

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**WATEROUS DRUG CORPORATION and
MS. EMMA CO,**

Petitioners,

-versus-

**G.R. No. 113271
October 16, 1997**

**NATIONAL LABOR RELATIONS
COMMISSION and ANTONIA
MELODIA CATOLICO,**

Respondents.

X-----X

DECISION

DAVIDE, JR., J.:

“Nor is he a true Servant who buys dear to share in the Profit with the Seller.”^[1]

This petition for certiorari under Rule 65 of the Rules of Court seeks to declare private respondent Antonia Melodia Catolico (hereafter Catolico) not a “true Servant,” thereby assailing the 30 September 1993 Decision^[2] and 2 December 1993 Resolution^[3] of the National

Labor Relations Commission (NLRC) in NLRC-NCR CA No. 005160-93, which sustained the reinstatement and monetary awards in favor of private respondent^[4] and denied the petitioner's motion for reconsideration.^[5]

The facts are as follows:

Catolico was hired as a pharmacist by petitioner Waterous Drug Corporation (hereafter WATEROUS) on 15 August 1988.

On 31 July 1989, Catolico received a memorandum^[6] from WATEROUS Vice President-General Manager Emma R. Co warning her not to dispense medicine to employees chargeable to the latter's accounts because the same was a prohibited practice. On the same date, Co issued another memorandum^[7] to Catolico warning her not to negotiate with suppliers of medicine without consulting the Purchasing Department, as this would impair the company's control of purchases and, besides she was not authorized to deal directly with the suppliers.

As regards the first memorandum, Catolico did not deny her responsibility but explained that her act was "due to negligence," since fellow employee Irene Soliven "obtained the medicines in bad faith and through misrepresentation when she claimed that she was given a charge slip by the Admitting Dept." Catolico then asked the company to look into the fraudulent activities of Soliven.^[8]

In a memorandum^[9] dated 21 November 1989, WATEROUS Supervisor Luzviminda E. Bautro warned Catolico against the "rush delivery of medicines without the proper documents."

On 29 January 1990, WATEROUS Control Clerk Eugenio Valdez informed Co that he noticed an irregularity involving Catolico and Yung Shin Pharmaceuticals, Inc. (hereafter YSP), which he described as follows:

A case in point is medicine purchased under our Purchase Order (P.O.) No. 19045 with YSP Sales Invoice No. 266 representing purchase of ten (10) bottles of Voren tablets at P384.00 per unit. Previous P.O.'s issued to YSP, Inc. showed

that the price per bottle is P320.00 while P.O. No. 19045 is priced at P384.00 or an over price of P64.00 per bottle (or total of P640.00). WDRC paid the amount of P3,840.00 thru MBTC Check No. 222832 dated December 15, 1988, Verification was made to YSP, Inc. to determine the discrepancy and it was found that the cost per bottle was indeed overpriced. YSP, Inc. Accounting Department (Ms. Estelita Reyes) confirmed that the difference represents refund of jack-up price of ten bottles of Voren tablets per sales invoice no. 266 as per their check voucher no. 629552 (shown to the undersigned), which was paid to Ms. Catolico through China Bank check no. 892068 dated November 9, 1989.

The undersigned talked to Ms. Catolico regarding the check but she denied having received it and that she is unaware of the overprice. However, upon conversation with Ms. Saldana, EDRC Espana Pharmacy Clerk, she confirmed that the check amounting to P640.00 was actually received by Ms. Catolico. As a matter of fact, Ms. Catolico even asked Ms. Saldana if she opened the envelope containing the check but Ms. Saldana answered her “talagang ganyan, bukas.” It appears that the amount in question (P640.00) had been pocketed by Ms. Catolico.^[10]

Forthwith, in her Memorandum^[11] dated 31 January 1990, Co asked Catolico to explain, within twenty-four hours, her side of the reported irregularity. Catolico asked for additional time to give her explanation,^[12] and she was granted a 48-hour extension from 1 to 3 February 1990. However, on 2 February 1990, she was informed that effective 6 February 1990 to 7 March 1990, she would be placed on preventive suspension to protect the interests of the company.^[13]

In a letter dated 2 February 1990, Catolico requested access to the file containing Sales Invoice No. 266 for her to be able to make a satisfactory explanation. In said letter she protested Saldaña’s invasion of her privacy when Saldaña opened an envelope addressed to Catolico.^[14]

In a Letter^[15] to Co dated 10 February 1990, Catolico, through her counsel, explained that the check she received from YSP was a Christmas gift and not a “refund of overprice.” She also averred that the preventive suspension was ill-motivated, as it sprang from an earlier incident between her and Co’s secretary, Irene Soliven.

On 5 March 1990, WATEROUS Supervisor Luzviminda Bautro, issued a memorandum^[16] notifying Catolico of her termination; thus:

We received your letter of explanation and your lawyer’s letter dated Feb. 2, 1990 and Feb. 10, 1990 respectively regarding our imposition of preventive suspension on you for acts of dishonesty. However, said letters failed to rebut the evidences [sic] in our possession which clearly shows that as a Pharmacist stationed at Espana Branch, you actually made Purchase Orders at YSP Phils., Inc. for 10 bottles of Voren tablets at P384.00/bottle with previous price of P320.00/bottle only. A check which you received in the amount of P640.00 actually represents the refund of over price of said medicines and this was confirmed by Ms. Estelita Reyes, YSP Phils., Inc. Accounting Department.

Your actuation constitutes an act of dishonesty detrimental to the interest of the company. Accordingly, you are hereby terminated effective March 8, 1990.

On 5 May 1990, Catolico filed before the Office of the Labor Arbiter a complaint for unfair labor practice, illegal dismissal, and illegal suspension.^[17]

In his Decision^[18] of 10 May 1993, Labor Arbiter Alex Arcadio Lopez found no proof of unfair labor practice against petitioners. Nevertheless, he decided in favor of Catolico because petitioners failed to “prove what they alleged as complainant’s dishonesty,” and to show that any investigation was conducted. Hence, the dismissal was without just cause and due process. He thus declared the dismissal and suspension illegal but disallowed reinstatement, as it would not be to the best interest of the parties. Accordingly, he awarded separation pay to Catolico computed at one-half month’s pay

for every year of service; back wages for one year; and the additional sum of P2,000.00 for illegal suspension “representing 30 days work.” Arbitrator Lopez computed the award in favor of Catolico as follows:

30 days Preventive Suspension	P2,000.00
Backwages	26,858.50
1/12 of P26,858.50	2,238.21
Separation pay (3 years)	4,305.15

TOTAL AWARD:	P35,401.86
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Petitioners seasonably appealed from the decision and urged the NLRC to set it aside because the Labor Arbitrator erred in finding that Catolico was denied due process and that there was no just cause to terminate her services.

In its Decision^[19] of 30 September 1993, the NLRC affirmed the findings of the Labor Arbitrator on the ground that petitioners were not able to prove a just cause for Catolico’s dismissal from her employment. It found that petitioner’s evidence consisted only of the check of P640.00 drawn by YSP in favor of complainant, which her co-employee saw when the latter opened the envelope. But, it declared that the check was inadmissible in evidence pursuant to Sections 2 and 3(1 and 2) of Article III of the Constitution.^[20] It concluded:

With the smoking gun evidence of respondents being rendered inadmissible, by virtue of the constitutional right invoked by complainants, respondents’ case falls apart as it is bereft of evidence which cannot be used as a legal basis for complainant’s dismissal.

The NLRC then dismissed the appeal for lack of merit, but modified the dispositive portion of the appealed decision by deleting the award for illegal suspension as the same was already included in the computation of the aggregate of the awards in the amount of P35,401.86.

Their motion for reconsideration having been denied, petitioners filed this special civil action for certiorari, which is anchored on the following grounds:

- I. Public respondent committed grave abuse of discretion in its finding of facts.
- II. Due process was duly accorded to private respondent.
- III. Public respondent gravely erred in applying Section 3, Article III of the 1987 Constitution.

As to the first and second grounds, petitioners insist that Catolico had been receiving “commissions” from YSP, or probably from other suppliers, and that the check issued to her on 9 November 1989 was not the first or the last. They also maintained that Catolico occupied a confidential position and that Catolico’s receipt of YSP’s check, aggravated by her “propensity to violate company rules,” constituted breach of confidence. And contrary to the findings of NLRC, Catolico was given ample opportunity to explain her side of the controversy.

Anent the third ground, petitioners submit that, in light of the decision in the *People vs. Marti*,^[21] the constitutional protection against unreasonable searches and seizures refers to the immunity of one’s person from interference by government and cannot be extended to acts committed by private individuals so as to bring it within the ambit of alleged unlawful intrusion by the government.

In its Manifestation in Lieu of Comment, the Office of the Solicitor General (OSG) disagreed with the NLRC’s decision, as it was of the persuasion that (a) the conclusions reached by public respondent are inconsistent with its findings of fact; and (b) the incident involving the opening of envelope addressed to private respondent does not warrant the application of the constitutional provisions. It observed that Catolico was given “several opportunities” to explain her side of the check controversy, and concluded that the opportunities granted her and her subsequent explanation “satisfy the requirements of just cause and due process.” The OSG was also convinced that Catolico’s dismissal was based on just cause and that Catolico’s admission of the existence of the check, as well as her “lame excuse” that it was

Christmas gift from YSP, constituted substantial evidence of dishonesty. Finally, the OSG echoed petitioners' argument that there was no violation of the right of privacy of communication in this case,^[22] adding that petitioner WATEROUS was justified in opening an envelope from one of its regular suppliers as it could assume that the letter was a business communication in which it had an interest.

In its Comment which we required to be filed in view of the adverse stand of the OSG, the NLRC contends that petitioners miserably failed to prove their claim that it committed grave abuse of discretion in its findings of fact. It then prays that we dismiss this petition.

In her Comment, Catolico asserts that petitioners' evidence is too "flimsy" to justify her dismissal. The check in issue was given to her, and she had no duty to turn it over to her employer. Company rules do not prohibit an employee from accepting gifts from clients, and there is no indication in the contentious check that it was meant as a refund for overpriced medicines. Besides, the check was discovered in violation of the constitutional provision on the right to privacy and communication; hence, as correctly held by the NLRC, it was inadmissible in evidence.

Catolico likewise disputes petitioners' claim that the audit report and her initial response that she never received a check were sufficient to justify her dismissal. When she denied having received a check from YSP, she meant that she did not receive any refund of overprice, consistent with her position that what she received was a token gift. All that can be gathered from the audit report is that there was apparently an overcharge, with no basis to conclude that Catolico pocketed the amount in collusion with YSP. She thus concluded that her dismissal was based on a mere suspicion.

Finally, Catolico insists that she could not have breached the trust and confidence of WATEROUS because, being merely a pharmacist, she did not handle "confidential information or sensitive properties." She was doing the task of a saleslady: selling drugs and making requisitions when supplies were low.

A thorough review of the record leads us to no other conclusion than that, except as to the third ground, the instant petition must fail.

Concededly, Catolico was denied due process. Procedural due process requires that an employee be apprised of the charge against him, given reasonable time to answer the charge, allowed amply opportunity to be heard and defend himself, and assisted by a representative if the employee so desires.^[23] Ample opportunity connotes every kind of assistance that management must accord the employee to enable him to prepare adequately for his defense, including legal representation.^[24]

In the case at bar, although Catolico was given an opportunity to explain her side, she was dismissed from the service in the memorandum of 5 March 1990 issued by her Supervisor after receipt of her letter and that of her counsel. No hearing was ever conducted after the issues were joined through said letters. The Supervisor's memorandum spoke of "evidences [sic] in [WATEROUS] possession," which were not, however, submitted. What the "evidences" [sic] other than the sales invoice and the check were, only the Supervisor knew.

Catolico was also unjustly dismissed. It is settled that the burden is on the employer to prove just and valid cause for dismissing an employee, and its failure to discharge that burden would result in a finding that the dismissal is unjustified.^[25] Here, WATEROUS proved unequal to the task.

It is evident from the Supervisor's memorandum that Catolico was dismissed because of an alleged anomalous transaction with YSP. Unfortunately for petitioners, their evidence does not establish that there was an overcharge. Control Clerk Eugenio C. Valdez, who claims to have discovered Catolico's inappropriate transaction, stated in his affidavit:^[26]

4. My findings revealed that on or before the month of July 31, 1989, Ms. Catolico in violation of the [company] procedure, made an under the table deal with YSP Phils. to supply WDRC needed medicines like Voren tablets at a jack-up price of P384.00 per bottle of 50 mg. which has a previous price of only P320.00;

5. I verified the matter to YSP Phils. to determine the discrepancy and I found out that the cost per bottle was indeed overpriced. The Accounting Department of YSP Phils. through Ms. Estelita Reyes confirmed that there was really an overprice and she said that the difference was refunded through their check voucher no. 629552 which was shown to me and the payee is Melodia Catolico, through a China Bank Check No. 892068 dated November 9, 1989.

It clearly appears then that Catolico's dismissal was based on hearsay information. Estelita Reyes never testified nor executed an affidavit relative to this case; thus, we have to reject the statements attributed to her by Valdez. Hearsay evidence carries no probative value.^[27]

Besides, it was never shown that petitioners paid for the Voren tablets. While Valdez informed Co, through the former's memorandum^[28] of 29 January 1990, that WATEROUS paid YSP P3,840.00 "thru MBTC Check No. 222832," the said check was never presented in evidence, nor was any receipt from YSP offered by petitioners.

Moreover, the two purchase orders for Voren tablets presented by petitioners do not indicate an overcharge. The purchase order dated 16 August 1989^[29] stated that the Voren tablets cost P320.00 per box, while the purchase order dated 5 October 1989^[30] priced the Voren tablets at P384.00 per bottle. The difference in price may then be attributed to the different packaging used in each purchase order.

Assuming that there was an overcharge, the two purchase orders for the Voren tablets were recommended by Director-MMG Mario R. Panuncio, verified by AVP-MNG Noli M. Lopez and approved by Vice President-General Manager Emma R. Co. The purchase orders were silent as to Catolico's participation in the purchase. If the price increase was objectionable to petitioners, they or their officers should have disapproved the transaction. Consequently, petitioners had no one to blame for their predicament but themselves. This set of facts emphasizes the exceedingly incredible situation proposed by petitioners. Despite the memorandum warning Catolico not to negotiate with suppliers of medicine, there was no proof that she ever

transacted, or that she had the opportunity to transact, with the said suppliers. Again, as the purchase orders indicate, Catolico was not at all involved in the sale of the Voren tablets. There was no occasion for Catolico to initiate, much less benefit from, what Valdez called an “under the table deal” with YSP.

Catolico’s dismissal then was obviously grounded on mere suspicion, which in no case can justify an employee’s dismissal. Suspicion is not among the valid causes provided by the Labor Code for the termination of employment;^[31] and even the dismissal of an employee for loss of trust and confidence must rest on substantial grounds and not on the employer’s arbitrariness, whims, caprices, or suspicion.^[32] Besides, Catolico was not shown to be a managerial employee, to which class of employees the term “trust and confidence” is restricted.^[33]

As regards the constitutional violation upon which the NLRC anchored its decision, we find no reason to revise the doctrine laid down in *People vs. Marti*^[34] that the Bill of Rights does not protect citizens from unreasonable searches and seizures perpetrated by private individuals. It is not true, as counsel for Catolico claims, that the citizens have no recourse against such assaults. On the contrary, and as said counsel admits, such an invasion gives rise to both criminal and civil liabilities.

Finally, since it has been determined by the Labor Arbiter that Catolico’s reinstatement would not be to the best interest of the parties, he correctly awarded separation pay to Catolico. Separation pay in lieu of reinstatement is computed at one month’s salary for every year of service.^[35] In this case, however, Labor Arbiter Lopez computed the separation pay at one-half month’s salary for every year of service. Catolico did not oppose or raise an objection. As such, we will uphold the award of separation pay as fixed by the Labor Arbiter.

WHEREFORE, the instant petition is hereby **DISMISSED** and the challenged decision and resolution of the National Labor Relations Commission dated 30 September 1993 and 2 December 1993, respectively, in NLRC-NCR CA No. 005160-93 are **AFFIRMED**, except as to its reason for upholding the Labor Arbiter’s decision, viz., that the evidence against private respondent was inadmissible for

having been obtained in violation of her constitutional rights of privacy of communication and against unreasonable searches and seizures which is hereby set aside.

Costs against petitioners.

SO ORDERED.

**Bellosillo, Vitug, Kapunan and Hermosisima, Jr., JJ.,
concur.**

- [1] WILLIAMS PENN, More Fruits of Solitude, maxim 209, in I Harvard Classics 389 (Charles W. Eliot ed., 1937).
- [2] Per Commissioners Rogelio I. Rayala, with Commissioners Domingo H. Zapanta and Edna Bonto-Perez, concurring. Original Record (OR), unpaginated; Annex “A” of Petition, Rollo, 25-36.
- [3] OR, 86-92; Annex “J” of Petition, Rollo, 96-102.
- [4] OR, unpaginated.
- [5] Id.
- [6] OR, 15.
- [7] Id., 16.
- [8] Id., 60.
- [9] Id., 17.
- [10] OR, 18.
- [11] Id., 19.
- [12] Id., 32.
- [13] Id., 20.
- [14] Id., 21.
- [15] Id., 35.
- [16] OR., 36.
- [17] Id., 2.
- [18] Supra, note 3.
- [19] Supra, note 2.
- [20] These sections pertinently provide as follows:
Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the Court, or when public safety or order requires other wise as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[21] 193 SCRA 57 [1991].

[22] Citing People vs. Marti, supra note 21.

[23] Tiu, vs. NLRC, 215 NLRC 540, 551 [1992].

[24] Mañebo vs. NLRC, 229 SCRA 240, 251 [1994].

[25] Reno Foods, Inc. vs. NLRC, 249 SCRA 379, 386 [1995]; Metro Transit Organization, Inc. vs. NLRC, G.R. No. 121574, 17 October 1996, 5-6.

[26] Rollo, 71-72.

[27] People vs. Laurente, 255 SCRA 543, 567 [1996]; Batiquin vs. Court of Appeals, 258 SCRA 334, 342 [1996].

[28] OR, 18.

[29] Annex "A" of Petitioner's Reply to Complainant's Position, Paper, OR, 42.

[30] Annex "B," id., id., 43.

[31] See LABOR CODE, Art. 282.

[32] Falguera vs. Linsangan, 251 SCRA 364, 376 [1995]; De la Cruz vs. NLRC, G.R. No. 119536, 17 February 1997, 7.

[33] Marina Port Services, Inc. vs. NLRC, 193 SCRA 420, 425 [1991]; De la Cruz vs. NLRC, supra note 32, at 7.

[34] Supra note 21.

[35] Reformist Union of R.B. Liner, Inc. vs. NLRC, G.R. No. 120482, 27 January 1997, 9; De la Cruz vs. NLRC, supra note 31, at 8.