

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**KWIKWAY ENGINEERING WORKS,
*Petitioner,***

-versus-

**G.R. No. 85014
March 22, 1991**

**NATIONAL LABOR RELATIONS
COMMISSION AND ROSALINDA
VARGAS,**

Respondents.

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D E C I S I O N

MEDIALDEA, J.:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court seeking the annulment of the Resolution of the respondent National Labor Relations Commission dated September 9, 1988 in NLRC NCR-5-1803-86 entitled, "Rosalinda L. Vargas, Complainant-Appellee vs. Kwikway Engineering Works, Respondent-Appellant," which affirmed the decision of the Labor Arbiter ordering the reinstatement of respondent Vargas.

The antecedent facts are as follows:

Petitioner is a corporation engaged in the business of fabrication of machine parts and allied works. Respondent Vargas was formerly employed by petitioner company as bookkeeper and secretary of its Cubao branch. As bookkeeper, it was her duty to fill up the check vouchers and indicate therein the name of the customer agent and the amount payable to each before they are presented to the agents for signing.

On March 20, 1986, the newly designated branch manager of petitioner's Cubao branch discovered that several blank vouchers already contained the signatures of the mechanic agents. Thus, the branch manager confronted the branch cashier in charge of the vouchers, Marina Corpus, concerning the irregularity. Corpus explained that respondent Vargas was aware of this practice. When asked for an explanation about the matter, respondent Vargas stated that the aforesaid procedure has been the practice in that office since the time of the former branch manager who had knowledge thereof. This was however later denied by the former manager of the Cubao branch office.

On November 23, 1986, branch manager Lazaro informed the head office with what he discovered. Petitioner company's assistant vice-president then conducted an investigation on the matter.

On the following day, respondent Rosalinda Vargas and Marina Corpus were placed under preventive suspension for an indefinite period of time on the ground of loss of trust and confidence in connection with check vouchers 6339, 6340, 6341, 6342, 6343 and 6344.

Sometime in the last week of April, 1986, respondent Vargas went to the head office upon instruction of petitioner, where she was informed of the result of the investigation. Petitioner offered her a chance to resign with separation pay, which she accepted.

However, on May 26, 1988, the Labor Arbiter rendered a decision directing the reinstatement of respondent Vargas to her former position with backwages.

Not satisfied with the decision, petitioner appealed to the respondent Commission. On September 9, 1988, the respondent Commission affirmed the decision of the labor arbiter.

Hence, this petition. The two issues to be resolved in this case are: a) Whether or not the dismissal of respondent Vargas was for a just and valid cause: and 2) whether or not respondent Vargas was deprived of her constitutional right to due process.

Anent the first issue, petitioner contends that the nature of the position of respondent Vargas, which involves the preparation of vouchers and handling of funds involves trust and confidence. It also maintains that private respondent's acts of dishonesty as well as her active participation in violating and infringing company accounting procedure which allowed the cashier to personally misappropriate sums of money provide sufficient basis for dismissing respondent. Petitioner further submits that respondent Vargas was aware that her cashier Marina Corpus was committing acts of dishonesty and misappropriation of company funds but she did not report the matter to her superiors in the company. Petitioner argues that the actuations of respondent Vargas were in violation of the company's code of conduct, which is punishable by dismissal.

We find merit in petitioner's contentions. The rule is settled that if there is sufficient evidence to show that the employee has been guilty of breach of trust or that his employer has ample reason to distrust him, the labor tribunal cannot justly deny to the employer the authority to dismiss such employee (*Reynolds vs. Eslava*, No. L-48814, June 27, 1985, 137 SCRA 259). Jurisprudence abounds with cases recognizing the right of the employer to dismiss the employee on loss of confidence. More so in the case of supervisors or personnel occupying positions of responsibility, loss of trust justifies termination (*Lamsan Trading vs. Leogardo*, No. 73245, September 30, 1986, 144 SCRA 571; *Reynolds vs. Eslava*, supra; *New Frontier vs. NLRC*, No. 51578, May 29, 1984, 129 SCRA 502; *Associated Citizens Bank vs. Hon. Blas F. Ople, et al.*, No. L-48896, 103 SCRA 130). The mere existence of basis for believing that the employee has breached the trust of employer is sufficient and does not require proof beyond reasonable doubt (*Sea Land Service vs. NLRC*, No. 68212, May 24,

1985, 136 SCRA 544; DOLE vs. NLRC, No. 55413, July 25, 1983, 123 SCRA 673).

It is clear from the records that as bookkeeper or accounting clerk of the company's Cubao branch, it is the duty of respondent Vargas to prepare and fill up check vouchers and to state the amounts therein before they are given to the customers for signing. There is also no doubt that it is also one of the respondent's duties to handle the personnel funds of the branch office. Clearly, respondent Vargas's position involves a high degree of responsibility requiring trust and confidence. Her position carries with it the duty to observe proper company procedures in the fulfillment of her job as it relates closely to the financial interests of the company.

Respondent Vargas admitted her failure to observe the required accounting procedure in the preparation of the vouchers alleging that this has been the practice in the office since the time of the former manager. Such failure, however, enabled the cashier to declare at one time, a different and larger amount in the check and misappropriate the difference to the damage of the company. Respondent Vargas admitted that she knew that at one instance, the cashier, Marina Corpus, made one customer agent sign the blank voucher for P2,700.00 which the latter is entitled to receive but reported a larger amount of P2,900.00 in the books of the company. Despite the knowledge of the cashier's dishonesty, as a result of her failure to fill up the vouchers properly, respondent Vargas still continued not to comply with the company operating procedure knowing fully well that her negligence is causing an opportunity for the cashier to commit fraud upon the company. Further, there was no effort on the part of respondent Vargas to report to petitioner the anomalies that are being committed by the cashier. As an employee holding a delicate position relating to the money matters of the company, respondent Vargas should be vigilant in protecting the financial interests of the company which she is tasked to do. Although it may be true that respondent Vargas has no direct participation in the cashier's acts of dishonesty concerning the funds of the office, respondent's non-performance of her duties which resulted in the commission of such anomalies is sufficient to breach the trust and confidence of her employer. Hence, it would be most unfair for the petitioner company to continue employing the private respondent if

the former believes that the latter's continuance in the service will be patently inimical to its interest.

Anent the second issue, We find that respondent Commission did not commit grave abuse of discretion in concluding that respondent Vargas was dismissed without due process. The twin requirements of notice and hearing constitute essential elements of due process in cases of employee dismissal: the requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss and the reason for the proposed dismissal; upon the other hand, the requirement of hearing affords the employee an opportunity to answer his employer's charges against him accordingly to defend himself therefrom before dismissal is effected. Neither of these two requirements can be dispensed with without running afoul of the due process requirement of the 1987 Constitution. (Century Textile Mills, Inc. vs. NLRC, No. 77859, May 25, 1988, 161 SCRA 528).

Records disclose that the following day after the branch manager informed the head office of the irregularities, respondent Vargas was immediately placed under preventive suspension for an indefinite period. Although the company vice-president allegedly held an investigation the day prior to the imposition of preventive suspension, such investigation is not sufficient to comply with the due process requirement. In the instant case, the records are bereft of any indication that a formal notice of the charge was given to the respondent prior to the suspension or that the said investigation gave adequate opportunity to the respondent to defend herself. It is important to stress that an employee whose services are sought to be terminated, has the right to be informed beforehand of his proposed dismissal or suspension as well as of the reasons therefor and to be afforded an adequate opportunity to defend himself from the charges leveled against him. We give respect to the following conclusions of the labor arbiter and respondent Commission:

“It is patent from the respondent's submission that written notice specifying the causes for termination was never furnished to complainant. Neither does it appear that she was given enough opportunity to explain her side and defend herself with the assistance of a representative of her choice if she so desires. What is in the record is the memorandum informing

her that she would be preventively suspended which suspension is indefinite as it has no time frame, and which indefinite suspension matures into a dismissal. Respondent through the communication sent by Mr. Apolinar Lazaro, Cubao Branch Manager of respondent to Mr. Roger Carcer, Assistant Vice President of respondent dated March 23, 1986 (Annex 'B' of respondent's position paper) claimed that upon discovery of some anomalous transaction on March 20, 1986 which deviates from respondent's SOP, Mr. Lazaro called the attention of complainant on March 21, 1986 and confronted her and required her to explain her side. Even, if we assume *arguendo* that such allegation is true (there is no evidence of record establishing it as a fact), such confrontation to explain her side, we believe is not the equivalent of the written notice required by Article 278(b) of the Labor Code, as amended. Furthermore, the hasty and peremptory manner of the issuance of the suspension order (issued day after Annex 'B' was prepared) is the best evidence that complainant was not afforded ample opportunity to be heard and to defend herself with the assistance of her representative if she so desires. Nothing also could be found in the record that during the suspension complainant was investigated thus affording her the opportunity to know charges and to defend herself with the assistance of her representative, if she so desires, against the charges. Complainant was therefore not accorded due process." (pp. 53-54, Rollo)

Further, the preventive suspension of respondent Vargas for an indefinite period amounted to a dismissal and is violative of Section 4, Rule XIV of the Implementing Rules of the Labor Code which limits the preventive suspension to thirty (30) days. The said rule also provides that "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." (Pacific Cement Company Inc. vs. NLRC, G.R. Nos. 78871-72, May 5, 1989, 173 SCRA 192).

Despite the foregoing, this Court finds that the dismissal of respondent Vargas was for a just cause. For failure of the employer to comply with the requirements of due process in terminating the

employees service, it shall be liable to indemnify the employee in the sum of P1,000.00 as damages (Seahorse Maritime Corporation vs. NLRC, G.R. No. 84712, May 15, 1989, 173 SCRA 390; Wenphil Corporation vs. NLRC, G.R. No. 80587, February 8, 1989, 170 SCRA 69).

ACCORDINGLY, the Petition is hereby **GRANTED**. The questioned Decision of the respondent National Labor Relations Commission dated September 9, 1988 insofar as it ordered the reinstatement of respondent Rosalinda Vargas with payment of three (3) years backwages is **REVERSED** and **SET ASIDE**. Petitioner company is ordered to pay an indemnity of P1,000.00 to respondent Vargas.

SO ORDERED.

Narvasa, Cruz, Cancayco and Griño-Aquino, JJ., concur.