

**ZENCO SALES, INC. AND/OR ZENCO FOOTSTEP, PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION, FIFTH DIVISION,
CAGAYAN DE ORO CITY, AND ANASTACIO C. YAP, RESPONDENTS.**

G.R. No. 111110. August 02, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a special civil action under Rule 65 to nullify the resolution[1] of the public respondent of 12 May 1993 in NLRC CA No. M-001029-92 which affirmed, with modification, the decision[2] of the Executive Labor Arbiter, Hon. Benjamin Pelaez, of 26 August 1992 in NLRC RABX Case No. 10-06-00351-91, entitled "Anastacio C. Yap vs. Zenco Sales, Inc. and/or Zenco Footstep." The Labor Arbiter had dismissed the private respondent's complaint for illegal dismissal, profit sharing, commission for 1990, and damages. The public respondent affirmed the decision of the Labor Arbiter but awarded "separation pay based on social justice."

In dismissing the complaint, the Labor Arbiter noted and held:

"Anent the issue of illegal dismissal, We find for Respondent. The Internal Audit Report clearly established Complainant's misfeasance and malfeasance in the performance of his duty as Branch Manager which resulted to a loss of substantial amount of money and an act inimical to the interest of Respondent corporation. Complainant is guilty of misfeasance for his failure to closely monitor and control the sales transactions of salesman Chua and malfeasance because he used Respondent corporation's properties, equipments and personnel in connection with his personal business of buy and sell of used sacks. These acts of Complainant constitute gross neglect in the performance of duty and serious misconduct resulting to loss of trust and confidence which under Article 292 [should be 282] of the Labor Code, as amended, are ground [sic] to terminate an employment.

We further noted that Complainant failed to dispute the findings of the Internal Auditors of Respondent corporation. However, he contended lack of due process in effecting the termination of employment. On the contrary, We find otherwise. Complainant was duly confronted by the findings of the auditors during the investigation conducted by Mr. Lino Sy, Assistant Vice-President for Sales in Mindanao, at De Luxe Hotel on 1 April 1991." [3]

In its resolution of 12 May 1993, the public respondent, acting on the complainant's appeal from the aforesaid decision, found the appeal "devoid of merit," declared that the Labor Arbiter's findings that the private respondent "is guilty of misfeasance and malfeasance is substantially supported by the facts and evidence on record," and sustained the Labor Arbiter's conclusion that the complainant was validly dismissed for cause. It specifically stated that the acts of the private respondent "constitute gross neglect in the performance of duty and serious misconduct resulting to loss of trust and confidence which under Article 292 [sic] of the Labor Code, as amended, are ground [sic] to terminate an employment." Nevertheless, it modified the decision by granting the complainant separation pay at the rate of one month's salary for every year of service. Its justification therefor reads:

"Considering, however, that the infractions of complainant which involved violations of company policies does

not constitute a depraved act or those reflecting on his moral character and taking into further account his ten (10) years of unblemished service, except for the instant case, We find justifiable basis it awarding his separation pay based on social justice fixed at the rate of one (1) month salary for every year 4 of service (See *PLDT vs. NLRC*, 164 SCRA 671 [1988])."[4]

Its motion to reconsider the modification having been denied by the public respondent in the resolution of 17 June 1993,[5] the petitioner filed this special civil action imputing upon the public respondent "patent abuse of discretion amounting to lack of jurisdiction and/or excess of jurisdiction in modifying the decision . . . of the Labor Arbiter." It maintains that giving the complainant (private respondent) separation pay "in the interest of social justice as an act of compassion is unwarranted under the given set of facts" and his ten years of service "cannot be given any premium to justify the award." [6]

In his comment posted on 28 September 1993, the private respondent defends the modification because the same finds justification under the Constitutional provision "for the improvement of the lot of the workers" and the ruling in *Philippine Long Distance Telephone Co. vs. National Labor Relations Commission*,[7] and asserts that the infraction he committed did not, as correctly held by the public respondent, involve a depraved act or those reflecting on his moral character.[8] It was, he claims, the petitioner's saleswoman, Ms. Chua, who was directly responsible for the losses it sustained."

In its Manifestation in Lieu of Comment,[9] the Office of the Solicitor General submits "that there is merit in petitioner's contention that since, as found by the Labor Arbiter and the NLRC, private respondent was guilty of committing acts which constitute gross neglect in the performance of duty and serious misconduct 'resulting to loss of trust and confidence,' the award of separation pay to private respondent was improper," and legally indefensible for it contravenes Section 7, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code. It argues that the only cases where separation pay shall be granted although the employee was lawfully dismissed are when the cause of termination was not attributable to the employee's fault but due to the following reasons: (1) the installation of labor-saving devices, (2) redundancy, (3) retrenchment, (4) cessation of the employer's business, or (5) when the employee is suffering from a disease and his continued employment is prohibited by law or is prejudicial to his health and to the health of his co--employees.[10] It cites this Court's decisions in *Eastern Paper Mills, Inc. vs. NLRC*,[11] *Philippine Long Distance Telephone Co. vs. NLRC*,[12] and *Baguio Country Club Corp. vs. NLRC*. [13]

The Office of the Solicitor General then concludes that from the established facts in this case, "it is clear that private respondent was validly dismissed not only because he committed neglect in the performance of his duties and serious misconduct but that his acts of using petitioner's equipment and personnel for his personal use and benefit constitutes an offense involving dishonesty."

In the resolution of 1 December 1993,[14] copy of which was received by the public respondent on 20 December 1993, this Court granted the prayer of the Office of the Solicitor General to give the public respondent a new period to file its own comment. Despite three extensions of thirty days each, the last of which, with warning, expired on 20 June 1994, the public respondent did not file the required comment.

The Court then resolved to decide this case on the merits without the public respondent's comment.

We rule for the petitioner.

The public respondent affirmed the findings of the Labor Arbiter that the private respondent "is guilty of misfeasance for his failure to closely monitor and control the sales transactions of salesman Chua and malfeasance because he used respondent corporation's properties, equipments and personnel in connection with his personal

business of buy and sale of used sacks," which, when brought within the ambit of Article 282 (not Article 292) of the Labor Code "constitute gross neglect in the performance of duty and serious misconduct resulting to loss of trust and confidence."

A reading of Articles 279 and 282 of the Labor Code and Section 7, Rule I, Book VI. of the Omnibus Rules Implementing the Labor Code[15] reveals that an employee who is dismissed for cause under Article 282 after appropriate proceedings in compliance with the due process requirements[16] is not entitled to an award of separation pay. Under Articles 283 and 284 of the Labor Code, separation pay is authorized only in cases of dismissals due to the following reasons: (a) the installation of labor-saving devices, (b) redundancy, (c) retrenchment, (d) cessation of the employer's business, and (e) when the employee is suffering from a disease and his continued employment is prohibited by law or is prejudicial to his health and to the health of his co-employees.[17]

In the 23 August 1988 Decision in *Philippine Long Distance Telephone Co. vs. NLRC*,[18] however, this Court, speaking through Mr. Justice Isagani A. Cruz, recognized an exception.

"Strictly speaking, however, it is not correct to say that there is no express justification for the grant of separation pay to lawfully dismissed employees other than the abstract consideration of equity. The reason is that our Constitution is replete with positive commands for the promotion of social justice, and particularly the protection of the rights of the workers. The enhancement of their welfare is one of the primary concerns of the present charter. In fact, instead of confining itself to the general commitment to the cause of labor in Article II on the Declaration of Principles and State Policies, the new Constitution contains a separate article devoted to the promotion of social justice and human rights with a separate sub-topic for labor. Article XIII expressly recognizes the vital role of labor, hand in hand with management, in the advancement of the national economy and the welfare of the people in general. The categorical mandates in the Constitution for the improvement of the lot of the workers are more than sufficient basis to justify the award of separation pay in proper cases even if the dismissal be for cause."[19]

Nevertheless, the Court re-examined the previous cases which granted separation pay in cases of dismissals for cause in the light of their lack of consistency as to the justification for the grant thereof and the amount or rate of such award, and, thereafter, laid down the following doctrine and its rationale:

"We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial, assistance, or whatever other name it is called, on the ground of social justice.

A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he had committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a like leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution.

The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. Compassion for

the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character." [20]

In the instant case, the private respondent was found guilty of gross misconduct for having used his employer's (petitioner's) "properties, equipments and personnel in connection with his personal business of buy and sale of used sacks." His acts involve gross dishonesty deliberately done for his personal advantage. The doctrine laid down in *Philippine Long Distance Telephone Co.* that separation pay, as a measure of social justice, shall be allowed only where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character is applicable.

The public respondent acted with grave abuse of discretion in awarding the private respondent separation pay despite its affirmance in toto of the findings and conclusions of the Labor Arbiter.

WHEREFORE, the petition is GRANTED. The challenged resolution of public respondent National Labor Relations Commission of 12 May 1993 in NLRC CA No. M-001029-92 (Case No. RAB-10-06-00351-91) is MODIFIED by deleting the award of separation pay.

No pronouncement as to costs.

SO ORDERED.

Cruz, (Chairman), Quiason, and Kapunan, JJ., concur.
Bellosillo, J., on official leave.

[1] Annex "G" of Petition; Rollo, 95-100.

[2] Annex "D"; Id., 68-79.

[3] Rollo, 76-77.

[4] Rollo, 99-100.

[5] Annex "I" of Petition; Id., 107-112.

[6] Id., 11.

[7] 164 SCRA 671 [1988].

[8] Rollo, 124.

[9] Id., 129-137.

[10] Articles 283 and 284, Labor Code.

[11] 170 SCRA 595 [1989].

[12] Supra note 7.

[13] 213 SCRA 664 [1992].

[14] Rollo, 139.

[15] Articles 279 and 282 of the Labor Code, as amended, and Section 7, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code read as follows:

"ART. 279. Security of Tenure. -- In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

* * *

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 duly authorized representative; and
- (e) Other causes analogous to the foregoing.

* * *

SEC. 7. Termination of employment by employer. -- The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective bargaining agreement with the employer or voluntary employer policy or practice."

[16] Rule XIV, Book V, Omnibus Rules Implementing the Labor Code.

[17] See *Eastern Paper Mills, Inc. vs. NLRC*, supra note 11.

[18] 164 SCRA 671 [1988]. See also *Eastern Paper Mills, Inc. vs. NLRC*, supra note 11.

[19] *Id.*, at 680.

[20] *Id.*, at 682-683.

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