

**NATIONAL SUGAR REFINERIES CORPORATION, ARSENIO B. YULO,
AND CONRADO VIADAD, PETITIONERS, VS. NATIONAL LABOR
RELATIONS COMMISSION, BENJAMIN L. QUIMBA, AND JENNY
LAGRANA (IN REPRE...**

G.R. No. 112539. June 21, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

For review is the ruling[1] of the National Labor Relations Commission, affirming the decision of the Labor Arbiter finding petitioners guilty of illegal dismissal of private respondents Benjamin Quimba and Monico Lagrana and ordering them to pay private respondents separation pay, backwages, and other benefits.[2]

The facts of this case are as follows:

In 1969, respondent Quimba was detailed as a warehouseman in the Calinog Lambunao Sugarmill, Inc., a sister corporation of petitioner National Sugar Refineries Corporation (NASUREFCO), until his transfer to petitioner corporation ten years later. On the other hand, respondent Lagrana started working for NASUREFCO in 1979 as sugar cut-in conveyor tender. Through the years the two were promoted until Quimba became the sugar warehouse superintendent and Lagrana, the sugar warehouse supervisor. These were the positions they were holding when they were dismissed in 1989. At that time, Quimba had served the company and its sister corporation for 20 years and 10 months, while Lagrana had served NASUREFCO for 10 years and 4 months.

Sometime in August 1988, NASUREFCO held a bidding for the sale of used jute bags. Jel Marketing won the right to purchase 100,000 pieces of class C bags.[3] The management committee in charge of the disposal of the bags, of which respondent Quimba was a member, designated the latter to supervise the withdrawal of the sacks from the NASUREFCO compound. As the class C bags were mixed with the more expensive types (classes A and B), it was agreed that the buyer, Jel Marketing, would send its own personnel to NASUREFCO for the sorting, counting, and bundling (SCB) of the 100,000 bags into bundles of 600. Jel Marketing was to withdraw 50,000 bags in October 1988 but only 48,000 were segregated from the stockpile.[4] When its workers tried to sort and bundle the remaining 2,000 bags, private respondents did not allow them as some bags were mixed with class A ones.[5] As a result, Jel Marketing was only able to withdraw 48,000 bags. When the workers came back on November 12, 1988 for the remaining bags, respondent Quimba directed respondent Lagrana to have Rodolfo Lilia, a utility man on floating status, supervise the sorting and bundling of bags, which lasted until November 17, 1988.

On November 23, 1988, Jel Marketing sent two trucks to petitioner's Calinog plant to pick up the sacks. The gate pass covering the bags was signed by respondent Quimba, Paquito Rebote, representing Jel Marketing, and Expedito Buena, representing NASUREFCO's general manager, Conrado Viadad. Upon inspection of the trucks' cargo at the gate, the guard discovered that the bundles were padded. A recount showed an excess of 20,500 bags worth P28,187.50.

In his report on the same day to respondent Quimba, respondent Lagrana explained that due to the assignment of workers in the retrieval of burnt sacks and liquidation of raw sugar, he was able to assign only one person, Lilia, to watch the sorting of the bags. He added that on Lilia's day off on November 17, 1988, he assigned three other workers to the job.[6] In another report, dated November 25, 1988, Lagrana recommended the suspension of Lilia for thirty days for neglect of duty.[7] In turn, Quimba submitted a report of the incident to Arsenio del Rosario, the administrative manager of NASUREFCO, attaching Lagrana's first report.[8] Meanwhile, Quimba required Lagrana to explain why he should not be suspended for neglect of duty.[9]

Petitioners investigated private respondents on November 24-25, 1988, December 6, 1988, and January 10, 1989. Nonetheless, the management of NASUREFCO did not take any disciplinary measures against private respondents who continued to work.

In the third quarter of 1989, the management noted a shortage of 8,728 piculs of raw sugar from its stock. The matter was promptly reported to NASUREFCO's head office in Manila. Acting on the report, the board of directors of NASUREFCO created a committee to investigate not only the reported sugar losses but also the attempted theft of used bags earlier.

On August 10, 1989, private respondents were placed on a 30-day preventive suspension. Lilia was suspended for 30 days, effective August 9, 1989, for neglect of duty in connection with the sorting and bundling of the used bags in November 1988.[10] On September 6, 1989, private respondents' suspensions were extended for another 30 days pending the investigation by the committee. In addition, they were required to explain in writing why they should not be dismissed for gross negligence and breach of trust.[11] In due time, both submitted their written explanations.[12]

On October 25 and November 7, 1989, respectively, private respondents Quimba and Lagrana received memoranda informing them of their dismissal, effective November 10, 1989, for gross negligence and loss of trust in connection with the withdrawal of the used bags.[13]

On November 13, 1989, private respondents sued NASUREFCO for illegal dismissal. Jenny Lagrana was substituted as party-complainant in place of her husband, respondent Monico Lagrana, who died on May 9, 1990.

After trial, the Labor Arbiter, on February 12, 1992, rendered judgment, the dispositive portion of which provides:[14]

PREMISES CONSIDERED, respondent[s] [are] hereby directed to reinstate complainant Benjamin Quimba to his former position or any equivalent position and to pay complainants backwages and other accrued benefits due them, to wit:

A. Benjamin Quimba

1. Service Incentive Leave Pay P 3,204.45

2. 13th month pay for 1989 5,593.69

3.

Backwages

255,743.59

4. Moral Damages 150,000.00

5. Exemplary Damages 50,000.00

P464,541.73

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B. MONICO LAGRANA/JENNY LAGRANA

1. Separation Pay P 38,316.70

2. Service Incentive Leave Pay 1,889.55

3.

13th Month Pay for 1989

3,298.43

4. Backwages up to May 9, 1990 35,663.80

5. Moral Damages 150,000.00

6. Exemplary Damages 50,000.00

P279,168.48

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A. BENJAMIN QUIMBA P 464,541.73

B. MONICO LAGRANA/JENNY

LAGRANA 279,168.46

743,710.01

C. 10% Attorney's fee 74,371.00

D. TOTAL P818,081.01

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SO ORDERED.

The relevant portion of the Arbiter's decision reads:[15]

After a close scrutiny of the evidence adduced by the parties, this Office finds and so holds that the dismissal is too severe a penalty. It is not proportionate to the gravity of the offense imputed to them, considering that they were charged for said offense for the first time and that their service records verily show that their ten years

service to the respondent were unblemished. The alleged loss of trust and confidence was grounded on mere suspicion and that the charges leveled against them were not substantiated. The records show that the alleged overpadding of the bundles of the used empty jute bags issue for which herein complainants were implicated happened sometime in November 1988. It further shows that the case was investigated by the respondents in November and December 1988 and in January 1989. Perforce it to say that during said investigation respondents had all the opportunity to clearly ascertain or determine the veracity of the charges imputed to the complainants for the complainants were around and they fully submitted themselves to the investigating panel and they have explained their side. Since then[,] respondents did not take any disciplinary action against the complainants despite the lapse of almost ten months . . . Much more, it was not clearly shown that complainants were involved in said anomaly, and it was established by the complainants that during said withdrawal of the empty jute bags of the Jel Marketing people[,] complainants were very busy because of the retrieval of the burned empty bags in the Sugar Warehouse Company and respondents [were] aware of said situation and lastly, the company did not suffer damages for the empty bags were retrieved. Likewise, we found the charge imputed to the complainants as regards the alleged enormous shortage of raw sugar wanting in evidence for it was later on discovered that actually there was no shortage for the defect or discrepancy lies in the Scale House and Hopper Scale and this fact was even admitted by the respondents. By taking into consideration the aforestated reasons, this Office is of the considered view that a 30 day suspension without pay is fair enough, suffice it to say that the ignominy and the mental torture undergone by complainants during their last 30 days of suspension without pay is practically a punishment by itself . . . To dismiss them without any showing that they were incorrigible offenders is too harsh and a severe penalty.

On appeal, the Fourth Division of the NLRC in Cebu City rendered a decision on July 6, 1993 which, while affirming the Labor Arbiter's finding of illegal dismissal, deleted the award of moral and exemplary damages to respondents as well as the separation pay granted to the widow of respondent Lagrana.[16] On petitioners' motion, the NLRC ordered, in lieu of his reinstatement, the payment of P155,952.00 as separation pay to respondent Quimba.[17] Private respondents also moved for reconsideration insofar as the decision of NLRC denied separation pay to the widow of respondent Lagrana and ordered payment of separation pay to Quimba in lieu of reinstatement. In a resolution, dated August 31, 1993, the NLRC ruled as follows:[18]

On the issues raised in the present motion, We note that the disallowance of separation pay to complainant Lagrana and the moral and exemplary damages in favor of complainant-appellees were determined and disposed of in our decision promulgated on July 6, 1993. The complainant-appellees not having sought for a reconsideration of the above matter within the reglementary period of ten (10) days as provided in the New Rules of the NLRC, the same had already become final and could no longer be the subject of the present motion. Hence, we shall now consider the disallowance of reinstatement in favor of complainant-appellee Benjamin Quimba.

. . . .

The hard fact is that the complainant-appellee Benjamin Quimba is not an ordinary rank-and-file employee. As such, the element of trust in him by his employer has to be seriously considered in the interest of justice and fair play. In this particular case, the circumstances clearly show that the respondent-appellant had absolutely no more trust in him. It was for this reason that moved us to grant separation pay to complainant-appellee Benjamin Quimba in lieu of reinstatement.

Hence, this petition for certiorari. Petitioners contend that:[19]

A.

RESPONDENT COMMISSION GRAVELY ABUSED ITS DISCRETION IN REVERSING THE FINDING OF NEGLIGENCE BY THE ARBITER WHICH IS SUFFICIENT GROUND FOR THE TERMINATION OF

MANAGERIAL EMPLOYEES ON THE GROUND OF LOSS OF TRUST AND CONFIDENCE.

B.

RESPONDENT COMMISSION GRAVELY ABUSED ITS DISCRETION AND ACTED WITHOUT BASIS IN LAW IN CONCLUDING THAT IT WAS UNFAIR AND UNJUST FOR PETITIONERS "TO DEMAND EFFICIENT SERVICE FROM THEIR EMPLOYEES."

C.

PRIVATE RESPONDENTS' NEGLIGENCE WAS SO GROSS AS TO RAISE THE LOGICAL INFERENCE THAT THEY WERE IN CRIMINAL CONSPIRACY WITH JEL PERSONNEL.

We agree that private respondents were guilty of negligence in connection with the withdrawal of used bags by Jel Marketing.[20] However, their negligence was neither gross nor habitual so as to warrant their dismissal from employment.

Respondents were remiss in their supervision of the withdrawal of the sacks by the buyer Jel Marketing. It is uncontroverted that Jel Marketing was supposed to withdraw 50,000 class C bags from the NASUREFCO compound in October 1988. However, the buyer was able to take out only 48,000 sacks. In his report to administrative manager del Rosario on November 25, 1998, respondent Quimba explained:[21]

. . . [W]e temporarily suspended them [Jel Marketing workers] from segregation [because] some bags were mixed with Class A although they are the winning bidder of Class C. We directed Mr. Paquito Rebote, the Jel representative, to come back on the 24th of October 1988 . . .

When Jel Marketing's workers came back on November 12, 1988 for the next batch of 50,000 bags, the melting of raw sugar and the retrieval of burnt sacks from the warehouse canopy at NASUREFCO were going on. Nevertheless, respondent Quimba allowed them to proceed and directed respondent Lagrana to assign Rodolfo Lilia, a utility man on floating status, to oversee the sorting, counting, and bundling of the bags.

During his investigation, respondent Quimba was asked to assess the performance of Lilia and respondent Lagrana. He stated:[22]

Mr. QUIMBA: Kay Lagrana satisfied man ako pero kay Lilia not so much. Kay floating na siya mo kaya guin transfer siya sa personnel because I am not satisfied with his performance. [With Lagrana, I am satisfied but not so much with Lilia. He's on floating status that is why he was transferred to the personnel [department] because I am not satisfied with his performance]

MR. HILADO: Why are you not satisfied with the performance of Lilia?

MR. QUIMBA: Ti as per record with the Supervisor nga pirmi lang siya nag guba-guba that is why I recommended him to be transferred. [It is of record with the Supervisor that he always goes out [even while on duty] that is why I recommended him to be transferred].

Lagrana told the investigating committee on November 2, 1989 that he assigned Lilia to the job because aside from the dearth of available utility personnel, the latter has had experience in such work.[23] This is exactly the opposite of what he had earlier told the committee on January 10, 1989.[24] When this contradiction was pointed out to him, he could not explain and merely stated:[25]

Indi ko gid man `to makwanan kay gina-pressure man ako sang una sang pamensar bala maayo nga amo to ang matabo. Ang pagperform ko man lang sang kwan nga eksakto amo man lang tani ato ang kwan nga daw na mental torture ako sadto. [I really could not . . . because I was mentally pressured thinking about it . . . Its proper performance was all I wanted, which is why I felt like I was mentally tortured by it.]

Respondent Lagrana also stated in his November 23, 1988 letter-report to respondent Quimba that, on November

17, 1988, when Lilia went off duty, he assigned Rodolfo Comprendio, Romeo Huntanar, and Alberto Lasotas to take over.[26] In his affidavit submitted to the Labor Arbiter as his direct testimony, Huntanar stated:

... At about 3:30 P.M., . . . Mr. Benjamin Quimba, the Sugar Warehouse Superintendent, came to me and told me to watch over the bundling of empty bags because nobody was watching over that work. The area where the bundling of empty bags was being done was near the place where I was working because it was just beside the Raw Sugar Warehouse. Immediately after Mr. Quimba gave me that assignment[,] I went to the area where the bundling of empty bags was being done but when I arrived there I found that the bundling was already completed so that I immediately returned to my previous work of scraping sugar.

Mr. Monico Lagrana was my supervisor on November 17, 1988 but it was Mr. Quimba who personally assigned me to watch over the bundling because he said that there was no one manning that post.

For his part, Lasotas denied having been assigned to oversee the SCB of the used bags since he was detailed the whole day of November 17, 1988 to the scraping of raw sugar for melting.[27]

The foregoing statements were not controverted by private respondents. Significantly, respondent Quimba himself admitted to Arsenio del Rosario, the administrative manager, that one man alone could not supervise the week-long sorting, counting, and bundling of 42,000 sacks.[28] Furthermore, as earlier mentioned, respondent Quimba, in a memorandum, dated November 25, 1988, even required respondent Lagrana to explain, within 48 hours, why he should not be suspended for neglect of duty in the supervision of the week-long sorting, counting, and bundling of the used bags.[29]

Respondent Quimba could have prevented the attempted pilferage of the enormous number of excess bags by ordering a final check of the bundles before issuing the gate pass to Paquito Rebote, the representative of Jel Marketing. It was shown during the hearing that the pass, which would have been enough for the trucks to leave the compound, was prepared by the warehouse department which respondent Quimba heads.[30] It was dated November 23, 1988, the day of the bags' withdrawal, and signed by respondent Quimba, Paquito Rebote, and Expedito Buena.[31] Knowing that sacks worth P96,600.00 were about to be taken out of the compound by virtue of the gate pass, the least that respondent Quimba could have done was to have a bundle double-checked before signing the pass.

Respondent Quimba testified that the issuance of the gate pass is routine upon payment of the bags.[32] Even so, this does not excuse his failure to order a double-check considering that the bags were sorted, counted, and bundled for five days by people hired by the buyer with only one NASUREFCO personnel to watch them, not to mention the fact that the buyer had earlier been involved in irregularities in connection with the first withdrawal of bags in October 1988.

Respondent Quimba's situation is not at all helped by his reason for suspending the sorting and bundling of the bags in October 1988, thus:[33]

Q

Mr. Quimba, do you remember that on November 23, 1988, you wrote a letter to Mr. del Rosario. I'm showing to you a letter which [is] Annex "D" of the respondent[s'] position paper?

A Yes.

Q Is this your letter?

A Yes.

....

Q And this report pertain[s] to the activities in the sugar warehouse pertaining to the used or empty bags, am I right?

A [T]hat is my report to del Rosario.

Q And this report which [has] been marked as Exhibit "1" pertain[s] to the step you took in connection with the counting of the bags, am I right?

A That is not the step but this is my report to del Rosario.

Q So that in your report to Mr. del Rosario you mention[ed] the step you took?

A That is the step because I rephrase my mind that he instructed me for these particular case in paragraph 2.

Q Who instructed you?

A It was Mr. del Rosario.

Q With respect to paragraph (2) that it is Mr. del Rosario who instructed you?

A Yes.

....

Q What was his instruction to you in connection with Exhibit "1"?

A To temporarily suspend the [sorting and bundling by] Jel Marketing.

Q Why did you temporarily suspend?

A It was Mr. del Rosario who temporarily suspend[ed it].

Q Why?

A I don't know.

Q You mean to say you do not know why Mr. del Rosario suspended [the sorting and bundling]?

A I d[o] not know.

This claim runs counter to his report where he stated:[34]

. . . we temporarily suspended them [Jel Marketing workers] from segregation [because] some bags were mixed with Class A although they are the winning bidder of Class C.

There is, in addition, his attempt to evade responsibility in having assigned Lilia to supervise the sorting and bundling of the bags, thus:[35]

Q Who assigned Mr. Rodolfo Lilia in sorting and to watch over the sorting and counting of the bags?

A It was A[rsen]io del Rosario, Jr. who assigned Mr. Lilia in the sorting and counting of bags.

Q You mean to say that you did not assign him in sorting, counting and bundling of bags?

A

I assigned Monico Lagrana per the instruction of Mr. Ar[se]nio del Rosario.

Q You mean to say that you are denying [that you] assigned Mr. Lilia?

A Why den[y]?

Q You are denying that?

A I d[o] not deny.

Q What [do] you mean to say that you do not deny?

A

You said I'm denying, it was Mr. Arsenio del Rosario who instructed me to assign Rodolfo Lilia in the sorting, counting and bundling operation. I also instructed Monico Lagrana to assign Rodolfo Lilia in sorting, counting and bundling operation.

However, during his investigation by the committee sometime after he was suspended in September 1989, respondent Quimba, in the presence of Arsenio del Rosario, stated:[36]

Guin assign ko ang mga sako sa Supervisor and [ang] Supervisor man ya guin assign sa rank and file na mag bantay ti . . . Si Lagrana kag si Lilia ang guin assign ko dira, sila nga duha.

[I assigned the [supervision of the sorting and bundling of] the bags to the Supervisor [Lagrana] who assigned it to the rank and file . . . I assigned Lagrana and Lilia, both of them].

Thus, as sugar warehouse superintendent and sugar warehouse supervisor, respectively, respondents Quimba and Lagrana failed to exercise the diligence demanded by the positions they hold in order to protect the interests of NASUREFCO. Worse, they have not been completely candid in detailing some of their actions.

We agree with the Labor Arbiter, however, that there are a number of factors which mitigate private respondents' shortcomings.

Firstly, this is their first offense. Under Art. 282 par. (b)[37] of the Labor Code, habituality, that is, repetition of

similar acts, is an indispensable element for dismissals due to gross negligence. Petitioners argue that this condition was met because the sorting of the bags took place from November 12 to 17, 1988, thus, private respondents were allegedly negligent on more than one occasion.[38] The reasoning is flawed. The entire sorting and bundling of the sacks constitutes a single operation and should not be divided into parts. The law is on the side of private respondents. In almost all the instances where this Court was confronted with the difficult choice of deciding whether to terminate an employee or to retain him, or order the payment of separation pay to him, because dismissal would be too harsh in view of his length of service and unblemished record, the Court has opted for the latter. This holds true for both managerial[39] and rank and file[40] employees.

Moreover, private respondents did not really have much choice in assigning only one man to watch the sorting and bundling of the sacks as it is uncontroverted that when Jel Marketing workers came back on November 12, 1988, the warehouse department was busy with other activities. As respondent Lagrana said in his November 23, 1988 report to Quimba:[41]

November 12, 1988 - Saturday - They started segregating, counting of empty bags. At that time only Mr. Rodolfo Lilia [was] attending [to] the job because Mr. Roseller Espia and Mr. Romeo Huntanar were absent and on leave respectively as they are [the] only three (3) personnel in my shift. Utilitymen were assigned in the retrieval of burnt jute bags at the refined whse. canopy.

November 13, 1988 - Sunday - Mr. Rodolfo Lilia was assigned to attend in the job. Winning bidder continued segregating, counting and bundling. We advice[d] them to stop bundling because only one (1) person could not cope up with the job. They concentrated only in segregation. R. Espia and R. Huntanar both on Rest Day. Utilitymen were assigned in the retrieval of burnt jute bags at the refined whse. canopy.

November 14, 1988 - Monday - Mr. Rodolfo Lilia was assigned to attend [to] the job. Concentration of whse. utilitymen is [in] recovering raw sugar leftover on the whse. #2 flooring for liquidation.

November 15, 1988 - Tuesday - Pay day - Mr. Rodolfo Lilia was assigned to attend [to] the counting, and segregation of empty bags. Sugar Whse. utilitymen were concentrating on scraping raw sugar leftover at the whse. #03 together with our utilitymen.

November 16, 1988 - Wednesday - Mr. Rodolfo Lilia was assigned to attend [to] the job to watch the segregation and counting of empty bags. R. Espia and R. Huntanar were utilized to reinforce in scraping sugar leftover at whse. #3 together with our utilitymen.

November 17, 1988 - Thursday - R. Lilia was on Rest day. Messrs. Rodolfo Comprendio, R. Huntanar and A. Lasotas were assigned [to] the job. Culmination of bundling of empty bags on this day.

November 18, 1988 - Friday - The undersigned on Rest day.

Apparently, the situation was aggravated by the fact that NASUREFCO had stopped the practice of hiring pakiao workers to sort and bundle the sacks.[42] Judging from their conduct during the SCB operations in October 1988, where private respondents assigned five men to supervise Jel Marketing's withdrawal of the bags,[43] there is no reason to suppose why, given the adequate supply of men, they would not assign more personnel to oversee the work.

There is, therefore, no merit in petitioners' contention that private respondents were guilty of gross negligence. As held in *Metro Transit Organization, Inc. v. NLRC*,[44] the term means "want or absence of even the slightest care or diligence as to amount to a reckless disregard of the safety of person or property."

Secondly, petitioners have not presented evidence to support their claim of loss of confidence in private respondents. Art. 282 par. (c) of the Labor Code provides:

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

....

(c) . . . willful breach by the employee of the trust reposed in him by his employer.

In *Tiu v. National Labor Relations Commission*,^[45] it was explained:^[46]

In the language of the aforequoted Article 28[2] (c) of the Labor Code, the [loss of confidence] must be based on the willful breach of the trust reposed in the employee by his employer. Ordinary breach will not suffice; it must be willful. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly or inadvertently. [Furthermore], it must be based on substantial evidence. . .

Clearly, private respondents' negligent acts cannot fall under this category.

The other reasons given for petitioners' alleged loss of confidence are the testimony of Lilia that when he asked respondent Quimba whether there is any reason for him to be extra careful, the latter replied that there was none, for which reason Lilia did not bother checking a single bundle of bags; and the fact that the gate pass covering the bags was issued by respondent Quimba. The first purportedly proves private respondents' intention to make Lilia less vigilant and thus pave the way for Jel Marketing's workers to commit irregularities.^[47] In short, petitioners see in these events evidence of private respondents' involvement in the scheme to asport the extra bags.

We do not agree. Aside from being uncorroborated, Lilia's testimony is weak. It is unnatural for a utility personnel to make such an inquiry from his superintendent and then altogether abandon his work because of a negative answer. Even assuming this to be true, it does not show that private respondents conspired with the Jel Marketing workers. As for the gate pass, petitioners' contention would have been credible if respondent Quimba and Jel Marketing's representative, Rebote, were the only ones who signed the pass. It is established, however, that it was also signed by a third party in the person of Buena, who represented Viadad, NASUREFCO's general manager. There is no suggestion here that even Buena is a party to the alleged conspiracy to make money out of the used bags. Furthermore, the fact that in October 1988 private respondents did not allow Jel Marketing to continue with the sorting and bundling because they found irregularities negates any inference of wrongdoing on the part of private respondents. It is noteworthy that petitioners did not file any criminal charges against those responsible for the attempted theft.

While proof beyond reasonable doubt is not necessary to establish loss of confidence, there must also be substantial evidence supporting it.^[48] Here, what petitioners have are mere suspicions. As held in *Waterous Drug Corporation v. NLRC*:^[49]

. . . [S]uspicion is not among the valid causes provided by the Labor Code for the termination of employment; and even the dismissal of an employee for loss of trust and confidence must rest on substantial grounds and not on the employer's . . . suspicion.

Indeed, the burden of proving just and valid cause for dismissing an employee rests upon the employer^[50] and, as in criminal prosecutions, the employer's cause stands or falls on the strength of its evidence and not on the weakness of the employee's defense.^[51]

Thirdly, petitioners themselves are not without blame. As noted by the Labor Arbiter, it was unusual for NASUREFCO to suspend private respondents only on August 10, 1989, nearly ten months after the latter were first investigated for the attempted theft of the used sacks. Petitioners explain that this was necessary for the "judicious appraisal and deliberation on the merits of the charges against [private respondents]."^[52]

The contention is untenable because during the interim, petitioners practically dropped the matter as private respondents were never reprimanded and no mention was ever made of the incident. It would appear that petitioners did not really lose confidence in private respondents because of this incident. It was only after the issue on the purported sugar losses came out that they revived this matter. However, petitioners, in this appeal, have abandoned their claim that private respondents are responsible for the latter. This could only mean that they have accepted private respondents' explanation that the alleged losses were actually caused by the understatement of weights in the Hopper scale.[53] It is, therefore, now late for petitioners to convince the Court of something (that they have lost confidence in private respondents) which in the first place they themselves did not believe in.

For these reasons, the Court agrees with the Labor Arbiter that, under the circumstances, private respondents' suspension without pay constitutes sufficient penalty. Dismissal would be too harsh a punishment since this would effectively deprive private respondents (or in the case of Lagrana, his heirs) the fruits of their long years of service in NASUREFCO. NASUREFCO did not really suffer any damage as all the bags were recovered. Strained relations between the parties is no longer an issue as public respondent ordered the payment of separation pay instead of the reinstatement of respondent Quimba to which the latter assented when he moved for the execution of the NLRC's decision as modified by its subsequent resolutions.

With regard to the award of exemplary and moral damages, public respondent acted correctly in deleting them. These are proper only when the dismissal of an employee is attended by bad faith or fraud, or constitutes an act oppressive to labor, or is done in a manner contrary to morals, good customs, or public policy.[54] As found by the NLRC, petitioners' actuations herein do not amount to any of the above.

Anent the claim of respondent Lagrana's widow that she has the right to receive the separation pay due her late husband, suffice it to say that the ruling of the NLRC denying the claim has since become final. She herself acknowledged this fact when, on June 19, 1996, she sought, together with respondent Quimba, the execution of the July 6, 1993 decision of public respondent as modified by its resolutions of August 31, 1993 and October 22, 1993.[55]

WHEREFORE, the petition for certiorari is dismissed and the decision of the NLRC, dated July 6, 1993, and its resolutions, dated October 22 and August 31, 1993, are AFFIRMED.

SO ORDERED.

Bellosillo (Chairman), and Puno, JJ., concur.

Quisumbing, J., no part, close relation to a party.

Buena, J., on leave.

[1] Per Commissioner Irene E. Ceniza and concurred in by Commissioner Bernabe S. Batuhan.

[2] Service incentive leave pay and 13th month pay.

[3] Records, p. 41; Respondents' Position Paper, Annex J, p. 3.

[4] TSN, pp. 36-37, July 18, 1990.

[5] Records, p. 28; Exh. 1.

[6] Id., p. 26; Respondents' Position Paper, Annex B.

[7] Id., p. 27; Id., Annex C.

- [8] Records, p. 28; Exh. 1.
- [9] Id., p. 46; Respondents' Position Paper, Annex M.
- [10] Id., p. 42; Id., Annex K.
- [11] Records, pp. 29-31, 649-650.
- [12] Id., pp. 32-34, 651-652.
- [13] Id., pp. 35-36, 653-654.
- [14] Id., pp. 105-106; Decision, pp. 24-25.
- [15] Rollo, pp. 98-101; Decision, pp. 17-20.
- [16] Rollo, pp. 24-38; Petition, Annex A.
- [17] Id., pp. 40-44; Id., Annex B.
- [18] Id., pp. 47-A - 47-B; Id., Annex C.
- [19] Rollo, pp. 12-13; Petition, pp. 11-12.
- [20] Petitioner has abandoned its claim that private respondents were responsible for the alleged sugar losses.
- [21] Records, p. 28; Exh. 1.
- [22] Records, p. 452.
- [23] Id., p. 473; Exh. 28, p. 2.
- [24] Id., pp. 473-474; Id., pp. 2-3.
- [25] Id., p. 474; Id., p. 3.
- [26] Records, p. 26; Respondents' Position Paper, Annex B.
- [27] Id., p. 437; Exh. 15.
- [28] Id., p. 28; Exh. 1.
- [29] Records, p. 46; Respondents' Position Paper, Annex M.
- [30] TSN, p. 29, July 18, 1990.
- [31] Records, p. 673; Respondents' Supplemental Position Paper, Annex U.
- [32] TSN, p. 28, July 18, 1990.
- [33] TSN, pp. 31-34, July 18, 1990.
- [34] Records, p. 28; Exh. 1.
- [35] TSN, pp. 19-20, July 18, 1990.
- [36] Records, pp. 451-452; Exh. 22. I-J.
- [37] ART. 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

....

(b) Gross and habitual neglect by the employee of his duties;

[38] Rollo, p. 114; Respondents' Memorandum of Appeal, p. 9.

[39] Dolores v. NLRC, 205 SCRA 348 (1992); Filipinas Manufacturers Bank v. The National Labor Relations Commission, 182 SCRA 848 (1990); Manila Electric Company v. NLRC, 175 SCRA 277 (1989); De Leon v. National Labor Relations Commission, 100 SCRA 691 (1980).

[40] Magnolia Corporation v. NLRC, 250 SCRA 332 (1995); Tanduay Distillery Labor Union v. NLRC, 239 SCRA 1 (1994); Bonotan v. National Labor Relations Commission, 237 SCRA 717 (1994); Mary Johnston Hospital v. NLRC, 165 SCRA 110 (1988); Itogon-Suyoc Mines, Inc. v. NLRC, 117 SCRA 523 (1982); Meracap v. International Ceramics Mfg. Co., Inc., 92 SCRA 412 (1975).

[41] Records, p. 26; Respondents' Position Paper, Annex B.

[42] Rollo, p. 128; Complainants' Opposition to Appeal, p. 6.

[43] Records, p. 28; Exh. 1.

[44] 263 SCRA 313, 321 (1996).

[45] 215 SCRA 540 (1992).

[46] Supra. at 547.

[47] Rollo, p. 116; Respondents' Memorandum of Appeal, p. 10.

[48] Garcia v. NLRC, 289 SCRA 36 (1998); Pampanga Sugar Development Corporation, Inc. v. NLRC, 272 SCRA 737 (1997).

[49] 280 SCRA 735, 746-747 (1997).

[50] De la Cruz v. National Labor Relations Commission, 268 SCRA 458 (1997); Western Shipping Agency, Inc. v. NLRC, 253 SCRA 405 (1996); San Antonio v. NLRC, 250 SCRA 359 (1995).

[51] De la Cruz v. National Labor Relations Commission, supra.

[52] Rollo, p. 153; Respondents' Motion for Reconsideration, p. 10.

[53] Rollo, pp. 125-126.

[54] Cosico, Jr. v. NLRC, 272 SCRA 583 (1997).

[55] Rollo, pp. 463-465.

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