

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**JARDINE DAVIES, INC.,  
*Petitioner,***

***-versus-***

**G.R. No. 76272  
July 28, 1999**

**THE NATIONAL LABOR RELATIONS  
COMMISSION, JARDINE DAVIES  
EMPLOYEES UNION (FFW) and  
VIRGILIO REYES,**

***Respondents.***

**X-----X**

**DECISION**

**QUISUMBING, J.:**

This Special Civil Action for *Certiorari* seeks to Set Aside the Decision<sup>[1]</sup> of National Labor Relations Commission promulgated on March 17, 1986, and its Resolutions dated May 14, 1986 and August 19, 1986 which denied petitioner's motions for reconsideration.

Petitioner is a domestic corporation engaged in general trading, including the exclusive distribution in the country of the world-renowned "Union 76" lubricating oil manufactured by Unoco

Philippines, Inc. Private respondent was a former sales representative of petitioner.

A review of the records of this case reveals that petitioner engaged the services of a private investigation agency to conduct surveillance and investigation pertinent to reports that some of petitioner's products, particularly the "Union 76" lubricating oil, were being illegally manufactured, blended, packed and distributed. Consequently, a private investigator of the said investigation agency, confirmed that there were really fake "Union 76" lubricating oil in the market and reported further that the same were indeed being illegally manufactured, blended, packed and distributed by private respondent Virgilio Reyes. Petitioner then secured a search warrant which led to the seizure of some of the alleged fake items found in the apartment complex reportedly occupied by said private respondent.

Thereafter, a criminal complaint for violation of Article 189 on unfair competition of the Revised Penal Code<sup>[2]</sup> was filed against private respondent and others. Subsequently, private respondent was likewise charged administratively for having committed serious misconduct inimical to the interest of petitioner company. Accordingly, he was advised to go on an indefinite leave. This eventually led to his termination from employment on February 23, 1983.

Meanwhile, all the materials seized by virtue of the search warrant issued were released by order of the same court in view of a petition filed by private respondent's younger brother, Donato Reyes. Apparently, the younger Reyes convinced the court that he was the legal tenant of the apartment complex searched and that all the materials seized are legally owned by him. He further proved that he was legally engaged in the business of general merchandising, operating under the trade name of Lubrix Conglomerate, a single proprietorship duly licensed by the government in dealing with oil and lubricant products. Furthermore, he presented the receipts covering the purchases of the seized Unoco products purposely for packing the same in small containers to be resold to the public.

Relying on the foregoing facts, private respondent sued petitioner for illegal dismissal. But the Labor Arbiter, Manuel R. Caday, dismissed his complaint.

In a Decision dated September 24, 1985, the labor arbiter stated that the apartment complex allegedly occupied by private respondent was indeed the situs of the illegal manufacture, blending and packaging of “Union 76” oil and lubricating products. Convinced that private respondent was personally involved in the aforementioned illegal activity, the labor arbiter ruled that the private respondent committed an act of serious misconduct, fraud or willful breach of trust reposed in him by petitioner, a just cause for terminating employment.<sup>[3]</sup>

Private respondent appealed to the NLRC. In its Decision dated March 17, 1986, the NLRC reversed the labor arbiter’s judgment on the ground that there is no cogent reason for petitioner to lose its trust and confidence on private respondent, there being “no shadow of an act amounting to serious misconduct, fraud or breach of trust” on the part of private respondent. The NLRC disposed of the case as follows:

“WHEREFORE, premises considered, the Decision appealed from is hereby SET ASIDE and a new one entered ordering the respondent-appellee to reinstate complainant-appellant with full backwages without deduction or qualification whatsoever for earning elsewhere and without loss of seniority rights.

SO ORDERED.”<sup>[4]</sup>

It’s motion for reconsideration having been denied, petitioner filed the instant petition before us.

The principal issue for resolution now is whether or not public respondent committed grave abuse of discretion in reversing the labor arbiter’s judgment which found a just and valid cause for dismissal of private respondent by petitioner.

Petitioner first contends that public respondent committed grave abuse of discretion in entertaining the appeal of private respondent despite its being filed out of time. Petitioner points out that private

respondent received the decision of the labor arbiter on October 23, 1985, as indicated by the registry receipt, hence he had only until November 2, 1985 within which to appeal, pursuant to Article 223 of the Labor Code. Petitioner submits that the appeal received by public respondent on November 4, 1985, was filed beyond the reglementary period.<sup>[5]</sup>

Petitioner concedes, however, that the last day for filing the appeal was November 2, 1985, which was a Saturday and a non-working day for NLRC. Clearly, the appeal could not have been filed on such date. Neither could it have been sent by registered mail because the post office was closed. The next day, November 3, 1985, was a Sunday. Accordingly, the appeal could still be filed on the next working day, Monday, November 4, 1985, the earliest day this could have been done.<sup>[6]</sup> Therefore, the appeal received by the public respondent was seasonably filed.

Now, on the substantive issues, petitioner contends that public respondent gravely erred in ruling that private respondent was dismissed without valid and just cause, despite overwhelming evidence showing private respondent's commission of fraudulent and dishonest acts.<sup>[7]</sup> Petitioner avers that the findings of facts of public respondent are not supported by evidence as these are diametrically opposed to those of the labor arbiter who was in the best position to evaluate the parties' evidence.<sup>[8]</sup> Further, petitioner insists that the testimonies of its own witnesses, with its exhibits, show the existence of substantial evidence proving private respondent's serious misconduct.<sup>[9]</sup> Petitioner also asserts that public respondent acted arbitrarily when it ruled that the guilt of private respondent must be proved beyond reasonable doubt to validly justify termination of his employment.<sup>[10]</sup>

Petitioner's attack on the alleged misappreciation of facts and distorted evaluation of evidence by public respondent stands, in our view, on hollow ground. Resort to judicial review of the decisions of the National Labor Relations Commission by way of a special civil action for *certiorari* under Rule 65 of the Rules of Court is confined only to issues of want or excess of jurisdiction and grave abuse of discretion on the part of the labor tribunal. It does not include an inquiry as to the correctness of the evaluation of evidence which was

the basis of the labor agency in reaching its conclusion. Neither is it for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses nor substitute findings of fact for those of an administrative body which has gained expertise in its specialized field. Arguably, there may even be an error in judgment. This, however, is not within the ambit of the extraordinary remedy of *certiorari*.<sup>[11]</sup>

It is beyond dispute that loss of trust and confidence constitutes a valid ground for dismissing an employee. As provided for in the Labor Code:

“ARTICLE 282. Termination by employer. — An employer may terminate an employment for any of the following causes:

X X X

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.”

X X X

It is settled that loss of confidence as a just cause for terminating employment must be premised on the fact that an employee concerned holds a position of trust and confidence.<sup>[12]</sup> This situation obtains where a person is entrusted with confidence on delicate matters, such as care and protection, handling or custody of the employer’s property,<sup>[13]</sup> as in this case. 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.<sup>[14]</sup> Likewise, it must be noted that proof beyond reasonable doubt is not required to dismiss an employee on the ground of loss of confidence. It is sufficient that there is some basis for such 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 of his position.<sup>[15]</sup>

This Court, however, has repeatedly stressed that the right of an employer to dismiss employees on account of loss of trust and confidence must not be exercised arbitrarily and without showing just cause, so as not to render the employee's constitutional right to security of tenure nugatory. Thus, although the dropping of a criminal charge for an employee's alleged misconduct does not bar his dismissal, and proof beyond reasonable doubt is not necessary to justify the same, still the basis thereof must be clearly and convincingly established.<sup>[16]</sup> Besides, for loss of confidence to be a valid ground for dismissal, such loss of confidence must arise from particular proven facts.<sup>[17]</sup> In other words, this ground must be founded on facts established by the employer who must clearly and convincingly prove by substantial evidence the facts and incidents upon which loss of confidence in the employee may be fairly made to rest; otherwise the dismissal will be rendered illegal.<sup>[18]</sup>

In the case at bar, private respondent was suspended and eventually dismissed for allegedly committing fraudulent acts and unfairly competing with petitioner. To justify its administrative action, petitioner somehow gave credence to the surveillance report implicating private respondent in the illegal manufacture, blending, packing and distribution of petitioner's products. Petitioner likewise relied on the result of the search on the apartment reportedly leased by private respondent from which alleged counterfeit "Union 76" oil products were seized. Unfortunately, these could not be deemed sufficient basis for petitioner to lose its trust and confidence on private respondent so as to justify the latter's dismissal.

For evidently, the surveillance report is unreliable. As found by the NLRC, the conclusions therein were mere deductions not supported by any substantial corroborating evidence. Public respondent also observed that the petitioner failed to show concrete evidence to controvert the proof presented by private respondent that the packing of genuine "Union 76" oil in small containers was in support of the marketing policy of petitioner. Furthermore, as the Solicitor General points out, petitioner's agents surprisingly did not submit to laboratory test the alleged fake merchandise seized during the search, to determine its genuineness.<sup>[19]</sup> This deficiency could be attributed to the misstep of the private detectives who were specifically instructed to investigate precisely the reported counterfeiting of petitioner's

products. Instead, the private investigators hurriedly concluded that the confiscated items were adulterated because they were not purchased directly from petitioner's warehouse. Petitioner's unexplained failure to ascertain the quality of the confiscated products is a virtual affirmation that the said articles are genuine, having been purchased from petitioner's dealers, and resold as is to end users. Accordingly, public respondent cannot be faulted in concluding that petitioner failed to substantiate its claim as to the actual existence of fake "Union 76" products.

Another virtual confirmation that petitioner lacks factual basis for its distrust of private respondent was the subsequent judicial order releasing the articles seized during the search. As it appears on record, the court believed the explanation of Donato Reyes, brother of private respondent, that he was the lessee of the aforesaid apartment. Besides, the court declared that the owner of the confiscated goods was Donato Reyes, and there was no proof that the mentioned articles belonged to private respondent. More importantly, the order stated that there is no evidence to prove that Lubrix Conglomerate was faking petitioner's products because Donato Reyes purchased the seized goods from petitioner's authorized dealers as evidenced by receipts of the purchase.

In sum, we hold that public respondent did not gravely abuse its discretion in ruling that petitioner failed to duly prove that the dismissal of private respondent was justified on account of loss of trust and confidence. Hence, private respondent's dismissal was found illegal.

With the finding that private respondent was illegally dismissed, an award of backwages is proper. It must be emphasized, though, that jurisprudence distinguishes between employees illegally dismissed prior to the effectivity of Republic Act No. 6715 on March 21, 1989, and those whose illegal dismissals were effected after such date. Thus, employees illegally dismissed prior to March 21, 1989, are entitled to backwages up to three (3) years without deduction or qualification,<sup>[20]</sup> while those illegally dismissed after are granted full backwages inclusive of allowances and other benefits or their monetary equivalent from the time their actual compensation was withheld from them up to the time of their actual reinstatement.<sup>[21]</sup>

Considering that private respondent was terminated from the service on February 23, 1983, he is entitled to backwages up to three years only, computed on the basis of his last monthly salary or pay.

In addition to backwages, illegally dismissed employees are entitled to either reinstatement, if feasible, or separation pay, if reinstatement is no longer viable.<sup>[22]</sup> In our view, the circumstances obtaining in this case would not warrant the reinstatement of the private respondent. Antagonism and imputations of criminal act caused a severe strain in the relationship between petitioner and private respondent, not to mention the considerable length of time private respondent has been out of petitioner's employ. Thus, a more equitable disposition would be an award of separation pay equivalent to one (1) month's pay for every year of service with petitioner, a fraction of at least six (6) months being considered as one (1) whole year.<sup>[23]</sup> In the computation of separation pay, the three-year period wherein backwages are awarded must be included.<sup>[24]</sup>

**WHEREFORE**, the instant Petition is **DENIED** for lack of merit. The assailed Decision of the NLRC is hereby **AFFIRMED**, subject to **MODIFICATION** that petitioner is hereby ordered to pay private respondent backwages, to be computed on the basis of his monthly salary or pay, up to three years; and separation pay, in lieu of reinstatement, equivalent to one month's pay for every year of service. Costs against petitioner.

**SO ORDERED.**

**Bellosillo, Puno, Mendoza and Buena, JJ., concur.**

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[1] Signed by Presiding Commissioner Diego Atienza, Commissioner Geronimo Quadra and Commissioner Cleto Villanueva.

[2] Expressly repealed by Section 239 of RA 8293, otherwise known as Intellectual Property Code of the Philippines, effective January 1, 1998.

[3] Rollo, pp. 53-54.

[4] Id. at 46.

[5] Id. at 35.

[6] Pacaña vs. NLRC, 172 SCRA 473, 477.

[7] Rollo, p. 240.

[8] Id. at 18.

- [9] Id. at 32.
- [10] Id. at 25.
- [11] ComSavings Bank vs. NLRC, 257 SCRA 307, 317-318.
- [12] Quezon Electric Cooperative vs. NLRC, 172 SCRA 88, 94.
- [13] Panday vs. NLRC, 209 SCRA 122, 125.
- [14] Aris Philippines Inc. vs. NLRC, 238 SCRA 59, 62.
- [15] Sajonas vs. NLRC, 183 SCRA 182, 188.
- [16] China City Restaurant Corporation vs. NLRC, 217 SCRA 443, 452-453.
- [17] Del Val vs. NLRC, GR-121806, September 25, 1998, p. 5.
- [18] Equitable Banking Corporation vs. NLRC, 273 SCRA 352, 376.
- [19] Rollo, p. 210.
- [20] Tan vs. NLRC, 271 SCRA 216, 223-224; Mercury Drug Co. vs. CIR, 56 SCRA 694.
- [21] Lopez vs. NLRC, GR-124548, October 8, 1998; Bustamante vs. NLRC, 265 SCRA 61, 71.
- [22] Mapalo vs. NLRC, 233 SCRA 266, 273.
- [23] Lopez vs. NLRC, supra; Mabeza vs. NLRC, 271 SCRA 670; Liana's vs. NLRC, 257 SCRA 186; Guatson vs. NLRC, 230 SCRA 815; JAM Transportation Co. Inc. vs. NLRC, 220 SCRA 114.
- [24] Guatson vs. NLRC, 230 SCRA 815, 824.