

PHILIPPINE AIRLINES, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND AIDA M. QUIJANO, RESPONDENTS.

G.R. No. 123294. October 20, 2010

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court seeking to annul, reverse and set aside the following issuances of public respondent National Labor Relations Commission (NLRC): (1) Decision[1] dated September 29, 1995 in NLRC NCR CA 007860-94 (NLRC NCR 00-03-01859-91), entitled "Aida M. Quijano v. Philippine Airlines, Inc.," which set aside the Decision[2] of Labor Arbiter Roberto I. Santos and ordered petitioner Philippine Airlines, Inc. (PAL) to pay private respondent Aida M. Quijano (Quijano) her separation pay in accordance with petitioner's "Special Retirement & Separation Program," and (2) Resolution[3] dated November 14, 1995 denying petitioner's Motion for Reconsideration thereof.

It bears stressing that pursuant to *St. Martin Funeral Home v. National Labor Relations Commission*[4] and *In Re: Dismissal of Special Civil Actions in NLRC Cases*,[5] all special civil actions arising out of any decision, final resolution or order of the NLRC must be filed with the Court of Appeals. However, since both parties of this case had filed their respective Memoranda prior to the promulgation of our decision in *St. Martin Funeral Home*, this case was no longer referred to the Court of Appeals.

The following are the pertinent facts, as summarized by the NLRC:

Complainant Quijano rose from the ranks starting as accounting clerk in December 1967 until she became effective September 1, 1984, Manager-Agents Services Accounting Division (ASAD), vice Josefina Sioson.

ASAD, the specific unit in PAL charged with the processing, verification, reconciliation, and validation of all claims for commission filed by agents worldwide, is under the direct supervision and control of the Vice President-Comptroller, and within the scope of the audit program of the Vice President-Internal Audit & Control.

On May 5, 1989, an investigating committee chaired by Leslie W. Espino (hereinafter referred to as the Espino Committee) formally charged Quijano as Manager-ASAD in connection with the processing and payment of commission claims to Goldair Pty. Ltd. (Goldair for short) wherein PAL overpaid commissions to the latter amounting to several million Australian dollars during the period 1984-1987. Specifically, Quijano was charged as Manager-ASAD with the following:

"Failure on the job and gross negligence resulting in loss of trust and confidence in that you failed to:

- a. Exercise the necessary monitoring, control and supervision over your Senior Accounts Analyst to ensure that the latter was performing the basic duties and responsibilities of her job in checking and verifying the correctness and validity of the commission claims from Goldair.
- b. Adopt and perform the necessary checks and verification procedures as demanded by your position in order to ensure that the commission claims of Goldair which you were approving for payment were correct and valid

claims thus resulting in consistent substantial overpayments to Goldair over a period of more than three years.

c. Require or otherwise cause a final reconciliation of the remaining balance due as commission claims to Goldair for a particular month such that a claim for a particular month was never liquidated in a final amount and thus contributing to consistent overpayments to Goldair."

The Senior Accounts Analyst referred to in the charge was Dora Jane Prado Curammeng who was included as a respondent. Curammeng was specifically assigned to handle and process commissions of agents in, among others, the Australia Region, and Goldair was among the travel agents whose production reports and commission claims were handled by her. Curammeng was accused of failing to verify the completeness of the documents supporting the claims; to trace and match each ticket in the production report submitted by Goldair with the IATA, BSP and CTO sales report; and to perform a complete verification of the net/net amounts claimed in the production reports against the approved marketing arrangements. However, Curammeng had already resigned and became a resident of Canada at the time of the investigation conducted by the Espino Committee.

Pending further investigation, the Espino Committee placed Quijano under preventive suspension and at the same time required her to submit her answer to the charges. As directed, Quijano submitted her answer wherein, among others, she explained as follows:

"My staff processes production reports submitted by both passenger and cargo agents. In 1984, they were only seven (7) people (with one on loan to Financial Analysis Division) and yet they process commission claims of an average of PHP four billion annually. My colleagues who are responsible for processing and recording gross passenger and cargo sales have around 51 people. Just the ratio of my staff to accounting sales staff, which is one to seven, would indicate the heavy load our unit experience.

I wish to emphasize however, that the staff assigned under my division have been selected on the basis of their judgment competence considering the very nature of marketing arrangements with agents are strictly private and confidential. Under the circumstances I have just mentioned, my staff's judgment and competence is heavily relied on particularly when random checking of commission claims for traffic documents and airway bills against sales reports is being performed by them. I also seek your appreciation of the work environment we are in and the intermittent conflicts we experience due to the pressure of prompt settlement of claims to agents and yet having the satisfaction that the processing procedures are adequate.

x x x x

May I reiterate to the Committee that when my staff informed me of their findings of double claims on the production reports for the months of October and November 1987, I followed this up with a representative of Goldair. On June 1988, I received a handwritten note from the representative of Goldair signed by its General Manager Aleco Papazoglou, a xerox copy of it is hereto attached as Annex "A". Mr. Papazoglou, in this note, guaranteed to me that he will undertake to collect any excessive payments on the agent fees from his agents and pay these to us afterwards.

At this point, I would like to emphasize that ASAD, before known as "Confidential Staff" under the Office of the VP-Comptroller, became a unit since 1976. Due to the confidential nature of its functions, the accounting procedures were not written. The procedures being performed by the staff were mainly practices handed down from their predecessors. Further, the procedures were tailored to adopt to the market environment of the country which were based on the approved marketing arrangements. But of course, there were inherent internal controls.

A final check whether accounting procedures being observed were appropriate in accordance with accounting standards, is the periodic examination of both our internal and external auditors.

During all these 4-1/2 years I have been with ASAD, I did not receive any feedback that there were

weaknesses or lapses in accounting controls and procedures being followed.

In 1985, Cressop McCormick & Paget made a study of the CMA's. They conducted an interview of all key personnel including me who were involved in handling CMA's. It was of course necessary for them to observe and evaluate the existing accounting procedures and controls. Their report, however, did not mention any adverse findings concerning my division.

In 1986, Sycip, Gorres, Velayo & Co. were engaged to look into the CMA functional specifications and to propose the best method of allocating commission expenses to flown revenues. To be able for them to render a report, it is, of course, necessary for them to delve into the reports we receive and the records we maintain. It is safe to surmise that they "walked through" our accounting procedures. No mention, however, of weaknesses on our accounting procedures and controls was made in their report.

Again, during the early part of 1987, all the production reports from Australia for the period April to September 1986 were borrowed and audited by Internal Audit and control. We apprised the auditor then of the various procedures we observed in processing these production reports. We did not receive any adverse feedback about their audit. Our confidence that the AMA's were properly enforced by Australian agents and that there were no irregularities committed were thus regained. We shifted our concentration to the other agents particularly those under Nett-Nett settlement arrangements and tried to recall any commission that should be disallowed.

In the middle of 1987, a special team from the Commission on Audit conducted a fraud audit and again, interviewed my staff and I on our accounting procedures. Incentive commission figures by agent by country were also furnished to them. I wasn't informed of any flaws in our accounting procedures and control nor existence of any fraud.

My division underwent scrutiny of three (3) prestigious consulting firms and of our own internal audit. I relied heavily on the absence of any unfavorable findings on accounting procedures and controls from them since their studies were quite extensive and lengthy. It is quite surprising at times why I am now asked how I could have failed to observe that certain accounting procedures were not being followed by my staff.

x x x x

Also, Internal Audit & Control made a regular audit in Australia in November, 1986 headed by no less than the Vice President-Internal Audit & Control. They did not discover any fraud nor report any questionable transaction on Passenger but on Cargo transaction only. If they, the auditors, did not find any discrepancy when their concentration is on Australia alone, how much more with us when our concentration is on the whole system? The production reports of Goldair was borrowed and assessed by the auditor before and after the regular audit."

The other members of the Espino Committee were Ricardo G. Paloma, then Senior Vice President-Strategic Planning & Corporate Services wrote a dissenting opinion to the Final Draft Majority Report in the following manner, to wit:

"A new set of procedures was apparently installed by Romeo Ines and Josefina Sioson in April, 1984 (without any evident formal authorization by the Comptroller Dept.) upon receipt of Aleco Papazoglou's letter that automatic payment be made upon presentation of his production reports in Manila Gold Air gained immunity against any possibility of cross of their production reports: it was simply impossible to cross check the production reports against sales reports are not yet in by the time the hand carried production reports arrive in ASAD.

Upon assumption of office by Aida Quijano this new set of procedure was carried over. She was made to understand that these were the OFFICIAL PROCEDURES, contrary to the actual procedure which called for production reports being initially checked by PAL Melbourne during the 1981 to 1983 period. This initial

check which had until then been handled by the Regional Office was combined with the secondary check and were all dumped on ASAD.

A mitigating factor in Quijano's favor is that UNSEEN HANDS designed or allowed this new procedure to be put in place. Ines, who became the VP Internal Audit should have known the prescribed procedures (or at the very least the actual practice during the period 1981 to 1983 when he was the VP Comptroller) and yet, did not alert her. Unknowingly, Quijano allowed the by-pass and the automatic payment of 80% upon presentation of production reports because Sioson assured her that was the procedure previously followed. Trustingly, she became a participant in this mess."

It should be noted that the Romeo Ines mentioned in the dissenting opinion is the same Romeo R. Ines who was one of the members of the Espino Committee and who was later named a respondent in the second Goldair charge, together with Chairman Espino. Romeo R. Ines was the VP-Comptroller for the period 1981-1983 and VP-Internal Audit for the period 1984-1987. While Josefina Sioson, as earlier shown, was the Manager-ASAD during the period 1981-1983 until she was replaced by Quijano on September 1, 1984. Incidentally, as found by respondent's witness Benigno Datoc, the Goldair fraud started in 1981 and continued until its discovery sometime in the latter part of 1987. And as of that year, Goldair had been PAL's agent for about seventeen (17) years already.

On July 2, 1990, another Administrative charge involving the same Goldair anomaly was filed, this time including Committee Chairman Leslie W. Espino and Committee Member Romeo R. Ines and several others, for "gross incompetence and inefficiency, negligence, imprudence, mismanagement, dereliction of duty, failure to observe and/or implement administrative and executive policies, and related acts or omissions." Pending the result of investigation by another committee chaired by Judge Martin S. Ocampo, the PAL Board of Directors suspended respondents Leslie W. Espino, Executive Vice-President and Chief Operating Officer; Ramon C. Lozon, Senior Vice-President-Finance; Romeo R. Ines, Vice President-Internal Audit & Control; Josefina Sioson, Manager-Staff Pricing; except respondents VP-Comptroller Robin C. Dui and Manager-ASAD Aida Quijano who were already suspended by the Espino Committee, and respondent Juan Yoga, former Regional Vice President-Australia who has already retired.

Meantime, PAL filed a civil case in Australia against Goldair seeking to recover AUD 11 million. Twice, Quijano went to Australia as witness for PAL. Thereafter, a settlement was reached whereby Goldair was to pay PAL a total of around AUD 7 million inclusive of court costs. A criminal case was nevertheless filed against Goldair's owner, Alexandro Papazoglou, by the Fraud Squad Victorian Police.

The Ocampo Committee having submitted its findings to the PAL Board of Directors, the latter, in a resolution dated January 18, 1991, considered respondents Leslie W. Espino, Ramon C. Lozon, Romeo R. Ines, Robin C. Dui, Josefina Sioson, and Aida M. Quijano, resigned from the service effective immediately, for loss of confidence and for acts inimical to the interest of the company.

The Board found as follows:

"This is the extended Resolution.

The Goldair fraud has caused a total loss to PAL as of August 1990 in the amount of AUD 14.6 million (PHP 204 million). Goldair is a company that served then as the General Sales Agent of PAL in Australia against Goldair, a settlement was reached whereby Goldair was to pay PAL a total of around AUD 7 million inclusive of court costs. This settlement is said to be the most practical and realistic under the circumstances. A criminal case was nevertheless filed against Goldair's owner, Alexandro Papazoglou, by the Fraud Squad Victorian Police. Hearings are still going on.

According to the evidence received and evaluated by the investigating committee, PAL lost the above huge sum of money to Goldair as a result of false, padded, erroneous or irregular claims for commissions submitted by Goldair and unwittingly paid by PAL. The Agents Services Accounting Division (ASAD), one of the divisions under the Comptroller Department, is the specific unit in the company charged with the processing, verification, and validation of all claims for commissions filed by the company's agents worldwide (excluding the U.S. which is processed by the San Francisco Regional Office). Consequently, responsibility for the Goldair fraud has been attributed mainly to the failure of ASAD to properly process and validate Goldair's commission claims prior to payment.

Thus, the following lapses or irregularities were uncovered in the course of the investigations that have been conducted:

1. No adequate effort was exerted to see to it that the supporting documents (photocopies of tickets submitted and attached to the production report were complete). Neither was a verification or comparison made between the tickets and the production report.
2. The simple and basic step of verifying the names of the passengers and their ticket numbers against ticket numbers, even on a check basis, to see whether they were reported more than once was not accomplished. If done, double or multiple reporting of tickets could have been readily detected.
3. Validation of the correctness of prorate values, by performing the proration, was not undertaken.
4. No reconciliation was made of all the amounts due the agent for a particular month. Such reconciliation would have disclosed whether or not the account for a particular month could be closed.
5. Production reports were not cross-checked against sales report or flight coupon registers.
6. Superiors failed to adequately monitor the activities of their subordinates to ensure that the latter were performing their duties.
7. The policy that cash vouchers could be approved only by duly authorized persons was in several cases violated."

Resolving the case of Quijano, the Board said:

"The charge against Ms. Quijano is that:

Quijano was the Manager-ASAD (Agents Services Accounting Division) in 1984-87, and responsible for the final scrutiny of agents' Production Reports and final recommendation for payment of travel agents' commissions.

As Manager-ASAD from 1984 to 1987 (when the fraud was discovered), she failed to uncover or detect and report or grossly disregarded the fraud although the commissions vis-à-vis production were scandalously high.

Ms. Quijano claims that she relied heavily on Ms. Curammeng's judgment competence to perform her work, particularly the "completeness of the documents" check. She argues that if she were to do the completeness check herself, there would be no need for the analyst. This argument, however, wittingly or unwittingly, misconceives the nature of her job. Precisely, her basic role and duty as a manager was to make sure that the analysts in her division were performing the tasks assigned to them. But Ms. Quijano did not see to it that the completeness check was actually being performed by Ms. Curammeng. This lapse in control, contributed materially to the double, multiple and fictitious reporting of tickets, and double claims for commissions perpetrated by Goldair. Ms. Quijano was certainly not expected to personally do and perform the completeness check herself. But as manager, it was clearly incumbent upon her to see to it that this completeness check was being done by her subordinates competently and efficiently. Yet, Ms. Quijano even failed to adopt ways and means of keeping herself sufficiently informed of the activities of her staff members so as to prevent or at least

discover at an early stage the fraud being perpetrated on a massive scale by Goldair against her company.

Her incompetence at her job is patent."

Her motion for reconsideration having been denied by the Board in a Resolution dated February 19, 1991, Quijano filed on March 25, 1991 the instant case against PAL for illegal suspension and illegal dismissal.[6]

The Labor Arbiter dismissed private respondent's complaint in a Decision dated September 7, 1994, the dispositive portion of which reads:

WHEREFORE, in conformity with the opinion above-expressed, judgment is hereby rendered dismissing the above-captioned case for lack of merit and, consequently, the respondent is absolved from any liability.[7]

Undeterred, private respondent filed an appeal before the NLRC which rendered the assailed Decision dated September 29, 1995, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing considerations, the decision appealed from should be, as it is hereby, VACATED and SET ASIDE and another one entered, directing the Philippine Airlines, Inc., thru its responsible officials, to pay Aida M. Quijano her separation pay in accordance with its "Special Retirement & Separation Program" dated February 15, 1988, plus ten percent (10%) of the total amount by way of attorney's fee.[8]

Petitioner filed a Motion for Reconsideration but this was denied by the NLRC in its Resolution dated November 14, 1995, the dispositive portion of which reads:

After due consideration of the Motion for Reconsideration filed by respondent-appellee on October 20, 1995, from the Decision of September 29, 1995, the Commission (Second Division) RESOLVED to deny the same for lack of merit.[9]

Hence, this petition for certiorari.

Both parties submitted their respective Memoranda[10] in late 1997, however, on September 11, 1998, petitioner filed a Motion for Suspension of Proceedings[11] based on Presidential Decree No. 902-A which reads, in part:

That upon appointment of management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.[12] (Underscoring supplied.)

The said motion referred to an Order[13] dated June 23, 1998 of the Securities and Exchange Commission (SEC) which appointed an Interim Rehabilitation Receiver for petitioner pursuant to Presidential Decree No. 902-A that was followed by the issuance of another Order[14] dated July 1, 1998 which commanded that "all claims against PAL are deemed suspended."

After hearing both parties on the question of whether or not the Court should render judgment during the state of suspension of claims, we ruled in the negative in a Resolution[15] dated September 4, 2000, the dispositive portion of which reads:

IN VIEW THEREOF, the Motion for Suspension of Proceedings of petitioner is GRANTED.[16]

Private respondent filed a Motion for Reconsideration[17] on October 3, 2000 of the above Resolution but we denied the same in a Resolution[18] dated November 13, 2000.

Since then petitioner was required by this Court to submit periodic status reports on the rehabilitation proceedings, the last of which was dated October 22, 2007,[19] declaring that the petitioner's request to exit from

rehabilitation had been granted by the SEC via an Order[20] issued on September 28, 2007, the dispositive portion of which reads:

WHEREFORE, in the light of the foregoing, and considering PAL's firm commitment to settle its outstanding obligations as well as the fact that its operations and its financial condition have been normalized and stabilized in conformity with the Amended and Restated Rehabilitation Plan exemplifying a successful corporate rehabilitation, the PAL's request to exit from rehabilitation is hereby GRANTED.

The PRR is likewise directed to furnish all creditors and parties concerned with copies of this Order at the expense of the Petitioner and submit proof of service thereof to the Commission, within fifteen (15) days from date of receipt of this Order.[21]

Considering the foregoing and the fact that both parties have long submitted their respective Memoranda in the instant case, private respondent filed a Motion to Resume Proceedings and to Render Judgment[22] on December 11, 2007. In compliance with this Court's Resolution[23] dated January 21, 2008 requiring petitioner to comment on private respondent's motion, petitioner filed a Comment/Manifestation[24] on February 28, 2008 which confirmed that "with the issuance of the Securities and Exchange Commission's September 28, 2007 Order granting PAL's request to exit from rehabilitation, there is no longer any legal impediment to the resumption of the instant proceedings."

In the instant petition, petitioner puts forward a singular argument, to wit:

ASSUMING ARGUENDO (WITHOUT ADMITTING) THAT THE EQUITABLE CONSIDERATIONS CITED BY THE NLRC DID EXIST, THE SAME CANNOT JUSTIFY THE AWARD OF SEPARATION PAY TO MRS. QUIJANO (despite the finding that she was legally suspended and thereafter legally dismissed) IN THE FACE OF OVERWHELMING EVIDENCE SUBMITTED BY PETITIONER WHICH CLEARLY SHOW THAT PHILIPPINE AIRLINES, INC. LOST SEVERAL MILLION AUSTRALIAN DOLLARS AS A RESULT OF THE FRAUD COMMITTED BY GOLDAIR AND THAT SAID FRAUD COULD ONLY HAVE BEEN MADE POSSIBLE BY MRS. QUIJANO'S PATENT MISMANAGEMENT AND GROSS INCOMPETENCE AS ASAD MANAGER IN FAILING TO DETECT THE IRREGULARITY. IN AWARDING SEPARATION PAY TO MRS. QUIJANO, THE NLRC COMMITTED A GRAVE ABUSE OF ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION.[25]

We affirm the NLRC ruling with modification.

At the onset, it should be noted that the parties do not dispute the validity of private respondent's dismissal from employment for loss of confidence and acts inimical to the interest of the employer. The assailed September 29, 1995 Decision of the NLRC was emphatic in declaring that it was "not prepared to rule as illegal the preventive suspension and eventual dismissal from the service of [private respondent]"[26] and rightfully so because the last position that private respondent held, Manager-ASAD (Agents Services Accounting Division), undeniably qualifies as a position of trust and confidence.

Loss of confidence as a just cause for termination of employment is premised from the fact that an employee concerned holds a position of trust and confidence. This situation holds where a person is entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. But, in order to constitute a just cause for dismissal, the act complained of must be "work-related" such as would show the employee concerned to be unfit to continue working for the employer.[27]

The January 18, 1991 Resolution of the PAL Board of Directors, the relevant portions of which are discussed in the narration of the facts of this case as culled from the assailed September 29, 1995 NLRC Decision, clearly laid out the reasons why it considered private respondent along with her other co-employees in PAL resigned from the

service effective immediately for loss of confidence and for acts inimical to the interest of the company. In private respondent's case, the Resolution underscored her acts of mismanagement and gross incompetence which made her fail to detect the irregularities in the Goldair account that resulted in huge financial losses for petitioner. Admittedly, the said findings are not backed by proof beyond reasonable doubt but are, nevertheless, given credence since they have been adopted by both the labor arbiter and the NLRC and are supported by substantial evidence. As we have consistently held, the degree of proof required in labor cases is not as stringent as in other types of cases.[28]

As a general rule, employers are allowed a wider latitude of discretion in terminating the employment of managerial personnel or those who, while not of similar rank, perform functions which by their nature require the employer's full trust and confidence. This must be distinguished from the case of ordinary rank and file employees, whose termination on the basis of these same grounds requires a higher proof of involvement in the events in question; mere uncorroborated assertions and accusations by the employer will not suffice.[29]

Having succinctly disposed of the issue of the validity of private respondent's dismissal, we now delve into the true crux of this controversy which is the legality of the award of separation pay to private respondent despite having been lawfully terminated for a just cause.

Petitioner argues that, in light of the fact that a just cause forms the basis for her lawful termination from the job, private respondent is not entitled to separation pay. Likewise, petitioner insists that even assuming that the equitable considerations cited by the NLRC did exist, the same cannot justify the award of separation pay. And, in awarding the same, the NLRC committed grave abuse of discretion amounting to lack of jurisdiction.

We do not agree.

Grave abuse of discretion is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.[30] This Court holds that the NLRC did not gravely abuse its discretion in granting separation pay to private respondent as the same is not characterized by caprice or arbitrariness being rooted in established jurisprudence.

The language of Article 279 of the Labor Code is pregnant with the implication that a legally dismissed employee is not entitled to separation pay, to wit:

An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

However, in exceptional cases, this Court has granted separation pay to a legally dismissed employee as an act of "social justice" or based on "equity." In both instances, it is required that the dismissal (1) was not for serious misconduct; and (2) does not reflect on the moral character of the employee[31] or would involve moral turpitude. This equitable and humanitarian principle was first discussed by the Court in the landmark case of *Philippine Long Distance Telephone Co. (PLDT) v. National Labor Relations Commission*,[32] wherein it was held:

Strictly speaking, however, it is not correct to say that there is no express justification for the grant of separation pay to lawfully dismissed employees other than the abstract consideration of equity. The reason is that our Constitution is replete with positive commands for the promotion of social justice, and particularly the protection of the rights of the workers. The enhancement of their welfare is one of the primary concerns of the present charter. In fact, instead of confining itself to the general commitment to the cause of labor in Article II on the Declaration of Principles of State Policies, the new Constitution contains a separate article devoted to

the promotion of social justice and human rights with a separate sub-topic for labor. Article XIII expressly recognizes the vital role of labor, hand in hand with management, in the advancement of the national economy and the welfare of the people in general. The categorical mandates in the Constitution for the improvement of the lot of the workers are more than sufficient basis to justify the award of separation pay in proper cases even if the dismissal be for cause.

x x x x

There should be no question that where it comes to such valid but not iniquitous causes as failure to comply with work standards, the grant of separation pay to the dismissed employee may be both just and compassionate, particularly if he has worked for some time with the company. For example, a subordinate who has irreconcilable policy or personal differences with his employer may be validly dismissed for demonstrated loss of confidence, which is an allowable ground. A working mother who has to be frequently absent because she has also to take care of her child may also be removed because of her poor attendance, this being another authorized ground. It is not the employee's fault if he does not have the necessary aptitude for his work but on the other hand the company cannot be required to maintain him just the same at the expense of the efficiency of its operations. He too may be validly replaced. Under these and similar circumstances, however, the award to the employee of separation pay would be sustainable under the social justice policy even if the separation is for cause.

But where the cause of the separation is more serious than mere inefficiency, the generosity of the law must be more discerning. There is no doubt it is compassionate to give separation pay to a salesman if he is dismissed for his inability to fill his quota but surely he does not deserve such generosity if his offense is misappropriation of the receipts of his sales. This is no longer mere incompetence but clear dishonesty. A security guard found sleeping on the job is doubtless subject to dismissal but may be allowed separation pay since his conduct, while inept, is not depraved. But if he was in fact not really sleeping but sleeping with a prostitute during his tour of duty and in the company premises, the situation is changed completely. This is not only inefficiency but immorality and the grant of separation pay would be entirely unjustified.

We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.[33]

In *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*,^[34] we clarified that the grant of separation pay may still be precluded even if the ground for the employee's dismissal is not serious misconduct under Article 282(a) of the Labor Code but other just causes under the same article and/or other authorized causes provided for under the Labor Code. However, the TMPCWA case still recognized the social justice exception prescribed in *Philippine Long Distance Telephone Company*. To quote the relevant portions of that decision:

Explicit in PLDT are two exceptions when the NLRC or the courts should not grant separation pay based on social justice: serious misconduct (which is the first ground for dismissal under Art. 282) or acts that reflect on the moral character of the employee. What is unclear is whether the ruling likewise precludes the grant of separation pay when the employee is validly terminated from work on grounds laid down in Art. 282 of the Labor Code other than serious misconduct.

A recall of recent cases decided bearing on the issue reveals that when the termination is legally justified on any of the grounds under Art. 282, separation pay was not allowed. x x x.

x x x x

In all of the foregoing situations, the Court declined to grant termination pay because the causes for dismissal recognized under Art. 282 of the Labor Code were serious or grave in nature and attended by willful or wrongful intent or they reflected adversely on the moral character of the employees. We therefore find that in addition to serious misconduct, in dismissals based on other grounds under Art. 282 like willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, and commission of a crime against the employer or his family, separation pay should not be conceded to the dismissed employee.

In analogous causes for termination like inefficiency, drug use, and others, the NLRC or the courts may opt to grant separation pay anchored on social justice in consideration of the length of service of the employee, the amount involved, whether the act is the first offense, the performance of the employee and the like, using the guideposts enunciated in PLDT on the propriety of the award of separation pay.[35] (Emphases supplied.)

In other words, under the present jurisprudential framework, the grant of separation pay as a matter of equity to a validly dismissed employee is not contingent on whether the ground for dismissal is expressly under Article 282(a) but whether the ground relied upon is akin to serious misconduct or involves willful or wrongful intent on the part of the employee.

It, thus, becomes pertinent to examine the ground relied upon for the dismissal of private respondent and to determine if the special circumstances described in PLDT are present in the case at bar.

Serious misconduct as a valid cause for the dismissal of an employee is defined simply as improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment. To be serious within the meaning and intendment of the law, the misconduct must be of such grave and aggravated character and not merely trivial or unimportant. However serious such misconduct, it must, nevertheless, be in connection with the employee's work to constitute just cause for his separation. The act complained of must be related to the performance of the employee's duties such as would show him to be unfit to continue working for the employer.[36] On the other hand, moral turpitude has been defined as "everything which is done contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general, contrary to justice, honesty, modesty, or good morals." [37]

In the case at bar, the transgressions imputed to private respondent have never been firmly established as deliberate and willful acts clearly directed at making petitioner lose millions of pesos. At the very most, they can only be characterized as unintentional, albeit major, lapses in professional judgment. Likewise, the same cannot be described as morally reprehensible actions. Thus, private respondent may be granted separation pay on the ground of equity which this Court had defined as "justice outside law, being ethical rather than jural and belonging to the sphere of morals than of law. It is grounded on the precepts of conscience and not on any sanction of positive law, for equity finds no room for application where there is law." [38]

A perusal of the assailed September 29, 1995 NLRC Decision would show that the following equitable considerations were relied upon by the NLRC to arrive at its assailed ruling, to wit:

a)

The Goldair fraud was found to have started in 1981. Private respondent became the Manager-ASAD only on September 1, 1984. The former Manager-ASAD from 1981 to August 1984 was Josefina Sioson.[39]

b)

ASAD is under the direct supervision and control of the Vice President-Comptroller and within the scope of the

audit program of the Vice President-Internal Audit and Control. The VP-Comptroller for the period 1981 to 1983 and the VP-Internal Audit for the period 1984 to 1987 was Romeo Ines.[40]

c)

The accounting procedures and controls inherited by private respondent when she took over ASAD were subjected to the scrutiny of prestigious accounting firms like Cressop, McCormick & Paget in 1985, the Sycip, Gorres, Velayo & Co., Inc. in 1986, including a special team from the Commission on Audit in 1987 - all of which made no adverse findings concerning ASAD.[41]

d)

No less than the VP-Internal Audit made a regular audit in Australia in November 1986 and in the early part of 1987, by borrowing all production reports covering April to September 1986, but found no irregularities nor made any adverse feedback against ASAD.[42]

e)

Private respondent was the first to discover the overpayment of commission claims to Goldair in 1984 in rate differences in net/net settlement which, after her intervention, did not recur. She was also the one who first discovered the fraud in double and fictitious commission claims and promptly took action when she withheld all provisional payments due Goldair.[43]

f)

Even after the Goldair anomaly was discovered, private respondent could have availed of PAL's Special Retirement and Separation Program, but she stayed put and had gone twice to Australia, while under preventive suspension, to attend court proceedings as a witness for petitioner enabling the said company to recover and minimize its economic loss.[44]

g)

Private respondent has no derogatory record during the entire period of her employment with petitioner for more than two decades. She steadily rose from the ranks until she became the ASAD Manager.[45]

h)

In the dissenting opinion of Ricardo Paloma, Vice Chairman of the Espino Committee and PAL Senior VP Strategic Planning and Corporate Service, to the Final Draft Majority Report, he observed that "a mitigating factor in [private respondent's] favor is that UNSEEN HANDS designed or allowed this new procedures to be put in place. Ines, who became the VP Internal Audit should have known the prescribed procedures (or at the very least the actual practice during the period 1981 to 1983 when he was the VP Comptroller) and yet, did not alert her. Unknowingly, [private respondent] allowed the by-pass and the automatic payment of 80% upon presentation of production reports because Sioson assured her that was the procedure previously followed. Trusting, she became a participant in this mess."[46]

Considering the foregoing uncontroverted special circumstances, we rule that the NLRC did not commit grave abuse of discretion amounting to lack of jurisdiction in ordering petitioner to pay private respondent separation pay for equitable considerations.

However, we do not agree with the NLRC that private respondent's separation pay should be awarded in accordance with PAL's "Special Retirement & Separation Program" dated February 15, 1988 plus ten percent (10%) of the total amount by way of attorney's fees.

At the risk of stating the obvious, private respondent was not separated from petitioner's employ due to mandatory or optional retirement but, rather, by termination of employment for a just cause. Thus, any retirement pay provided by PAL's "Special Retirement & Separation Program" dated February 15, 1988 or, in the absence or legal inadequacy thereof, by Article 287 of the Labor Code^[47] does not operate nor can be made to operate for the benefit of private respondent. Even private respondent's assertion that, at the time of her lawful dismissal, she was already qualified for retirement does not aid her case because the fact remains that private respondent was already terminated for cause thereby rendering nugatory any entitlement to mandatory or optional retirement pay that she might have previously possessed.

Likewise, attorney's fees are not proper in this case because the same can only be awarded when the employee is illegally dismissed in bad faith and is compelled to litigate or incur expenses to protect his rights by reason of the unjustified act of his employer.^[48] The aforementioned conditions do not obtain in this case.

As to the matter of the proper amount of separation pay to be awarded to private respondent on the basis of equitable considerations, our pronouncement in *Yrasuegui v. Philippine Airlines, Inc.*^[49] is instructive, to wit:

Here, We grant petitioner separation pay equivalent to one-half (1/2) month's pay for every year of service. It should include regular allowances which he might have been receiving. We are not blind to the fact that he was not dismissed for any serious misconduct or to any act which would reflect on his moral character. We also recognize that his employment with PAL lasted for more or less a decade.

Private respondent's circumstances are more or less identical to the above-cited case in the sense that, as previously discussed, her dismissal was neither for serious misconduct nor for an offense involving moral turpitude. Furthermore, her employment with petitioner spanned more than two decades unblemished with any derogatory record prior to the infractions at issue in the case at bar.

WHEREFORE, the assailed NLRC Decision dated September 29, 1995 as well as the Resolution dated November 14, 1995 are AFFIRMED with the MODIFICATION that petitioner Philippine Airlines, Inc. pay private respondent Aida Quijano one-half (1/2) month salary for every year of service as separation pay on equitable grounds.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Del Castillo, and Perez, JJ., concur.

[1] Rollo, pp. 34-52; penned by Commissioner Victoriano R. Calaycay with Presiding Commissioner Raul T. Aquino and Commissioner Rogelio I. Rayala, concurring.

[2] *Id.* at 54-74.

[3] *Id.* at 32.

[4] 356 Phil. 811 (1998).

[5] A.M. No. 99-2-01-SC, February 9, 1999. The pertinent portion of which reads:

In light of the decision in *St. Martin Funeral Homes v. NLRC* (G.R. No. 130866, 16 September 1998), all special civil actions arising out of any decision or final resolution or order of the National Labor Relations Commission filed with the Court after 01 June 1999 shall no longer be referred to the Court of Appeals, but shall forthwith be DISMISSED.

- [6] Rollo, pp. 35-45.
- [7] Id. at 74.
- [8] Id. at 52.
- [9] Id. at 32.
- [10] Id. at 326-350 & 357-368.
- [11] Id. at 381-385.
- [12] Id. at 382.
- [13] Id. at 395-398.
- [14] Id. at 399-400.
- [15] Id. at 437-440.
- [16] Id. at 440.
- [17] Id. at 442-445.
- [18] Id. at 446.
- [19] Id. at 640-642.
- [20] Id. at 643-648.
- [21] Id. at 648.
- [22] Id. at 649-651.
- [23] Id. at 653.
- [24] Id. at 653-655.
- [25] Id. at 22.
- [26] Id. at 51.
- [27] Rentokil (Initial) Philippines, Inc. v. Sanchez, G.R. No. 176219, December 23, 2008, 575 SCRA 324, 333.
- [28] Etcuban, Jr. v. Sulpicio Lines, Inc., G.R. No. 148410, January 17, 2005, 448 SCRA 516, 529.
- [29] Coca-Cola Bottlers Philippines Incorporated v. National Labor Relations Commission, 254 Phil. 771, 778 (1989).
- [30] Ferrer v. Office of the Ombudsman, G.R. No. 129036, August 6, 2008, 561 SCRA 51, 65.
- [31] Yrasuegui v. Philippine Airlines, Inc., G.R. No. 168081, October 17, 2008, 569 SCRA 467, 502.
- [32] 247 Phil. 641 (1988).
- [33] Id. at 647-649.
- [34] G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171.
- [35] Id. at 222-223.

[36] *Lagrosas v. Bristol-Myers Squibb (Phil.), Inc./Mead Johnson Phil.*, G.R. Nos. 168637 & 170684, September 12, 2008, 565 SCRA 90, 99.

[37] *Soriano v. Dizon*, A.C. No. 6792, January 25, 2006, 480 SCRA 1, 9.

[38] *Aparente, Sr. v. National Labor Relations Commission*, 387 Phil. 96, 107 (2000).

[39] *Rollo*, p. 47.

[40] *Id.* at 47-48.

[41] *Id.* at 48.

[42] *Id.* at 49.

[43] *Id.* at 50-51.

[44] *Id.* at 51.

[45] *Id.* at 50-51.

[46] *Id.* at 49.

[47] Article 287. RETIREMENT. - Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term "one-half (1/2) month salary" shall mean fifteen (15) days plus one twelfth (1/12) of the 13th-month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

An underground mining employee upon reaching the age of fifty (50) years or more, but not beyond sixty (60) years which is hereby declared the compulsory retirement age for underground mine workers, who has served at least five (5) years as underground mine worker, may retire and shall be entitled to all the retirement benefits provided for in this Article. (R.A. No. 8558, approved on February 26, 1998.)

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions provided under Article 288 of this Code.

[48] *Pepsi Cola Products Philippines, Inc. v. Santos*, G.R. No. 165968, April 14, 2008, 551 SCRA 245, 253.

[49] *Supra* note 31 at 502, citing *Aparente, Sr. v. National Labor Relations Commission*, *supra* note 34; *Planters*

Products, Inc. v. National Labor Relations Commission, G.R. No. 78524, January 20, 1989, 169 SCRA 328; Insular Life Assurance Co., Ltd. v. National Labor Relations Commission, 240 Phil. 703 (1987); Soriano v. National Labor Relations Commission, 239 Phil. 119 (1987).

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