

COCA-COLA BOTTLERS, PHILS., INC., PETITIONER, VS. KAPISANAN NG MALAYANG MANGGAGAWA SA COCA-COLA-FFW AND FLORENTINO RAMIREZ, RESPONDENTS.

G.R. NO. 148205. February 28, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review of the Resolution[1] of the Court of Appeals in CA-G.R. SP No. 58012 reversing the Resolution of the National Labor Relations Commission (NLRC) in NLRC NCR CASE CA 018341-99.

The Antecedents

Petitioner Coca-Cola Bottlers Phil., Inc. is a domestic corporation engaged in the manufacture, sale and distribution of softdrinks. It maintains plants in various areas of the country, among others, in Calamba and Sta. Rosa, Laguna, in Lipa City and Balayan, Batangas; in Sta. Cruz, Gumaca; in San Pablo City and Lucena City, Quezon Province; in Las Piñas City, and Dasmariñas, Cavite.

On July 1, 1982, the petitioner hired Florentino Ramirez as “driver-helper” with the following duties:

- (a) as driver, he checks the truck’s oil, water, wheels, etc.;
- (b) as helper, he is charged of loading and unloading truck’s load; putting bottles in the coolers and displays company products to each outlet or customer’s store.[2]

Ramirez became a member of the respondent Kapisanan ng Malayang Manggagawa Sales Force Union, the bargaining representative of the rank- and-file employees of the petitioner company. In 1996, he was the “shop steward” of the union at the company’s Batangas Sales Office.[3]

Sometime in October 1996, it happened that the route salesman for Route M11 was unavailable to make his usual routes. Since Ramirez had been driving for the route salesman for so long, the petitioner company decided to assign him as temporary replacement of the regular route salesman for routes M11, AMC and LPR. Thereafter, in a Letter dated December 5, 1996, the Officer-in-Charge of the Batangas Sales Office, Victor C. dela Cruz, informed the Officer-in-Charge of DSS-District 44, Rolando Manzanares, that a review of the copies of the invoices relating to the transactions of Ramirez in Rt. M11 revealed the following discrepancies: (a) the number of cases delivered to customers; (b) empty bottles retrieved from them, and (c) the amounts in Sales Invoices Nos. 3212215, 3288587, 3288763, 3288765 and 3288764, thus:

- Finance and Customer’s Copies of Sales Invoice No. 3288765 showing the deliberate omission in the finance copy of the delivery of 25 cases of Sprite (8 ounces) and the absence in the Customer’s Copy of the retrieval of 10 cases of Coke (1.5 liters).

- Finance and Customer’s Copies of Sales Invoice No. 3288764, a comparison of which shows that the retrieval

of empty bottles amounting to Two Thousand Two Hundred Fifty Pesos (P2,250.00) reflected in the Finance Copy as having been collected was not reflected in the Customer's Copy.

- Finance and Customer's Copies of Sales Invoice No. 3212215 which shows that the refund of thirty-three (33) cases was reflected only in the Finance Copy.

Ramirez received a Memorandum from District Office Nos. 44 and 45 requiring him to report to the said office starting December 5, 1996 until such time that he would be notified of the formal investigation of the charges against him.[4]

During the formal investigation conducted by a panel of investigators on December 20, 1996, Ramirez was not represented by counsel. He also manifested that he was waiving his right to be represented by counsel when the members of the panel asked him about it. Ramirez was then asked to explain the discrepancies subject of the charges, and narrated the following:

(a) Re: Sales Invoice No. 3212215. Ramirez unloaded the products from the delivery truck in the morning and delivered the same to the customer. He then gave a copy of the sales invoice to the customer, which showed the quantity and prices of the products delivered. He told the customer to prepare the payment and that he would return later in the evening to collect the same. Because the customer did not have enough money on hand, he covered the deficit by returning 33 cases of empty bottles, which was reflected in the copy of the sales invoice forwarded to the sales department. Ramirez reasoned that he failed to note the return of the empty bottles in the copy of sales invoice he later delivered to the customer because the latter informed him that such copy had been misplaced. Besides, Ramirez and the customer had agreed that he (Ramirez) would just note the return of the empty bottles on the customer's copy of the sales invoice the following day. Ramirez pointed out that the petitioner company did not suffer any loss because the empty bottles were turned over to it.

(b) Re: Sales Invoice No. 3288587 dated October 12, 1996. Ramirez admitted that there the customer made an overpayment of P504.00. He claimed, however, that he returned the amount to the customer from his own money, and retained the P504.00 by way of reimbursement for the amount he had earlier given to the customer. Hence, the petitioner company and the customer did not suffer any loss.

(c) Re: Sales Invoice No. 3288763 dated October 14, 1996. Ramirez claimed that he had erroneously written Sales Invoice No. 3288763 instead of Sales Invoice No. 3288765 (customer's copy) in his RHF Report dated October 14, 1996. He also claimed to have overlooked Sales Invoice No. 3288763 when he issued a receipt to customers "Iglesia or Dolor Hernandez," and mistakenly issued Sales Invoice No. 3288763. He also declared that he failed to include Sales Invoice No. 3288765 in his RHF Report as one of the cancelled invoices because it was already too late in the evening.

(d) Re: Sales Invoice No. 3288764. Ramirez declared that it was only after he had unloaded and delivered the products to the customer and had given a copy of the sales invoice to the latter that he realized that the customer had returned several cases of empty bottles worth P2,250.00. He pointed out that he indicated the same in the copy of the sales invoice he submitted to the company, but failed to do so in the customer's copy of the sales invoice.

On February 11, 1997, Ramirez received a notice from the company informing him that his services were being terminated; that based on the investigation, it was clearly established that he violated Sections 10 and 12 of the CCBPI Employees' Code of Disciplinary Rules and Regulations (Red Book); and that coupled with his prior infractions, his employment was terminated effective February 12, 1997.

On March 17, 1997, Ramirez and the union filed a Complaint[5] for unfair labor practice and illegal dismissal against the company with the Arbitration Branch of the NLRC, docketed as RAB-IV-3-8862-97-B. Ramirez claimed that although he was merely an acting salesman, the alleged violations for which he was dismissed, i.e., Sections 10 and 12 of the petitioner company's rules and regulations, particularly designated as fictitious sales and falsification of company reports, were normally only for full-fledged salesmen. He pointed out that:

Firstly, respondent company's act of grounding individual complainant on alleged shortage in the bodega, has no factual basis, as no actual inventory was conducted; and

Secondly, individual complainant was terminated for violations which are alien to his official functions and designation; and

Lastly, as officer of the union, individual complainant was terminated at the time the collective bargaining negotiations was underway and at its critical stage.

These facts clearly establish a classic case of an employer harassing an official of the union, which we humbly submit as a clear case of interference by an employer in the right of the workers to self-organization and to collective bargaining.[6]

Ramirez likewise claimed that he was denied of his right to due process, based on the following grounds:

Firstly, individual complainant was dismissed without having been first issued a "notice of dismissal" which supposedly should contain the charges against him, which would be made as basis for his termination.

Secondly, individual complainant was dismissed without affording him an ample opportunity to defend himself, as he was not notified in advance of the subject of the administrative investigation.

Thirdly, individual complainant was terminated without just and valid cause, and in gross violation of his right to due process.

Lastly, individual complainant was terminated by respondents in utter bad faith, as the decision on the said termination was arrived at, without any just and valid cause. Simply put, respondents simply acted oppressively, malevolently, and with grave abuse of prerogatives.[7]

For its part, the petitioner company alleged that the dismissal of Ramirez was based on the facts unearthed during the formal investigation, and that he was guilty of serious misconduct, a valid ground for termination of employment. Even if he was occupying the position of route driver/helper, he was nevertheless performing the functions and duties of a route salesman, and, as such, he not only committed fraud, but also willfully breached the trust and confidence reposed on him by the petitioner company. According to the petitioner company, considering the sanctions imposed on Ramirez for prior breaches of company rules, his dismissal from employment was with basis. The petitioner company also insisted that Ramirez was accorded his right to due process: he was notified of the charges against him, was subjected to a formal investigation during which he was allowed to explain the discrepancies, and was notified of the outcome thereof, as well as the bases of the termination of his employment.

On July 31, 1998, the Labor Arbiter (LA) rendered judgment[8] dismissing the complaint for lack of merit. The LA found that based on the evidence, there was a justifiable basis for the dismissal of Ramirez. According to the LA, it was of no moment that the official designation of Ramirez was "driver-helper," since he committed the infractions while he was performing the functions of an "acting salesman." The LA further found that due process had been complied with.[9]

Aggrieved, Ramirez appealed the decision to the NLRC, docketed as NLRC NCR CASE CA 018341-99.

Ramirez argued that any errors or discrepancies he may have committed while he was assigned as route salesman were excusable. He pointed out that he was merely a driver/helper and had no formal training as route salesman before such temporary designation. He averred that the petitioner company dismissed him because of the on-going collective bargaining negotiations which were then in a critical stage.

On September 20, 1999, the NLRC rendered a Resolution[10] affirming the decision of the LA. It declared that the petitioner company had adduced documentary evidence to show that Ramirez failed to justify why the amount of P2,250.00 was not reflected in the customer's copy of Sales Invoice No. 3288764. According to the NLRC, Ramirez also failed to justify the omission of the return of 33 cases of company products in the customer's copy of Sales Invoice No. 3212215. The NLRC found the same to be sufficient basis for a finding of grave misconduct, which rendered Ramirez unworthy of the trust and confidence demanded of his position as an "acting salesman." Citing the ruling of this Court in *Philippine Commercial International Bank v. Jacinto*,[11] the NLRC declared that Ramirez's claim that the penalty of dismissal was too harsh and disproportionate on account of his being a mere "acting salesman," was untenable.

The NLRC, likewise, rejected Ramirez's plea of denial of due process, declaring that he was accorded the chance to be heard on the complaint against him and to adduce evidence on his behalf. It ruled that Ramirez failed to prove ill-motive on the part of the petitioner company for dismissing him.

Upon the denial of his motion for reconsideration, Ramirez filed a petition for certiorari under Rule 65 of the Rules of Court with the Court of Appeals (CA), docketed as CA-G.R. SP No. 58012 wherein he alleged the following:

- THE HONORABLE PUBLIC RESPONDENT SERIOUSLY ERRED, THEREBY COMMITTING GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION, IN AFFIRMING THE LABOR ARBITER'S DECISION UPHOLDING THE LEGALITY OF INDIVIDUAL PETITIONER'S DISMISSAL, CONSIDERING THAT:

- INDIVIDUAL PETITIONER WAS OFFICIALLY DESIGNATED AS "DRIVER-HELPER," A POSITION WHICH DOES NOT INVOLVED (sic) THE ELEMENT OF "TRUST AND CONFIDENCE," YET, WAS TERMINATED FOR ALLEGED "LOSS OF TRUST AND CONFIDENCE;"

- INDIVIDUAL PETITIONER, AS A "DRIVER-HELPER" WAS MERELY TEMPORARILY ASSIGNED AS "ACTING SALESMAN" WHEN THE ALLEGED DISCREPANCY IN THE TRANSACTION DOCUMENTS TOOK PLACE;

- INDIVIDUAL PETITIONER WAS NOT SPECIFICALLY TRAINED AS "SALESMAN," THUS, CANNOT BE EXPECTED TO PERFORM IN THE SAME MANNER AS AN OFFICIAL ONE, WHO ARE PRECISELY "TRAINED" FOR THE ENDEAVOR.

- THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION, IN FINDING THAT INDIVIDUAL PETITIONER WAS VALIDLY DISMISSED FOR LOSS OF TRUST AND CONFIDENCE, AS, EVEN IF THE SAID GROUND REALLY EXISTS, HE COULD HAVE BEEN ALLOWED TO CONTINUE HIS EMPLOYMENT, AS "DRIVER-HELPER" – HIS OFFICIAL DESIGNATION, A POSITION WHICH DOES NOT INVOLVE AN ELEMENT OF "TRUST AND CONFIDENCE."

- THE HONORABLE PUBLIC RESPONDENT, LIKE THE HONORABLE LABOR ARBITER A QUO, COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION, IN DECLARING THAT “COMPLAINANT’S DESIGNATION AT THE TIME OF THE INFRACTION IS OF NO MOMENT.”

- IN SUM, THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION, IN NOT FINDING PRIVATE RESPONDENT GUILTY OF ILLEGAL DISMISSAL AND UNFAIR LABOR PRACTICE; AND IN NOT ORDERING PRIVATE RESPONDENT TO REINSTATE INDIVIDUAL PETITIONER TO HIS FORMER POSITION AS “DRIVER-HELPER,” AND TO PAY FULL BACKWAGES, DAMAGES AND ATTORNEY’S FEES.[12]

In a Decision dated October 25, 2000, the CA dismissed the petition.[13] It ruled that the petitioner’s designation at the time of the infraction was of no moment; when he agreed to be an “acting salesman” for Route M11, AMC and LPR, he actually performed the duties of a salesman, and in so doing, assumed the responsibilities of the position. The CA further ratiocinated that notwithstanding Ramirez’s lack of training, he had assumed and performed the duties of a salesman; hence, he was obligated to do so with due care, dedication, and with due regard to the exercise of the degree of diligence to prevent the commission of any serious error, mistake or blunder on his part.

The CA also ruled that Ramirez had not been denied his right to due process. It concluded that the falsification of the sales invoices and receipts violated company rules and policy, and that he was guilty of gross misconduct which also constituted a breach of trust and confidence reposed on him by the petitioner company.

Undaunted, the petitioner filed a motion for the reconsideration of the decision contending that:

THE HONORABLE COURT SERIOUSLY ERRED WHEN IT HELD THAT THE FINDING AND DECLARATION OF THE LABOR ARBITER AND PUBLIC RESPONDENT THAT INDIVIDUAL PETITIONER’S “DESIGNATION AT THE TIME OF THE INFRACTION IS OF NO MOMENT” HAVE LEGAL BASIS.[14]

THE HONORABLE COURT SERIOUSLY ERRED WHEN IT FAILED TO CONSIDER THAT INDIVIDUAL PETITIONER WAS OFFICIALLY DESIGNATED AS “DRIVER-HELPER,” A POSITION WHICH DOES NOT INVOLVED (sic) THE ELEMENT OF “TRUST AND CONFIDENCE.”[15]

THE HONORABLE COURT SERIOUSLY ERRED IN NOT FINDING THAT THE INDIVIDUAL PETITIONER’S RIGHT TO DUE PROCESS WAS GROSSLY VIOLATED.[16]

This time, the CA found merit in petitioner’s cause and, on January 30, 2001, issued a Resolution granting the said motion, and set aside its earlier ruling.

WHEREFORE, premises considered, the petitioners’ motion for reconsideration is hereby GRANTED, and Our decision of 25 October 2000 is vacated. The assailed resolutions of public respondent dated September 20, 1999 and December 21, 1999 are REVERSED and SET ASIDE, and a new judgment is rendered, ordering the respondent company to reinstate petitioner Florentino A. Ramirez to his job as driver-helper without loss of seniority and other rights, and to pay him his full backwages, allowances and other benefits until his retirement, without diminution, or their monetary equivalent, plus 10% as attorney’s fees. Costs against private respondent.[17]

The CA ratiocinated that as an acting salesman who did not possess the required basic training of a route salesman, Ramirez was made to discharge the duties of a route salesman. It also emphasized that as driver/helper,

his job was not a position reposed with trust and confidence. Thus, the CA declared that the petitioner committed a mere oversight of certain internal control procedures in the proper recording of his sales and other transactions, resulting in the shortage in one transaction, offset by an overage in another. While he was inefficient and incompetent as a route salesman, he was not so as a driver/helper. Considering that he was merely discharging the functions of a salesman in an acting capacity, and that the petitioner company did not suffer any loss on account of the violations and/or omissions of Ramirez, the penalty of dismissal was too harsh. The CA also ruled that there was no dishonesty or a demonstration of moral perverseness as would justify the claimed loss of confidence attendant to the job, and, as such, gave Ramirez the benefit of the doubt.

On the issue of due process, the CA ruled that the petitioner was not afforded due process because the panel of investigators focused on Ramirez's violations of internal control procedures instead of the substance of the charges against him.[18]

Aggrieved by the appellate court's volte face, the petitioner company filed the instant petition for review on certiorari, alleging that:

THE HONORABLE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE CONTRARY TO LAW AND THE SETTLED RULINGS OF THE SUPREME COURT IN THAT:

- THE RESPONDENT WAS LAWFULLY TERMINATED FROM EMPLOYMENT.

- THE COURT OF APPEALS ACTED WITHOUT JURISDICTION IN RENDERING THE QUESTIONED RESOLUTIONS.

- THE FINDINGS OF FACT BY THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE HONORABLE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION AND ARE MERE CONCLUSIONS REACHED WITHOUT CITATION OR SPECIFIC EVIDENCE AND/OR ARE PREMISED ON THE PURPORTED ABSENCE OF EVIDENCE CONTRADICTED BY THE EVIDENCE ON RECORD.[19]

The core issue for resolution is whether or not respondent Florentino Ramirez was dismissed by the petitioner without just or valid cause.

The Respondent Committed
Irregularities in the Performance
of His Duties as Route Salesman

We find, as the CA did in its assailed Resolution, that the respondent, by his acts and omissions, committed irregularities in the performance of his duties. He made it appear in the customer's copy of Sales Invoice No. 3212215 that the latter returned 33 cases of family-size empty bottles valued at P4,092.00; however, such transaction was not reflected in the invoice submitted by him to the petitioner company.

A perusal of the customer's copy of the sales invoice would show that the customer owed the petitioner company P9,045.00. However, in the petitioner company's copy of the sales invoice, the respondent declared that the customer returned 33 cases of empty bottles valued at P4,092.00; hence, the customer owed the petitioner only P4,953.40 which the customer paid. The respondent failed to indicate the return of the empty bottles in the petitioner company's copy of the sales invoice. The explanation of the respondent, that while he intended to correct the customer's copy of the sales invoice he was unable to do so because such customer's copy had been misplaced by the customer, is unacceptable. The respondent should have presented the affidavit of the customer to

corroborate such claim. The fact that it turned out that the customer still had his copy of the sales invoice does not sit well with the respondent's cause. In fine then, the explanation given by the respondent during the panel investigation is untrue.

There is no dispute that the respondent overcharged the customer in Sales Invoice No. 3288587 in the amount of P504.00, and that the respondent returned the overpayment to the customer. However, the respondent was burdened to give a valid explanation for such overcharging on the customer, which he failed to do.

The respondent also admitted that he failed to indicate in the customer's copy of Sales Invoice No. 3288764 the customer's retrieval of 210 cases of empty Coca-Cola bottles of varied sizes, amounting to P2,250.00. The respondent failed to give a valid explanation for his omission, although there appears to be no doubt that, indeed, the customer returned the 210 empty bottles to the petitioner through him.

The Penalty of Dismissal
For the Respondent's
Infraction is, however,
Too Severe

In order to effect a valid dismissal of an employee, the law requires that there be just and valid cause as provided in Article 282 and that the employee was afforded an opportunity to be heard and to defend himself.[20] Pursuant to Article 282 of the Labor Code, an employee's services can be terminated for the following just causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly-authorized representative.
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly-authorized representative; and
- (e) Other causes analogous to the foregoing.

In termination disputes, the burden of proof is always on the employer to prove that the dismissal was for a just and valid cause.[21] Considering the nature of the charges and the penalties therefor, the petitioner is bound to adduce clear and convincing evidence to prove the same.

We have always held that an employer enjoys a wide latitude of discretion in the promulgation of policies, rules and regulations on work-related activities of the employees.[22] It is recognized that company policies and regulations, unless shown to be grossly oppressive or contrary to law, are generally valid and binding on the parties and must be complied with until finally revised or amended, unilaterally or preferably through negotiation, by competent authority. The Court has upheld a company's management prerogatives so long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements.[23] For misconduct or improper behavior to be a just cause for dismissal, the same must be related to the performance of the employee's duties and must show that he has become unfit to continue working for the employer.[24]

In cases when an employer may dismiss an employee on the ground of willful disobedience, there must be concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and (2) the order violated must have been

reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[25]

In the present case, the respondent was dismissed for dishonesty, more specifically for violation of the company policy, and, more particularly, Sections 10 and 12 of Company Rules and Regulation No. 005-85, Fictitious sales transactions; Falsification of company records/data/documents/reports; Conspiring or conniving with, or directing others to commit fictitious transactions; and inefficiency in the performance of duties, negligence and blatant disregard of or deviation from established control and other policies and procedures.

However, the petitioner failed to adduce clear and convincing evidence that the respondent had fictitious sales transactions, or that he falsified company records/documents/reports, or that he connived with customers of the petitioner to persuade them to commit fictitious transactions. It is undisputed that the respondent entered into the sales transactions subject of the complaint of the petitioner for and in behalf of the petitioner. While it is true that the respondent failed to indicate the return of the empty bottles made by a customer either in the petitioner company's copy of the sales invoice or in his reports on his sales transactions; and overcharged a customer in one transaction, there is no clear and convincing evidence that the respondent did so intentionally, for a wrong or criminal purpose. There is also no showing that the respondent intentionally defied the lawful orders or regulations of the petitioner. Indeed, as declared by the CA in its assailed resolution, the petitioner did not suffer any material loss by the respondent's actuations:

At the outset, it may be stated that the petitioners' positive allegation that the individual petitioner was also an official of the petitioner union, being the latter's "shop steward" at respondent company's Batangas Sales Office, as the real motive for his termination, has not been established by sufficient proof to justify a finding in their favor.

...

A quick review of the salient facts shows that individual petitioner Florentino A. Ramirez was hired by private respondent company on July 1, 1982, as "driver-helper," with the latest basic salary of P11,285.00 as of February 1997 and an average commission of P2,800.00 a month. As such "driver-helper," his official duties and responsibilities, among others, are as follows: (a) as driver, he checks the truck's oil, water, wheels, etc.; (b) as helper, he is tasked with loading and unloading truck's load; putting bottles in the coolers and displays company products to each outlet or customer's store. Obviously, this job did not involve the same amount of trust and confidence as that of a salesman. Officially, petitioner Ramirez had no other alternate duties.

It is not refuted that individual petitioner did not possess the required basic training to act as salesman, and that this fact was known to the private respondent company at the time it designated him as acting salesman during those days, particular October 02, 12, and 14, 1996, when no route salesman was available. It is also self-evident that the job description of the driver-helper hardly includes any task which would significantly overlap with those of the salesman as would afford the driver-helper, through time perhaps, the experience to adequately discharge the duties of a salesman. In fact, as admitted by the private respondent, because of the amount of trust and confidence involved in the job of a salesman, rigorous requirements and internal control procedures are enforced, and understandably, as well as strict accountability.

From the parties' various pleadings both in this petition, as well as in the case below, what becomes clear is that the private respondent suffered no damage whatsoever from the actuations of the individual petitioner. His alleged dishonesty was not proven. What he committed was merely non-compliance with, or oversight of, certain internal procedures in the proper recording of his sales and other transactions, resulting in a shortage in one transaction, which was nevertheless offset by an overage in another. It could be allowed that, indeed, he was inefficient and incompetent for the function of a salesman which he had to temporarily perform.[26]

...

In pointing out that the private respondent suffered no material loss, We note that it was very possible that the discrepancies found in the documents reflecting the individual petitioner's transactions as an "acting salesman" could very well have been due to simple inadvertence and the fact that the customers, who for some reason failed to pay their accounts with exact cash but instead partly with empty bottles, later misplaced their copy of the invoice. Thus, their copy could not be corrected seasonably. The recording was very likely bungled further by individual petitioner's lack of training and familiarity with the strict recording procedures. We are inclined to give him this benefit of the doubt.

That the individual petitioner has not been specifically trained as salesman is undisputed. It is likewise uncontroverted that before an employee could qualify as a full-fledge "salesman," the respondent company requires as a condition sine qua non that he first undergo "basic salesman training" and several seminars to be acquainted with his specific functions. This is understandable, because the company salesman not only must find customers, promote and sell its products, but he also must account for his sales and inventory to the last centavo, every day, according to its internal controls and policies. It is obvious that this was not so with the individual petitioner. He was tasked with a duty involving trust and specialized skills for which he was never trained. His alleged failure to comply strictly with all the procedures, of which he was unfamiliar, was to be expected.

Yet Ramirez was penalized as a full-fledge salesman, not as a driver-helper who was forced to perform the functions of acting salesman or perhaps risk being charged with insubordination. Then it was not just any penalty meted out to him, as if there is only one punishment possible for him: the supreme sanction of dismissal.

We cannot but agree that the extreme penalty of dismissal was too harsh and manifestly disproportionate to the infraction committed, which appears to have been fully explained, and, in fact, to be not inexcusable under the circumstances. There was no dishonesty, no demonstration of such moral perverseness as would have justified the claimed loss of confidence attendant to the job. The company must bear a share of the blame for entrusting a mere driver-helper with a highly fiduciary task knowing that he did not possess the required skills. At most, Ramirez failed to comply with, or even violated, certain company rules of internal control procedures, but to say that it was deliberate is gratuitous.

Perhaps, individual petitioner should first have been given a mere warning, then a reprimand or even a suspension, but certainly not outright dismissal from employment. One must keep in mind that a worker's employment is property in the constitutional sense, and he cannot be deprived thereof without due process and unless it was commensurate to his acts and degree of moral depravity. [27]

In *Charles Joseph U. Ramos v. The Honorable Court of Appeals and Union Bank of the Philippines*, [28] the Court held that, in order to validly dismiss an employee on the ground of loss of trust and confidence under Article 282 of the Labor Code of the Philippines, the following guidelines must be followed:

- The loss of confidence must not be simulated;
- It should not be used as a subterfuge for causes which are illegal, improper or unjustified;
- It may not be arbitrarily asserted in the face of overwhelming evidence to the contrary;
- It must be genuine, not a mere afterthought, to justify earlier action taken in bad faith; and
- The employee involved holds a position of trust and confidence.[29]

In *Sulpicio Lines, Inc. v. Gulde*,^[30] the Court emphasized that loss of trust and confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility or trust and confidence. As such, he must be invested with confidence on delicate matters, such as the custody handling or care and protection of the property and assets of the employer. In order to constitute a just cause for dismissal, the act complained of must be work-related. It must be shown that the employee is unfit to continue to work for the employer. Further, well-settled is the rule that “for loss of trust and confidence to be a valid ground for dismissal of an employee, it must be substantial and founded on clearly established facts sufficient to warrant the employee’s separation from employment.”^[31]

We agree that route salesmen are likely individualistic personnel who roam around selling softdrinks, deal with customers and are entrusted with large asset and funds and property of the employer. There is a high degree of trust and confidence reposed on them, and when confidence is breached, the employer may take proper disciplinary action on them.^[32] The work of a salesman exposes him to voluminous financial transactions involving his employer’s goods. The life of the softdrinks company depends not so much on the bottling or production of the product since this is primarily done by automatic machines and personnel who are easily supervised but upon mobile and far-ranging salesmen who go from store to store all over the country or region. Salesmen are highly individualistic personnel who have to be trusted and left essentially on their own. A high degree of confidence is reposed on them because they are entrusted with funds or properties of their employer.^[33]

The designation of the respondent, who was employed as driver-helper, but temporarily assigned as route salesman for a period of three (3) days, did not automatically make him an employee on whom the petitioner reposed trust and confidence, for breach of which he shall be meted the penalty of dismissal. The assumption by the respondent, for only three days, of some of the duties of a route salesman on orders of the petitioner, did not automatically make him an employee holding a position of trust and confidence. Despite his additional duties, the respondent remained a driver-helper of the petitioner. Thus, respondent cannot be dismissed pursuant to Article 282 of the Labor Code.

The rulings of the Court in *Charles Joseph U. Ramos v. The Honorable Court of Appeals and Union Bank of the Philippines*,^[34] cited by the petitioner are not on all fours applicable in this case. This is so because in *Ramos*, prior to the dismissed employee’s appointment as an acting branch manager, he was the branch cashier, the position next to the branch manager. The positions of branch cashier and branch manager are positions endowed with trust and confidence. Moreover, upon the appointment of *Ramos* as Officer-In-Charge (OIC) branch manager, another person was appointed to serve as OIC branch cashier. Thus, for that period of time, *Ramos* ceased to be a branch cashier when he was appointed as OIC branch manager. In this case, however, the respondent continued to be a driver/helper when he was designated as an acting salesman. Although barren of experience and training as route salesman, the respondent had no choice but to comply with the petitioner’s orders and tried his best to do the task assigned to him.

The ruling of the Court in *Philippine Commercial International Bank v. Jacinto*,^[35] is not also applicable in the present case. In that case, *Jacinto* was a customer relations assistant and was assigned to act as an alternate FX Teller when the FX Teller was not available. Both positions involved trust and confidence. Moreover, the employee (*Jacinto*) was not dismissed but only meted the penalty of suspension.

In its assailed resolution, the CA ruled:

That once, back in 1992, *Ramirez* had borrowed some empty bottles from a customer but later returned them the same day and was suspended for it, or that he went AWOL several times in 1996 and thus was meted a suspension of 2 days, are the only blemishes in his record of any significance. To our mind, coupled with his

present predicament, these could not justify such a professed loss of confidence as to sever him from his employment of 14 years.[36]

We agree with the CA. As the Court ruled in *Pepsi-Cola Distributors of the Philippines, Inc. v. NLRC*: [37]

... Moreover, private respondent was already penalized with suspensions in some of the infractions imputed to him in this case, like sleeping while on route rides, incomplete accomplishment of sales report and his failure to achieve sales commitments. He cannot again be penalized for those misconduct. The foregoing acts cannot be added to support the imposition of the ultimate penalty of dismissal which must be based on clear and not on ambiguous and ambivalent ground.

Considering the factual backdrop in this case, we find and so rule that for his infractions, the respondent should be meted a suspension of two (2) months.

IN LIGHT OF ALL THE FOREGOING, the petition is **PARTIALLY GRANTED**. The Resolution of the Court of Appeals dated January 30, 2001 affirming the assailed resolution of the NLRC is **SET ASIDE**. The Decision of the Court of Appeals dated October 25, 2000 is **AFFIRMED** with the **MODIFICATION** that the respondent is meted the penalty of Two (2) months suspension. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Eliezer de los Santos, with Associate Justices Eugenio S. Labitoria and Eloy R. Bello, Jr. (retired), concurring.

[2] Rollo, p. 87.

[3] Ibid.

[4] Id. at 105.

[5] Records, p. 1.

[6] Id. at 34.

[7] Id. at 35.

[8] Id. at 110-114.

[9] Id. at 114.

[10] Id. at 169-175.

[11] 196 SCRA 697 (1991).

[12] CA Rollo, pp. 12-13.

[13] Id. at 469.

[14] Id. at 471.

[15] Id. at 474.

[16] Id. at 478.

- [17] Id. at 500.
- [18] Id. at 493-494.
- [19] Rollo, pp. 19-20.
- [20] Phil. Employ Services and Resources, Inc. v. Paramio, 427 SCRA 732 (2004).
- [21] VH Manufacturing, Inc. v. NLRC, 322 SCRA 417 (2000).
- [22] Id. at 422.
- [23] Aparente, Sr. v. National Labor Relations Commission, 331 SCRA 82 (2000).
- [24] Molato v. National Labor Relations Commission, 266 SCRA 42 (1997).
- [25] Ibid.
- [26] Rollo, pp. 261-262.
- [27] Id. at 264-266.
- [28] G.R. No. 145405, June 29, 2004.
- [29] Ibid.

[30] 377 SCRA 525 (2002).

- [31] Ibid.
- [32] Coca-Cola Bottlers Philippines, Inc. v. NLRC, 172 SCRA 751 (1989).
- [33] Id. at 757.
- [34] Supra, note 28.
- [35] Supra, note 11.
- [36] Rollo, p. 266.

[37] 272 SCRA 267 (1997).

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