

SIXTA C. LIM, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND PEPSI-COLA FAR EAST TRADE DEVELOPMENT CO., INC., RESPONDENTS.

G.R. No. 118434. July 26, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In this petition for certiorari under Rule 65 of the Rules of Court, petitioner Sixta C. Lim urges us to nullify the decision of public respondent National Labor Relations Commission (NLRC) in NLRC-NCR CA 005656-93 which upheld her dismissal by private respondent Pepsi-Cola Far East Trade Development Co., Inc. (hereinafter PEPSI), thus reversing the decision of the Labor Arbiter in NLRC-NCR 00-05-02852-91.

After deliberating on the petition, the comments thereon by the public and the private respondents, and the petitioner's reply to such comments, we resolved to give due course to the petition.

The incomplete summation of the antecedent facts by both the Labor Arbiter and the NLRC compels us to examine the original records to arrive at a just determination of this case.

PEPSI, a manufacturer of concentrates to be sold to Pepsi-Cola Bottlers Co., Inc., has a workforce of only nineteen employees, the petitioner being one of them. PEPSI employed her on 15 June 1983, but she had been with the Pepsi Group since 1 January 1981 as a secretary for Pepsi Bottling Co. (Phils.), Inc.[1] At the time of her dismissal, she held the position of Staff Accountant. As such, she assisted and worked closely with the Plant Accountant to carry out the accounting department's tasks necessary to ensure an accurate, timely, and coordinated compilation of data for each accounting transaction.[2] In particular, her work involved: (1) Cost Accounting-Production Reporting (40%) -- to ensure that all inventory movements were reported and recorded in the accounting records; (2) Cost Accounting-Financial Reporting (20%) -- to prepare accurate and timely, periodic, quarterly, and annual reports (e.g., Raw materials, Inventory Cost of Sales, etc.); (3) Payroll Reporting (15%) -- to ensure timely, complete, and accurate preparation of payroll expenditures, and valid authorization and accuracy of payroll changes; (4) Statutory Reporting (15%) -- to prepare accurate and complete quarterly sales tax returns, year-end tax schedules, and other government-related requirements; and (5) Preparation of daily trade accounts receivable reports, petty cash fund custodianship, and check preparation (10%).[3]

As per company policy, PEPSI regularly evaluated its employees' performance. Originally, the following ratings were used:

Marginal

- Obviously well below the acceptable level for the position.

Fair

- Below standard, shows noticeable need for improvement.

Commendable

- Fully meeting the performance requirements of the position.

Superior

- Noticeably better than required performance.

Distinguished

- Outstanding - Obviously far above an acceptable job.[4]

Over time, the petitioner's overall performance appraisals rated as follows: (a) "S" (Superior) as of 1 May 1984;[5] (b) "C" (Commendable) for the period for 1 December 1987 to 31 August 1988;[6] and (c) "C--" (C minus), quantified as 81.10% for the period from 1 September 1988 to 31 May 1989.[7]

In the latter part of 1989, PEPSI charged the rating nomenclatures for the performance evaluation of its employees,[8] to wit:

Significantly Above Target (SA):

- Exceeds position requirements by a wide margin; exceptional.

Above Target (AT):

- Usually exceeds position requirements.

On Target (OT):

- Meets and sometimes exceeds position requirements.

Below Target (BT):

- Meets some or many but not all position requirements.

Significantly Below Target (SB):

- Below position requirements by a wide margin; unacceptable.

For the period beginning 1 July 1989 until 31 December 1989, the petitioner received an overall rating of BT or Below Target in the management performance appraisal.[9] This rating was heavily influenced by her performance in production reporting, which accounted for forty percent (40%) of the overall rating. Her superior's appraisal on this matter was as follows:

Cost accounting work in PEPSI Concentrate Operations is one of the most significant tasks in inventory management and reporting. For some years, Sixta has been doing this job and the experience she gained from the work should have improved her performance in the tasks assigned to her. However, it is evident that the quality of her work in cost accounting needs a lot of improvement. Certain reconciliation[s] of book and subsidiary balances of inventories in 1989 were not updated. This resulted to [sic] long unresolved discrepancies in the accounting records which should have been avoided had Sixta did [sic] her job diligently [sic].[10]

She likewise obtained a BT rating for Cost Accounting-Financial Reporting, which was weighted at twenty percent (20%).[11] She was appraised thus:

The financial reporting aspect of cost accounting contributes to better management of [sic] the company's resources and gives decision makers an important guide in setting the company's direction towards productivity and profitability. It seems that Sixta does not fully appreciate such importance of the report[s] she generates. The reports she submits need to be thoroughly checked and these are submitted with little allowance for review. Furthermore, she has no systematic workplan which could have aided her in the diligent [sic] and competent performance of her tasks.

As to the other aspects of her job responsibilities, viz., payroll; statutory reports; and preparation of daily trade

accounts receivable reports, petty cash custodianship, and check preparation, which categories account for fifteen percent (15%), fifteen percent (15%), and ten percent (10%) of the overall rating, respectively, the petitioner was rated OT or On Target.[12]

The overall performance appraisal[13] of the petitioner stated:

Sixta's overall performance for 1989 is below target. Though she has been on the job for a number of years, her indifference towards her job has hindered an improved performance from her [sic]. Although she performs well in certain areas of her work, her seemingly lack of interest in performing beyond expectations of her peers and superiors has affected her over-all performance.

She should try to improve her work habits, especially in putting her priorities in proper order. Furthermore, she should develop her own work plan for her to perform the tasks in a systematic and efficient manner. She should always be alert for [sic] her past mistakes so as not to commit the same errors repeatedly. That way, her superiors could place a significant degree of reliance on her work.

In response thereto, the petitioner wrote her superior, Mr. Wilbert Young, asking for a re-evaluation of her performance appraisal[14] as: (a) she was the first to be evaluated using the revised evaluation sheet; (b) the long unresolved discrepancies referred to were committed in 1989 while she was on maternity leave; (c) she did appreciate the importance of her reports, for which reason she even worked Saturdays to accomplish them; and (d) the delays were caused by the delay of the submission of data she needed to accomplish her reports.

On 30 November 1990, the petitioner wrote another letter to the plant manager, Mr. Marianito Lucero,[15] wherein she questioned the change of weight of the Cost Accounting-Production Reporting from twenty percent (20%) to forty percent (40%). She then objected to the finding that "certain reconciliation of book and subsidiary balances of inventories in 1989 were not updated" in the appraisal, and explained that the use of the word "certain" indicated mere isolated omissions, and since the report in its entirety was not defective, such should not drag her rating down. Moreover, she inquired why she was not rated for the other portions of her work and stressed that she was on maternity leave during the time there was a failure to "update," which should not, therefore, be attributed to her. She likewise excepted to the finding that "it resulted to long unresolved discrepancies" in the accounting records, and contended that if, indeed, this was long unresolved, then it should not have been allowed to stay unresolved and she should have been informed sooner.

She then pointed out that the period involved, 1 July 1990 to 31 December 1990, covered only five months, but what was singled out in the appraisal was her year-end financial report, forgetting the other financial reports she submitted during the appraisal period. She made it clear that a few mistakes and delays did not mean she failed to appreciate the importance of these reports; in any event, her supervisors were likewise culpable since they were lax in allowing the reports to remain "unupdated" when they knew she was on leave. Finally, she claimed that she was fed the wrong figures, hence the mistakes. As a consequence, she questioned the favorable appraisal of the warehouseman who fed her the wrong figures. In conclusion, she cited her past favorable appraisals and asserted the unlikelihood of an abrupt decline in her performance in so short a time.

PEPSI conducted another appraisal[16] of the petitioner's performance for the period from 1 January 1990 to 31 December 1990. The petitioner received an overall rating of BT, with the text of her overall appraisal[17] reading:

Sixta's overall rating is "Below Target". Her performance meets some but not all position requirements. In the previous rating, it has been pointed out that she has to upgrade the quality of her work, particularly in Cost Accounting related tasks. However, her continued inability to show a marked improvement in her tasks has caused disruptions in the efficient workflow in the Department.

The usual delays and inaccuracies in the submission of her Cost Accounting reports has made her superiors

spend more time than necessary in reviewing and correcting her job. Furthermore, she has not consistently adhered to company's [sic] policies relating to cash-handling functions. In instances where she forced balance [sic] certain petty cash reports and advanced her personal funds for petty cash. She could not have resorted to such improper practices had she submitted liquidation reports on time.

Considering that she has been with the Company for quite sometime [sic], it was expected that she should show improvements every year and expectations should also grow. However, what happened was expectations of her superiors have remained in [sic] status quo for a number of years, yet she was not able to meet such standards. She should strive harder to produce the necessary results and do some re-evaluation of her attitudes [sic] towards her tasks. She should bear in mind one of the value statement [sic] that the Pepsico Concentrate Operations Management has advocated: "ONLY RESULTS-ORIENTED [sic] PEOPLE SHOULD BE HIRED DEVELOPED AND PROMOTED."

Like the previous appraisal, the petitioner received BT ratings for Cost Accounting -- Production Reporting and Cost Accounting -- Financial Reporting. In addition, she received a BT rating for preparation of accounts receivable reports, petty cash fund custodianship, and check preparation. For payroll and statutory reports, she received a rating of OT. The following were thus suggested as areas for improvement:

FOR COST ACCOUNTING -- PRODUCTION REPORTING

1. She must learn to prioritize her various tasks. This way, she shall be able to effectively manage her time and produce results on a timely basis.
2. She should raise the necessary warning signals if she's having difficulties with certain areas of her job. This will alert her superiors to immediately help resolve the problems.

FOR COST ACCOUNTING -- FINANCIAL REPORTING

1. She should develop her own system of self checking/review of her job.
2. She should learn to fully utilize the computer to simplify her job and facilitate timely generation of her reports.

FOR PAYROLL:

1. She should always be in [sic] the lookout for any discrepancy in payroll reports. Such matters upon discovery, should immediately be resolved.

FOR PREPARATION OF ACCOUNTS RECEIVABLE REPORTS, PETTY CASH FUND CUSTODIANSHIP AND CHECK PREPARATION JOB:

1. She should strictly adhere to company policies. She should realize the repercussions of these violations.
2. She should closely monitor receivable balances to avoid bad debts losses.[18]

Unsatisfied, the petitioner wrote a letter on 4 March 1991 to Mr. Yasuyuki Mihara of Pepsi Co, Inc., Japan.[19] She pointed out that Mr. Young issued a memorandum asking the Plant Manager, Mr. Marianito Lucero, about her case without furnishing her a copy thereof, and that Messrs. Young and Lucero never discussed the matter with her. In response, Mr. Mihara sent her a telegram dated 22 March 1991 informing her that he understood her point and would discuss the matter with her superiors on his visit to the Philippines after his return from New York.[20]

PEPSI, however, did not wait for Mr. Mihara's visit. It asked the petitioner to voluntarily resign and offered to pay her termination benefits,[21] but she refused.[22]

On 6 May 1991, the petitioner was verbally informed of her termination as an employee of PEPSI.[23]

On 14 May 1991, the petitioner filed with the Labor Arbiter a complaint for "dismissal without due process" against PEPSI.[24]

On 15 May 1991, the petitioner received a Termination Letter from PEPSI's Marianito Lucero advising her of PEPSI's decision to terminate her services for "gross inefficiency" effective 31 May 1991.[25]

On 14 October 1991, the petitioner filed her Position Paper with a prayer for reinstatement with full backwages or, if reinstatement was not possible, then for payment of separation pay of P268,000.00 in accordance with company policy, and moral damages of P100,000.00.[26] To which, the private respondent filed its Position Paper and claimed that the petitioner's BT performance appraisal was sufficient ground to dismiss her under Article 282(b) of the Labor Code.[27]

On 30 July 1993, the Labor Arbiter rendered judgment[28] in favor of the petitioner and disposed of the case as follows:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Ordering respondent Pepsi-Cola Far East Trade Development Co., Inc. to reinstate complainant to her former position without loss of benefits and seniority rights, or in lieu thereof at the discretion of the respondent company, to pay her separation pay which [sic] equivalent to (P13,550 x 10 years) P135,500.00;
2. Ordering respondent company to pay complainant his [sic] 13th month pay for her imputed service for the years 1991, 1992, and a proportionate amount in 1993, in the total amount of (P13,550 x 2.5) P33,875.00;
3. Ordering respondent company to pay complainant her full backwages the total amount of which up to even date is computed as follows:
$$P13,550.00 \times 26 \text{ month [sic]} = P352,300.00$$
4. Awarding complainant ten (10%) on his [sic] total monetary reward for and as attorney's fees.

PEPSI seasonably appealed from the decision to the NLRC.[29]

In its decision[30] of 28 October 1994, the Second Division of the NLRC reversed the decision of the Labor Arbiter. The dispositive portion of the decision states:

WHEREFORE, in view of the foregoing, the Decision of Labor Arbiter Bartolabac dated July 30, 1993 is hereby REVERSED, vacated and set aside and a new one rendered in its place, validating the complainant Sixta Lim's dismissal but directing Pepsi-Cola Far East Trade Development Co., Inc. to pay the complainant separation benefits equivalent to one month pay for every year of service.

All other claims are DENIED for lack of merit.

Her motion for reconsideration of this adverse decision was denied on 13 December 1994.[31]

The petitioner then filed this special civil action for certiorari and contended that the NLRC committed grave abuse of discretion in reversing the Labor Arbiter because: (1) her alleged inefficiency was not among the just causes prescribed by law for the dismissal of an employee; (2) even under PEPSI's new performance evaluation method, her dismissal from employment was not justified; and (3) even assuming that such dismissal was justified, she was still entitled to separation benefits of P268,000.00 in accordance with PEPSI's policy and practice, plus damages and attorney's fees. On the other hand, PEPSI insists that gross inefficiency is just cause for dismissal under Article 282(b) of the Labor Code.

Under Article 282 of the Labor Code (P.D. No. 442), as amended, the following are deemed just causes to terminate an employee:

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

We cannot but agree with PEPSI that "gross inefficiency falls within the purview of "other causes analogous to the foregoing," and constitutes, therefore, just cause to terminate an employee under Article 282 of the Labor Code. One is analogous to another if it is susceptible of comparison with the latter either in general or in some specific detail; or has a close relationship with the latter.[32] "Gross inefficiency" is closely related to "gross neglect," for both involve specific acts of omission on the part of the employee resulting in damage to the employer or to his business. In *Buiser vs. Leogardo*,[33] this Court ruled that failure to observe prescribed standards of work, or to fulfill reasonable work assignments due to inefficiency may constitute just cause for dismissal.

In the case at bench, however, prior to the issuance of the Termination Letter on 15 May 1991, PEPSI never called the petitioner's attention to any alleged "gross inefficiency" on her part. Likewise, she was never warned of possible disciplinary action due to any alleged "gross inefficiency." The evaluation report merely indicated her areas for improvement. Moreover, in PEPSI's brochure entitled "Managing Performance For the 90's,"[34] a BT rating does not merit dismissal from the service; as a matter of fact, the lower rating -- Significantly Below Target (SB) -- is not even a ground for termination of employment, but may only justify putting the employee "on probation and [telling him] that improvement is a necessity."

Undoubtedly, the petitioner obtained an unfavorable rating, but not to the extent, under the company's standards, to warrant even a probationary measure which is given to the lowest rating of Significantly Below Target (SB). If the company truly found the petitioner's "inefficiency" to be of such a gross character, then it should have rated her even lower than SB, since the latter only requires that the employee be put on probation.

It is then quite clear that by its own acts, PEPSI had not characterized as "gross inefficiency" whatever failures, shortcomings, or deficiencies may have been attributable to the petitioner. The rule is of course doctrinally entrenched that in termination cases, the burden of proving that the employee's dismissal from employment was for just cause rests upon the employer.[35]

Moreover, PEPSI violated the petitioner's right to due process -- the heart of the employee's right to security of tenure which is guaranteed in full by no less than the Constitution.[36] This right is implemented by the requirements of twin notice and hearing prescribed in Article 277 of the Labor Code, as amended, and in Sections 2 to 7, Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code. The first notice appraises the employee of the particular acts or omissions for which his dismissal is sought, which may be loosely considered as the proper charge; while the second informs the employee of the employer's decision to dismiss him. The latter must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge, and ample opportunity to be heard and defend himself with the assistance of his representative,

if he so desires. Non-compliance therewith is fatal as these requirements are conditions sine qua non before dismissal may be validly effected.[37] It goes without saying that the dismissal must be for any of the causes provided for in Article 282 of the Labor Code.[38]

All that transpired in this case was that after the petitioner wrote a letter to Mr. Yasuyuki Mihara of Pepsico, Inc., Japan, she was twice verbally asked to voluntarily resign, albeit with separation pay. When she rejected the proposal, she was verbally informed of her termination, as a consequence of which, she filed her complaint for "dismissal without due process" on 14 May 1991. The formal Letter of Termination was only prepared and served on her on 15 May 1991.

The petitioner's termination, being both substantively and procedurally flawed for being violative of due process is, therefore, null and void. The petitioner is entitled to reinstatement, with back wages from the time she was illegally dismissed until she is effectively reinstated, less whatever she may have received as wages through payroll reinstatement,[39] and whatever amount she may have earned from employment elsewhere during the period of her illegal dismissal.[40]

WHEREFORE, the instant petition is GRANTED. The challenged decision of the Second Division of the National Labor Relations Commission in NLRC-NCR CA 005656-93 is hereby SET ASIDE. Private respondent Pepsi-Cola Far East Trade Development Co., Inc. is ordered to reinstate petitioner Sixta C. Lim to her position as Staff Accountant without loss of seniority rights, and to pay her (a) backwages from the time she was illegally dismissed until she is effectively reinstated, less whatever she may have received through payroll reinstatement and whatever amount she may have earned from employment elsewhere during the period of her illegal dismissal, and (b) other monetary benefits that may be due her from the date of her illegal dismissal until such effective reinstatement.

Costs against the private respondent.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, and Francisco, JJ., concur.
Panganiban, J., took no part.

[1] Original Records (OR), 115.

[2] Annex "B" of Reply; Id., 194.

[3] Id., 194-196.

[4] Annexes "B-1" and "B-2" of Complainant's Position Paper; OR, 46, 52.

[5] Annex "B", Id.; Id., 41-45.

[6] Annex "B-1", Id.; Id., 46-51.

[7] Annex "B-2", Id.; Id., 52-58.

[8] Annex "C", Id.; Id., 60.

[9] Annex "C" of Complainant's Position Paper; OR, 60-62.

[10] Id., 60.

[11] Id.

[12] OR, 62.

[13] Id., 61.

[14] Annex "C-1" of Complainant's Position Paper; Id., 63-64.

[15] Annex "C-2" of Complainant's Position Paper; OR, 65-69.

[16] Annex "D" of Complainant's Position Paper; OR, 70-74.

[17] Id., 74.

[18] OR, 71-73.

[19] Annex "D-1" of Complainant's Position Paper; Id., 75-80.

[20] Annex "D-2" of Complainant's Position Paper; OR, 81.

[21] Complainant's Position Paper, Id., 28; Respondent's Position Paper, Id., 97-98; Rollo, 15.

[22] Id., 28; Id., 15.

[23] OR, 2.

[24] Id.

[25] Annex "G" of Complainant's Position Paper; Id., 84.

[26] Id., 26-34.

[27] OR, 87-89.

[28] Id., 304-312. Per Labor Arbiter Geobel A. Bartolabac.

[29] Id., 318.

[30] Rollo, 21-30. Per Calaycay, V.R., Comm., with Aquino, R., and Rayala, R., Comms., concurring.

[31] OR, 451 et seq.

[32] Webster's Third New International Dictionary [1993], 77.

[33] 131 SCRA 151 [1984].

[34] Annex "C" of Petition; Rollo, 48.

[35] *Manggagawa ng Komunikasyon sa Pilipinas vs. NLRC*, 194 SCRA 573, 577 [1991]; *Pan Pacific Industrial Sales Co., Inc. vs. NLRC*, 194 SCRA 633, 637 [1991]; *Gesulgon vs. NLRC*, 219 SCRA 561, 570 [1993]; *Philippine Manpower Services, Inc. vs. NLRC*, 224 SCRA 691, 698-699 [1993]; *Pacific Timber Export Corp. vs. NLRC*, 224 SCRA 860, 863 [1993]; *Reno Foods, Inc. vs. NLRC*, 249 SCRA 379, 386 [1995].

[36] Section 3, Article XIII.

[37] *Abiera vs. NLRC*, 215 SCRA 476, 480-482 [1992]; *Tiu vs. NLRC*, 215 SCRA 540, 551-552 [1992]; *Corral vs. NLRC*, 221 SCRA 693, 697 [1993]; *Radio Communications of the Phils., Inc. vs. NLRC*, 221 SCRA 782, 786-787 [1993]; *Estiva vs. NLRC*, 225 SCRA 169, 174-175 [1993]; *Labor vs. NLRC*, 248 SCRA 183, 202-203 [1995].

[38] Imperial Textile Mills, Inc. vs. NLRC, 217 SCRA 237, 245 [1993].

[39] PEPSI alleges in its Memorandum (Rollo, 212) that "pending appeal before the [NLRC], the petitioner received P220,187.50 as a result of payroll reinstatement for the period of August 1, 1993 to October 31, 1994." (at 218)

[40] Ferrer vs. NLRC, 224 SCRA 410, 423 [1993]; Pines City Educational Center vs. NLRC, 227 SCRA 655, 664-665 [1993].

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