

NATIONAL SUGAR REFINERIES CORPORATION (NASUREFCO), PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) AND SUSAN PABIONA, RESPONDENTS.

G.R. No. 122277. February 24, 1998

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a petition for certiorari and prohibition filed by the National Sugar Refineries Corporation (NASUREFCO) to annul the 23 June 1995 Decision of the National Labor Relations Commission (NLRC) which affirmed that of the Labor Arbiter holding that private respondent Susan Pabiona was illegally dismissed by NASUREFCO, and the Resolution of 20 September 1995 denying its motion for reconsideration.

NASUREFCO is a domestic corporation engaged in sugar refinery. In January 1989 it launched its Raw and Refined Sugar Exchange Program under which clients of NASUREFCO were no longer required to deliver raw sugar as a precondition to their withdrawal of refined sugar. All they had to do was to present properly endorsed documents chargeable against their future deliveries of raw sugar to NASUREFCO.

In line with the Raw and Refined Sugar Exchange Program, Pabiona was appointed as Sugar Accountant-Bookkeeper. She was tasked to maintain records of all transactions pertaining to the Raw and Refined Sugar Exchange Program, validate Raw Sugar Quedans submitted by Exchange participants prior to issuance of the Refined Sugar Delivery Orders and prepare and issue Refined Sugar Delivery Orders only after validation procedures have been properly complied with. The procedures consisted of (a) substantiating the Raw Sugar Quedans by checking if these were properly signed by the authorized quedan holders; (b) validating written reports of the authorized surveyor in accordance with the pre-agreed scope of services, weights, manner of weighing, calibration procedures, and the absence/presence of representatives; (c) checking the mathematical accuracy of the quantities shown in the quedans; and, (d) computing the refined sugar equivalent of the raw sugar exchanged based on POL analyses/refining yield.

When the books of NASUREFCO were audited in 1990 anomalous and irregular transactions were uncovered in the Raw Sugar Movement Report. Thus -

1. On or about December 14, 1989, she prepared RSDO No. 0212 in favor of Shantung Commercial without even seeing the corresponding RSQ's or DO's. This resulted in Shantung Commercial being able to withdraw more refined sugar than was due them because the DO's for the raw sugar to be delivered to NASUREFCO were marked "to be served with DETERIORATED SUGAR." Deteriorated sugar is of lower quality hence, with less refined sugar equivalent than the normal raw sugar. Involved in the transaction were 7,031.99 piculs.
2. Sometime in October 1989, Shantung Commercial was able to withdraw refined sugar on the strength of RSDO No. 0121 prepared by complainant. This RSDO was issued based on the RSQ of Victorias Milling Company (VMC) for 383.05 piculs. Due to some problems with the VMC RSQ, Shantung was required to replace them. Complainant made it appear that the RSQ was already replaced when in fact it was not.

NASUREFCO was not able to get the raw sugar. The VMC RSQ which complainant should have kept until replaced was later sold by Ms. C. Alfonso, a co-employee of complainant.

3. In her report on Raw Sugar Endorsements and withdrawals as of February 11, 1990, complainant made it appear that Dacongogon Producers endorsed 18,000 piculs of raw sugar under DO No. 035 on December 28, 1989. DO No. 035 was never endorsed on that date as it was received by NASUREFCO only on January 1990. Complainant intentionally and deliberately included the supposed endorsement in the 1989 transactions to make it appear that Dacongogon Producers endorsed more than 200,000 piculs of raw sugar for the period, hence, entitled to claim a volume incentive of PHP 1.00 per picul. Complainant also included the endorsements made by other parties under Dacongogon Producers to qualify it for the incentive.

NASUREFCO found Pabiona's written explanation flawed, unsatisfactory. Hence, on 31 May 1990 NASUREFCO through its Human Resource Division Officer-in-Charge charged Pabiona with several violations of accounting policies. Pabiona was again given the chance to air her side, which she did through a memorandum. On 2 and 3 July 1990 a formal investigation was conducted. Pabiona was advised to retain a counsel of her choice to assist her in presenting her case. After the formal investigation, NASUREFCO terminated the services of Pabiona for willful violation of company policies, gross and habitual neglect of duties, and willful breach of trust.

Thus Pabiona filed her complaint with the Labor Arbiter for illegal dismissal. On the other hand, NASUREFCO maintained that the dismissal was for a just cause after proper procedures were observed, hence, legal and valid.

On 26 November 1993 Labor Arbiter Dennis D. Juanon sustained Pabiona and ruled that her dismissal was illegal because -

To our considered opinion, she merely record (and) reports whatever transactions ought to be recorded by her as such personnel. Whatever defects in number or quality of the goods transacted by the corporation is no longer within the ambit of her functions.

She, however, as projected in the testimony of respondent's personnel, was exercising functions which to our mind, appears to be more than x x x (the) ordinary functions of an accountant-bookkeeper. For this, we believe that whatever mistakes made in the process of performance of her work as designated, are more than her ordinary functions, (hence) she cannot be ordinarily blamed.

x x x x

In resume, it is our considered opinion that while complainant may have committed some neglect of duty however, the same was not within her ordinary functions as per job description x x x x Evidences (sic) adduced by either party show that if at all there was negligence that may have been committed in the performance of her work, absent was the character of regularity in committing negligence.

x x x x

Complainant herself to reiterate, admits that she may be negligent yet it was not gross and habitual; that her acts in violating company policies as basis for her dismissal may be viewed by respondent as breach of trust, yet the same is not willful.[1]

On appeal NASUREFCO insisted that the Labor Arbiter committed serious errors in his findings of fact and appreciation of evidence and that his conclusion was contrary to law, jurisprudence and the evidence on record.

But the NLRC upheld the Labor Arbiter and ruled that under the Raw and Refined Sugar Exchange Program a client of NASUREFCO was allowed to withdraw refined sugar even if it had not yet delivered the corresponding raw sugar provided a properly endorsed Raw Sugar Quedan or Delivery Order was presented. After examination and validation of the sugar quedan, a corresponding Refined Sugar Delivery Order was issued to the client

allowing withdrawal of refined sugar from NASUREFCO's warehouse. The Refined Sugar Delivery Order was the sole document that enabled a client to withdraw refined sugar. The examination and validation of all these procedures rested with Pabiona. The NLRC thus affirmed the Labor Arbiter -

After examining both complainant's and respondent's evidence, We find that the infractions imputed to the complainant are not gross and habitual, but rather her inability to exercise due diligence in the performance of her duties or her failure to follow-up transactions and make the necessary correction on the records or report she prepares. The infractions are not deliberate and intentional on the part of the complainant with full intent to cause great damage and prejudice to the respondent. In fact, the latter failed to prove that irreparable damage was incurred due to the negligent acts of the complainant. Neither did we find intent for personal gain when complainant committed these acts. Respondent did not submit any evidence that complainant benefited from these infractions. On the other hand, we find that complainant acted in good faith when she performed her duties which led to these omissions attributed to her. In fine, we could conclude that complainant was negligent, but not gross and habitual in her record keeping, but this does not constitute a sufficient ground to cause her termination.

With the denial of its motion for reconsideration, NASUREFCO is now before us imputing grave abuse of discretion on the part of NLRC.

Pabiona's duties, according to her Job Value Contribution Statement, consist of -

1. Maintaining records of all transactions pertaining to the Raw and Refined Sugar Exchange Program.
2. Validating Raw Sugar Quedans submitted by Exchange Program participants prior to issuance of Refined Sugar Delivery Order. Validation procedures are as follows:
 - a. Substantiate the Raw Sugar Quedans by checking if quedans are properly signed by authorized quedan holders;
 - b. Validate written reports of the authorized surveyor on polarization analyses, compliance of surveyor in accordance with pre-agreed scope of services, weights, manner of weighing, calibration procedures, the absence/presence of representatives;
 - c. Check mathematical accuracy of the quantities shown in the quedans; and
 - d. Compute the refined sugar equivalent of the raw sugar exchanged based on POL analysis/Refining yield.
3. Preparing Refined Sugar Delivery Orders (RSDO) after validating procedures.

The Labor Arbiter found that although Pabiona was guilty of neglect of duty, the duties which she performed and of which she was being charged of neglect, were not within her ordinary functions as Sugar Accountant-Bookkeeper. The Labor Arbiter ratiocinated that as Pabiona merely recorded transactions that ought to be recorded, whatever defects in the quantity or quality items transacted were no longer her responsibility.

For its part, NLRC found that Pabiona's infractions were not gross nor habitual but that she merely failed to exercise due diligence in performing her duties, forgot to follow up transactions and make necessary corrections on the records and reports she prepared. Neither were the infractions deliberate nor intentional as NASUREFCO failed to prove intent on the part of Pabiona to personally gain from the transactions; in other words, her infractions were in good faith.

The preparation and validation of documents for purposes of withdrawing refined sugar from NASUREFCO's warehouse involve trust and confidence. It is only through the issuance by Pabiona of a Refined Sugar Delivery Order that the planters could avail of the refined sugar of NASUREFCO.

The rule is settled that if the employee is guilty of breach of trust or that his employer has justifiable reason to

distrust him, the labor tribunal cannot justly deny the freedom and authority to dismiss his employee.[2]

The basic premise for dismissal on the ground of loss of confidence is that the employee concerned holds a position of trust and confidence. It is the breach of this trust that results in the employer's loss of confidence in the employee. Under Art. 282 of the Labor Code, as amended, loss of confidence would be the result of "fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative," a just cause for termination. It cannot be gainsaid that the breach of trust must be related to the performance of the employee's functions.[3]

Contrary to the findings of the Labor Arbiter and the NLRC, the infractions committed by Pabiona were directly within the purview of her job description. It was only through her active participation and involvement in the illicit infringement of the company's accounting procedures that some clients of NASUREFCO were able to withdraw refined sugar in larger quantities to the prejudice of the latter.

Neglect of duty, to be a ground for dismissal, must be both gross and habitual.[4] In the instant case, Pabiona's neglect of duty was gross. As her position related to money matters, she was expected and required to be extra vigilant in the performance of her job as it involved the financial interest of the company. She was also habitually remiss in her duties. She issued a Refined Sugar Delivery Order to Shantung Commercial without first examining the corresponding Raw Sugar Quedan and Delivery Order. Consequently, Shantung Commercial was able to withdraw a larger quantity of refined sugar than what was allowable to it. In another instance, Pabiona again issued a Refined Sugar Delivery Order to Shantung Commercial without the corresponding Raw Sugar Quedan. Thus, NASUREFCO was not able to collect raw sugar from Shantung Commercial equivalent to the refined sugar it had withdrawn. Thirdly, Pabiona made it appear that in 1989 Dacongcong Producers endorsed more than 200,000 piculs of raw sugar to NASUREFCO thereby allowing it to qualify in the Volume Incentive Program under which NASUREFCO would pay P1.00 per picul of raw sugar to every planter that endorsed 200,000 piculs or more of raw sugar to NASUREFCO. The fact that NASUREFCO did not suffer losses from the anomalies committed by Pabiona because of timely discovery does not excuse the latter as she was very much aware that her acts would be greatly prejudicial to NASUREFCO.

In fine, we hold that the dismissal of Pabiona as Sugar Accountant-Bookkeeper was for a just and valid cause and that NASUREFCO faithfully observed procedural due process in effecting her dismissal.

WHEREFORE, the instant petition is GRANTED. The decision of public respondent National Labor Relations Commission of 23 June 1995 affirming the decision of the Labor Arbiter of 26 November 1993 which found the dismissal of respondent Susan Pabiona to be illegal, and the Resolution of 20 September 1995 denying NASUREFCO's motion for reconsideration are REVERSED and SET ASIDE; consequently, the complaint of respondent Susan Pabiona filed with the Labor Arbiter is DISMISSED. No costs.

SO ORDERED.

Davide, Jr., (Chairman), Vitug, Panganiban, and Quisumbing, JJ., concur.

[1] Decision, Rollo, pp. 42-56.

[2] *Kwikway Engineering Works v. NLRC*, G.R. No. 84914, 22 March 1991, 195 SCRA 529.

[3] *Quezon Electric Cooperative v. NLRC*, G.R. No. 19718-22, 12 April 1989, 172 SCRA 94.

[4] *Alcantara, Samson S.*, *Philippine Labor Legislation Annotated*, Vol. 1, 1996 Ed., p. 1071.

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