

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**NATIONAL BOOKSTORE, INC., and  
ALFREDO C. RAMOS,**  
*Petitioners,*

*-versus-*

**G.R. No. 146741  
February 27, 2002**

**COURT OF APPEALS SPECIAL EIGHT  
DIVISION, NATIONAL LABOR  
RELATIONS COMMISSION, MARIETTA  
M. YMASA and EDNA L. GABRIEL,**  
*Respondents.*

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**DECISION**

**BELLOSILLO, J.:**

This Petition for Review under Rule 45 seeks to set aside the 30 June 2000 Decision<sup>[1]</sup> and 10 January 2001 Resolution<sup>[2]</sup> of the Court of Appeals, which affirmed the Resolutions of the National Labor Relations Commission (NLRC) dated 8 October 1997<sup>[3]</sup> and 9 February 1999.<sup>[4]</sup>

Petitioner National Bookstore, Inc., employed private respondent Marietta M. Ymasa on 14 February 1980 and private respondent Edna L. Gabriel on 2 September 1979. On 28 August 1992 when both

claimed to have been illegally dismissed from employment, private respondents Ymasa and Gabriel were Cash Custodian and Head Cashier of petitioner National Bookstore, respectively.

On 28 June 1992, a Sunday, private respondents reported for work at their place of assignment, i.e., the SM North Edsa Branch of petitioner National Bookstore to count the previous day's sales proceeds as a matter of routine. Private respondent Ymasa counted the money intended to be deposited with INTERBANK while private respondent Gabriel attended to the money for deposit with PCIB. The counting was done in the presence of a watcher, one Maricen Cupcupin. After preparing the corresponding deposit slips which Cupcupin accordingly signed, the counted money was placed inside two (2) separate plastic bags which were sealed with scotch tapes. The plastic bags were then tied together with rubber band, with the bag containing the money intended for deposit with INTERBANK placed on top. Thereafter, private respondent Ymasa put the plastic bags inside her cabinet which she accordingly locked.

Since both Branch Manager Charito M. Gonzales and Assistant Branch Manager Roberto Tagalog were not in their offices, it was only at around closing time at 8:30 in the evening of 28 June 1992 that the two (2) plastic bags earlier stored in private respondent Ymasa's cabinet were taken out. These plastic bags and the day's sales placed in another bag euphemistically called "sandwich" were handed over to the Assistant Manager for safekeeping in the Branch vault.

On 29 June 1992, Monday, private respondents retrieved from the Assistant Manager the money already counted and placed inside the sealed plastic bags to be picked up by the roving tellers of INTERBANK and PCIB. But before being deposited, the money was again counted. The amount for deposit to PCIB was found short of P42,758.70. All efforts made to locate the missing amount failed. Thus, on 30 July 1992 the Management through Personnel Manager Atty. Cornelio A. Padilla, Jr. asked private respondents to "explain in writing not later than end of store hours on August 1, 1992, why they should not be dismissed" for the loss of company funds. The Management also placed private respondents under preventive suspension effective immediately.

On 31 July 1992 private respondents explained in writing what transpired on 28 and 29 June 1992, basically denying responsibility over the lost company funds. They emphasized that they had no access to petitioner National Bookstore's vault and that before leaving the office on both occasions and after doing their tasks, petitioner National Bookstore's lady guard, Ms. Roda Sungkip, subjected them to a thorough body search. They asserted that "they have been in the service of the company for the past 13 years and it has been their practice to turn over their collection to their supervisor without any proof of receipt every end of the business day." Moreover, they appealed that they "have been honest and sincere to their work and religiously rendered their services to the company to the best of their ability."

Petitioner National Bookstore, after finding the explanations of private respondents unsatisfactory, notified them on 29 August 1992 of the termination of their services for gross neglect of duty and loss of confidence to take effect immediately and "without prejudice to appropriate legal action that the Management may take for the restitution of the missing Company funds."

On 4 February 1993 private respondents filed a complaint for illegal dismissal against petitioner National Bookstore and/or its President Alfredo C. Ramos before the Labor Arbiter who ruled in favor of private respondents on 20 June 1994.<sup>[5]</sup> According to the Labor Arbiter, the documentary and testimonial evidence presented by the parties showed that although private respondents were afforded due process before being dismissed, their dismissal was not founded on valid and justifiable grounds as provided under Art. 282 of the Labor Code, as amended. Thus, the Labor Arbiter declared private respondents to be entitled to reinstatement with payment of full back wages under Art. 279 of the Labor Code, as amended. But after considering the strained relations among the parties brought about by the litigation, the Labor Arbiter instead ordered petitioners to pay private respondents separation pay, back wages, moral and/or actual damages and attorney's fees.

On 8 October 1997 petitioners' appeal before the NLRC was denied.<sup>[6]</sup> The NLRC affirmed with modification the decision of the Labor

Arbiter by deleting the award of damages and attorney's fees for lack of sufficient basis. On 9 February 1999 petitioners sought reconsideration but the NLRC denied their motion.<sup>[7]</sup> Thus, on 8 March 1999 petitioners filed before the Court of Appeals a petition for certiorari imputing grave abuse of discretion on the part of the NLRC for affirming the decision of the Labor Arbiter albeit with modification. On 30 June 2000 the Court of Appeals dismissed the petition for lack of merit and affirmed the resolutions of the NLRC dated 8 October 1997 and 9 February 1999.<sup>[8]</sup> Public respondent found no reason to deviate from the accepted doctrine that findings of fact of the NLRC affirming those of the Labor Arbiter are generally accorded respect and even finality when supported by substantial evidence, or that amount of evidence which a reasonable mind might accept as adequate to justify a conclusion.<sup>[9]</sup> Hence, this petition raising the basic issue of whether private respondents were illegally dismissed.

We find for private respondents. The petition is without merit. The onus of proving that the dismissal of the employee was for a valid and authorized cause rests on the employer<sup>[10]</sup> and failure to discharge the same would mean that the dismissal was not justified and therefore illegal.<sup>[11]</sup>

The requisites for a valid dismissal are:

- (a) the employee must be afforded due process, i.e., he must be given an opportunity to be heard and to defend himself; and
- (b) the dismissal must be for a valid cause as provided in Art. 282<sup>[12]</sup> of the Labor Code<sup>[13]</sup> or for any of the authorized causes under Arts. 283<sup>[14]</sup> and 284<sup>[15]</sup> of the same Code.

Anent the first requisite, the employer must furnish the employee with two (2) written notices: (a) a written notice containing a statement of the cause for the termination to afford the employee ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires; and, (b) if the employer decides to terminate the services of the employee, the employer must notify

him in writing of the decision to dismiss him, stating clearly the reasons therefor.<sup>[16]</sup>

Petitioner National Bookstore, as correctly pointed out by the Labor Arbiter in his decision, more than substantially observed this requirement. On 30 July 1992 it gave private respondents an opportunity to explain why they should not be dismissed for the loss of company funds, which private respondents immediately complied with by submitting their joint answer on 31 July 1992. Moreover, on 29 August 1992 petitioner National Bookstore sent another written notice to private respondents informing them of its decision to terminate their services setting forth the reasons therefor. But the burden imposed on petitioner National Bookstore does not stop here. It must also show with convincing evidence that the dismissal was based on any of the just or authorized causes provided by law for termination of employment by an employer.

To quote petitioner National Bookstore's Personnel Manager Padilla, Jr., "we are constrained to terminate your employment or services with the Company effective immediately for gross neglect of duty and loss of confidence."<sup>[17]</sup> Gross neglect of duty and loss of confidence are just causes for termination of employment by an employer.<sup>[18]</sup>

Gross negligence has been defined as the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.<sup>[19]</sup> A perusal of the records of the case does not in any way show that private respondents were even remotely negligent of their duties so as to cause the loss of petitioner National Bookstore's funds. Private respondents were able to illustrate with candor and sincerity the procedure they took prior to the loss which was witnessed by an employee of petitioner National Bookstore. They were in fact subjected to a thorough body search by petitioner National Bookstore's lady guard before leaving their place of work on the date in issue, a claim not controverted by petitioners. Moreover, it was not even shown that they had access to the vault where the money was kept.

Significantly, in order to constitute a just cause for the employee's dismissal, the neglect of duties must not only be gross but also

habitual. Thus, the single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.<sup>[20]</sup> Verily, assuming arguendo that private respondents were negligent, although we find otherwise, it could only be a single or an isolated act that cannot be categorized as habitual, hence, not a just cause for their dismissal.

On the other hand, loss of trust and confidence to be a valid ground for dismissal must be based on a willful breach of trust and founded on clearly established facts.<sup>[21]</sup> A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.<sup>[22]</sup> The Labor Arbiter, the NLRC and the Court of Appeals were unanimous in declaring that there was no willful breach of confidence in the instant case as petitioners failed to establish with certainty the facts upon which it could be based. Indeed, petitioner National Bookstore lost some funds but that private respondents were responsible therefor was not supported by any substantial evidence.

Private respondents have been illegally dismissed. Consequently, they are entitled to reinstatement to their former positions without loss of seniority rights and payment of back wages.<sup>[23]</sup> However, if such reinstatement would prove impracticable and hardly in the best interest of the parties, perhaps due to the lapse of time since their dismissal, private respondents should be awarded separation pay in lieu of reinstatement<sup>[24]</sup> computed at one (1) month salary for every year of service with a fraction of six (6) months equivalent to one (1) whole year.<sup>[25]</sup>

Consequently private respondents, for having been illegally dismissed after 21 March 1989, conformably with established jurisprudence,<sup>[26]</sup> are granted full back wages 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.

The deletion of the award of damages is sustained for lack of sufficient basis to justify them. Certainly, the finding that private respondents have been wrongfully dismissed does not automatically signify that petitioners are liable for moral and other damages. Award of moral damages cannot be justified solely upon the premise that the



employer fired his employee without just cause or due process. Additional facts must be pleaded and proved to warrant the grant of moral damages under the Civil Code, i.e., that the act of dismissal was attended by bad faith or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy; and, that social humiliation, wounded feelings, grave anxiety, etc., resulted therefrom.<sup>[27]</sup> These were not shown in the instant case.

As regards exemplary damages, they may only be awarded if the dismissal was shown to have been effected in a wanton, oppressive or malevolent manner<sup>[28]</sup> or where the party involved is entitled to moral or compensatory damages.<sup>[29]</sup> Again, this was not adequately established by evidence.

However, as for attorney's fees, private respondents are entitled thereto as they were compelled to litigate with petitioners and incur expenses to enforce and protect their interests.<sup>[30]</sup> The award by the Labor Arbiter of P22,268.22 and P22,916.41 as attorney's fees to private respondents Marietta M. Ymasa and Edna L. Gabriel, respectively, being reasonable is sustained.

**WHEREFORE**, the Petition is **DENIED** for lack of merit. The Decision of the Court of Appeals dated 30 June 2000 and its Resolution of 10 January 2001 affirming the Resolutions of the National Labor Relations Commission dated 8 October 1997 and 9 February 1999 are **AFFIRMED**. Petitioners National Bookstore, Inc. and Alfredo C. Ramos are **DIRECTED** jointly and severally to reinstate private respondents Marietta M. Ymasa and Edna L. Gabriel to their former positions without loss of seniority rights plus payment of full back wages. However, if reinstatement is no longer practicable, petitioners are likewise **DIRECTED** to pay jointly and severally each private respondent separation pay equivalent to one (1) month salary for every year of service, a fraction of six (6) months being considered one (1) whole year, and full back wages inclusive of allowances and other benefits or their monetary equivalent from 29 August 1992 up to the time of the finality of this Decision, plus attorney's fees awarded by the Labor Arbiter, which we **AFFIRM**. Costs against petitioners.

## **SO ORDERED.**

### **Mendoza, Quisumbing, Buena and De Leon, Jr., JJ., concur.**

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- [1] Decision penned by Associate Justice Ramon Mabutas, Jr., concurred in by Associate Justices Demetrio G. Demetria and Jose L. Sabio, Jr.; Rollo, pp. 26-55.
- [2] Resolution penned by Associate Justice Ramon Mabutas, Jr., concurred in by Associate Justices Jose L. Sabio, Jr. and Alicia L. Santos; id., p. 72.
- [3] Resolution penned by Commissioner Joaquin A. Tanodra, concurred in by Commissioner Ireneo B. Bernardo. Commissioner Lourdes C. Javier was on leave; CA Rollo, pp. 19-29.
- [4] Resolution penned by Commissioner Tito F. Genilo, concurred in by Commissioners Lourdes C. Javier and Ireneo B. Bernardo; id., pp. 32-33.
- [5] Penned by Labor Arbiter Facundo L. Leda; Records, pp. 243-255.
- [6] See Note 3.
- [7] See Note 4.
- [8] Penned by Associate Justice Ramon Mabutas, Jr., and concurred in by Associate Justices Demetrio G. Demetria and Jose L. Sabio, Jr.; Rollo, pp. 26-55.
- [9] See Note 1, citing Gabisay and Gomez vs. NLRC, G.R. No. 108311, 18 May 1999, 307 SCRA 141; Audion Electric Co., Inc. vs. NLRC, G.R. No. 106648, 17 June 1999, 308 SCRA 340.
- [10] Arboleda vs. NLRC, G.R. No. 119509, 11 February 1999, 303 SCRA 38.
- [11] Azcor Manufacturing, Inc. vs. NLRC, G.R. No. 117963, 11 February 1999, 303 SCRA 26; CMP Federal Security Agency, Inc. vs. NLRC, G.R. No. 125298, 11 February 1999, 303 SCRA 99; Carlos A. Gothong Lines, Inc. vs. NLRC, G.R. No. 96685, 15 February 1999, 303 SCRA 164; Maranaw Hotels and Resort Corporation vs. NLRC, G.R. No. 123880, 23 February 1999, 303 SCRA 540.
- [12] Art. 282. Termination by Employer. — An employer may terminate an employment for any of the following causes:
- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
  - (b) Gross and habitual neglect by the employee of his duties;
  - (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
  - (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and,
  - (e) Other causes analogous to the foregoing.
- [13] See Note 10.



- [14] Art. 283. Closure of Establishment and Reduction of Personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.
- [15] Art. 284. Disease as Ground for Termination.— An employer may terminate the ‘services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.
- [16] See Note 10; *Kams International, Inc. vs. NLRC*, G.R. No. 128806, 28 September 1999, 315 SCRA 316; *C & A Construction Co., Inc. vs. NLRC*, G.R. No. 122279, 22 November 1999, 318 SCRA 784.
- [17] Underscoring supplied for emphasis.
- [18] See Note 12.
- [19] *Citibank vs. Gatchalian*, G.R. No. 111222, 18 January 1995, 240 SCRA 212.
- [20] *Cesario Alvero Azucena, Jr., The Labor Code With Comments and Cases*, Vol. II, Fourth Ed., 1999, Reprinted 2001, p. 595, citing Department of Labor Manual, Sec. 4343.01[27].
- [21] *Surigao del Norte Electric Cooperative vs. NLRC*, G.R. No. 125212, 28 June 1999, 309 SCRA 233.
- [22] *Ibid.*
- [23] *De Guzman vs. NLRC*, G.R. No. 130617, 11 August 1999, 312 SCRA 266.
- [24] *Lambo vs. NLRC*, G.R. No. 111042, 26 October 1999, 317 SCRA 420.
- [25] *Pure Foods Corporation vs. NLRC*, G.R. No. 78591, 21 March 1989, 171 SCRA 415.
- [26] *Pepsi-Cola Products Philippines, Inc. vs. NLRC*, G.R. No. 121324, 30 September 1999, 315 SCRA 587.
- [27] *Primero vs. Intermediate Appellate Court*, G.R. No. 72644, 14 December 1987, 156 SCRA 435.
- [28] *Cocoland Development Corp. vs. NLRC*, G.R. No. 98458, 17 July 1996, 259 SCRA 51.

- [29] Dee Hua Liong Electrical Corp. vs. Reyes, G.R. No. 72182, 25 November 1986, 145 SCRA 713.
- [30] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: . . (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. (New Civil Code).

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