

ROSITA DE GUZMAN, PETITIONER, VS. THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), SARA LEE PHILS., INC., METROLAB INDUSTRIES, INC., DANILO M. PEREZ IN HIS C...

Ponente: BERSAMIN, L.P., J.

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BERSAMIN, L.P., J.:

The petitioner-employee comes to us on certiorari seeking to annul and set aside the resolution dated February 11, 2004 issued in NLRC NCR CA No. 030855-02 entitled Rosita de Guzman v. Sara Lee Phils., Inc., et al,[1] affirming the dismissal of her complaint against her employer by the Labor Arbiter;[2] and the resolution dated May 20, 2004, denying her motion for reconsideration,[3] both issued by the National Labor Relations Commission (NLRC), claiming that the NLRC thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction.

The antecedent facts are as follows.

The petitioner was the treasury manager of her employer Sara Lee Philippines, Inc. (Sara Lee) for 12 years. Her duties included the handling of collections and of the bank transactions of Sara Lee, which was engaged in the business of marketing and distribution of personal care products. Respondent Metrolab Industries, Inc., (Metrolab) was the subsidiary of Sara Lee,[4] while respondents Danilo M. Perez and Persie Torregoza were, respectively, its president/general manager and chief financial officer.

On March 9, 2001, Sara Lee served a letter memorandum, informing her that she was being placed on preventive suspension for 30 days effective immediately and requiring her to explain within 72 hours the irregularities found during the course of the financial audit. The letter memorandum reads:[5]

Dollar collection on January 17, 2001 of \$2,090 for export transaction with Pinili Commodity Corp. You (petitioner) issued an initial official receipt (OR) under Metrolab #8351 for \$2,090 which was given to Pinili Commodity Corp. This was canceled and replaced with SLPI OR#3858 amounting to P99,275. This means that the dollar remittance was converted to peso equivalent to P47.50 to a dollar. The following are the discrepancies: customer copy of Metrolab OR (first OR) showed date January 17, 2001. However, in the duplicate, no date was indicated. Customer copy of SLPI OR (second OR) showed date January 31, 2001, duplicate in your original handwriting showed February 2, 2001. These were remitted to the bank on February 6, which as per our policy should have been remitted within 24 hours.

All cash collections in February 2 to February 5, 2001 was deposited on February 6 to Citibank via check amounting to P972,245.00 referring to the following transaction dates and OR nos.

Tampered dates OR # Payee Amount

February 2 13853 Accord P 7,135

13854 Missing

13855 Missing

13856 Accord 22,335

13857 J. Villarica 3,000

13859 T. Tiglao 210,000

13860 A. Bermudez 230,000

February 5

Pepito Sacalang c/o Tina 400,000

TOTAL P 972,245

Please explain why all Accounting duplicate copies of these OR are tampered.

In the same letter-memorandum, Sara Lee informed her that she would not be allowed to enter company premises except upon prior notification and instructed her to turn over within the day all company assets issued to her to Mr. Nem Blanco.[6]

On March 12, 2001, she was granted her request of an additional 72 hours within which to submit her written explanation. However, despite the extension given, she failed to give her written explanation.[7]

Also on March 12, 2001, Sara Lee notified all banks where it maintained its accounts that the petitioner was no longer authorized to transact business in its behalf and named its new authorized representatives in lieu of the petitioner.[8]

On March 22, 2001, the petitioner filed a complaint in the Arbitration Branch of the NLRC, alleging unlawful preventive suspension and claiming damages.

On March 27, 2001, Sara Lee terminated the petitioner's services on the ground of dishonesty; falsification of records on official document or making false statement in the documents of Sara Lee, and loss of trust and confidence, as follows:

This is to inform you that after due consideration and deliberation. Management has decided to terminate your services as Treasury Manager effective close of business hours March 28, 2001 on the ground of dishonesty; falsification of records on official document or making false statement in any documents of Sara Lee Phils, Inc. and lost of Trust and confidence.

Company records at our possessions show that on January 17, 2001 your received payment of \$ 2,090.00 from Pinili Commodity Corp. and the dollars were deposited in peso last February 6, 2001 using P47.50 to a \$ as conversion rate. Official receipts relative to this payment were also tampered.

Secondly, cash collections from February 2 to February 5, 2001, amounting to P972,245.00 were deposited on February 6, 2001 to Citibank with tampered dates on official receipts while other official receipts are missing.

Furthermore, you were given ample opportunities to explain and defend yourself on the allegation stated in the Preventive Suspension memo dated March 9, 2001. Your failure to comply to explain is considered a voluntary waiver of your rights to be heard and explain, thus, the company decided to terminate your services without having to hear your side.

Please be guided accordingly.[9]

The termination letter was received by the petitioner on March 28, 2001.

On April 5, 2001, the petitioner supplemented/amended her complaint to include unlawful termination and damages.[10]

After the parties exchanged their respective position papers, Labor Arbiter Francisco A. Robles rendered his decision on December 18, 2003, dismissing the petitioner's complaint for lack of merit.[11]

On appeal, the NLRC upheld the Labor Arbiter through its resolution of February 11, 2004, disposing thus:[12]

WHEREFORE, the decision appealed from is hereby AFFIRMED.

SO ORDERED.

The motion for reconsideration was later denied.[13]

Hence, this special civil action for certiorari, wherein the petitioner insists that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction:

I

THE PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION IN RESOLVING THAT PETITIONER ROSITA DE GUZMAN WAS NOT ILLEGALLY SUSPENDED

II

THE NLRC GRAVELY ABUSED ITS DISCRETION IN RESOLVING THAT PETITIONER ROSITA DE GUZMAN WAS NOT ILLEGALLY DISMISSED CONSIDERING THE ABSENCE OF LEGAL GROUND TO EFFECT THE SAME AND FOR FAILURE OF PRIVATE RESPONDENTS TO AFFORD PETITIONER WITH DUE PROCESS

III

THE NLRC GRAVELY ABUSED ITS DISCRETION IN RESOLVING THAT COMPLAINANT/APPELLANT ROSITA DE GUZMAN WAS NOT ENTITLED TO HER MONETARY CLAIMS.

We find no merit in the petition for certiorari.

In disposing of the petitioner's contention that she was illegally suspended by her employer, the NLRC held:

First issue: Whether or not the complainant was illegally suspended.

There is no law, rule or ruling requiring an employer to first give an employee the benefits of notice and hearing before he may preventively suspend the latter. Sections 8 and 9 of Rule XIII, Book V of the Implementing Rules of the Labor Code only provide that "the employer may place the worker under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers." And that "no preventive suspension shall last longer than thirty days x x x." Considering that the complainant was found to have misappropriated company funds and to have tampered official receipts, it was indeed necessary for the respondents to immediately preventively suspend her, so as to prevent her from destroying incriminating evidence, and therefore derailing the investigation of the charges against her. The right of the employer to preventively suspend an employee pending the investigation of the charges against him has been repeatedly recognized by the Supreme Court (Samillano vs NLRC, 265 SCRA 788; PAL 292 SCRA 40).

Moreover, the word "suspension" used in the company rule providing that "a major (grave) offense will mean suspension or termination after the employee has been proven guilty x x x" (records, p. 114) refers to

“suspension” as a penalty and not as a preventive measure. This is implied from the fact that “suspension” is used as an alternative to “termination,” which is penalty. Thus, the company rule in question has no bearing on the respondents’ right to preventively suspend the complainant.[14]

The foregoing disposition of the NLRC is correct because it is consistent with the law and jurisprudence. As we have earlier said, the petitioner, as the treasury manager of Sara Lee, received cash and check collections for her employer and also acted as the authorized representative in her employer’s bank transactions. She thus occupied a position of the highest trust and confidence. For that reason, her preventive suspension was deemed necessary by her employer to prevent any serious and imminent threat to its assets and property. The suspension accorded with Sec. 8 and Sec. 9, Rule XXIII, Book V of the Implementing Rules of the Labor Code, as amended, to wit:

Sec. 8. Preventive Suspension. – The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

Sec. 9. Period of Suspension. – No preventive suspension shall last longer than thirty (30) days xxx

The preventive suspension, being imposed to protect the interests of the employer, was not a penalty in itself but an acceptable precautionary measure consistent with the policy of preventively suspending an employee under investigation for charges involving dishonesty.[15] As to this, there is to be no question, for, as the Supreme Court said:

Imposed during the pendency of an administrative investigation, preventive suspension is not a penalty in itself. It is merely a measure of precaution so that the employee may be separated, for obvious reasons, from the scene of his alleged misfeasance while the same is being investigated.[16]

A preventive suspension imposed under Sec. 8 of Rule XXIII, supra, is truly separate and distinct from a suspension imposed as a penalty after an investigation. The former does not require prior notice and hearing but the latter requires them. In the petitioner’s case, the preventive suspension was proper considering that it was enough that the management felt a threat to their property requiring preventive measures.

Yet, the petitioner would interpret the preventive suspension as a malicious prelude to oust her from her employment and, as such, the suspension should be considered as a constructive dismissal.[17]

We regard her interpretation as unfounded. Aside from its being evidently preventive, the suspension was not attended by circumstances that support her interpretation. What we can find are indications that the suspension and other acts of the employer were solely intended to ensure the continuity of bank and other transactions during her administrative investigation. Such transactions and other acts used to be delegated to the petitioner. Hence, malice was not attributable to the employer.

Anent her termination, the NLRC did not find any illegality attendant to it, observing:

Second issue: Whether or not the complainant was illegally dismissed from employment.

The complainant was asked to explain in writing why, in four official receipts she issued in connection with the same transaction (sales to Pinili Commodity Corp. amounting to US\$2,090.00, which she admittedly received), she used three different dates and left the fourth official receipt undated, and why she did not remit the money in question to the bank within twenty-four hours “as per policy” (records, p. 61). The above-mentioned four official receipts (records, pp. 75-78) were submitted in evidence by the respondents. As earlier stated, she never submitted the required written explanation despite the fact that she was granted a three-day extension of the period for its submission. This is not the actuation of an innocent person who has nothing to hide. Moreover, if she indeed lost the US\$2,090.00 that she kept in a locked drawer, as she claims

(records, pp. 110-111), she should have reported its loss, and if it really mysteriously reappeared in her locked drawer a few days later, she should also have reported such mysterious reappearance. As it is, her narration of the supposed facts strains credulity. Thus, her refusal and/or failure to submit the required written explanation justifies her employer's loss of confidence in her, which is a valid ground for her dismissal.

Moreover, as a further consequence of her refusal to submit the above-mentioned written explanation, she may not claim to have been denied due process. It is settled that due process is not violated when a person is not heard because he has chosen not to give his side of the case (*Philippine Savings Bank vs. NLRC*, 261 SCRA 409; *Palagpag vs. NLRC*; 218 SCRA 511; *Stronghold Insurance Co., Inc. vs. NLRC*, 205 SCRA 605);[18]

We still uphold the NLRC on this aspect of the petitioner's case. No circumstance or reason has been shown to justify a different outcome. The records bear out that on March 9, 2001 the petitioner was required to submit her written explanations on the charges against her. Yet, she opted not to render any written explanations despite her asking an additional time to submit the explanations. Her letters[19] could not be regarded as an appropriate response to the letter-memorandum. But, manifestly enough, her letters could not be treated as her response because she was thereby only protesting her suspension and stating that she would ventilate her response in the proper forum. She thus disregarded the demand contained in the letter-memorandum for her to explain the charges against her. Thus, she should not now accuse the private respondents of denying her due process, which, in her case, meant her being given the opportunity to be heard and to present her case. Evidently, she was not denied such opportunity.[20]

The petitioner attempts to explain the subject of the letter-memorandum of Sara Lee by stating in her petition as follows:

2. On January 17, 2001 at approximately 5:30 o'clock in the afternoon, a representative from Pinili Commodity Corporation (PCC) accompanied by Ruby Batac of Sara Lee came to Petitioner's office at Sara Lee and remitted to her the amount of Two Thousand and Ninety Dollars (US \$2,090.00). This amount represents the dollar collection for the day for export transactions with PCC. Ms. Batac of Sara Lee told Petitioner that it was Metrolab's collection such that Petitioner assigned to the account the corresponding Metrolab Official Receipt (O.R. No. 8351).

3. Considering that it was already past office hours and heeding the call of Cardinal Sin for the people to gather at the Edsa Shrine for the now historic EDSA PEOPLE POWER II, there was haste for the employees of Sara Lee to leave the company premises. Petitioner immediately put the money inside the drawer and locked the same since her assistant, who has access to the Company vault had already left the company premises.

4. Petitioner was about to leave the office when the representative from Pinili Commodity Corporation (PCC) came back and called her attention that she failed to put the date on the official receipt. Hence, said representative wrote the date January 17, 2001 on the original receipt but failed to do the correction on the duplicate which was already locked up in the drawer.

5. Due to the unfolding political circumstances during that time, and due to tremendous volume of work, Petitioner totally forgot about the aforesaid transaction. It was only on January 31, 2001 that Petitioner remembered the same when somebody from the export division, reminded her of the said collection. It was then clarified that it was not for the account of Metrolab but that it was Sara Lee's collection. Upon knowing this, Petitioner immediately cancelled Metrolab Official Receipt No.8351 and issued a Sara Lee official receipt dated January 31, 2001 for the said amount. During that day however, Petitioner cannot locate the dollar cash, which she earlier locked up in the drawer. Considering that the cash was already due for deposit, Petitioner converted the dollars into its equivalent in Philippine pesos using the foreign exchange rate when it was originally received. The sum in Philippine pesos was deposited in Sara Lee's depository bank on February 6, 2001, together with the other collection of Sara Lee for the period of February 2 to 5, 2001.

6. Subsequently, however, Petitioner found the dollar collection in the drawer on February 7, 2001 after the equivalent sum in Philippine pesos was deposited and credited to the account of Sara Lee.[21]

Her explanation through her petition is belated for purposes of her case in the NLRC. She should have given the explanation when it was demanded of her.

In termination cases, the employer bears the onus of proving that the dismissal is for a just cause.[22] The requisites for a valid dismissal of an employee are that: (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, Labor Code, or for any of the authorized causes under Art. 283 and Art. 284, Labor Code.[23]

Art. 282, Labor Code, states:

Art.282. Termination by employer. – An employer may terminate an employment for any of the following causes:

xxx

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

xxx

The NLRC ruled that the employer had a just and valid cause in terminating the services of the petitioner.

We agree, because she held a position of trust and confidence as a treasury manager, controlling the funds received in the course of business such as collections and being responsible for depositing the funds for her employer. Her denial of posing any serious threat to the employer's assets is thus unworthy of consideration in the face of the facts. The Labor Arbiter emphasized this fact in his decision:

In the case at bar, it cannot be denied that complainant holds a position of trust and confidence. She was employed as the Treasury Manager. Thus, she was entrusted with the responsibility of handling and securing company funds. For failing to comply with the highest standards expected of her as a managerial and a trusted employee, complainant breached the trust and confidence reposed upon her by the respondents. xxx. [24]

It is generally accepted, moreover, that employers are allowed wide latitude of discretion in terminating the employment of managerial personnel or those who, while not of similar rank, perform functions which by their nature requires the employer's full trust and confidence.[25]

Loss of confidence, as a just cause for termination of employment, is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence, but in order to constitute a just cause for dismissal, the act complained of must be "work-related" such as shows the employee concerned to be unfit to continue working for the employer.[26] The petitioner was charged with falsification of official receipts; and delay and anomaly in remitting and depositing collections. The charges involved the very core of the petitioner's responsibility as a treasury manager and justified the employer's loss of trust and confidence.

Still, the petitioner would dismiss the perceived anomalies involving the official receipts and the delay in the deposits as not of a degree sufficient to warrant her termination. She further cites the dismissal of the criminal cases brought against her upon those anomalies and delays and argues that the dismissal of such criminal cases should have impelled the NLRC to rule in her favor.

The petitioner's position is unworthy of consideration.

The dismissal of the criminal cases did not warrant a finding that the NLRC thereby committed grave abuse of discretion in affirming her termination. The fact that Sara Lee did not suffer any monetary loss due to the peso equivalent of the \$2,090.00 remittance being eventually deposited in its account is of no consequence. Neither is it of consequence to her case that she later deposited her collections, considering that such depositing did not comply with the 24-hour rule of the employee and that she used her personal checks to deposit her collections. Of consequence to her case was, rather, that she had breached the trust and confidence reposed in her as a managerial employee. Her infractions of company rules and regulations relating to her job were far from trivial, for, undoubtedly, the employer was acting within its rights to treat such infractions of a serious nature due to her being no less than its treasury manager. What are decisive should be that her infractions were not denied or reasonably explained by her. They were, in fact, not deniable.

The mere existence of a basis for believing that a managerial employee has breached the trust of his employer suffices to warrant dismissal.[27] Proof beyond reasonable doubt is not required, because it suffices that there is basis for the loss of confidence, like when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation renders him unworthy of the trust and confidence demanded by his position.[28] As the Labor Arbiter properly stated it:

xxx Complainant was tasked to perform key functions within the company. As Treasury Manager, she was vested with the full trust and confidence of her employer in respect of her custody of company funds. She was thus bound by an exacting standard of work ethics. Unfortunately, she was seriously involved in anomalies which she was not able to satisfactorily exculpate herself from. She clearly betrayed the trust and confidence reposed upon her by the respondents.[29]

With our determination that the petitioner's dismissal was for a just and valid cause and that due process was observed in meting the termination, we find that the NLRC did not commit any grave abuse of discretion in not awarding the petitioner's monetary claims.

WHEREFORE, the PETITION FOR CERTIORARI is DENIED DUE COURSE for lack of merit and this case is DISMISSED

SO ORDERED.

Villarama, Jr., and Arevalo-Zenarosa, JJ., concur.

[1] Rollo, pp. 33-45.

[2] NLRC NCR 30-03-01470-01 entitled Rosita De Guzman v. Sara Lee Philippines, Inc., Metrolab Industries, Inc. and/or Danilo M. Perez and Persie C. Torregozo.

[3] Rollo, pp. 46-47.

[4] According to the petitioner, she was the treasury manager of Metrolab; and became the treasury manager also of Sara Lee after the latter acquired Metrolab in 1999. Metrolab is now a subsidiary of Sara Lee.

[5] Rollo, pp. 48-49; 311-312.

[6] Rollo, p. 49.

[7] Rollo, pp. 312-313.

[8] Rollo, pp. 8; 50-54 (Annexes D to D-4, inclusive).

- [9] Rollo, p. 55.
- [10] Rollo, pp.56-67.
- [11] Rollo, pp. 179-194.
- [12] Rollo, pp. 33-45.
- [13] Rollo, pp. 46-47.
- [14] Rollo, p. 42; Annex A, petition.
- [15] Dayan v. Bank of PI, 369 SCRA 712.
- [16] Philippine Airlines, Inc. v. NLRC, 292 SCRA 40.
- [17] Petition, p. 14; rollo, p. 15.
- [18] Rollo, pp. 43-44; Annex A, petition.
- [19] Annexes P and Q, Petition; rollo, pp. 272-274.
- [20] J.D. Legaspi Construction v. NLRC, 390 SCRA 233.
- [21] Petition, pp. 5-6; rollo, pp. 6-7.
- [22] Asia Pacific Chartering (Phils.), Inc. v. Farolan, 393 SCRA 454.
- [23] Asia Pacific Chartering (Phils.), Inc. v. Farolan, 393 SCRA 454.
- [24] Rollo, p. 191.
- [25] Gonzales v. NLRC, 355 SCRA 195.
- [26] Gonzales v. NLRC, 355 SCRA 195.
- [27] Caoile v. NLRC, 299 SCRA 76; Manila Midtown Commercial Corp. v. Nuwhrain (Ramada Chapter), 159 SCRA 212.
- [28] Sajonas v. NLRC, 183 SCRA 182.
- [29] Rollo, p.192

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