

**PIZZA HUT/PROGRESSIVE DEVELOPMENT CORPORATION,  
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION,  
LABOR ARBITER SALIMATHAR NAMBI AND FROILAN RUEDA,  
RESPONDENTS.**

*G.R. No. 117059. January 29, 1996*

Ponente: PUNO, J.

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**PUNO, J.:**

Private respondent Froilan Rueda was employed as Assistant Manager III at Pizza Hut in Park Square, Makati. On May 31, 1990, private respondent received a letter from petitioner Pizza Hut/Progressive Development Corporation terminating his employment for "violation of Section 4 (a) of the Employee Code of Conduct on Dishonesty and Other Fraudulent Acts, to wit: (s)tealing or attempting to steal from the company or from co-employees." [1]

On September 3, 1990, private respondent filed with the National Labor Relations Commission (NLRC) a complaint for illegal dismissal against the petitioner. In its Decision [2] dated October 29, 1993, Labor Arbiter Salimathar Nambi ruled in favor of private respondent. However, because of the parties' strained relationship, respondent Labor Arbiter did not order private respondent's reinstatement and instead directed the payment of backwages, separation pay and attorney's fees. The dispositive portion of the Decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered ordering respondents PIZZA HUT/PROGRESSIVE DEVELOPMENT CORPORATION to pay the complainant the following:

1. Backwages for three (3) years, thus: P3,300.00 x 36 mos. = P118,800.00;
2. Separation pay at one (1) month salary for every year of service in the total amount of P24,750.00;
3. Ten percent (10%) of the total award for and as Attorney's fees." [3]

This Decision was affirmed by the NLRC on April 29, 1994. [4] The NLRC also denied the petitioner's Motion for Reconsideration in its Order dated June 29, 1994. [5]

The present petition for certiorari seeks to nullify the aforementioned Decisions and Order rendered by the public respondents. It raises the following grounds:

"Public Respondent Labor Arbiter committed grave abuse of discretion which is tantamount to lack of jurisdiction in rendering the decision in favor of Private Respondent Rueda in spite of the overwhelming evidence against the latter. Respondent NLRC likewise committed grave abuse of discretion amounting to lack of jurisdiction in ordering the dismissal of the appeal and in denying the Motion for Reconsideration filed by your petitioner. The capricious and arbitrary rulings of Public Respondents without evidence in support thereof and even contrary to the evidence adduced during trial place the Petitioner in jeopardy and at the same time expose it to irreparable damage and injury." [6]

The basic issue to be resolved in the case at bar is the legality of private respondent's dismissal.

For an employee's dismissal to be valid, two requisites must be met: (1) the employee must be afforded due process, meaning, he must be given an opportunity to be heard and to defend himself, and (2) the dismissal must be for a valid cause as indicated in Article 282 of the Labor Code.[7]

First, on due process. Petitioner assails the ruling that private respondent was not afforded an opportunity to be heard before he was dismissed from work. The ruling of Labor Arbiter sustained by the respondent NLRC held:

"... Respondents contend that complainant was afforded due process as evidenced by the minutes of the investigation (Exhs. 4 to 4-c) wherein he was able to give his side on his defense. Complainant, however, denied that no such investigation was conducted by the respondents. An examination of the said minutes of investigation (Exhs. 4 to 4-c) reveals that the same was not signed by the complainant. Without complainant's signature on the said minutes, it cannot be concluded that the same is authentic and (not) merely fabricated to suit respondents' defense. Indeed, respondents failed to present any notice or letter to complainant affording him the opportunity to present evidence in refutation of the charge against him. This Office has no other option therefore, but to conclude that complainant's right to due process was not duly observed by the respondents..."[8]

The essence of due process in administrative proceedings is an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of.[9] Before an employee can be dismissed, the Labor Code requires the employer to furnish the employee a written notice containing a statement of the causes for termination and to afford said employee ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires. If the employer decides to terminate the services of the employee, the employer must notify the worker in writing of the decision to dismiss him, stating clearly the reasons there for. [10]

The records show that petitioner satisfied the requirements of due process before dismissing private respondent. Contrary to the finding of public respondents, petitioner required private respondent to submit his written explanation regarding the charge of tip bussing. On February 23, 1990, private respondent submitted his handwritten letter to the petitioner explaining his side.[11] Thereafter, the petitioner formed a committee to investigate the private respondent.[12] On March 13, 1990, petitioner sent a memorandum to private respondent directing him to appear with counsel before the investigating committee.[13] On March 15, 1990, the petitioner conducted an investigation where private respondent was asked to explain his side. The proceedings were tape recorded and transcribed. In a letter dated May 22, 1990, petitioner notified private respondent of the management's decision to terminate his employment.[14] It is therefore clear that private respondent was given full opportunity to present his side before he was dismissed from service. The refusal of private respondent to sign the minutes of the investigation does not negate the fact that he has been given due process. Well to note, there is nothing in the records to show that said minutes contain any inaccuracy or falsity to justify private respondent in refusing to authenticate the same with his signature.

Next, we determine whether there was just cause for private respondent's dismissal.

Petitioner's evidence to prove tip bussing shows that on February 14, 1990, private respondent was the assigned closing manager at its Pizza Hut outlet in Park Square, Makati. One of his duties as closing manager was to put the tips collected for the day in the safety vault after they are counted and recorded by the tip custodian. On that date, however, private respondent failed to put the tips in the safety vault. Instead, he asked the cashier to change all loose coins and small bills to one hundred peso bills and placed them in his pocket.[15]

On February 18, 1990, the store's tip custodian, Ms. Leah Reyes, discovered that the tips collected on February

14 were not in the safety vault. Ms. Reyes asked private respondent about the missing tips. Private respondent admitted that the money was with him and promised to return it the next day. On February 21, 1990, private respondent handed the amount of P705.00 to Ms. Reyes minus P100.00 which he took as cash advance. On this basis, petitioner dismissed private respondent.

Private respondent, on the other hand, maintains that there was no valid cause for his dismissal. He explained that on February 14, 1990, the tip custodian did not report for work. As closing manager, he was forced to keep the money in his custody. On February 17, 1990, when the tip custodian returned to work, he informed the custodian that the tips collected on February 14 were still with him and that he kept them in his locker. The tip custodian, however, did not ask for the money until February 20, 1990. Before handing the money to the tip custodian, the private respondent deducted P100.00 from the P705.00 as cash advance. He said that he deducted his cash advance with the consent of the tip custodian.[16]

We affirm the Decision of the public respondents that petitioner has no valid cause to dismiss private respondent.

The totality of petitioner's evidence only proves that private respondent failed to deposit the February 14 tips in the safety vault. The omission, however, does not necessarily establish that private respondent stole the money, as petitioner wants us to believe. In his letter[17] to the petitioner dated February 23, 1990, private respondent explained why he was unable to put the money in the safety vault, thus:

February 23, 1990

To: MDA

Fr: FBR

Re: Tips of Feb. 14 worth P705.

This letter is in response regarding the tips that I have kept temporarily which you questioned why it's with me, it was last Feb. 14 day's tips.

In the late evening (early morning) of Feb. 14 (Feb. 15), after business operating hours, which is actually full at that time 'till 12:30 to 1:00 AM, after counting the tips I asked the duty cashier to change all loose coins and bills to hundreds and place them (the loose bills) in the change fund. When they were changed to hundreds, I temporarily placed them in my polo pocket and continue doing our proper turn-over of the cashier for that day's sales which is P60,000 for regular dine-in and P13,000 for the RBD. I deposited the said sales at about 1:30 A.M. I was the only duty manager at that time for operations while Jun Amagsila, another manager was conducting our weekly inventory. I've also accomplished and finished the RBD sales report 'cause we don't have closing CSR at that time. After checking all the reports I've placed all the change fund (P6,000), keys and other things inside the safe. That time, cleaning operations were only halfway through, so I monitored and helped the closing crews with their tasks, stations after stations. We went out at around 3 AM past.

At home, I've noticed inside my pocket the tips for that day 'cause I forgot to place it inside the safe so I just decided to give it to Leah Reyes (a crew & tip custodian). The next day, supposedly my schedule was 12:00 noon, I've reported for work at 3:00 P.M. to off-set the excess hours rendered the previous day with your approval. The money is with me and brought it and placed them inside my checkbook at my locker upon arrival. When Leah asked me where was the tip of Feb. 14, I said that it's with me, and she didn't bother to get it from me. It was only Last Feb. 21, the day for tips distribution that I have given the said amount to Leah R. I asked her to deduct P100 from my tips as cash advance 'cause that time I haven't time to go to Metrobank to withdraw some from my salary.

I don't see any reason why some are questioning me regarding this matter, 'cause I just temporarily kept it and there was no manager assigned as tip custodian partner. It has been a practice systemwide that there should be

one.

For your information.

(sgd) FROILAN B. RUEDA

There is no doubt that private respondent temporarily kept the money instead of putting it in the company safety vault. Given the circumstances of the case however, we cannot deduce dishonesty from the act and omission of private respondent. It was Valentine's Day, and like most restaurants, the Pizza Hut branch in Park Square was swarmed with customers. All the crew members, including private respondent, were very busy attending to their duties. It is not unusual therefore, for private respondent to forget to deposit the tips in the safety vault before going home. The omission could have been caused by oversight due to the hectic work activities on that day. Our norms of social justice demand that we credit employees with the presumption of good faith in the performance of their duties, especially private respondent who has served petitioner for four and a half years without any tinge of dishonesty.

Moreover, the penalty of dismissal should not be imposed if it is too harsh and disproportionate to the offense committed by an employee. The following circumstances accentuate the harshness of private respondent's dismissal: first, this is private respondent's first offense after four and a half years of unblemished employment with petitioner; second, the amount which private respondent failed to deposit in the safety vault is only minimal; third, the money did not belong to the petitioner but to its employees who did not even complain about the incident and finally, nobody suffered any loss as private respondent eventually returned the money six (6) days later, in time for its distribution to the employees.

Petitioner charges private respondent with a very serious offense involving dishonesty. This can irreparably wreck his life as an employee for no employer will take to its bosom a dishonest employee. It behooved petitioner to prove its charge with clear and convincing evidence. Dismissal is the supreme penalty that can be meted to an employee and its imposition can not be justified where the evidence ambivalent.

Accordingly, we hold that public respondent NLRC did not err in awarding backwages and separation pay to private respondent, in view of its finding that private respondent was dismissed without a just cause. We, however, find the award of attorney's fees improper as it was not shown that petitioner acted in bad faith in terminating private respondent's services.<sup>18</sup> An honest misappreciation of the facts and the law on the part of the petitioner does not mean it acted with malice in dismissing private respondent. Indeed, it even gave private respondent full opportunity to defend himself before he was dismissed.

IN VIEW WHEREOF, the assailed Decisions and Order rendered by public respondents are MODIFIED by deleting the award of attorney's fees to private respondent. No costs.

### **SO ORDERED.**

Regalado (Chairman), Romero, and Mendoza, JJ., concur.

[1] Termination letter addressed to private respondent Froilan Rueda, Rollo, p. 96.

[2] Rollo, pp. 41-50.

[3] Rollo, p. 50.

[4] Rollo, pp. 38-40.

[5] Rollo, pp. 36-37.

- [6] Petition, Rollo, p. 13.
- [7] Mapalo vs. NLRC, 233 SCRA 266(1994).
- [8] Rollo, pp. 48-49.
- [9] Philippine Phosphate Fertilizer Corp. vs. Torres, 231 SCRA 335(1994).
- [10] Article 277 (b), Labor Code; Sections 2, 5, and 6 of Rule XIV Book V, Implementing Rules and Regulation.
- [11] Annex "1" of petitioner's Memorandum on Appeal, Rollo, p. 73.
- [12] Rollo, p. 85.
- [13] Rollo, p. 86
- [14] Rollo, p. 96.
- [15] Petition, Rollo, pp. 9-10.
- [16] Comment, Rollo, pp. 125-126.
- [17] Rollo, pp. 73-74.
- [18] De Ia Pena vs. Court of Appeals, 231 SCRA 456 (1994).

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