CHANROBLES PUBLISHING COMPANY

SUPREME COURT
SECOND DIVISION

MARCIA TUMBIGA,
***Petitioner*,**

-versus- **G.R. No. 121429**
June 19, 1997

NATIONAL LABOR RELATIONS COMMISSION, GENERAL MILLING CORPORATION, and EDUARDO CABAHUG,
***Respondents*.**

x---x

D E C I S I O N

PUNO, *J.*:

The present case stemmed from the dismissal of petitioner from service for "gross or serious misconduct" and "gross inefficiency in the performance of duties."

The facts show that in 1989, petitioner was hired on a temporary basis by General Milling Corporation (GMC) as an invoicing clerk. She held the position for about a month while the regular employee assigned to the job was on leave. Petitioner was laid off when the employee she substituted resumed working for GMC.

On May 28, 1990, petitioner was rehired by GMC as a billing clerk. Later on, she became a regular employee of GMC. In September, 1991, petitioner was temporarily designated as invoicing clerk in lieu of the regular invoicing clerk, Grace Gabuya, who went on maternity leave. Petitioner's main duty was to receive orders from customers and forward them to the mill for subsequent delivery.

While petitioner was the acting invoicing clerk, GMC received complaints from two (2) of its valued customers that petitioner mishandled their orders. The first complaint involved the order of Delia Garces, wife of GMC's general feeds dealer in Pagadian City. In October 1991, she ordered two hundred (200) bags of layer mash from petitioner via a long distance call. Petitioner promised Garces that the order would be loaded on board the vessel, Gothong, bound for Ozamis City. As scheduled, Garces sent her delivery trucks to Ozamis City to pick up the order, but the shipment did not arrive. Garces was furious.

The second complaint involved the order of Inday Lim, a poultry owner. On October 15, 1991, she ordered two hundred forty (240) bags of feeds. Petitioner assured Lim that delivery would be made on October 17, 1991. There was no delivery on said date. Lim followed up her order the following day through a series of phone calls but to no avail. At about 6:00 p.m., Lim again phoned petitioner regarding her order. Petitioner replied that delivery had to be made the following day, at 6:00 a.m., because there was no truck available. Lim was frantic and insisted on the immediate delivery of her order. Petitioner disinterestedly told Lim that nothing could be done about the situation. Anxious that she would not be able to feed her chicks, Lim sought the help of petitioner's supervisor, Mr. Jovy Sepe. Sepe was able to arrange the partial delivery of ten (10) bags of feeds to Lim at about 7:00 p.m.

On December 27, 1991, Atty. Joseph Baduel, legal counsel of GMC, issued a Memorandum,[1] dated December 27, 1991, directing petitioner to explain in writing within three (3) days why no disciplinary action should be taken against her for "serious and gross misconduct" and "gross inefficiency in the performance of duties." The memorandum also alleged the report of her supervisor and co-

workers that she was very slow in her work and had several backlogs which affected and delayed the work of her co-workers.

In her written explanation,[2] dated December 30, 1991, petitioner claimed she did not represent to Garces that her order would be loaded on board the vessel Gothong because she knew that Garces' order would be shipped by William Lines. She denied responsibility for the non-delivery of Garces' order and alleged that the shipping line failed to load the cargoes on board the vessel. As regards the complaint of Lim, petitioner averred that she worked undertime on the date Lim placed her orders. When she reported for work, Lim's various orders were already on her table. Allegedly, she was verifying which of the orders were being followed up by Lim when Lim insisted on immediately picking them up.

Petitioner denied the charge that she was very slow in her work. She averred she was never remiss in her work, and that she has not been reprimanded or suspended for violating company rules and regulations.

GMC found petitioner's explanation unsatisfactory. Apparently, petitioner's case was set for investigation on January 3, 1992, but she shunned the chance given her. GMC offered to pay petitioner's separation pay but it was rejected. GMC terminated her services effective January 15, 1992. Petitioner, however, was not allowed to report for work after the close of business hours of January 10, 1992, the date she received the letter of dismissal.

Petitioner sued GMC and its Vice-President for Engineering and Plant Administration, Engr. Eduardo Cabahug, for illegal dismissal and unfair labor practice.[3] Petitioner prayed for reinstatement and payment of full backwages, moral and exemplary damages and attorney's fees.

In her Position Paper,[4] petitioner alleged that her dismissal was anchored on fabricated charges; that she should not be dismissed because she was then performing a temporary task; that the incidents involving Garces and Lim were inevitable because she was not given sufficient training for her new job as an invoicing clerk. Additionally, she claimed she got the ire of the management when she refused to

resign from her membership with the GMC-Independent Labor Organization (GMC-ILO), the certified bargaining agent of the rank-and-file employees of GMC.

GMC justified the dismissal of petitioner on the following grounds: (1) "gross inefficiency in the performance of duties" for failing to verify if the orders made by its valued customers were delivered as she promised; (2) "gross or serious misconduct" for not paying attention to the verbal admonition of her supervisors that she was very slow in her work.[5] Allegedly, there were occasions in the past when petitioner's supervisor reprimanded her for inefficiency but she kept on table hopping during office hours instead of improving her working habits.

On October 22, 1992, Labor Arbiter Ernesto F. Carreon rendered judgment in favor of petitioner.[6] The pertinent portion of his decision states:

> "The complaint of the two (2) customers was the non-delivery of their orders which in the first place was not the responsibility of the complainant but by the mill. The involvement of the complainant in the problems was her assurance to the customers that their orders would be delivered on a scheduled date which she could have got also from the mill that would make the delivery.
>
> "If the orders were not delivered as scheduled then the same should have been principally the main concern of the mill and not that of the complainant who had no control over the employees of the mill.
>
> "With respect to the contention of the respondents that the complainant was grossly inefficient in the performance of her work, (w)e disregard the same for lack of merit.
>
> "For one thing, if the complainant was indeed inefficient, she could not have been chosen by the respondent to take the place of Grace Gabuya in order to do the delicate and intricate work of an invoicing clerk.

"For another thing, as correctly pointed out by the complainant, she never received any warning or reprimand relevant to her alleged dysfunctional, which is surprising if indeed the charge of the respondents is true.

"All told, We rule and so hold that the dismissal of the complainant is harsh a penalty for the misstep committed by her.

"x x x

"However, in view of the apparent strained relationship between the parties and to reinstate the complainant would only certainly redound to their mutual detriment, instead of reinstatement (w)e opt to grant the complainant separation pay equivalent to one (1) month salary for every year of service.

"Relative to the second issue (w)e rule to dismiss the charge of unfair labor practice as (w)e are not satisfied by the degree of proof presented by the complainant in order to at least substantially establish the charge."

"x x x

"WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent General Milling Corporation to pay the complainant the following:

1. Separation pay	—	P5,550.00
2. Backwages	—	24,975.00
3. Attorney's fees	—	3,052.50
Total		P33,577.50
		========

"The case against respondent Eduardo Cabahug, the respondents' counterclaims and the other claims of the complainant are dismissed for lack of merit.

"SO ORDERED."

Both parties appealed from the labor arbiter's ruling.

Respondent National Labor Relations Commission set aside the Decision of the Labor Arbiter and ruled in favor of GMC. The relevant portion of NLRC's Decision,[7] dated August 15, 1994, reads:

> "The evidence on record clearly established that complainant was guilty of gross neglect of her duties in relation to the transactions involving Mrs. Delia Garces and Inday Lim, a just cause for termination under Art. 282 (b) of the Labor Code, or at least, she was grossly inefficient in the performance of her duties in connection with said transaction, an analogous just cause under Art. 282 (e) of the Labor Code. Surely, by such gross neglect of duty or gross inefficiency, GMC suffered damages, not only in its expected income from said transactions but more so to its corporate image or goodwill.
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> "As a matter of fact, based on the findings of the Labor Arbiter as stated in the aforesaid decision, it is apparent that the herein complainant-appellant was directly responsible for those incidents which occurred during the second week of October, 1991, . . . which incidents created some difficult problems for the firm. However, the Labor Arbiter sought to mitigate the gravity of the misconduct committed by the aforesaid employee by stressing the need for compassion and leniency in the treatment of the said employee, stating that after all it was the complainant-appellant's first offense, that the penalty imposed by the respondent corporation was too harsh, the penalty of suspension could have sufficed, and that the position of the complainant-appellant in the company was that of a billing clerk and it was, therefore, not surprising that she was not adequately prepared to perform the duties and functions of an invoicing clerk, which was the position temporarily assigned to her when the aforementioned incidents occurred.
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> "We cannot subscribe to the views expressed by the Labor Arbiter in regard to the justification for the dismissal from the service of the complainant-appellant. While (w)e perfectly agree with the proposition that as a worker the complainant-appellant should have been accorded leniency and compassion

by the management of the respondent corporation, it is clear from the facts and circumstances of this case that it was the complainant-appellant herself who made it virtually impossible for the management of the company to treat her shortcomings with leniency and compassion. In fact, it is evident from the facts on record that the respondents gave the complainant-appellant an ample opportunity to explain her side in relation to the charges levelled against her and to avert the situation in which she would be subjected to disciplinary action. However, instead of giving a satisfactory explanation to the management of the firm and properly defending her rights as worker, particularly in the investigation in which her presence and participation had been required by the company, the complainant-appellant chose to accuse two responsible officials of the corporation of committing unfair labor practice acts against her, which accusation was found by the Labor Arbiter to be without any sufficient evidentiary support. Had the said employee been less combative and arrogant in her attitudes towards the management of the respondent corporation, and if she had been more candid and conciliatory in confronting the charges and the issues raised against her as an employee of the firm, (w)e would probably have something to support the theory that her position in this case is not beyond the reach of human compassion and is well within the constitutional policy to extend full protection of labor."

x x x

"WHEREFORE, judgment is hereby rendered reversing and setting aside the aforementioned decision dated October 22, 1992 of the Labor Arbiter in connection with the above entitled case for the reasons stated in the foregoing discussions.

"The complaint filed by the herein complainant-appellant against the General Milling Corporation and/or Engr. Eduardo Cabahug and the complainant-appellant's appeal to this Commission are hereby DISMISSED.

"SO ORDERED."

Hence, the petition.

Petitioner contends that public respondent gravely abused its discretion in:

> "I. REVERSING THE DECISION OF THE LABOR ARBITER FINDING THE DISMISSAL OF PETITIONER ILLEGAL WHICH WAS DULY SUPPORTED BY FACTS AND EVIDENCE ON RECORD AND SUBSTITUTING IT WITH A FINDING WITH NOTHING TO SUPPORT BUT SURMISES AND CONJECTURES;
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> "II. DECLARING THE DISMISSAL OF PETITIONER TO BE VALID DESPITE THE GLARING FAILURE ON THE PART OF PRIVATE RESPONDENTS TO PROVE THE EXISTENCE OF A JUST CAUSE AND TO SHOW OBSERVANCE OF DUE PROCESS; AND
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> "III. DISREGARDING THE EXISTENCE OF SUFFICIENT BASES TO WARRANT THE AWARD OF DAMAGES IN FAVOR OF PETITIONER."

The first issue is whether there is a just cause to impose disciplinary action against the petitioner.

There is hardly any question that petitioner mishandled the orders of Garces and Lim. Her ineptitude certainly damaged the corporate reputation of GMC. She was given by GMC the opportunity to explain her gross neglect of duty but she shunned the investigation.

In an attempt to exculpate herself, petitioner now avers she was given little time to acquaint herself with the delicate duty of the invoicing clerk, hence, it was not unexpected for her to commit mistakes relative to her new assignment. She further contends that she should be given consideration for her lapses because she was then performing a temporary duty.

We are not impressed by petitioner's posture. We have held that when an employee accepts a position, whether it be a temporary assignment or not, he assumes its responsibilities. Any employee entrusted with

responsibility by his employer should perform the task assigned to him with reasonable care and dedication. Failing in this, the employee must suffer the consequence of his negligence in the performance of his duties.[8]

In the case at bar, petitioner assumed the responsibilities of invoicing clerk when she accepted the position. She even admitted that she had held the position before she became a regular employee of GMC. Thus, she cannot claim lack of time to familiarize herself with the duties of an invoicing clerk. In truth, the incidents involving customers Lim and Garces happened because she lacked zeal and dedication in doing her assigned task. Her callous reaction to Lim's complaint illustrates her lack of concern for the interest of her employer. Even assuming, arguendo, that she was not sufficiently trained for the invoicing clerk's job, she could have referred the problems of Lim and Garces to her supervisors since they are more adept to handle the matter. So simple a remedy was not even taken by the petitioner.

The second issue is whether dismissal is the proper penalty to be imposed on petitioner. We agree with the labor arbiter that dismissal is too harsh in relation to the offense she committed.[9] The offense was the first to be committed by petitioner and she did not do it with malice. She was not also solely responsible for the aforementioned incidents. The mill is likewise responsible for the timely delivery of the orders of its customers. The records also show that petitioner has not been suspended, nor has she been given written warnings for violating company rules or for her alleged below par performance at work in the past.

We concur with the labor arbiter that suspension of petitioner would have sufficed. But again, the evidence shows that the relationship of the parties has been unduly restrained as to make petitioner's reinstatement no longer feasible and advisable.[10] Petitioner has wildly accused GMC and its officials of union busting, while GMC has charged petitioner of serious misconduct and gross inefficiency due to her incorrigible attitude towards her work. Thus, in lieu of reinstatement, it is only just and equitable to award separation pay in favor of petitioner.[11]

The third issue relates to the claim for damages by petitioner. Petitioner assails the public respondent for disallowing her prayer for damages. She claims she was constantly harassed by the management to force her to resign.

We find no reason to reverse the findings of both the labor arbiter and the respondent NLRC that petitioner is not entitled to damages. There was just cause to discipline her, albeit her dismissal was a disproportionate penalty to her offense. Her dismissal was not done in a wanton or oppressive manner. In fact, she was given due process before she was dismissed. Her dismissal arose out of the honest belief of her employer that she committed acts inimical to its business interests. The settled rule is that an employer may be held liable for damages only if the dismissal of the employee was attended by evident bad faith[12] or fraud or was oppressive to labor or done in a manner contrary to morals, good customs or public policy.[13]

For the same reason, petitioner's claim for attorney's fees has no leg to stand on. Article 2208 of the Civil Code allows attorney's fees to be awarded by a court when its claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission of the party for whom it is sought.[14] We restate that attorney's fees is not recoverable where there is no sufficient showing of bad faith.[15]

IN VIEW WHEREOF, the August 15, 1994 Decision and May 3, 1995 Resolution of public respondent in NLRC Case No. V-0025-93 is set aside and the October 22, 1992 Decision of the labor arbiter in RAB VII-02-0212-92 is reinstated with modification that the award of P3,052.50, as attorney's fees, is deleted. No costs.

SO ORDERED.

Regalado, Romero, Mendoza and Torres, Jr., *JJ.*, concur.

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[1] Rollo, pp. 41-42.
[2] Ibid., pp. 43-45.
[3] Docketed as AB-VII-0212-92.
[4] Rollo, pp. 24-38.

[5] See Position Paper, Rollo, pp. 64-65.
[6] Rollo, pp. 68-78.
[7] Penned by Commissioner Bernabe S. Batuhan, concurred in by Presiding Commissioner Irenea E. Ceniza and Commissioner Amorito V. Cañete; Rollo, pp. 101-115.
[8] Philippine Commercial International Bank vs. Jacinto, G.R. No. 92742, May 6, 1991, 196 SCRA 699.
[9] Filipinas Manufacturer's Bank vs. NLRC, G.R. 72805, February 28, 1990, 182 SCRA 848; Bernardo vs. NLRC, G.R. No. 105819, March 15, 1996, 255 SCRA 108.
[10] L.T. Datu & Co., Inc. vs. NLRC, G.R. No. 113162, February 9, 1996, 253 SCRA 440.
[11] People's Security, Inc. vs. NLRC, et al., G.R. No. 96451, September 8, 1993, 226 SCRA 146.
[12] Hilario vs. NLRC, G.R. No. 119583, January 29, 1996, 252 SCRA 555.
[13] Philippine School of Business Administration (PSBA) vs. NLRC, G.R. No. 114143, August 28, 1996.
[14] Bernardo vs. NLRC, at note no. 9.
[15] Servicewide Specialists, Inc., vs. CA, et al., G.R. No. 110597, May 8, 1996, 256 SCRA 649.

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