

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**ANITA LLOSA-TAN,
*Petitioner,***

-versus-

**G.R. No. 77457
February 5, 1990**

**SILAHIS INTERNATIONAL HOTEL,
CARMELITO REGALADO, VANESSA
SUATENGCO AND NESTOR
FAMATIGAN,**

Respondents.

X-----X

DECISION

PARAS, J.:

This is a Petition for *Certiorari* seeking to set aside: (1) the Decision dated May 28, 1984 of the National Labor Relations Commission in NLRC Case No. NCR-10-6699-82 reversing the Decision of the Labor Arbiter dated March 22, 1983 which had ordered the reinstatement of complainant to her position but without any award of backwages and (2) resolutions: (a) dated July 15, 1986 and (b) January 26, 1987 of the same Commission denying the first and second motions for reconsideration respectively, of the said decision for lack of merit.

The antecedent facts of the case are as follows:

The complainant was front office cashier of Silahis International Hotel since November 2, 1976 until her questioned dismissal on October 30, 1982. She is also a member of the Silahis International Hotel Employees Union.

Since 1977, the Silahis International Hotel, respondent herein, had a standing corporate policy (Corporate Policy No. 014) which reads:

CASHING OF CHECKS

“It has been observed that employees frequently make use of our units’ facilities for cashing checks, personal or otherwise, even when a number of these checks unfortunately bounce to the detriment of SMC and its affiliates.

“When a check bounces, management in effect extends credit to the employee. In order to minimize these losses, it has no other recourse but to effect salary deductions.

“Henceforth, all cashiers of SMC and its affiliates are hereby instructed to refuse the cashing of personal checks of employees and officials, endorsement by any executive of the Sulo Management Company, or Philippine Village Hotel or Silahis International Hotel or Sulo Hotel notwithstanding.

“This policy is intended for uniform application at all levels, in SMC as well as all its affiliates in order to preclude any element of discrimination.” (Rollo, pp. 41-42).

On August 22, 1982, while petitioner was on duty, she was approached by Mr. Fernando Gayondato, the general cashier of Puerto Azul Beach Resort — a sister company of Silahis International Hotel and nephew of the Executive Vice President, to encash two (2) US dollar checks with a combined value of US \$1,200.00 or P10,389.60. These checks were drawn by Mr. Reynaldo Vicencio and were payable to cash. Although petitioner politely explained the existence of Policy No. 014 prohibiting such transactions, Gayondato persisted and assured that the presentation of aforesaid checks to the

front office cashier was upon instructions of the Executive Vice President. Thus, petitioner, eventually encashed the aforesaid checks, notwithstanding Corporate Policy No. 014. Thereafter, the said checks bounced.

On October 1, 1982, respondent Vanessa Suatengco issued a memorandum to the petitioner requiring her to explain in writing why she should not be terminated for encashing the two (2) personal checks without proper authorization. In the same memorandum, petitioner was put under preventive suspension effective October 2, 1982. In due time, petitioner submitted her letter of explanation (Rollo, pp. 84-85), explaining the circumstances under which the encashment was made as follows:

“x x x

- “2. Mr. Gayondato wanted to encash said checks with her and he thereupon affixed his signature at the back thereof. Undersigned asked him if he knows the drawer thereof, and he assured her that he knows personally Mr. Reynaldo M. Vicencio, being a close friend and a frequent guest at Puerto Azul, and the said checks were fully funded;
- “3. Undersigned explained to Mr. Gayondato that there is an existing policy prohibiting encashment of checks with the front office cashier without the written endorsement of any of the top officials mentioned in Corporate Policy No. 014. However, Mr. Gayondato repeatedly assured undersigned that said checks had already been shown by him earlier to EVP Trinidad Diaz-Enriquez, her auntie, and he was advised to present the same to the front office cashier of Silahis, as he needed the Philippine currency equivalent thereof to meet some urgent disbursements in Puerto Azul;
- “4. Because of His being the General Cashier of Puerto Azul, and his being a very close relative to EVP Trinidad Diaz-Enriquez, and his repeated assurances that the checks were already passed upon by EVP Trinidad Diaz-Enriquez, and considering his representation for his need for cash to meet certain urgent disbursements in Puerto Azul, and the

expected foreign exchange income that will accrue to Silahis, undersigned was finally constrained in good faith to allow encashment of said dollar checks;

- “5. Previously, undersigned refused to allow encashment of a check issued in favor of Mr. Johannes Jahms, Resident Manager of Silahis, due to her adherence to said Corporate Policy No. 014. Instead of being praised and commended, undersigned received a memorandum from management which in effect reprimanded her for following said policy and she almost got dismissed for being inflexible and not using her sound discretion on the matter. When she took up the matter with Mr. F. S. Famatigan, Jr., he then advised undersigned to be flexible and use her sound discretion in future similar cases. Hence, this is also one of the compelling reasons why undersigned allowed encashment of the aforesaid dollar checks, as she was apprehensive then that she might again be reprimanded for not being flexible and not exercising her sound discretion.”

Despite petitioner’s explanation in the aforesaid letter, her services were terminated effective October 30, 1982.

Subsequently, petitioner filed a complaint against respondents for illegal dismissal. On March 22, 1983, Labor Arbiter Virginia G. Son rendered a decision, the dispositive portion of which reads as follows:

“WHEREFORE, premises considered the respondents are hereby ordered to reinstate the complainant to her position without loss of seniority rights but without any award of backwages. The complaint for unfair labor practice is dismissed for lack of merit.” (Rollo, pp. 4-5)

Respondent Hotel appealed the decision of the Labor Arbiter to the National Labor Relations Commission which was opposed by the petitioner (Rollo, p. 5).

On May 28, 1984, the National Labor Relations Commission rendered a decision setting aside the decision of the Labor Arbiter dated March

22, 1983 and dismissing the complaint for illegal dismissal for lack of merit (Rollo, p. 14).

Petitioner, however, filed a motion for reconsideration in the National Labor Relations Commission on June 22, 1986 which was denied on July 15, 1986 (Rollo, p. 20).

On July 29, 1986, petitioner filed her second motion for reconsideration which was likewise denied on January 26, 1987 for lack of merit (Rollo, p. 24).

Hence, this petition.

The Second Division of this Court, in its resolution dated April 2, 1987 without giving due course to the petition, required respondents to comment (Rollo, p. 30), which was filed on May 22, 1987 by public respondent (Rollo, p. 40), and on July 17, 1987, by respondent Hotel (Rollo, p. 61).

After all the required pleadings had been filed in this case, this Court in its resolution dated January 20, 1988 resolved to give due course to the petition and to consider this case submitted for decision (Rollo, p. 120).

In her petition, petitioner assigned the following alleged errors:

I

THE NLRC ERRED IN FINDING THAT THE PETITIONER WAS GUILTY OF NEGLIGENCE.

II

THE NLRC FAILED TO CONSIDER THAT DISMISSAL IS TOO HARSH CONSIDERING THE REASONS THAT PROMPTED THE ENCASHMENT.

III

THE NLRC FAILED TO CONSIDER THE FACT THAT THE DISMISSAL OF THE PETITIONER WAS PATENTLY ILLEGAL, NOT ONLY BECAUSE IT WAS UNSUPPORTED BY A LEGITIMATE REASON BUT BECAUSE SHE WAS DEPRIVED OF HER RIGHT TO DUE PROCESS AS SANCTIONED BY THE COLLECTIVE BARGAINING AGREEMENT (CBA FOR BREVITY) EXECUTED BETWEEN RESPONDENT HOTEL AND THE UNION WHERE THE PETITIONER WAS A MEMBER. (Rollo, p. 5)

The pivotal issue of this case is whether or not the acts of petitioner constitute gross negligence resulting in a valid ground for the termination of her employment.

Petitioner contends that the National Labor Relations Commission erred in finding that she was guilty of gross negligence encashing the dollar checks in question, citing that the Labor Arbiter in her decision made no finding of negligence, rather the Labor Arbiter noted that the petitioner's act of encashing the checks was motivated by good faith. Further, the exceptions to Corporate Policy No. 014 were sometimes allowed, upon the concurrence of two conditions, to wit:

1. Approval of the Assistant Manager as the Officer-in-Charge.
2. Official use or benefit.

Said conditions were found to exist and warranted the relaxation of Company Policy No. 014 (Rollo, p. 6).

On the other hand, respondent hotel alleged that the encashment of the two (2) dollar checks is clearly prohibited by the Corporate Policy No. 014 and despite the knowledge of this policy, petitioner admittedly encashed the aforementioned checks which resulted in a great financial loss to respondent Hotel and such act of the petitioner indisputably constitutes gross negligence which warranted the termination of her employment.

The petition is impressed with merit.

Gross negligence has been defined as the want of any or slight care (Caunan vs Compania General de Tabacos, 56 Phil. 547) or the utter disregard of consequences (Marinduque Iron Mines Agents, Inc. vs WCC, 99 Phil. 485 [1956]).

Admittedly, the encashment of the checks in question is a violation of Policy No. 014 of said hotel. But as found by the Labor Arbiter, it was established that: (a) complainant was not motivated by bad faith; (b) Policy No. 014 is not strictly or consistently enforced but has been relaxed repeatedly to meet business exigencies; and (c) complainant's encashment of the checks in question was not only with the knowledge but with clearance from her superiors who are more knowledgeable as to the circumstances under which the enforcement of the same may be relaxed.

More specifically, the findings of the Labor Arbiter read:

“It does not appear from the records, however, that the complainant had intended to cause damage to the company in encashing the checks. Instead, what appears is that complainant was motivated only by good faith.

“Neither do the respondents accuse complainant of bad faith. From the records, it would even appear that the respondents had initially condoned complainant's acts. In the first place, respondents admitted that Policy No. 014 is not strictly and consistently enforced. This policy had been relaxed repeatedly to meet business exigencies. Respondents, although not informed beforehand, had knowledge of the encashment of the checks. If we are to believe the affidavit of Samuel Grulla, the Assistant Manager of Silahis International Hotel, he was ‘notified of the transaction after encashment of the dollar checks by Mrs. A. Tan when she approached me and informed me about the same, as Mr. Gayondato who presented the check for encashment was about to leave the cashier's counter.’ If complainant's encashment of the checks came to the knowledge of management, no action, however, was taken by the company against the complainant. It was only after the checks bounced and when the injury to the company made manifest that the

company took actions. Under this circumstance, this Office believes that the company is estopped from imposing the severe penalty of dismissal on the complainant.” (p. 15, Rollo)

Moreover, it cannot be said that complainant was precipitate or that she has acted in utter disregard of consequences. On the contrary, she refused to encash subject checks despite the request of Mr. Gayondato, the general cashier of Puerto Azul, but was persuaded only upon the assurances of the latter that such was the wish of the Executive Vice President and that said encashment was necessary to meet certain disbursements in Puerto Azul. In addition, she informed personally Mr. Samuel Grulla, Assistant Manager of the Silahis International Hotel, of said encashment, who also told her that such is “alright”. The truth of this statement was attested to by said official in his affidavit dated January 4, 1983 (Annex “B”, Rollo, p. 27).

Finally, against the background of her previous experience when she refused to encash a similar check for Mr. Katte, the Food and Beverage Manager of Silahis International Hotel, and that she was reprimanded by the management of the Silahis International Hotel for her refusal, as well as threatened with suspension or dismissal from her job, coupled with the advice of Mr. Nestor Famatigan, Jr., Silahis International Hotel Comptroller, to use her discretion in handling similar requests in the future, it is not at all surprising that she opted to take subject course of action.

Verily, complainant was placed under most difficult circumstances and she deserves the full protection of the law.

It is well settled that dismissal based on loss of trust and confidence arising from alleged misconduct of employee, is not to be used as a shield to dismiss an employee arbitrarily (*Callanta vs Carnation Philippines, Inc.*, 145 SCRA 268 [1986]). Although the power to dismiss is a normal prerogative of the employer, the same is not without limitations (*Rance vs NLRC*, 163 SCRA 279 [1988]). The right of the employer must not be exercised arbitrarily and without just cause. Otherwise, the constitutional guarantee of security of tenure of the workers would be rendered nugatory. While dismissing or laying off of an employee is a management’s prerogative, it must nevertheless be done without abuse of discretion (*Atlas Consolidated*

Mining Corp. vs NLRC, G.R. No. 75755, November 24, 1988). Furthermore, the right of employer to freely select or discharge his employees is regulated by the State, because the preservation of the lives of the citizens is a basic duty of the State, more vital than the preservation of the corporate profit (Euro-Linea, Phils., Inc. vs NLRC, 156 SCRA 78 [1987]). In addition, security of tenure is a right of paramount value guaranteed by the Constitution and should not be denied on mere speculation (Tolentino vs NLRC, 152 SCRA 717 [1987]). Protection to labor and social justice provisions of the Constitution and the labor laws and rules and regulations are interpreted in favor of the exercise of labor rights (Euro-Linea, Phils., Inc. vs NLRC, supra).

Based on the foregoing, there is no compelling reason to disturb the arbiter's finding of facts. It has been ruled time and again that finding of facts of the Labor Arbiters is conclusive on the Supreme Court if supported by substantial evidence (Reyes vs Philippine Duplication, Inc., 109 SCRA 489 [1981]).

However, it is axiomatic that where there is a finding of illegal dismissal, petitioner is entitled not only to reinstatement but also award of backwages (Alzosa vs NLRC, 120 SCRA 611 [1983]; Atlas Consolidated Mining & Dev. Corp. vs NLRC, 167 SCRA 759 [1988]). Accordingly, also recently, this Court holding that NLRC gravely abused its discretion in setting aside the decision of the Labor Arbiter and in granting respondent company clearance to dismiss the petitioner, ruled that petitioner is entitled to reinstatement and to payment of full backwages from date of termination but not more than a maximum of three (3) years (Jaballas vs Const. & Dev. Corp. of the Phils., 165 SCRA 716 [1988]).

PREMISES CONSIDERED, the assailed Decision of the National Labor Relations Commission is hereby **DISMISSED**, and **SET ASIDE** and private respondent Silahis International Hotel is ordered to reinstate petitioner Anita Llosa-Tan to her former position or similar position without loss of seniority rights with full backwages beginning October 30, 1982 for a period of three (3) years therefrom.

SO ORDERED.

Melencio-Herrera, J., (Chairman), Padilla, Sarmiento and Regalado, JJ., concur.

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