

VIOLA CRUZ, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, NORKIS DISTRIBUTORS, INC., JOSE RAMIRO A. CARPIO, JR., WESSIE QUISUMBING, AND ELIZALDE AMPALAYO, RESPONDENTS.

G.R. No. 116384. February 07, 2000

Ponente: PURISIMA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-116384/>

PURISIMA, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court ascribing grave abuse of discretion to the National Labor Relations Commission (NLRC) in issuing its Resolution, dated November 19, 1993, dismissing for lack of merit petitioner's complaint against the respondents, Norkis Distributors, Inc., Jose Ramiro A. Carpio, Jr., Wessie Quisumbing, and Elizalde Ampalayo; and the subsequent Order, dated April 13, 1994, denying petitioner's Motion for Reconsideration.

The antecedent facts are as follows:

Respondent Norkis Distributors, Inc., a domestic corporation with principal office and business address at A. S. Fortuna Street, Mandaue City, Cebu, is engaged in the business of selling motorcycles and household appliances, with branches all over the country, one of which branches is in Valencia, Bukidnon. Respondents Wessie Quisumbing, Jose Ramiro A. Carpio, Jr., and Elizalde Ampalayo are its President, Vice-President and Manager, respectively.

Petitioner Viola Cruz was hired and employed by respondent Norkis sometime in March 1997 as cashier/bookkeeper at its branch in Cagayan de Oro City, and was later transferred to its Valencia, Bukidnon branch. For her loyalty and dedication to the company, petitioner Cruz was given compensating salary adjustment of One Hundred (P100.00) Pesos, effective July 1, 1990.[1]

In October 1990, the Valencia branch of Norkis was scheduled to transfer its office to another place. On October 14, 1990, while petitioner and her co-employees were busy packing up and making an inventory of the things to be moved preparatory to such transfer, the petitioner suddenly collapsed. She was rushed to the Monsanto General Hospital in Valencia, Bukidnon in the evening of the same day but was able to report for work the following day.

On October 17, 1990, petitioner was transferred to the Capitol College General Hospital in Cagayan de Oro City and was confined thereat until October 25. She was diagnosed to be suffering from "CNS Infection: TB Meningitis vs. Cryptococcal Meningitis". She was later transferred to the Maria Reyna Hospital, where she was confined from October 25 to December 5, 1990, and treated for "Cryptococcal Meningitis, Pott's Disease, and Diabetes Mellitus Type II".

Starting October 15, 1990, the petitioner stopped reporting for work. On October 19, 1990, respondent Norkis was informed by petitioner's co-employees of her condition, and it was able to recruit a replacement cashier/bookkeeper in the person of Hernando Juaman, two (2) days after petitioner's collapse.

On December 28, 1990, petitioner sent a letter to respondent Norkis to verify the status of her employment. As an answer, she received a termination letter, dated November 2, 1990,[2] citing health reasons as the cause for her dismissal, to wit:

"Norkis-VMNG
Mandaue City
November 2, 1990

To: Viola Cruz

Bookkeeper/Cashier - NDC Valencia

Thru: Jojo Cruz

From: P.I. R. Department

Subject: RELIEVING OF DUTIES AND FUNCTIONS

Your present ill-health conditions has made you incapable of performing your assigned duties and functions effectively.

Because of the above reason, management has decided to relieve you of your present duties and responsibilities as Bookkeeper/Cashier of NDC Valencia effective immediately.

This is done to protect company interest and to avoid disruption of the normal business operations that may result to delay in the submission of reports affecting the entire organization, and to avoid occurrence of substantial losses. Further, this is to protect you from any additional physical and mental burden that may result because of your incapable (sic) to work normally. This will serve as your notice of termination for health reason which will take effect upon receipt of this letter.

For your information and compliance.

(Sgd.) Elenito P. Palang
HRD Manager

Noted:

(Sgd.) Ramiro A. Carpio
Vice-President

On March 18, 1991, petitioner lodged a complaint for illegal dismissal against the private respondents, praying for payment of separation pay in lieu of reinstatement, service incentive, leave pay, maternity leave pay, 13th month pay, holiday pay and other money claims, before the Arbitration Branch of the NLRC in Cagayan De Oro City.

On May 28, 1993, Labor Arbiter Leon P. Murillo rendered a decision for complainant/petitioner, disposing as follows:

"WHEREFORE, in view of all the foregoing judgment is hereby entered ordering Norkis Distributors, Inc. to pay complainant Viola Cruz the following:

- 1) Separation pay P 25,832.10
- 2) Service Incentive leave pay P 1,819.80
- 3) Proportionate 13th month pay for 1990 P 2,909.27

and all the above-named respondents are hereby ordered to jointly and severally pay complainant Viola Cruz

P100,000.00 in moral damages and P20,000.00 in exemplary damages.

Respondent Norkis Distributors, Inc. is likewise ordered to pay P15,056.11 as attorney's fees."[3]

From the said decision both parties appealed to the NLRC; and on November 19, 1993, the Fifth Division of the NLRC reversed and set aside the appealed decision of the Labor Arbiter, ruling thus:

"WHEREFORE, the decision appealed from is Reversed and Set Aside and a new one dismissing the complaint for lack of merit. However, respondent company is ordered to pay complainant her unpaid service incentive leave pay and proportionate 13th month pay for 1990 in the aggregate sum of P4,729.07."[4]

After her receipt of the Resolution dated April 11, 1994 of NLRC, denying her motion for reconsideration, petitioner found her way to this court via the present petition, imputing grave abuse of discretion to the NLRC, and posing as issues:

- WHETHER OR NOT PETITIONER WAS ILLEGALLY DISMISSED BY PRIVATE RESPONDENTS.
- WHETHER OR NOT PETITIONER IS ENTITLED TO RECOVER MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES FROM PRIVATE RESPONDENTS.

The petition is visited by merit.

In its Comment sent in on April 19, 1995, respondent National Labor Relations Commission theorized that its factual findings cannot be looked into and re-examined by this Court following the well-entrenched doctrine that factual findings of quasi-judicial agencies like the NLRC, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but even finality, when such findings are supported by substantial evidence.

The Court agrees with respondent NLRC on the validity of the aforesaid doctrine. However, it is well-settled that there are judicially recognized exceptions to the said doctrine, one of which is when the findings of fact of the Labor Arbiter and of the National Labor Relations Commission are at variance, such as in the case under scrutiny, where the Court may cull its own finding of facts on the basis of the evidence on record.

In the said letter of termination, dated November 2, 1990, private respondents cited "health reasons" as the cause for petitioner's dismissal from work:

"xxx This will therefore serve as your notice of termination for health reason which will take effect upon receipt of this letter. xxx"[5]

Under Section 8, Rule I, Book VI of the Rules and Regulations Implementing the Labor Code, for a disease to be a valid ground for the dismissal of the employee, the continued employment of such employee is prohibited by law or prejudicial to his health or the health of his co-employees, and there must be a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months, even with proper medical treatment. Since the burden of proving the validity of the dismissal of the employee rests on the employer, the latter should likewise bear the burden of showing that the requisites for a valid dismissal due to a disease have been complied with. In the absence of the required certification by a competent public health authority, this Court has ruled against the validity of the employee's dismissal.[6]

Considering that in the present case, the alleged reason for the dismissal of petitioner was her illness, the private respondents have to prove that their decision to terminate the services of petitioner was reached after compliance with the aforesaid requisites under Section 8. Private respondents having failed to substantiate the same, the dismissal of petitioner on the ground of illness cannot be upheld.

Respondent Norkis cited as another ground for the dismissal of petitioner, her alleged unexplained absence for almost three (3) months, which they theorized upon as amounting to abandonment. It is argued that since petitioner did not inform the company that she was sick, did not file a sick leave and did not also present a medical certificate to support her illness for a period of three months, she was considered absent without leave, and to have abandoned her job.

On the other hand, petitioner maintains that, contrary to private respondents' allegation that she abandoned her work, her serious illness which necessitated her confinement in a hospital for almost three (3) months, caused her inability to report for work.

The petition is meritorious.

For unexplained absence to constitute abandonment, there must be a clear, deliberate and unjustified refusal on the part of the employee to continue his employment, without any intention of returning.[7] The Court has repeatedly held that mere absence does not suffice to constitute abandonment. The absence must be accompanied by overt acts unerringly showing that the employee simply does not want to work anymore. In the case of *Artemio Labor, et al. vs. NLRC and Gold City Commercial Complex, Inc. and Rudy Uy*,[8] it was held that to constitute abandonment, two elements must concur, to wit: (1) the failure to report for work or absence without valid or justifiable reason, and (2) clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.

In the case at bar, petitioner's absence was explained by the undeniable fact that she was confined for treatment in several hospitals for around three (3) months. The claim of respondent Norkis that it was not informed of the sickness of petitioner is belied by the fact that on October 14, 1990, the day before petitioner stopped going to work, she collapsed within the office premises and was immediately rushed to a hospital. Such fact should explain why petitioner deemed it unnecessary to inform respondent Norkis that she was sick. Moreover, private respondents were apparently told that the petitioner was ill because in the letter of termination dated November 2, 1990, they advised petitioner that the company has decided to replace her as her "present ill-health condition has made you (her) incapable of performing your (her) assigned duties and functions effectively." That she did not file any sick leave was of no moment considering that there was no communication from the respondent company regarding the status of petitioner's employment. The said letter of termination, dated November 2, 1990, was only received by petitioner in January 1991, after she wrote them (private respondents) on December 28, 1990, requesting financial assistance.

The additional ground cited by the private respondents for the dismissal of petitioner was loss of trust and confidence as a result of alleged defalcation of company funds committed by petitioner. They theorized that during an audit and inventory conducted by Mr. Hernando Juaman, who replaced petitioner as cashier/bookkeeper, unaccounted company funds in petitioner's custody were discovered such that on October 19, 1990, a letter informing petitioner of such unaccounted funds, together with an attached statement of account, was sent to petitioner and received by her husband Jojo Cruz. A follow-up letter was sent to petitioner on October 24, 1990, but petitioner continued to ignore the same and failed to reply thereto. It is private respondents' submission that the discovery of the missing funds in petitioner's custody, her unexplained disappearance and prolonged absence militate against the protestation of innocence of petitioner and are inculpatory facts and circumstances of defalcation against her; private respondents concluded.

For her part, petitioner countered that the allegations of private respondents are baseless. According to her, she was not present when the audit was allegedly conducted and she was neither informed of the charges against her nor given an opportunity to refute the same. She denied receiving the letters requiring her to explain the missing

funds on the dates they were supposedly sent. Moreover, Mr. Juaman, who allegedly conducted the audit, did not testify and neither was his affidavit presented before the Labor Arbiter. What was introduced as evidence of the alleged defalcation was the affidavit of a certain Mr. Elenito Palang, which affidavit could not be given credence because the latter was not the one who conducted the audit and had no personal knowledge of the defalcation. References were made to unaccounted company funds allegedly in the possession of petitioner but there was no categorical statement as to how such shortages were caused, the audit procedure observed and it was petitioner who was responsible for the said shortages; petitioner pointed out.

Petitioner's posture is sustainable. The letter dated October 19, 1990, allegedly sent to petitioner regarding the defalcation charges, reads:

"This is to formally inform (sic) you that due to your indisposition to discharge your duties and responsibilities as the Cashier/Bookkeeper of NDC Valencia, we have no other recourse but to have another person to take your place.

In the turnover and conduct of investigation of Hernando Juaman, Accounting Field Staff sent by the management to take over your place, the following things were uncovered:

- Unaccounted cash from the collections of October 12 and 13, 1990 of P5,374 and P2,712, respectively, totaling to P8,086; These unaccounted cash were determined from the official receipts copies of the branch.
- Unaccounted unclaimed salaries and wages of CSRs Pedro Versales and Nilo Pamutungan of P896.15 and P700.00 respectively, totaling to P1,596.15

Since it is indeterminable when you can report back to work and account the abovementioned unaccounted cash we will be forced to apply your provident fund to these accountabilities. Please refer to the attached summary of your partial accountabilities with the company."[9]

The aforesaid letter made mention of the alleged unaccounted funds in petitioner's custody but no receipts, documents and other proofs were attached to prove the collection and receipt by petitioner of the amounts therein listed. The attached statement of account is of no probative value because it was just a summary of petitioner's alleged accountabilities. It does not suffice to show that petitioner did receive, retain and convert funds in her custody.

What is more, private respondents failed to prove that a copy of the October 19, 1990 letter was really sent to and received by petitioner. The allegation that said letter as well as the follow-up letter dated October 24, 1990 were received by her husband cannot be relied upon because the private respondents did not adduce any evidence that petitioner's husband did really receive subject letters. It is also negated by the fact that in later communications of private respondents to the petitioner, no mention was ever made about her alleged defalcation. In a letter dated February 4, 1991, or almost four (4) months after the petitioner was reportedly informed of the defalcation charges against her on October 19, 1990, no mention was ever made of petitioner's alleged accountabilities. As a matter of fact, the letter just apprised petitioner of the amount of separation pay due her, and of the decision of the company to deduct therefrom the amount owing from the vehicle she acquired from the company under a leasing unit plan:

"xxx the net amount due you at Pesos: Twelve Thousand Two Hundred Twenty-Three and twenty centavos (P12, 223.20).

xxx xxx xxx

xxx we will deduct the corresponding fees including that for compulsory TPL from your separation pay. xxx.

We will be preparing the separation pay after the registration has been renewed and this will be forwarded to you immediately together with the quit claim which will serve as clearance for the branch to release your MC after you have signed the same.

xxx xxx xxx"[10]

And in the following letter sent to petitioner on January 14, 1991, reiterating the company's decision to terminate her for health reasons, the company even assured her that she would still be considered for any future vacancy in the company, to wit:

"We are glad that you have already recovered although partially, and rest assured that once you will become completely healed in the future and certified by your doctor to be physically fit to return to work, we will still consider you for any vacancy in the company. xxx xxx xxx"[11]

If it were true that petitioner was guilty of misappropriation of company funds and she was terminated for loss of trust and confidence, why did respondent Norkis still promise petitioner a future employment in the company. Untenable is respondents' contention that when they terminated petitioner for health reasons, they intentionally did not make mention of the alleged defalcation because they wanted to give petitioner a graceful exit from the company. Defalcation or misappropriation of company funds if true is too serious an offense and breach of trust not to be exposed at the first opportunity.

In the case of *Artemio Labor, et al. vs. NLRC, Gold City Commercial Complex, Inc. and Rudy Uy*,^[12] this Court held that the right of an employer to dismiss employees on the ground of loss of trust and confidence must not be exercised arbitrarily and without just cause. For loss of trust and confidence to be a valid ground for dismissal of an employee, it must be substantial and founded on clearly established facts sufficient to warrant the employee's separation from employment. Loss of confidence must not be used as a subterfuge for causes which are improper, illegal or unjustified; it must be genuine, not a mere afterthought, to justify earlier action taken in bad faith.^[13] Because of its subjective nature, this Court has been very scrutinizing in cases of dismissal based on loss of trust and confidence because the same can easily be concocted by an abusive employer. Thus, when the breach of trust or loss of confidence theorized upon is not borne by clearly established facts, such dismissal on the ground of loss and confidence cannot be allowed. In the case under consideration, evidence is utterly wanting as to the defalcation allegedly perpetrated by the petitioner. Consequently, her dismissal on the ground of loss of confidence cannot be countenanced.

What is more, as intimated by petitioner, private respondents were remiss in their duty to afford her due process. An employee may only be dismissed for just or authorized causes and the legality of dismissal of an employee hinges on: (a) the legality of the act of dismissal; that is dismissal on the grounds provided for under Article 283 (now 282) of the New Labor Code and (b) the legality in the manner of dismissal.^[14] The law requires that an employee sought to be dismissed must be served two written notices before termination of his employment. The first notice is to apprise the employee of the particular acts or omissions by reason of which his dismissal has been decided upon; and the second notice is to inform the employee of the employer's decision to dismiss him. Failure to comply with the requirement of two notices makes the dismissal illegal. The procedure is mandatory. Non-observance thereof renders the dismissal of an employee illegal and void.^[15]

Records on hand show that prior to the letter of termination aforementioned, petitioner was never notified, through a memo or letter, of the missing funds alluded to. Neither was she required to give her side regarding the alleged misappropriation or defalcation of company funds being imputed to her. As pointed out by the Solicitor General, petitioner was never served with notices by the private respondents, verbally or in writing, to inform her of the charges against her and to require her to answer such charges. It bears stressing that the respondents failed

to establish that subject letter of October 19, 1990 was received by petitioner or her husband. As a matter of fact, from the evidence it can be gleaned that the said letter was antedated so as to feign compliance with legal requirements.

There is merit in petitioner's submission that the award of moral and exemplary damages in her favor is warranted by her unjustified dismissal. Award of moral and exemplary damages for an illegally dismissed employee is proper where the employee had been harrassed and arbitrarily terminated by the employer.[16] Moral damages may be awarded to compensate one for diverse injuries such as mental anguish, besmirched reputation, wounded feelings and social humiliation occasioned by the employer's unreasonable dismissal of the employee. This Court has consistently accorded the working class a right to recover damages for unjust dismissals tainted with bad faith; where the motive of the employer in dismissing the employee is far from noble. The award of such damages is based not on the Labor Code but on Article 220 of the Civil Code. However, under the attendant facts and circumstances, the Court is of the sense that the amount of One Hundred Twenty Thousand (P120,000.00) Pesos awarded by the Labor Arbiter for moral and exemplary damages is too much. Fifty Thousand (P50,000.00) Pesos of moral damages and Ten Thousand (P10,000.00) Pesos of exemplary damages should suffice.

WHEREFORE, the petition is GRANTED; the resolution of National Labor Relations Commission in NLRC Case No. M-001458-93 is SET ASIDE; and the resolution of the Labor Arbiter dated May 28, 1993, in NLRC RAB Case No. 10-03-00211-91 is hereby REINSTATED, with the modification that the award of damages is reduced to Fifty Thousand (P50,000.00) Pesos, as moral damages, and Ten Thousand (P10,000.00) Pesos, as exemplary damages. Costs against Norkis Distributors, Inc.

SO ORDERED.

Melo, (Chairman), Vitug, and Gonzaga-Reyes, JJ., concur.

Panganiban, J., no part, former partner of a party's counsel.

[1] Rollo, p. 5.

[2] Rollo, pp. 156-157.

[3] Rollo, p. 40.

[4] Rollo, p. 48.

[5] Rollo, p. 157.

[6] Pantranco North Express, Inc. vs. NLRC, et al., G.R. No. 114333, January 24, 1996, 252 SCRA 237, 244; General Textile, Inc. vs. NLRC, et al., G.R. No. 102969, April 4, 1995, 243 SCRA 232, 236; Cebu Royal Plant vs. Hon. Deputy Minister of Labor, et al., G.R. No. 58639, August 12, 1987, 15 SCRA 38, 43-44.

[7] Flores vs. Funeraria Nuestro, G.R. No. 66890, April 15, 1988, 160 SCRA 568, 571.

[8] G.R. No. 110388, September 14, 1995, 248 SCRA 183.

[9] Rollo, p. 209.

[10] Rollo, p. 159.

[11] Rollo, p. 158.

[12] G.R. No. 110388, September 14, 1995, 248 SCRA 183.

[13] Starlite Industrial Corp. vs. NLRC, G.R. No. 78491, March 16, 1989, 171 SCRA 315.

[14] Shoemart, Inc. vs. NLRC, G.R. No. 74225, August 11, 1989, 176 SCRA 385.

[15] Tingson, Jr. vs. NLRC, 185 SCRA 498 [1980]; National Service Corp. vs. NLRC, 168 SCRA 122 [1988]; Ruffy vs. NLRC, 182 SCRA 365 [1990].

[16] Lim vs. NLRC, G.R. No. 79907 and Sweet Lines, Inc. vs. NLRC, G.R. No. 79975, March 16, 1989.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.