forced leave without pay as a constructive dismissal, private respondent filed a complaint against petitioner with the Regional Arbitration Branch No. IX of Davao City for illegal dismissal, reinstatement with back wages, vacation and sick leave pay, moral and exemplary damages and attorney's fees (Rollo, p. 50).

On March 17, 1989, petitioner filed its Answer wherein it denied that private respondent was constructively or illegally dismissed as the records of its Davao office and the affidavits submitted by the Paulino spouses and Solis were still being evaluated in Manila; that private respondent allowed his wife to gain access to confidential matters; and that he had not answered the inter-office memoranda and demand letter sent to him (Rollo, p. 55).

Due to the failure of the parties to arrive at an amicable settlement, the Labor Arbiter directed them to submit their position papers.

On September 20, 1989, the Labor Arbiter rendered a decision, dismissing the complaint of private respondent for lack of merit (Rollo, p. 40).

Private respondent then appealed to NLRC. On October 12, 1992, NLRC set aside the Labor Arbiter's decision and ruled that private respondent was illegally dismissed. However, instead of reinstatement, NLRC merely granted private respondent separation pay at the rate of one month salary for every year of service.

In issuing such order, NLRC took into consideration "the realities of the situation in the instant case [that] the reinstatement of complainant would not be conducive to industrial peace and harmony. Complainant is a managerial employee and his continuance in the service would naturally involve the continued trust and confidence in him by respondent" (Rollo, p. 38).

Petitioner then filed a Motion for Reconsideration which was denied (Rollo, p. 38).

Hence, this petition.

## II

There is a divergence of views between the Labor Arbiter and NLRC regarding the fitness of private respondent to remain in the employ of petitioner as a Station Manager, particularly on the issue of inadequacy of the evidence against private respondent.

We agree with NLRC. The so-called “Affidavit/Testimony” of Elizabeth Paulino implicating private respondent to the anomaly (Rollo, p. 72), was not verified or under oath. Neither Paulino nor those who signed as witnesses to said exhibit were presented before the Labor Arbiter. Likewise, the written statements of Jaime Paulino and Darwin Solis (Rollo, pp. 74-75) were unverified and the two signatories were not called to testify before the Labor Arbiter. The said exhibits were therefore hearsay and of no probative values. On top of this, Elizabeth Paulino executed an affidavit absolving private respondent and his wife of any participation with respect to the cash shortage. This affidavit is noteworthy because the affiant admitted sole liability for the cash shortage.

Fernando T. dela Cerna, the Internal Auditor of petitioner, found private respondent’s “explanation reasonable except items (sic) pertaining to the amount of cash shortage since appellee [petitioner herein] would still conduct further verification and/or investigation (Rollo, p. 26). Petitioner, in its answer filed with the Labor Arbiter, stated that it “decided to further study in detail and scrutinize the records of the Davao Branch” regarding the liability of private respondent (Rollo, p. 31).

The NLRC also found the other charges levelled against private respondent to be without basis and accepted his explanation thereof as satisfactory. It took note of the long and dedicated service of private respondent to the company (Rollo, pp. 31, 34-35). It belittled the charges that private respondent allowed his wife to go to the branch office to help him prepare his reports and that he brought to

the office his own air-conditioning unit (Rollo, pp. 32-35) saying that it is common practice for housewives to have “their presence felt” in the offices of their husbands and for executives to bring their own appliances to their office.

Petitioner claims that the City Prosecutor decided to file an information against private respondent in connection with the cash shortage in the labor case. The outcome of the preliminary investigation before the City Prosecutor cannot affect the proceedings before the NLRC, which has to review the decision of the Labor Arbiter on the basis of the evidence on record, not on the basis of the evidence submitted to the City Prosecutor.

It appears that Elizabeth Paulino executed an affidavit before the City Attorney absolving private respondent on the basis of which the City Prosecutor dismissed the charges against private respondent. Petitioner claims that Elizabeth Paulino retracted her affidavit and the City Prosecutor decided to file criminal charges against private respondent. This evidence cannot be used to alter the decision of the NLRC.

Also presented as an issue was petitioner’s directive to private respondent of October 12, 1988 to go on leave without pay to pave the way for the investigation of the charges against him.

Sections 3 and 4, Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code, Termination of Employment, provide:

“Section 3. Preventive suspension. — The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

“Section 4. Period of suspension. — No preventive suspension shall last longer than 30 days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount

paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.”

Petitioner having violated the maximum 30-day preventive suspension under Section 4, Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code, a sanction is imposed on him in consonance with our ruling in *Great Pacific Life Assurance Corporation vs. National Labor Relations Commission*, 187 SCRA 694 (1990). Petitioner must indemnify private respondent in the amount of One Thousand Pesos (P1,000.00).

**WHEREFORE**, the Decision of National Labor Relations Commission is **AFFIRMED** with the **MODIFICATION** that petitioner is ordered to indemnify private respondent in the amount of P1,000.00. The Temporary Restraining Order issued by this Court on March 15, 1993 is **LIFTED**.

**SO ORDERED.**

**Padilla, Davide, Jr., Bellosillo and Kapunan, JJ., concur.**