

LILIA PASCUA, MIMI MACANLALAY, SUSAN C. DE CASTRO, VIOLETA M. SORIANO AND VICTORIA L. SANTOS, PETITIONERS, VS., NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) AND TIONGSAN...

G.R. No. 123518. March 13, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In granting this petition, the Court relies on the following doctrines: (1) where the conclusions of the NLRC and the labor arbiter are conflicting, this Court may review factual findings; (2) the employer has the burden of proof to show the validity of the dismissal; (3) a dismissal is deemed illegal unless the employer proves (a) just or authorized cause and (b) observance of due process; and (4) acceptance by the employee of separation pay does not estop him from alleging the illegality of his dismissal and from pressing for reinstatement.

[The Case]

This petition for certiorari under Rule 65 of the Rules of Court assails the Decision of the National Labor Relations Commission[1] promulgated on April 29, 1995, and its Resolution[2] promulgated on September 19, 1995 denying petitioners' motion for reconsideration in NLRC CA No. 007894-94,[3] both rendered in the consolidated cases for illegal dismissal filed by petitioners against respondents in the Regional Arbitration Branch of the Cordillera Administrative Region.

The assailed Decision disposed as follows:[4]

“WHEREFORE, premises considered, the assailed decision of the Labor Arbiter, dated 30 September 1994 is hereby MODIFIED, as follows:ua

(a) Complainant Lilia Pascua is declared to have voluntarily resigned; hence, the finding a quo of illegal dismissal and the consequent awards of backwages and additional separation pay pertaining to her are hereby SET ASIDE;

(b) Complainant Victoria Santos is found not to have been dismissed; hence, the finding a quo of illegal dismissal and the consequent award of backwages pertaining to her are hereby SET ASIDE. However, she is still entitled to separation pay in lieu of reinstatement, due to strained relationship;

(c) Complainant Violeta Soriano's dismissal is declared to be for just cause; hence, the finding a quo of illegal dismissal and the consequent awards of backwages and separation pay, as to her, are hereby SET ASIDE;

(d) Complainant Susan de Castro is found not to have been dismissed; hence, the finding a quo of illegal dismissal and the consequent awards of backwages, as to her, are hereby SET ASIDE. However, she is still entitled to separation pay in lieu of reinstatement due to strained relationship, plus her unpaid salary.

Other holdings in the appealed decision stand AFFIRMED.”

On the other hand, the labor arbiter's[5] disposition, dated September 30, 1994, reads:[6]

“VIEWED FROM THIS LIGHT, judgment is hereby rendered with the following dispositions:

1. That the complainants were illegally dismissed. Considering however, that, reinstatement is no longer possible, because [of] the serious personal and physical differences between them, respondent, should pay the complainants' backwages and/or separation [pay] as follows:

A. LILIA PASCUA P 126,696.52

(Backwages + separation pay)

B. MIMI MACANLALAY 4,138.49

(Separation pay)

C. VICTORIA SANTOS 123,038.18

(Backwages + separation pay)

D. SUSAN DE CASTRO 118,874.52

(Backwages + separation pay)

E. VIOLETA SORIANO 119,616.52;

(Backwages + separation pay)

PROVIDED, that, the payment of the backwages, shall be without prejudice to any adjustment, for the purpose of deducting, the complainants' earnings elsewhere during the pendency of the case;

2. That the claims for overtime pay, rest day premiums and service incentive leave pay are denied, considering the finding of the office of the Regional Director of DOLE-CAR, that respondent committed no violation in so far as general labor standards are concerned; and

3. That the claims for moral and exemplary damages as well as attorney's fees are denied for lack of proper basis.”

[The Facts]

The facts of the case, as narrated by the labor arbiter and quoted by the NLRC, are as follows:[7]

“The complainants are among the thirty seven (37) employees of Henry Lao at the Tionsan Super Bazaar. On August 7, 1991, Henry Lao received a telephone call from a lady, who informed him, that, Lydia Navarette, one of his sales ladies had just stolen a ‘Sanyo Karaoke’, the previous night. Upon his receipt of the information, he immediately dispatched Luisita Lavarias and Lydia Navarette to the latter's house and [sic] recover the stolen item. When the two (2) reached Navarette's house, she reasoned out, that, she did not have her keys. Thereafter, they returned to the bazaar. There, Lydia Navarette made a confession, that, there were others who were involved in the stealing of goods. Henry Lao, then called his other sales ladies for a confrontation. The first person that he called was a certain ‘Noemi’, who in turn pointed to a certain Celia Lazo, as one of them. Gloria Garcia was the next person to be called. She likewise admitted her participation. When she said that she knew the persons involved in the pilferage or price cutting, she was required by Henry Lao to write down their names. Violeta Soriano and Susan Castillo were included in her list. The eighteen (18)

sales ladies who admitted their guilt resigned. The remaining workers were placed under the watchful eyes of respondent.

On August 21, 1991, Lilia Pascua was caught repairing three (3) pairs of pants, that allegedly was [sic] not bought at the Tiongsan Super Bazaar. The following day, she did not report for work anymore. Instead, she went to see the respondent's bookkeeper and requested for the computation of her separation pay.

On August 24, 1991, barely seventeen (17) days after the mass resignation of the 18 sales ladies, for various offenses, Victoria Santos was caught charging a meter of a cloth for the price of a yard. For this offense, she was suspended for a period of thirty (30) days. She never returned to work since then.

Mimi Macanlalay and Violeta Soriano were previously assigned as cashiers. But because of their alleged acts of dishonesty, they were relieved from their positions. Mimi Macanlalay later on resigned. While Violeta Soriano was terminated on the ground of insubordination on December 11, 1991.

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THE CASE OF LILIA PASCUA:

Lilia Pascua was employed on June 2, 1985, as a saleslady. She is [sic] assigned at the pants section of [the] bazaar. She is [sic] a trusted employee of respondent. For a time, he relied on her (TSN, Henry Lao, February 7, 1994, p. 9) On September 21, 1991, she left her station unattended for about three (3) hours in the afternoon. At about the same time, respondent noticed Mrs. Manaois, roaming around the store without buying anything. Henry Lao closely watched her, because she was one of the people that were conniving with the sales ladies. At 6:00 o' clock p.m. respondent saw Mrs. Manaois approach Lilia Pascua at the sewing machine. Lilia Pascua was finishing the last of the three (3) pairs of pants that belonged to Mrs. Manaois. (TSN, Henry Lao, February 4, 1994, p. 9)

Respondent scolded Lilia Pascua for this offense, because it is against the respondent's policy that repair jobs of items that are not bought at the bazaar, should not be accepted. She was given a warning, that this prohibition should be strictly followed. Lilia Pascua did not report for work the next day. She opted to resign. Respondent paid her separation pay.

THE CASE OF MIMI MACANLALAY:

Mimi Macanlalay was employed on June 10, 1989. Previously, she worked for Mrs. Tan. On September 19, 1991, Mrs. Tan went to the Tiongsan Super Bazaar, and she saw Mimi Macanlalay working as a cashier. Mrs. Tan informed Mr. Lao, that Mimi Macanlalay was previously dismissed by her for dishonesty. In relieving Ms. Macanlalay from her position as cashier, respondent ratiocinates:

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'xxx (i)t is perfectly normal for Mr. Lao to be apprehensive when he was informed by his customer friend about the previous dismissal of complainant Macanlalay from her previous job for dishonesty. Considering the widescale underpricing pilferage and deceit which was discovered only a month earlier, Mr. Lao was naturally worried xxx.'

'Upon the admission made by complainant, Mr. Lao, naturally had reason to doubt her honesty. This was the reason why he informed her, that she was returning her as sales lady.' (See Vol. II, pp. 114-115, records of Macanlalay v-Lao cases)

Just like Lilia Pascua, Mimi Macanlalay resigned, and was paid her separation pay.

THE CASE OF VICTORIA SANTOS:

On August 24, 1991, Victoria Santos was caught charging a meter of a cloth for the price of a yard. Mr. Lao immediately called her, for an explanation. Her explanation was found by Mr. Lao to be unsatisfactory. She was suspended for thirty (30) days.

THE CASE OF VIOLETA SORIANO:

Violeta Soriano was employed on May 16, 1984. After the August 7, 1991 incident, she was assigned as a cashier. She was reverted back as a sales lady after a few weeks when Mr. Lao learned, that, she had some knowledge of the schemes of the resigned employees. On November 9, 1991, Mr. Lao required her to explain in writing, why she should not be the subject matter of a disciplinary action, for her failure to fill up her daily time record. Mr. Lao ordered another employee to put the phrase 'no entry' into Ms. Soriano's daily time record. Ms. Soriano attempted to grab the daily time record from its custodian. A commotion ensued, in the presence of many customers. She was suspended for thirty (30) days. Respondent reviewed her past records and found out that, she was the subject matter of a disciplinary action in the past. She was terminated [sic] on December 8, 1991.

THE CASE OF SUSAN DE CASTRO

Susan De Castro refused to receive her salary on November 18, 1991, because she insisted on receiving more than what is indicated in the payrolls. Respondent told her, that if she is [sic] not satisfied with her salary, she can [sic] find employment elsewhere. She failed to report for work on the following day. In any case, respondent states, that, she can be dismissed for lack of trust and confidence, for her involvement in the pilferage of goods."

Petitioners filed at the Regional Arbitration Branch of the NLRC[8] separate complaints against Henry Lao[9]for "illegal dismissal and claims for violation of labor standards pertaining to payment of wages." [10] The parties submitted position papers and documentary evidence, and hearings were held. Subsequently, the labor arbiter ruled that the dismissals were illegal and awarded back wages and separation pay to petitioners.

Both petitioners and respondent appealed to the NLRC, which modified the appealed decision. It found the termination of petitioners' employment to be due either to voluntary resignation or dismissals with just cause; however, it awarded separation pay to Victoria Santos. Petitioners' motion for reconsideration was unavailing. Hence, this petition which was deemed submitted for decision upon receipt by the Court of private respondent's memorandum on October 22, 1997.[11]

[Respondent NLRC's Ruling]

The NLRC ruled:

"On the bases of the foregoing, we find that the evidence on hand preponderates for the dismissal of complainant. There could be no better evidence other than the DTR itself. Granting that there was indeed an instruction in the past for the employees not to make regular entries in their DTRs the same should not be expediently used as a lame excuse for the employee who defies an order from management for him to now to make the proper entries. Management should not be taken hostage of [sic] its previous mistakes or apparent leniencies precluding it from instituting the necessary and needed reforms and punishing violators thereof.

In the case at bar, there is no dispute that an order for the employees to make regular entries in their DTRs is lawful and that defiance thereof undoubtedly amounts to insubordination. Hence, complainant's dismissal is justified under the premises.

Besides, there is reasonable ground to believe that complainant had indeed left for overseas employment which explains why complainant was not able to testify on the witness stand during the trial of the case and refute the charges of management in this regard (TSN dated 07 February 1994, p. 8, Volume III, Records).

Insofar as the payment of overtime pay is concerned it must be denied for lack of factual or legal basis. Under the premises, complainants failed to substantiate their entitlement to overtime pay by clear and convincing evidence. Unlike in ordering monetary claims whereby the burden of proof rests [on] the shoulders of the employer the same does not squarely apply in claims for overtime pay on the theory that an employee is presumed to have been engaged to render the regular or normal eight (8) hours of work per day. Besides, the mere fact that respondent committed no violation of labor standards laws per inspection report by the Inspector Division of the Regional office concerned, should work in his favor (p. 33, Volume I, Records).

Anent the claim for moral and exemplary damages, suffice it to say, that even granting that the issue on sexual harassment implicating Mr. Henry Lao was sufficiently established, the award for said damages must still fail because the said ground relied upon by the complainants was neither the proximate nor contributory cause of their supposed dismissals.

Finally, we need to stress that under Article III (a) of the Labor Code, as amended, attorney's fees are recoverable only against the culpable party in case of unlawful withholding of wages, a situation not obtaining in the case at bar."^[12]

[The Issues]

In their Memorandum,^[13] petitioners present the following issues:

“Whether or not Respondent NLRC committed grave abuse of discretion amounting to lack of jurisdiction

1. In reversing the finding of illegal dismissal of the labor arbiter who observed the demeanors of the witnesses during the trial on the merits and in supplanting its conflicting rulings which are contrary to law and settled jurisprudence.

2. In finding petitioners to have voluntarily resigned despite complete absence of any evidence of resignation and consequently in finding them as not illegally dismissed despite complete absence on [sic] evidence that private respondent complied with the termination guidelines as mandated in Article 277 (b) and Rule XIV, Book V of the Rules Implementing the Labor Code, thus making the questioned decision as not supported by evidence.

3. In not reinstating petitioners with full backwages and other benefits until actual reinstatement and in not granting their money claims for underpayment of wages, overtime pay and other benefits, claims for moral and exemplary damages and attorney's fees against private respondent Henry Lao who has been established as a sexual harasser.”

At bottom, the resolution of this case hinges on this question: Were petitioners' employment terminated because of resignation, abandonment or dismissal?

[The Court's Ruling]

The petition is meritorious.

[Main Issue: Abandonment, Resignation or Dismissal?]

Petitioners claim that they were denied due process. In the first place, they were not even served “a formal notice of dismissal.” In particular, the violation of procedural due process was manifested when Petitioner “Mimi Macanlalay x x x was summarily discharged due to a mere say-so suspicion of dishonesty.”^[14]

Petitioners further allege that their dismissals were “oppressive and anti-social,” complaining that it was “off-tangent and immaterial” for private respondent to discuss the “theft and price-cutting of some employees of respondent bazaar x x x because the offenses of some employees cannot be imputed against petitioners.”^[15]

Petitioners indignantly accuse the NLRC of being “biased in favor of private respondent,” as shown when the Commission decreed the validity of their dismissals in the clear absence of evidence, and of issuing conflicting rulings to accommodate respondent employer.[16] Buttressing their contention, petitioners point out that the award of separation pay expressly to Victoria Santos and Susan de Castro and impliedly to Mimi Macanlalay[17] indicates that they were illegally dismissed because, if they were not, then they should not have been awarded any separation pay as was done to Lilia Pascua and Violeta Soriano.[18]

Petitioners also allege that the NLRC abused its discretion when it ruled that they had been “validly dismissed and [that they] resigned voluntarily just because they received money from private respondent.”[19] Citing *Molave Tours Corporation vs. NLRC, et al.*,[20] they argue that since resignation must be made with the intent of relinquishing one’s office, the filing of their complaints for illegal dismissal is “wholly incompatible” with private respondent’s assertion that they “voluntarily resigned.”[21]

Upholding public respondent, the solicitor general contends that Petitioners Lilia Pascua, Victoria Santos and Susan C. De Castro resigned from their jobs; that Mimi Macanlalay voluntarily left private respondent’s employ; and that Petitioner Violeta Soriano was dismissed for just cause.

Private respondent, on the other hand, maintains the validity of the dismissal of the petitioners. It contends that the award of separation pay “[was] not inconsistent with the finding that there [was] no illegal dismissal since it was given by the employer as financial assistance.”[22]

Private respondent also insists that Petitioner Pascua clearly violated the company rule “that only pants bought from Tionsan may be worked on by the employees x x x.”[23] She was not dismissed but “simply did not report for work and instead demanded x x x separation pay.”[24] Petitioner Santos, on the other hand, “simply did not report back to work after serving her thirty (30) days suspension. Instead, she asked private respondent to pay her separation pay computed at one (1) month pay for every year of service.”[25] Petitioner Soriano was first suspended for causing a “commotion inside the store in the presence of customers.” Later, her employment was validly terminated.[26] Petitioner De Castro “showed gross insubordination and hostility towards private respondent [Henry Lao].” Though it is true that the latter had “suggested to her to look for employment elsewhere, this certainly did not amount to a termination.”[27] Lastly, Petitioner Macanlalay “resigned.”[28]

[Review of Evidence in Labor Cases]

As a rule, petitions for certiorari under Rule 65 involve only jurisdictional issues, or grave abuse of discretion amounting to lack or excess of jurisdiction. Hence, this Court refrains from reviewing factual assessments of lower courts and agencies exercising adjudicative functions, such as the NLRC. Occasionally, however, this Court is constrained to wade into factual matters when there is insufficient or insubstantial evidence on record to support those factual findings; or when too much is concluded, inferred or deduced from the bare or incomplete facts appearing on record. In the present case, we find the need to review the records to determine the facts with certainty not only because of the foregoing inadequacies, but also because the NLRC and the labor arbiter have come up with conflicting positions.[29]

In the present case, the central question is: Was petitioners’ employment terminated in accordance with law? After poring over the records and the evidence, as well as the applicable law and jurisprudence, the Court is convinced that the answer is “No.”

First. Basic is the doctrine that resignation must be voluntary and made with the intention of relinquishing the office, accompanied with an act of relinquishment.[30] Based on the evidence on record, we are more than convinced that Petitioners Lilia Pascua, Mimi Macanlalay, Susan C. De Castro and Violeta Soriano did not

voluntarily quit their jobs. Rather, they were forced to resign or were summarily dismissed without just cause. Petitioners -- except Victoria L. Santos -- forthwith took steps to protest their layoff and thus cannot, by any logic, be said to have abandoned their work.[31]

Second. In labor cases, the employer has the burden of proving that the dismissal was for a just cause; failure to show this, as in the instant case, would necessarily mean that the dismissal was unjustified and, therefore, illegal.[32] To allow an employer to dismiss an employee based on mere allegations and generalities would place the employee at the mercy of his employer; and the right to security of tenure, which this Court is bound to protect, would be unduly emasculated.[33] Considering the antecedents in the summary dismissals effected against Petitioners Pascua, Macanlalay, De Castro and Soriano, the causes asserted by private respondent are, at best, tenuous or conjectural; at worst, they are mere afterthoughts.

Third. Under the Labor Code, as amended, the dismissal of an employee which the employer must validate has a twofold requirement: one is substantive, the other procedural. Not only must the dismissal be for a just or an authorized cause as provided by law (Articles 282, 283 and 284 of the Labor Code, as amended); the rudimentary requirements of due process -- the opportunity to be heard and to defend oneself -- must be observed as well.[34]

Fourth. Petitioners Pascua and Macanlalay's acceptance of separation pay did not necessarily amount to estoppel; nor did it connote a waiver of their right to press for reinstatement, considering that such acceptance -- particularly by Petitioner Pascua who had to feed her four children[35] -- was due to dire financial necessity.[36]

Based on the above postulates, the facts and the law as they apply to each petitioner shall now be discussed.

[Petitioners Illegally Dismissed]

Lilia Pascua. According to the NLRC, after being caught repairing the last of three pairs of pants which were not bought at the Tiongsan Super Bazaar, Lilia Pascua admitted the wrongdoing to Henry Lao, explaining that she was merely accommodating a certain Mrs. Manaois, who was allegedly Lao's friend. She averred:[37]

"5. That at almost 6:30 o' clock in the evening of August 21, 1991, a close friend of my employers whom I know as Ms. Manaois approached me and requested me to cut and sew the hem of her pants which I turned down;

6. That said Ms. Manaois however insisted that I work on her pants with the assurance that she will be the one to talk to my employers anyway she is their 'kumadre' such that with said assurance I started to put my line ('guhit') on the hem of the pants at which time, Henry Lao approached us and questioned my act;"

Thereupon, she was scolded and suspended by Lao, after which, the NLRC found, she decided to resign from private respondent's employ.

We cannot accept the NLRC's simplistic findings. The uncontested affidavit of Petitioner Pascua provides the evidence conveniently ignored by the NLRC, which shows the folly of the alleged resignation:[38]

"7. That Henry Lao shouted at me and told me to go upstairs to the counter so that I can sign for my suspension and hurried me up by pushing me by my shoulders towards the direction of the counter and as soon as I was there, he hurriedly let me sign a blank paper and no copy was given to me;

8. That thereafter, Henry Lao kept pushing me by my shoulders as he repeatedly told me in a loud manner, 'pakuwenta mo na ang separation pay mo at hindi ka na rin makakabalik. Puntahan mo ang accountant.' which made me nervous and afraid especially that he kept on pushing me even when I was already on top of the stairs;

9. That on August 22, 1991, as instructed by Henry Lao, I went to the accountant for the computation of my

separation pay which she computed after which I went to Tiong San Super Bazaar where I was paid the computed separation pay of P8,010.;" (Emphasis supplied).

It is evident from the above that, contrary to private respondent's allegation, Petitioner Pascua was forced to resign -- an act which was tantamount to a dismissal, an illegal one at that.

Was there any valid cause for her dismissal?[39] The solicitor general submits: "It must be pointed out that Henry Lao was acting within his rights when he chastised and suspended petitioner for flagrant violation of company rules." [40] We do not agree. To be a just cause for an employee's dismissal, wilful disobedience must show the following: the employee's assailed conduct must have been wilful or intentional, the wilfulness being characterized by a "wrongful and perverse attitude"; and the order violated must have been reasonable, lawful, made known to the employee and pertinent to the duties which he or she had been engaged to discharge. In this light, not every case of so-called wilful disobedience by an employee can reasonably be penalized with dismissal.[41]

In the present case, Petitioner Pascua was aware of the close relationship between Henry Lao and Mrs. Manaois. Indeed, Lao himself did not deny that he knew Manaois. Thus, Pascua feared that, if she turned down Mrs. Manaois' request, she would be subjected to public scolding by Lao. Thus, accommodation of the said request may have been an act of disobedience of her employer's order, but hardly an instance of the "wrongful and perverse attitude" that would warrant a penalty as grave as dismissal. Fairness requires that dismissal, being the ultimate penalty that can be meted out to an employee, must have a clear basis.[42] Any ambiguity in the ground for the termination of an employee should be interpreted against the employer, who ordained such ground in the first place.

Susan De Castro. Finding that she was "not at all dismissed," the NLRC, as well as the labor arbiter, ruled that Petitioner De Castro was "similarly situated as petitioner Santos." We do not agree.

First of all, the NLRC could not explain the contradictions in Petitioner De Castro's case. If she had not been dismissed but was still an employee of private respondent, then why did she file this case for illegal dismissal? And even more perplexing: Why would the NLRC conclude that reinstatement was no longer possible because of the parties' "respective imputations of charges against each other"?

Furthermore, the labor arbiter's finding that there was no evidence on record to establish her dismissal is refuted by these uncontested allegations of Petitioner De Castro:[43]

"2. Complainant Susan de Castro, in Case No. -0377-91, was also a saleslady of the Tionsan Super Bazaar from May 16, 1987 to November 19, 1991. She worked every day except Mondays, her restday [sic], in nine and a half hours (9 ½) but she was required to fill up her daily time records reflecting eight (8) hours work only. Her wage rates were as follows:

P40/day - May 16, 1987 to December 31/87

64/day - January/88 to September 30/89

89/day - October/89 to November 30, 1990

99/day - December 1/90 to April 30/91

106/day - May 1/91 to November 19, 1991.

Complainant was not paid her legal benefits such as underpayment of basic wage, unpaid overtime pay, premiums for restday [sic] and holiday pay, incentive leave pay and 13th month pay differentials. That on November 19, 1991 she was dismissed summarily, whimsically and capriciously in this manner: When she

filled up her daily time record correctly and demanded payment of her correct wage/overtime pay, respondent Henry Lao flared up and said: 'Huwag ka ng pumasok? [sic] Suspended ka na! Antayin mo na lang ang sulat ko! You are excused, goodbye!' And she was not allowed to report for work anymore." (Emphasis supplied).

What further muddles the issue of dismissal is the grant of separation pay. The solicitor general contends that, since private respondent was not averse to giving separation pay to Petitioners Pascua and Macanlalay, it may also be required to pay separation pay to those employees who "leave its employ." [44] The grant of separation pay, however, is inconsistent with existing employment or voluntary resignation, for it presupposes illegal dismissal. [45]

The solicitor general rationalizes the award of separation pay as one that is based on "equitable consideration;" that is, it was for the purpose of providing petitioner the "wherewithal during the period that she is looking for another employment." [46] This explanation is unacceptable. If petitioner was legally dismissed, as the solicitor general held, then the NLRC erred in finding her "entitled to separation pay, in lieu of reinstatement." Indeed, if she was dismissed for cause, jurisprudence demands that she should not be granted any award for the wrongdoing she was alleged to have committed; nor is she entitled to reinstatement and back wages. [47]

While this Court has allowed the grant of separation pay "as a measure of social justice," settled is the rule that separation pay is allowed only in those instances in which the employee is validly dismissed for causes other than serious misconduct or those involving his moral character. [48] And certainly, the charge against de Castro -- falsifying her daily time records -- involves her moral character.

Mimi Macanlalay. According to the NLRC, Petitioner Macanlalay "voluntarily left private respondent's employ." The solicitor general, in turn, alleges that this is supported by the finding of the labor arbiter that she "lodged her complaint, because her separation pay [was] too little." [49]

The evidence on record negates resignation. Petitioner Macanlalay contends that, prior to her employment at Tiongsan Super Bazaar, she had been a saleslady at Rommel's which was owned by a certain Mrs. Tan. On September 20, 1991, while she was working as a cashier at Tiongsan, Mrs. Tan saw her; thereupon, Mrs. Tan reported to Henry Lao that Petitioner Macanlalay had previously been dismissed for alleged dishonesty. Petitioner was then called by Lao and unceremoniously told: "Kunin mo na ang separation pay mo. Pa total mo na sa accountant. At huwag ka ng magtrabaho dito." [50]

Clearly, she did not resign; she was orally dismissed by Lao. It is this lack of clear, valid and legal cause, not to mention due process, that made her dismissal illegal, warranting reinstatement and the award of back wages. [51]

Violeta M. Soriano. The solicitor general contends that the two labor tribunals were correct in holding that Petitioner Soriano was "dismissed for just causes," namely: (1) the omission of an entry in her daily time record and her attempt to prevent the writing of "no entry" thereon; (2) her reservation of certain merchandise which she intended to purchase without informing the management; and (3) her absences without prior approval. Here, however, the solicitor general declares that private respondent is subject to sanction "for its failure to accord Petitioner Soriano the right to an administrative investigation in conformity with the procedural requirements of due process." [52]

We do not agree with the solicitor general. The NLRC justified Petitioner Soriano's dismissal by alleging that it was due to her failure to make regular entries in her daily time records. We believe, however, that this alleged "just cause" was convincingly disputed by Petitioner Soriano in her letter dated November 9, 1991, which states: [53]

"First, with respect to your finding that I have not been filling up my daily time record daily, I would like to

remind you that you are the one who established said system or practice which is applicable to all employees in your establishment with specific instructions from you as to what working hours are supposed to be reflected therein which is limited to only eight (8) hours a day although I and the other employees regularly and normally render work beyond eight (8) hours daily. With such system, you do not expect me and my co-employees to do otherwise for fear of being charged by you for disobedience to your instructions and consequently be the subject of persistent harassments and unnecessary confrontations with you. In other words, if I and my co-employees have not been filling up our daily time record on a daily basis, it was more in accordance with your specific instructions. It is indeed a surprise to me why it is only now that you are seemingly making a big issue out of a system that you yourself has [sic] created and this time in a way that is against me when I do not have anything to do with said system that you imposed on me and co-employees. Besides, this is what I had been doing from the time I was employed in your establishment to November 07, 1991 [in] accordance with your instructions. It would seem however that you instructed Dasig to fill up my daily time record by placing therein 'no entry' for the blank spaces provided for November 3 to 7, 1991, inclusive, which I asked her to sign but she refused to do so. Likewise, you verbally told me today that I had to leave the premises at 5:30 p.m. and to work for only eight (8) hours which I did not do considering that this would be a sudden change of my regular working hours. x x x"

The labor arbiter sustained Petitioner Soriano's explanation, holding thus:[54]

"Violeta Soriano, was first relieved from her position as cashier, after the August 7, 1991 incident. On October 9, 1991, she executed an affidavit attesting that, the workers at Tiongsan Super Bazaar were underpaid. (See Vol. I, p. 53, record of Lilia Pascua) According to the respondent, after she was relieved from her position, she refused to perform the task, that, she had been previously doing. When she was confronted by Mr. Lao, why she was behaving that way, she flared up. Due to this, she was issued a memorandum for insubordination. (See Vol. II, p. 157, record of Macanlalay, et al. cases) Another memorandum was issued on November 8, 1991, directing her to explain why she had not been filling up her daily time records. (See Vol. II, p. 86) A notice of preventive suspension was issued to her on November 10, 1991. (See Vol. II, p. 89) And, finally a notice of dismissal dated December 8, 1991. (See Vol. II, p. 90)

Complainant believes that these series of memoranda, were issued by respondent only after he failed to convince her to retract her statement that she executed in favor of Lilia Pascua. (See Vol. II, p. 63, record of Macanlalay, et al. v- Henry Lao)

The respondent's decision to dismiss is hazy. It does not contain any findings of fact, and the basis for the imposition of the penalty.

As evidenced by the records, there should have been no basis for the issuance of the notice of preventive suspension that was issued on November 10, 1991. Granting, that, it is true that, complainant refused to receive on November 8, 1991, (see Vol. II, p. 86) she submitted her explanation on November 10, 1991, at 8:30 a.m. (See p. 88, *ibid*) There is likewise no basis for the accusation that complainant made an unauthorized change in her lunch break. (See p. 89, *ibid*) Respondent himself confirmed that his salesladies were free to arrange among themselves their time. (TSN, Henry Lao, February 10, 1994, p. 40)

xxx xxx xxx

It has been held, that, the employer is possessed with an inherent right to dismiss an employee for loss of confidence. The Court has a plethora of decisions that supports and recognizes this authority of the employer to sever its relationship with the employee involving such cases. However, loss of confidence as a valid cause to terminate an employee must nonetheless rest on an actual breach of duty committed by the employee and not on the employer's imagined whim or caprice. The employer's evidence must clearly and convincingly establish the facts and incidents upon which the loss of confidence in the employee may fairly be made to rest. (*Estiva v- NLRC*, 22 SCRA 169, other citations omitted)

The respondent failed to establish the bases for the complainants' dismissal. They were illegally dismissed." (Emphasis supplied).

To find a convenient justification to dismiss an employee, Henry Lao cannot unilaterally change the previous rule -- irregular as it may have been -- regarding entries in daily time records without first informing petitioners, particularly Soriano, of such change. True, an employee may be validly dismissed for violation of a reasonable company rule or regulation adopted for the conduct of the company's business. It is equally true, however, that company policies and regulations are generally valid and binding on the parties and must be complied with until finally revised or amended by competent authority.[55] It is settled, too, that -- in order that an employer may terminate the services of an employee on the ground of wilful disobedience of the former's orders, regulations or instructions -- it must be established that the said orders, regulations, or instructions are (1) reasonable and lawful, (2) sufficiently known to the employee, and (3) connected with the duties which the employee has been engaged to discharge.[56]

[Petitioner Santos Resigned]

We agree that Petitioner Santos voluntarily resigned. The labor arbiter did not find Petitioner Santos [or Petitioner De Castro] to have been illegally dismissed:[57]

"Respondent states, that, Victoria Santos and Susan de Castro were not dismissed, but if they reported back, Mr. Lao, had valid grounds to dismiss them. Except for the sweeping accusations, there is no evidence on record to support their dismissal. Therefore, this Labor Arbiter is not in a position to declare that complainants Santos and De Castro have forfeited their employment with respondent."

Likewise, the NLRC ruled that Victoria L. Santos was not dismissed. Rather, after her suspension for "charging for a meter of cloth bought [at] the price of a yard,"[58] she offered to resign. The solicitor general supports this by stating that "even the Labor Arbiter discovered this when he ruled that 'there [was] no evidence on record to support their [Santos' and De Castro's] dismissal.'"[59]

Notwithstanding his assertion that Petitioner Santos had resigned, the solicitor general sustained the award of separation pay to her, because she had a "right to return to private respondent bazaar," which she could have exercised if not for her "strained relationship"[60] with its owner.

Petitioner Santos contends that the affidavit she executed on October 9, 1991 caused her illegal summary dismissal.[61] As correctly found by the NLRC, this allegation defies logic, because Petitioner Santos was dismissed on September 25, 1991, that is, prior to the execution of said affidavit.

[Damages and Attorney's Fees]

Moral damages are recoverable where the dismissal of the employee was attended by bad faith or constituted an act oppressive to labor or was done in a manner contrary to morals, good customs or public policy.[62] Although the Labor Code is silent on the liability of an employer for damages in case the termination of employment is declared to be unjust, we have ruled,[63] however, that the employer may be so liable if, in terminating the employment, it also committed an antisocial and oppressive abuse of its right to investigate and dismiss its employee in violation of Article 1701 of the Civil Code.[64] Thus, in *CLLC E.G. Gochangco Workers Union vs. NLRC*,[65] we said:

"As for moral damages, we hold the said respondent liable therefor under the provisions of Article 2220 of the Civil Code providing for damages for 'breaches of contract where the defendant acted fraudulently or in bad faith.' We deem just and proper the sum of P5,000.00 each in favor of the terminated workers, in the concept of such damages."

In cases involving breaches of contracts, moral damages may also be awarded where the defendant acted fraudulently or in bad faith.[66] Good faith refers to a state of mind, which is manifested by the acts of the individual concerned. It consists of an intention to abstain from taking an unconscionable and unscrupulous advantage of another.[67] Henry Lao's dismissals of petitioners, except Santos who resigned, was marked by precipitate dispatch and utter disregard of due process. Clearly, Lao abused his position as an employer.

It is well-settled that, for dismissals to be valid, not only must employers show sufficient ground therefor, but must also prove that they observed procedural due process by giving their employees two notices -- first, of the intention to dismiss, indicating therein their acts or omissions complained against; and, second, of the decision to dismiss – and, in between such notices, an opportunity for them to answer and rebut the charges against them.[68] In the present case, not only was private respondent's dismissal of petitioners without just cause; it was also without procedural due process.

Attorney's fees may likewise be awarded, for concerned petitioners were dismissed in bad faith.[69] Petitioner Pascua was summarily dismissed. Petitioner De Castro was also dismissed without due process after she demanded to be paid her correct wages as mandated by labor laws. Petitioner Soriano, in spite of her explanation in answer to the capricious charges raised by Henry Lao, was still summarily dismissed. Attorney's fees may be awarded when petitioners, illegally dismissed in bad faith, are compelled to litigate or incur expenses to protect their rights by reason of the acts and the omissions of their employer.[70]

WHEREFORE, the petition is GRANTED and the assailed Decision and Resolution are hereby REVERSED and SET ASIDE. Petitioners Pascua, Macanlalay, De Castro and Soriano are FOUND to have been illegally dismissed. Private respondents are ORDERED to REINSTATE them immediately without loss of seniority rights and with full back wages and other benefits from the time of their illegal dismissal up to the time of their actual reinstatement,[71] but the amounts already paid to Petitioners Pascua and Macanlalay shall be deducted from the sums respectively due them. Each illegally dismissed petitioners is AWARDED P25,000 as moral damages plus ten percent of the total sum as and for attorney's fees. Having voluntarily resigned, Petitioner Santos is not entitled to the awards given to other petitioners. However, inasmuch as the private respondent did not appeal, it is bound by the NLRC's disposition in regard to Santos.[72] No costs.

SO ORDERED.

Davide, Jr., Bellosillo, Vitug, and Quisumbing, JJ., concur.

[1] Third Division composed of Comm. Ireneo B. Bernardo, ponente; and Pres. Comm. Lourdes C. Javier and Comm. Joaquin A. Tanodra, concurring; Rollo, pp. 30-53.

[2] Rollo, pp. 81-83.

[3] Appealed from RAB-CAR-09-0317-91; RAB-CAR-11-0373-91; RAB-CAR-11-0377-91; RAB-CAR-11-0378-91; and RAB-CAR-11-0380-91.

[4] Rollo, pp. 52-53; assailed Decision, pp. 24-25.

[5] Labor Arbiter Irenarco R. Rimando.

[6] Rollo, pp. 109-110; LA's decision, pp. 22-23.

[7] Rollo, pp. 32-35; assailed Decision, pp. 4-7.

[8] Sitting in Baguio City.

- [9] Doing business under the name and style “Tiongsan Super Bazaar.”
- [10] Rollo, p. 90; LA’s decision, p. 2.
- [11] Rollo, p. 419.
- [12] Rollo, pp. 74-76; assailed Decision, pp. 21-23.
- [13] Rollo, pp. 329-330.
- [14] Rollo, p. 341; Petitioners’ Memorandum, p. 26.
- [15] Rollo, p. 340; Petitioners’ Memorandum, p. 25.
- [16] Rollo, p. 331; Petitioners’ Memorandum, p. 16.
- [17] Resulting from the upholding of other dispositions of the labor arbiter.
- [18] Rollo, pp. 330-331; Petitioners’ Memorandum, pp. 16-17.
- [19] Rollo, p. 336; Petitioners’ Memorandum, p. 21.
- [20] 250 SCRA 325, November 24, 1995, per Francisco, J.
- [21] Rollo, p. 338; Petitioners’ Memorandum, p. 23.
- [22] Ibid., p. 434; Private Respondent’s Memorandum, p. 16.
- [23] Ibid., p. 441; Private Respondent’s Memorandum, p. 23.
- [24] Ibid., p. 443; Private Respondent’s memorandum, p. 25.
- [25] Ibid., p. 447; Private Respondent’s Memorandum, p. 29.
- [26] Ibid., p. 451; Private Respondent’s Memorandum, p. 33.
- [27] Ibid., p. 452; Private Respondent’s Memorandum, p. 34
- [28] Ibid., p. 453; Private Respondent’s Memorandum, p. 35.
- [29] Bontia vs. National Labor Relations Commission, 255 SCRA 167, March 18, 1996.
- [30] Magtoto vs. National Labor Relations Commission, 140 SCRA 58, November 18, 1985.
- [31] Batangas Laguna Tayabas Bus Company vs. NLRC, et al., 212 SCRA 792, August 21, 1992; Bontia vs. National Labor Relations Commission, supra.
- [32] Roselini L. de La Cruz, et al. vs. National Labor Relations Commission, et al., G.R. No. 115527, August 18, 1997; Metro Transit Organization, Inc. vs. National Labor Relations Commission, et al., 263 SCRA 313, October 17, 1996; Mapalo vs. National Labor Relations Commission, et al., 233 SCRA 266, June 17, 1994; Philippine Manpower Services, Inc., et al., vs. National Labor Relations Commission, et al., 224 SCRA 691, July 21, 1993.
- [33] Sanyo Travel Corporation, et al. vs. National Labor Relations Commission, G.R. No. 121449, October 2, 1997; JGB and Associates, Inc. vs. National Labor Relations Commission, et al., 254 SCRA 457, March 7, 1996.
- [34] Corazon Jamer, et al., vs. National Labor Relations Commission, et al., G.R. No. 112630, September 5, 1997.
- [35] Rollo, p. 166.

- [36] Solis vs. National Labor Relations Commission, 263 SCRA 629, October 28, 1996; Guerrero vs. National Labor Relations Commission, 261 SCRA 303, August 30, 1996.
- [37] Rollo, p. 119; Annex A, Petitioners' Position Paper.
- [38] Ibid.
- [39] Guatson International Travel and Tours, Inc. vs. NLRC, 230 SCRA 815, March 9, 1994.
- [40] Rollo, p. 405; Solicitor General's Memorandum, p. 11.
- [41] Stolt-Nielsen Marine Services (Phils.), Inc. vs. National Labor Relations Commission, 258 SCRA 643, July 11, 1996.
- [42] Pantranco North Express, Inc. vs. National Labor Relations Commission, 252 SCRA 237, January 24, 1996.
- [43] Rollo, pp. 135-136; Petitioners' Joint Position Paper, pp. 2-3.
- [44] Rollo, p. 409; Petitioners' Memorandum, p. 15.
- [45] Zarate, Jr. vs. Olegario, October 7, 1996; Torillo vs. Leogardo, Jr., 197 SCRA 471, 477, May 27, 1991.
- [46] Rollo, p. 409; Petitioners' Memorandum, p. 15; citing the case of A' Prime Security Services, Inc. vs. NLRC, 220 SCRA 142, March 19, 1993.
- [47] Filflex Industrial & Manufacturing Corporation, et al., vs. National Labor Relations Commission, G.R. No. 115395, February 12, 1998, p. 14.
- [48] Gold City Integrated Port Service, Inc. vs. National Labor Relations Commission, 245 SCRA 627, July 6, 1995; Philippine Long Distance Telephone Co. vs. NLRC, 164 SCRA 671, August 23, 1988; Sampaguita Garments Corp. vs. NLRC, 233 SCRA 260, June 17, 1994; Cathedral School of Technology vs. NLRC, 214 SCRA 551, October 13, 1992; Baguio Country Club vs. NLRC, 213 SCRA 664, September 4, 1992.
- [49] Rollo, p. 410; Solicitor General's Memorandum, p. 16.
- [50] Rollo, p. 153; Annex "E-2" of Petitioners' Joint Position Paper.
- [51] Article 279, Labor Code of the Philippines; General Textile, Inc. vs. NLRC, 243 SCRA 232, 243, April 4, 1995.
- [52] Rollo, pp. 411-412; Solicitor General's Memorandum, pp. 17-18.
- [53] Rollo, p. 159; Annex "E-8" of Petitioners' Joint Position Paper.
- [54] Rollo, pp. 101-104; LA's decision, pp. 13-16.
- [55] Tanala vs. National Labor Relations Commission, 252 SCRA 314, January 24, 1996; Soco vs. Mercantile Corporation of Davao, et al., 148 SCRA 526, March 16, 1987; GTE Directories Corporation vs. Sanchez, et al., 197 SCRA 452, May 27, 1991; San Miguel Corporation vs. Ubaldo, et al., 218 SCRA 293, February 1, 1993.⁵⁵
- [56] AHS/Philippines, Inc. vs. Court of Appeals, 257 SCRA 319, 330, June 14, 1996.
- [57] Rollo, p. 101; LA's decision, p. 13.
- [58] Rollo, p. 406; Solicitor General's Memorandum, p. 12.
- [59] Rollo, p. 407; Solicitor General's Memorandum, p. 13.

[60] Rollo, p. 407; Solicitor General's Memorandum, p. 13.

[61] Rollo, p. 141; Petitioners' Joint Position Paper, p. 8.

[62] Belaunzaran vs. National Labor Relations Commission, 265 SCRA 800, 809, December 23, 1996.

[63] Philippine Refining Company, Inc Garcia, 18 SCRA 107, September 27, 1966; Nadura vs. Benguet Consolidated, Inc., 5 SCRA 879, August 24, 1962.

[64] Hilario vs. National Labor Relations Commission, 252 SCRA 555, 561, January 29, 1996.

[65] 161 SCRA 655, 671, May 30, 1988; per Sarmiento, J.

[66] Lim vs. Court of Appeals, 263 SCRA 569, October 24, 1996.

[67] Farolan vs. Solmac Marketing Corporation, 195 SCRA 168, March 13, 1991

[68] MGG Marine Services, Inc. vs. NLRC, 259 SCRA 664, July 29, 1996.

[69] Pizza Hut/Progressive Development Corp. vs. NLRC, 252 SCRA 531, January 29, 1996.

[70] Summa Insurance Corporation vs. Court of Appeals, 253 SCRA 175, February 5, 1996; Alitalia vs. Intermediate Appellate Court, 192 SCRA 9, December 4, 1990.

[71] Pursuant to the ruling in Bustamante vs. National Labor Relations Commission, 265 SCRA 61, November 28, 1996.

[72] That is, "she is still entitled to separation pay in lieu of reinstatement, due to strained relationship." See par. b of the NLRC's disposition, footnote 4.

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