

**UNIWIDE SALES WAREHOUSE CLUB and VIVIAN M. APDUHAN,
Petitioners, vs. NATIONAL LABOR RELATIONS COMMISSION and
AMALIA P. KAWADA, Respondents.**

G.R. No. 154503. February 29, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court filed by Uniwide Sales Warehouse Club (Uniwide) and Vivian M. Apduhan (Apduhan) seeking to annul the Decision[1] dated November 23, 2001 and the Resolution[2] dated July 23, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 64581.

The facts of the case:

Amalia P. Kawada (private respondent) started her employment with Uniwide sometime in 1981 as a saleslady. Over the years, private respondent worked herself within Uniwide's corporate ladder until she attained the rank of Full Assistant Store Manager with a monthly compensation of P13,000.00 in 1995.

As a Full Assistant Store Manager, private respondent's primary function was to manage and oversee the operation of the Fashion and Personal Care, GSR Toys, and Home Furnishing Departments of Uniwide, to ensure its continuous profitability as well as to see to it that the established company policies and procedures were properly complied with and implemented in her departments.[3]

Sometime in 1998, Uniwide received reports from the other employees regarding some problems in the departments managed by the private respondent.[4] Thus, on March 15, 1998, Uniwide, through Store Manager Apduhan, issued a Memorandum addressed to the private respondent summarizing the various reported incidents signifying unsatisfactory performance on the latter's part which include the commingling of good and damaged items, sale of a voluminous quantity of damaged toys and ready-to-wear items at unreasonable prices, and failure to submit inventory reports. Uniwide asked private respondent for concrete plans on how she can effectively perform her job.[5] In a letter[6] dated March 23, 1998, private respondent answered all the allegations contained in the March 15, 1998 Memorandum.

Unsatisfied, Apduhan sent another Memorandum[7] dated March 30, 1998 to private respondent where Apduhan claimed that the answers given by the private respondent in her March 23, 1998 letter were all hypothetical and did not answer directly the allegations attributed to her.[8] Apduhan elaborated the incidents contained in the March 15, 1998 Memorandum.

On June 30, 1998, Apduhan sent another Memorandum[9] seeking from the private respondent an explanation regarding the incidents reported by Uniwide employees and security personnel for alleged irregularities committed by the private respondent such as allowing the entry of unauthorized persons inside a restricted area during non-office hours, falsification of or inducing another employee to falsify personnel or company records, sleeping and allowing a non-employee to sleep inside the private office, unauthorized search and bringing out of

company records, purchase of damaged home furnishing items without the approval from superior, taking advantage of buying damaged items in large quantity, alteration of approval slips for the purchase of damaged items and abandonment of work.[10] In a letter[11] dated July 9, 1998, private respondent answered the allegations made against her.

On July 27, 1998, private respondent sought medical help from the company physician, Dr. Marivelle C. Zambrano (Dr. Zambrano), due to complaints of dizziness.[12] Finding private respondent to be suffering from hypertension, Dr. Zambrano advised her to take five days sick leave.[13]

On July 30, 1998, private respondent was able to obtain from Dr. Zambrano a certificate of fitness to work,[14] which she presented to Apduhan the following day.[15] It turned out that Dr. Zambrano inadvertently wrote "Menia," the surname of the company nurse, in the medical certificate instead of private respondent's surname.[16] Thereafter, private respondent claims that Apduhan shouted at her and prevented her from resuming work because she was not the person referred to in the medical certificate.[17] After private respondent left Apduhan's office, a certain Evelyn Mague, Apduhan's assistant, approached the private respondent to get the certification so that it may be photocopied. When she refused to give the certification, private respondent claims that Apduhan once again shouted at her which caused her hypertension to recur and eventually caused her to collapse. Private respondent's head hit the edge of the table before she fell down on the ground for which she suffered contusions at the back of her head, as evidenced by the medical certificate[18] issued by Dr. George K. C. Cheu of the Chinese General Hospital & Medical Center.[19]

On August 1, 1998, private respondent reported the confrontation between her and Apduhan to the Central Police District.[20] Likewise, private respondent was able to obtain from Dr. Zambrano the corrected certification[21] together with the clarification that the name "Amalia Menia" written on the July 30, 1998 certification referred to Amalia Kawada.[22]

Thereafter, counsel for private respondent sent a letter[23] dated August 1, 1998 to Apduhan stating that the latter's alleged continued harassment and vexation against private respondent created a hostile work environment which had become life threatening, and that they had no alternative but to bring the matter to the proper forum.[24]

On August 2, 1998, Apduhan issued a Memorandum,[25] received on the same day by Edgardo Kawada, the husband of private respondent, advising the latter of a hearing scheduled on August 12, 1998 to be held at the Uniwide Office in Quirino Highway, and warning her that failure to appear shall constitute as waiver and the case shall be submitted for decision based on available papers and evidence.[26]

On August 3, 1998, private respondent filed a case for illegal dismissal before the Labor Arbiter (LA).[27]

Counsel for private respondent sent a letter[28] dated August 8, 1998 to Apduhan claiming that the August 2, 1998 Memorandum was a mere afterthought, in an attempt to justify private respondent's dismissal; and that on August 3, 1998, private respondent had already filed charges against Uniwide and Apduhan (petitioners).

On August 8, 1998, Apduhan sent a letter addressed to private respondent, which the latter received on even date, advising private respondent to report for work, as she had been absent since August 1, 1998; and warning her that upon her failure to do so, she shall be considered to have abandoned her job.[29]

On September 1, 1998, Apduhan issued a Memorandum[30] stating that since private respondent was unable to attend the scheduled August 12, 1998 hearing, the case was evaluated on the basis of the evidence on record; and enumerating the pieces of evidence of the irregularities and violations of company rules committed by private respondent, the latter's defenses and the corresponding findings by Uniwide. Portions of the Memorandum read:

VIOLATIONS:

- Allowing entry of Unauthorized person inside a Restricted Area during non-office hours (night-time)

x x x x

FINDINGS:

Towards these evidence, Ms. A. Kawada only raised questions as to the propriety of the entries on the logbook, but the offense itself was not even denied categorically by the employee concerned. Hence, the fact remains that the employee concerned indeed allowed the entries of Mr. Ed Kawada on different occasions. The Security personnel when asked why they did not report those incidents immediately, answered: They hesitated to report them because they were afraid as the employee concerned is a manager, whom they thought knows better than them.

Violation – No. 9 Type C, Code of Discipline

- Falsification of or Inducing another employee to falsify personnel or company records.

x x x x

FINDINGS:

In her answer, Ms. A. Kawada again only questioned the propriety of the entries on the logbook, but there were clear indications that the violation was indeed committed as shown by the abovestated pieces of evidence.

The testimonies by the witnesses' are very explicit of what really transpired, specifically security guard Dennis Venancio, who just performs his duty of reporting any unusual incident that occurred within his jurisdiction. The fact that they failed to report it at an earlier time, in understandable, since they were hesitant, that the manager might get back at them, or simply because of their respect for Ms. A. Kawada, as a Manager.

Violation – No. 8 Type F, Code of Discipline

- Sleeping during overnight work last August 17, 1997.

x x x x

FINDINGS:

Based on the records and reports submitted, there is no doubt that the concerned employee committed such an offense. The witnesses stated their testimonies only in accordance with what they have seen and witnessed during those stated periods.

Violation – No. 7 Type D, Code of Discipline

- Unauthorized Search, Bringing Out and taking of Company Records, March 18, 1998 and March 20, 1998.

x x x x

FINDINGS:

It is established that 15 approval slips were taken by the employee concerned, however, only 11 approval slips were surrendered or returned.

Violation – No. 1 Type F, Code of Discipline

- Purchases of Dented or Sub-standard items of Home Furnishing without approval from authorized Supervisor, February 3, 1998.

x x x x

FINDINGS:

Towards this accusation subject employee countered that she only asked Ms. Melanie Laag why she was not able to sign said approval slip but not for the purpose of letting her sign it. By this, it only means that indeed the said approval slip does not contain the necessary approval prior to the purchase. This could be related to the other charge against the subject employee on unauthorized search and bringing out of company records, for based on the circumstances there was such a search conducted to look for and retrieve approval slips of subject employee, as there are really approval slips of subject employee which does not bear the necessary approval. The search must have been probably made to cover up and/or suppress such evidence against her.

- Altering Approval slips dated January 17, 1998.

a) #1 original quantity – 7 pieces changed to 2 pieces – amount was altered from Php14.00 to Php10.00.

b) #2 erasures on the number of quantity whether 15, 5 or 7 pieces.

x x x x

FINDINGS:

Towards this accusation Ms. A. Kawada submitted no plausible explanation, indicating that said employee concerned might have really committed the acts complained of.

Violation of Company Rules on the proper procedure in selling of dented merchandise.

- Making Reservations of Dented Items – January to February 1998.

x x x x

FINDINGS:

There was no direct explanation submitted by Ms. A. Kawada on this. Thus, it becomes clear that Ms. Kawada had violated the company rule on No Reservation.

- Conduct unbecoming of a manager in cornering and/or bringing large quantity of damaged items (toys, furniture, RTW, appliances and Home Furnishing items), causing demoralization among the store crew and tainting management's image to its personnel.

x x x x

FINDINGS:

The report that were submitted by the witnesses proved that Ms. Kawada made those purchases of dented or sub-standard items that were under her assigned area, without regard for the rest of the employees who wanted to buy also, thus, using and taking advantage of her position, to the detriment of the other employees and painting a bad image of the company's managers.

- Abandonment of work or absence for five (5) consecutive days without prior notice from any authorized company officer or higher authority.

FINDINGS:

Despite notice for subject employee to report to work or else be considered as having abandoned her job, it appears that subject employee continuously failed to report for work without any explanation.

Violation – No. 2, Sec. A

Based on all the foregoing it seems clear and convincing, that you have indeed committed the violations imputed on you. The aforementioned violations per se deserves termination as a penalty, not to mention that they also constitute willful breach of the trust reposed on you as a manager. Thus, we have no other alternative but to terminate your service with the Company, effective September 1, 1998, on the grounds of violations of Company Rules, Abandonment of Work and loss of trust and confidence.

You are hereby directed to surrender all other documents and papers pertaining to your job, which you may have acquired and have come into your possession as a result of your employment with the company.

Please be guided. thank you.[31] (Emphasis supplied)

On March 9, 1999 the LA[32] dismissed the complaint for lack of merit.[33] Private respondent appealed the LA's decision to the National Labor Relations Commission (NLRC).

In its Decision[34] dated December 27, 2000, the NLRC ruled in favor of private respondent, reversing the LA, to wit:

WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE. Complainant is declared constructively dismissed by respondents. Respondents Uniwide Sales Warehouse Club and Vivian Apduhan are jointly and severally ordered to pay complainant the following sums:

Separation Pay:

November 1981 –July 3, 1998

P13,000.00 x 16.8 yrs. = P218,400.00

Backwages:

July 31, 1998-up to the present

Moral Damages

= P100,000.00

Exemplary Damages

P100,000.00

Attorney's fees computed at ten percent (10%) of the total award.

SO ORDERED. [35]

According to the NLRC, private respondent was subjected to inhuman and anti-social treatment oppressive to labor. Private respondent received successive memoranda from Apduhan accusing the former of different infractions, some of which offenses complainant was informed of only a year after the alleged commission. Further, Apduhan's ill will and motive to edge private respondent out of her employ was displayed by Apduhan's stubborn refusal to allow private respondent to continue her work on the flimsy excuse that the medical certificate did not bear her correct surname, while Apduhan knew for a fact that the same could not have referred to another person but to private respondent.[36]

Also, the NLRC observed that private respondent was not afforded due process by petitioners because the former was not given an opportunity to a fair hearing in that the investigation was conducted after private respondent had been constructively dismissed; and that there was no point for private respondent to still attend the investigation set on August 12, 1998 after her constructive dismissal on July 31, 1998 and after she had already filed her complaint.

Feeling aggrieved, petitioners appealed the NLRC Decision to the CA. In the assailed Decision[37] dated November 23, 2001, the CA affirmed in toto the NLRC Decision.

Hence, the present petition.[38]

The sole issue raised before the Court is:

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN SUSTAINING THE NLRC'S FINDING THAT PRIVATE RESPONDENT WAS CONSTRUCTIVELY DISMISSED.[39]

It is a well-settled rule that the jurisdiction of the Supreme Court in petitions for review on certiorari under Rule 45 of the Rules of Court is limited to reviewing errors of law, not of fact.[40] The Court is not a trier of facts. In the exercise of its power of review, the findings of fact of the CA are conclusive and binding and consequently, it is not the Court's function to analyze or weigh evidence all over again.[41]

The foregoing rule, however, is not absolute. The Court, in *Dusit Hotel Nikko v. National Union of Workers in Hotel, Restaurant and Allied Industries (NUWHRAIN)*,[42] held that the factual findings of the NLRC as affirmed by the CA, are accorded high respect and finality unless the factual findings and conclusions of the LA clash with those of the NLRC and the CA in which case the Court will have to review the records and the arguments of the parties to resolve the factual issues and render substantial justice to the parties.[43]

The present case is clouded by conflict of factual perceptions. Consequently, the Court is constrained to review the factual findings of the CA which contravene the findings of facts of the LA.

The Court's Ruling

The petition is meritorious. After a thorough examination of the conflicting positions of the parties, the Court finds the records bereft of evidence to substantiate the conclusions of the NLRC and the CA that private respondent was constructively dismissed from employment.

Case law defines constructive dismissal as a cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee.[44]

The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances.[45] It is an act amounting to dismissal but made to appear as if it were not. In fact, the employee who is constructively dismissed may be allowed to keep on coming to work. Constructive dismissal is therefore a dismissal in disguise. The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.[46]

In the present case, private respondent claims that from the months of February to June 1998, she had been subjected to constant harassment, ridicule and inhumane treatment by Aduhan, with the hope that the latter can get the private respondent to resign.[47] The harassment allegedly came in the form of successive memoranda which private respondent would receive almost every week, enumerating a litany of offenses and maligning her reputation and spreading rumors among the employees that private respondent shall be dismissed soon.[48] The last straw of the imputed harassment was the July 31, 1998 incident wherein private respondent's life was put in danger when she lost consciousness due to hypertension as a result of Aduhan's alleged hostility and shouting.[49]

The Court finds that private respondent's allegation of harassment is a specious statement which contains nothing but empty imputation of a fact that could hardly be given any evidentiary weight by this Court.[50] Private respondent's bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot

be given credence.[51]

The sending of several memoranda addressed to a managerial or supervisory employee concerning various violations of company rules and regulations, committed on different occasions, are not unusual. The alleged February to June 1998 series of memoranda given by petitioners to private respondent asking the latter to explain the alleged irregular acts should not be construed as a form of harassment but merely an exercise of management's prerogative to discipline its employees.

The right to impose disciplinary sanctions upon an employee for just and valid cause, as well as the authority to determine the existence of said cause in accordance with the norms of due process, pertains in the first place to the employer.[52] Precisely, petitioners gave private respondent successive memoranda so as to give the latter an opportunity to controvert the charges against her. Clearly, the memoranda are not forms of harassment, but petitioners' compliance with the requirements of due process.

The July 31, 1998 confrontation where Apduhan allegedly shouted at private respondent which caused the latter's hypertension to recur and eventually caused her to collapse cannot by itself support a finding of constructive dismissal by the NLRC and the CA. Even if true, the act of Apduhan in shouting at private respondent was an isolated outburst on the part of Apduhan that did not show a clear discrimination or insensibility that would render the working condition of private respondent unbearable.

Moreover, the finding of the NLRC that Apduhan knew for a fact that the certification presented by private respondent referred to the latter and not to another person is a mere conjecture. There is no evidence to sustain the same. This Court has consistently held that litigations cannot be properly resolved by suppositions, deductions, or even presumptions, with no basis in evidence, for the truth must have to be determined by the hard rules of admissibility and proof.[53]

Self-serving and unsubstantiated declarations are insufficient to establish a case before quasi-judicial bodies. Well-entrenched is the rule that the quantum of evidence required to establish a fact in quasi-judicial bodies is substantial evidence. Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might opine otherwise.[54]

On petitioners' claim of abandonment by private respondent, well-settled is the rule that to constitute abandonment of work, two elements must concur: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason, and (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act. The employer has the burden of proof to show the employee's deliberate and unjustified refusal to resume his employment without any intention of returning. Mere absence is not sufficient. There must be an unequivocal intent on the part of the employee to discontinue his employment.[55]

Private respondent's failure to report for work despite the August 8, 1998 letter sent by Apduhan to private respondent advising the latter to report for work is not sufficient to constitute abandonment. It is a settled rule that failure to report for work after a notice to return to work has been served does not necessarily constitute abandonment.[56]

Private respondent mistakenly believed that the successive memoranda sent to her from March 1998 to June 1998 constituted discrimination, insensibility or disdain which was tantamount to constructive dismissal. Thus, private respondent filed a case for constructive dismissal against petitioners and consequently stopped reporting for work.

In the case of *Lemery Savings & Loan Bank v. National Labor Relations Commission*,[57] the Court held:

It is true that the Constitution has placed a high regard for the welfare of the labor sector. However, social and

compassionate justice does not contemplate a situation whereby the management stands to suffer for certain misconceptions created in the mind of an employee. x x x

Nevertheless, the mistaken belief on the part of the employee should not lead to a drastic conclusion that he has chosen to abandon his work. x x x We cannot readily infer abandonment even if, sometime during the pendency of this case, he refused to heed the warning given him by petitioner Dimailig while believing that he was dismissed through no fault of his.[58] (Emphasis supplied)

The Court finds that petitioners were not able to establish that private respondent deliberately refused to continue her employment without justifiable reason. To repeat, the Court will not make a drastic conclusion that private respondent chose to abandon her work on the basis of her mistaken belief that she had been constructively dismissed by Uniwide.

Nonetheless, the Court agrees with the findings of the LA that the termination of private respondent was grounded on the existence of just cause under Article 282 (c) of the Labor Code[59] or willful breach by the employee of the trust reposed on him by his employer or a duly authorized representative.[60]

Private respondent occupies a managerial position. As a managerial employee, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal.[61]

In *Caoile v. National Labor Relations Commission*,[62] the Court distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the loss of trust and confidence is concerned. The Court held:

Thus, with respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient.[63] But, as regards a managerial employee, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of trust and confidence demanded by his position.[64] (Emphasis supplied).

In order to give private respondent an opportunity to explain the several violations of company rules she allegedly committed, private respondent was given several memoranda, to which she initially responded. Also, to give private respondent an opportunity to be heard, defend herself, confront the witnesses against her as well as to present her own evidence, Apduhan scheduled a hearing on August 12, 1998, notice of which was sent on August 2, 1998 and duly received by private respondent's husband on the same day.[65] This fact alone would have indicated to private respondent that there was no intention on the part of petitioners to effect her constructive dismissal. However, private respondent opted to file the complaint for illegal dismissal the next day; and not to attend the scheduled hearing on August 12, 1998. Thus, petitioners were justified to decide the case on the basis of the records at hand.[66]

The irregularities and offenses committed by private respondent, corroborated by the various pieces of evidence supporting such charges, i.e. records, reports and testimonies of Uniwide employees,[67] in the mind of the Court, constitute substantial evidence that private respondent is in fact responsible for the alleged charges.

To disprove the charges against her, private respondent presented a letter[68] dated July 29, 1998 from a former Uniwide employee, Luisa Astrologo (Astrologo), stating that the latter was urged by her manager, a certain Ralph Galang, to testify against private respondent for improper behavior concerning the "dented product for which

private respondent is abusing her power of reserving and picking the best product she can afford to dispatch.”[69] The letter, however, does not state that the charges Astrologo imputed to private respondent were false. The letter merely states that Astrologo “does not see anything wrong about the matter.”[70] Moreover, in her Memorandum,[71] filed with the Court, private respondent merely cited inconsistencies in the reports regarding the charges imputed to her without denying the said allegations.

It is true that private respondent had risen from the ranks, from being a saleslady in 1981 to a Full Assistant Store Manager in 1995. She worked for Uniwide for almost 17 years with a clean bill of record. However, these facts are not sufficient to overcome the findings of petitioners that the private respondent is guilty of the charges imputed to her.

Finally, the NLRC and the CA erred in finding that private respondent was denied due process. Private respondent claims that she lost the opportunity to be heard when she was constructively dismissed on July 31, 1998,[72] and that it was only after she filed a complaint for illegal dismissal with the NLRC on August 3, 1998 that petitioners notified the private respondent of the investigation which will be conducted on August 12, 1998 concerning her alleged offenses. The Memorandum dated August 2, 1998[73] completely demolishes such claims. It shows on its face that private respondent received the Memorandum on August 2, 1998, a day before she filed the complaint for illegal dismissal against petitioners; and that private respondent was notified that the hearing was scheduled on August 12, 1998 and explicitly warned her that her failure to appear thereat shall mean a waiver to be heard, and the case shall then be submitted for decision based on available papers and evidence.

In reality, private respondent, as found earlier was not terminated on July 31, 1998. There was no constructive dismissal. Again, the successive memoranda presented by private respondent and the alleged July 31, 1998 shouting incident are not sufficient to establish her claim of harassment.

However, as to the September 1, 1998 Memorandum where the private complainant was dismissed for loss of trust and confidence, the Court finds the notice of the scheduled August 12, 1998 hearing sufficient compliance with the due process requirement.

The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, a fair and reasonable opportunity to explain one’s side.[74] It is not the denial of the right to be heard but denial of the opportunity to be heard that constitutes violation of due process of law.[75] In the instant case, private respondent was again notified of the August 12, 1998 hearing through a letter[76] dated August 8, 1998 which was received by private respondent herself.[77] Clearly, private respondent was given an opportunity to be heard. However, private respondent chose not to attend the scheduled hearing because of her mistaken belief that she had already been constructively dismissed.

At this point, the Court agrees with and adopts the findings of the LA in his Decision:[78]

We cannot, with due respect, subscribe to complainant’s [herein private respondent] position for it simply lacks evidence and that all that there is to it is seemingly a general allegation. We examined the record and as we have done it we find no acts or incidents constituting complainant’s alleged “constructive dismissal”. On the contrary, what is generally existing thereat is that complainant was dismissed by the respondents [Uniwide and Apduhan] for an array of violations consisting of, but not limited to the following: allowing entry of unauthorized personnel inside a company restricted area; falsification of or inducing another employee to falsify personnel or company records; sleeping during overnight work; unauthorized search and bringing out of company records; unauthorized purchase of damaged items; alteration of approval slips for the purchase of damaged items; unduly reserving and buying of damaged items; and abandonment of work.

In fact, as it even appears the “constructive dismissal” allegedly committed on complainant looks simply an

excuse to avoid and/or evade the investigation and consequences of the violations imputed against her while employed and/or acting as respondent's assistant store manager. As shown on an earlier setting on the investigation of her case, she filed a sick leave, thus causing the hearing/investigation to be rescheduled. Again, upon rescheduling, complainant despite notice failed to appear or did not appear, this time coming up with the excuse that she had been already "constructively dismissed". This evasive attitude of her more than enough supports the impression that complainant could be guilty or is guilty of the charges against her and believes that she might not be able to defend herself. This is even bolstered by the information that complainant called on several of the witnesses against her, simply to influence them and their testimonies. x x x Thus, viewed the foregoing finding, we opined that complainant could not have been "constructively dismissed." [79] (Emphasis supplied)

It should be remembered that the Philippine Constitution, while inexorably committed towards the protection of the working class from exploitation and unfair treatment, nevertheless mandates the policy of social justice so as to strike a balance between an avowed predilection for labor, on the one hand, and the maintenance of legal rights of capital, the proverbial hen that lays the golden egg, on the other. Indeed, we should not be unmindful of the legal norm that justice is in every case for the deserving, to be dispensed with in light of established facts, the applicable law, and existing jurisprudence. [80]

WHEREFORE, the instant petition is GRANTED. The Decision dated November 23, 2001 and Resolution dated July 23, 2002 of the Court of Appeals in CA-G.R. SP No. 64581 together with the Decision dated December 27, 2000 of the National Labor Relations Commission are REVERSED and SET ASIDE. The complaint of private respondent Amalia P. Kawada is DISMISSED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Penned by Justice Eugenio S. Labitoria and concurred in by Justices Teodoro P. Regino and Rebecca De Guia-Salvador; rollo, pp. 39-46.

[2] Id. at 48.

[3] Rollo, p. 15.

[4] Id. at 16.

[5] Id. at 59-60.

[6] Id. at 61-64.

[7] Id. at 65-71.

[8] Rollo.

[9] Id. at 72.

[10] Id.

[11] Id. at 74-77.

[12] Id. at 40.

[13] Id.

- [14] Id. at 106
- [15] Id. at 41.
- [16] Id.
- [17] Rollo.
- [18] Id.
- [19] Id. at 446.
- [20] Id. at 107.
- [21] Id. at 449.
- [22] Id.
- [23] Id. at 109-110.
- [24] Id.
- [25] Id. at 111.
- [26] Rollo.
- [27] Id. at 42.
- [28] Id. at 112-113.
- [29] Id. at 78.
- [30] Id. at 80.
- [31] Rollo, pp. 80-87.
- [32] Labor Arbiter Donato G. Quinto, Jr.
- [33] Rollo, pp. 143-179.
- [34] Id. at 491-504.
- [35] Rollo, p. 503.
- [36] Id. at 221-232.
- [37] Rollo, pp. 39-46.
- [38] Id. at 12
- [39] Id. at 20.
- [40] *Lorenzo v. People*, G.R. No. 152335, December 19, 2005, 478 SCRA 462, 469; *Ilao-Quianay v. Mapile*, G.R. No. 154087, October 25, 2005, 474 SCRA 246, 253.
- [41] *Go v. Court of Appeals*, G.R. No. 158922, May 28, 2004, 430 SCRA 358, 364, citing *Gabriel v. Spouses Mabanta*, 447 Phil. 717, 725 (2003).
- [42] *Dusit Hotel Nikko v. National Union of Workers in Hotel, Restaurant and Allied Industries (NUWHRAIN)-Dusit Hotel Nikko Chapter*, G.R. No. 160391, August 9, 2005, 466 SCRA 374.

[43] Id. at 387-388.

[44] Chiang Kai Shek College v. Court of Appeals, G.R. No. 152988, August 24, 2004, 437 SCRA 171, 177; Globe Telecom, Inc. v. Florendo-Flores, 438 Phil. 757, 766 (2002); Blue Dairy Corporation v. National Labor Relations Commission, 373 Phil. 179, 186 (1999).

[45] Aguilar v. Burger Machine Holdings Corporation, G.R. No. 172062, October 30, 2006, 506 SCRA 266, 273.

[46] Id.

[47] Rollo, p. 672.

[48] Id.

[49] Id. at 675.

[50] Portuguese v. GSIS Family Bank (Comsavings Bank), G.R. No. 169570, March 2, 2007, 517 SCRA 309, 323.

[51] Go v. Court of Appeals, supra note 41, at 366.

[52] Foster Parents Plan International/Bicol v. Demetriou, G.R. No. L-74077, July 7, 1986, 142 SCRA 505, 509.

[53] Lagon v. Hooven Comalco Industries, Inc., 402 Phil. 404, 421-422 (2001).

[54] Portuguese v. GSIS Family Bank (Comsavings Bank, supra note 50, at 323, citing Vertudes v. Buenaflor, G.R. No. 153166, December 16, 2005, 478 SCRA 210, 230.

[55] Northwest Tourism Corp. v. Court of Appeals, Former Special Third Division, G.R. No. 150591, June 27, 2005, 461 SCRA 298, 309-310.

[56] Philippine Industrial Security Agency Corporation v. Dapiton, 377 Phil. 951, 960 (1999).

[57] G.R. No. 96439, January 27, 1992, 205 SCRA 492.

[58] Id. at 499.

[59] Article 282 of the Labor Code provides:

“Art. 292. Termination by employer. – An employer may terminate an employment for any of the following causes:

x x x x

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative. x x x”

[60] Rollo, p. 172.

[61] Caoile v. National Labor Relations Commission, 359 Phil. 399, 405 (1998).

[62] Id.

[63] Id. at 406, citing Manila Midtown Commercial Corporation v. Nuwhrain (Ramada Chapter), G.R. No. L-57268, March 25, 1988, 159 SCRA 212.

[64] Id. at 406, citing Sajonas v. National Labor Relations Commission, G.R. No. 49286, March 15, 1990, 183 SCRA 182; Reyes v. Minister of Labor, G.R. No. 48705, February 9, 1989, 170 SCRA 134.

[65] Rollo, p. 79.

[66] Id. at 80.

[67] Id. at 329-356.

[68] Rollo, p. 505.

[69] Id.

[70] Id.

[71] Id. at 670.

[72] Id. at 697.

[73] Id. at 111.

[74] *Eastern Overseas Employment Center, Inc. v. Bea*, G.R. No. 143023, November 29, 2005, 476 SCRA 384, 392, citing *NFD International Manning Agents v. National Labor Relations Commission*, 348 Phil. 264 (1998).

[75] Id.

[76] Rollo, p. 78.

[77] Id.

[78] Id. at 143-179.

[79] Rollo, pp. 150-151.

[80] *Portuguez v. GSIS Family Bank (Comsavings Bank)* supra note 50, at 326-327, citing *Cebu Metal Corporation v. Salilling*, G.R. No. 154463, September 5, 2006, 501 SCRA 61.

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