

PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, PETITIONER, VS. MARIA NYMPHA MANDAGAN, RESPONDENT.

G.R. No. 160965. July 21, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

For resolution is a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure seeking the review and the reversal of the Decision[2] dated May 29, 2002 and the Resolution[3] dated November 10, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 63166.

Petitioner Philippine National Construction Corporation (PNCC) hired respondent Maria Nympha Mandagan on December 16, 1995, as Legal Assistant, with the rank of Assistant Manager, on probationary status while she was waiting for the results of the Bar examinations. Respondent was assigned to the corporate legal division where she performed research work, drafted legal opinions, served as a member of a management collective bargaining agreement (CBA) negotiating panel, and handled litigation, mostly labor cases. On June 16, 1996, after successfully hurdling the Bar examinations, respondent was issued a regular appointment by petitioner.

On June 2, 1998, petitioner issued a memorandum[4] to respondent requiring her to show cause in writing why no disciplinary action should be taken against her for committing acts violative of the PNCC Code of Employee Discipline, to wit:

- Engaging in private law practice which is in violation of Section 6(a), Section 6(b)(26) and Section 11 of the PNCC Code of Employee Discipline;
- Using the company's official address as your address for your private case which is not only in violation of Section 8(A)(1) of the PNCC Code on Employee Discipline but is prejudicial to the best interests of the PNCC; and
- Representing a client who has a pending case against PNCC which is not only prejudicial to the interests of the company but is in violation of the ethics of your profession.[5]

This memorandum was served on respondent on the eve of June 3, 1998 at her residence.

On June 4, 1998, in reply, respondent wrote a strongly worded memorandum[6] stating that she took offense at the manner of service of the office memorandum. According to her, the June 2, 1998 memorandum was merely a scheme intended to terminate her from employment. She said it was sparked by the incident on March 30, 1998 in which she was seen with then PNCC Corporate Comptroller Renato R. Ramirez, who was able to enter the PNCC compound despite being unauthorized to do so, he having filed a constructive dismissal case against petitioner.

On June 9, 1998, respondent submitted another memorandum[7] denying the charges against her, claiming that the case she handled was only an accommodation, accepted by her upon the request and authority of then PNCC President Melvin Nazareno and Mr. Ramirez, and that she was on leave at every scheduled hearing of the said case. She explained that she had the distinct impression that the lawyers of the PNCC Legal Division can take on

accommodation cases. She cited as an example Atty. Glenna Jean Ogan who, appearing as counsel for PNCC employee Fabian Codera, was even provided with a service vehicle and considered on official time during hearings. She further explained that when a petition for the annulment of judgment was filed with the regional trial court (RTC) assailing the final and executory decision in the ejectment case in favor of Mr. Ramirez, she desisted from representing the latter. She said that she signed, as counsel of record, the petition for certiorari filed before the CA only for the purpose of terminating it. She also claimed that there was no conflict of interest between Ramirez's labor and ejectment cases since the former was still pending resolution.

Petitioner, thereafter, conducted a clarificatory hearing.

Later, petitioner, thru then PNCC President and Chief Executive Officer Rogelio L. Luis, sent respondent a letter[8] dated June 15, 1998 notifying her that her explanation in both memoranda and her statements during the clarificatory conference were inconsistent, unacceptable, and, by themselves, admission of the truth of the charges against her. As a consequence, her employment would be terminated effective at the close of office hours on June 19, 1998 for violations of the PNCC Code of Employee Discipline and for loss of trust and confidence.

On October 28, 1998, respondent initiated a complaint[9] for illegal dismissal against petitioner and four (4) of its corporate officers.

In a Decision[10] dated July 15, 1999, Labor Arbiter (LA) Edgardo M. Madriaga dismissed the complaint for being unmeritorious, stating that petitioner was justified in dismissing respondent for loss of trust and confidence for handling the constructive dismissal case of Mr. Ramirez against PNCC, in a conflict of interest with her employer. Petitioner was, however, directed to pay respondent separation pay in accordance with law.

Aggrieved, respondent appealed the said Decision to the National Labor Relations Commission (NLRC). In the Resolution[11] promulgated July 31, 2000, the NLRC Second Division denied the appeal for lack of merit. While affirming in toto the Decision of LA Madriaga, the NLRC, however, declared that the allegation of conflict of interest was baseless as respondent was able to refute the same by documentary evidence that the labor case of Mr. Ramirez against petitioner was represented by another counsel. The dismissal of respondent was upheld on the ground that she failed to adduce documentary evidence to show that her appearance in the ejectment case of Mr. Ramirez was with the authority and approval of then PNCC President Nazareno and Mr. Ramirez. By reason thereof, the NLRC gave more credence to the theory of petitioner that she violated the PNCC Code of Employee Discipline on moonlighting and using company property for personal purposes. Respondent's motion for reconsideration was, likewise, denied in a Resolution[12] dated November 8, 2000.

Respondent thus went to the CA via a special civil action for certiorari under Rule 65 of the Rules of Court. This time, the tide turned in her favor. In its Decision[13] dated May 29, 2002, the CA annulled the Decision and Resolutions of the LA and the NLRC, respectively, for lack of sufficient proof that respondent did engage in the private practice of law since there was only a single case involved which had the corresponding authorization from her superiors. Finding the dismissal of respondent illegal, the CA ordered petitioner to pay respondent separation pay, in lieu of reinstatement, in view of their already strained relations, and full backwages from date of dismissal until the finality of its Decision.

Petitioner moved for the reconsideration of the CA Decision insisting inter alia that respondent's handling of even only a single non-PNCC case already constituted a violation of the PNCC Code of Employee Discipline, since moonlighting is strictly prohibited under existing company rules and regulations.

The CA, in its assailed Resolution dated November 10, 2003, denied petitioner's motion for lack of merit, citing *Office of the Court Administrator v. Atty. Misael M. Ladaga*[14] which held that an isolated appearance did not

constitute private practice of law, especially when done with the permission of superiors.

Hence, this petition assigning the following errors:

I

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT HEREIN RESPONDENT DID NOT VIOLATE ANY COMPANY POLICY OR REGULATION WHEN SHE HANDLED A PRIVATE CASE AND USED COMPANY TIME AND FACILITIES FOR SUCH UNAUTHORIZED OUTSIDE ENGAGEMENT.

II

THE COURT OF APPEALS GRAVELY ERRED WHEN IT FOUND NO VALID CAUSE TO TERMINATE THE EMPLOYMENT OF HEREIN RESPONDENT, A MANAGERIAL EMPLOYEE, FOR VIOLATION OF COMPANY RULES, BREACH OF TRUST, AND/OR LOSS OF CONFIDENCE.

III

THE COURT OF APPEALS GRAVELY ERRED WHEN IT ANNULLED THE RESOLUTIONS OF THE NLRC AND GRANTED HEREIN RESPONDENT'S PETITION FINDING THE NLRC TO HAVE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.[15]

In a nutshell, petitioner contends that the CA erred in holding that respondent's dismissal was illegal when it ruled that respondent did not violate the PNCC Code of Employee Discipline on moonlighting and personal use of company time and property despite undisputed and overwhelming evidence to the contrary. It posits that respondent readily admitted rendering services outside PNCC in her pleadings and her taking advantage of office time and property was shown by using the address of PNCC for her personal cases and utilizing her leave credits to attend hearings. It further claims that the CA gravely erred in reversing the findings of both the LA and the NLRC despite existing jurisprudence to the effect that their findings are entitled to great weight and respect, nay conclusiveness, when buttressed by substantial evidence. This is in addition to the fact that the case cited by the CA is not on all fours with the present case. It also asserts that respondent's fault-finding cannot exculpate her from her misdeeds. In view of these, petitioner insists that, as employer who is given a wide latitude in determining who among its managerial employees are entitled to its trust and confidence, and also taking into consideration its findings of her alleged frequent tardiness and absences, her not being able to "get along well with her co-employees," and her misrepresentations in the resume she submitted to Malacañang to get a favorable endorsement for promotion, it is only justified in dismissing respondent from employment.

The petition is without merit.

In petitions for review before this Court, as a general rule, only questions of law are allowed. An exception to this is when the findings of the administrative agencies below and the appellate court differ, as in the case at bar.[16] Thus, an independent evaluation of the facts of this case is called for, especially considering that, while the LA and the NLRC both found respondent's dismissal valid and legal, the bases for their findings are also different.[17] Hence, the claim of petitioner that these findings are conclusive upon us is incorrect.

Petitioner dismissed respondent from employment because she was found guilty of the charges against her. It found respondent to have engaged in private law practice in violation of Sections 6(a)(b)(26) and 11 of the PNCC Code of Employee Discipline.[18] It also found her to have used the company's official address for her private case in violation of Section 8(A)(1) of the same Code, which is also prejudicial to its best interests. Finally, it found her to have represented a client who had a pending case against PNCC. The pertinent sections of the Code

are quoted hereunder:

SECTION 6. Conduct and Behavior

- An employee's conduct in the performance of his duties should be beyond reproach and free from the appearance of impropriety.

x x x

- x x x

26) Moonlighting or rendering services for another employer without the knowledge or approval of Management.

SECTION 8. Company Property. -

- The following acts shall constitute violation of this section:

1) Using Company property, equipment or materials for personal use or purpose.

SECTION 11. Conflict of Interest. -

- The following act shall constitute violation of this section:

1) Engaging, participating or involving oneself, directly or indirectly, in any transaction, undertaking, or business enterprise, where such engagement, participation, or involvement is in conflict with, or is improper or undesirable in the interest of the Company.[19]

The imposable penalties for the said offenses within a 12-month period are as follows: a) for moonlighting - a 5-day suspension for the first offense, a 15-day suspension for the second offense, and dismissal on the third offense; b) for the use of company property for personal purposes - suspension to dismissal, depending on the gravity of the offense; and c) for committing acts constituting conflict of interest - reprimand to dismissal depending on the gravity of the offense.

According to petitioner, respondent failed to substantiate her claim that her appearance in the ejectment case of Mr. Ramirez was upon his and former PNCC President Nazareno's authority and directive, since she did not present any documentary evidence to prove the same. To support its position that respondent was without the proper authority, it presented a handwritten note from Atty. Hoover Ablang, former Head of the Legal Division of PNCC, stating that her appearance was without his prior authority and clearance.

We must stress, however, that in termination cases, the burden of proof rests upon the employer to show that the dismissal of the employee is for just or authorized cause. Failure to do so would mean that the dismissal is not justified. This is consonant with the guarantee of security of tenure in the Constitution[20] and reiterated in the Labor Code.[21] A dismissed employee is not required to prove his innocence of the charges leveled against him by his employer. Likewise, the determination of the existence and sufficiency of a just cause is to be exercised with fairness and in good faith and after observing due process.

Thus, we agree with the CA that petitioner failed to show by clear and convincing evidence that respondent was indeed guilty of moonlighting as defined under the PNCC Code of Employee Discipline, i.e., rendering services for another employer without the knowledge OR approval of management. In the manner in which the rule is phrased, since the words "knowledge" and "approval" are separated by the disjunctive OR, it is evident that even knowledge alone by the management of PNCC of the alleged moonlighting is tantamount to an implied approval and is sufficient to exonerate respondent from liability.

Therefore, it cannot be said that her appearance in the ejectment case of PNCC Corporate Comptroller Ramirez

was without the knowledge of management considering that the former PNCC top officers were the ones who asked her to do so. Moreover, when she filed her application for leave of absence during one of her hearings, she specifically stated in the leave form that her absence was due to the filing of the ejectment complaint for Mr. Ramirez, and this application was approved by petitioner.

We also find the handwritten note of the former head of the Legal Division, Atty. Hoover Ablang, presented by petitioner to refute respondent's allegation of approval from the top management of PNCC, to be of questionable probative value in light of respondent's revelation that Atty. Ablang himself appeared as counsel before the Metropolitan Trial Court of Manila, Branch 3, in the criminal case for violation of Batas Pambansa Blg. 22[22] filed against the wife of Jose Z. Gregorio, employee of PNCC. From the proceedings before the LA to its pleadings before this Court, the petitioner has consistently kept silent about the matter.

It may also be mentioned that respondent proffered documentary evidence in the form of an exchange of correspondence showing that another member of the Legal Division, Atty. Glenna Jean Ogan, was hired by the very same Mr. Ramirez to handle his annulment case for a fee.[23] Again, this Court notes that petitioner tried to dodge this allegation by simply claiming that respondent's "name-dragging" will not exculpate her from her misdeeds.

The CA, thus, did not err in citing *Office of the Court Administrator v. Atty. Misael M. Ladaga*[24] because the June 2, 1998 Memorandum enumerated among the violations committed by respondent the "private practice of law." In the cited case, we held that "private practice of law" does not refer to an isolated court appearance but contemplates a succession of acts of the same nature habitually or customarily holding one's self to the public as a lawyer.

As to the charge that respondent made personal use of company property, the only evidence submitted by petitioner were copies of the complaint filed before the MTC, Parañaque City and copies of the pleadings and resolutions in the CA case, showing that her mailing address corresponded to the company's address. As respondent pointed out, there was no proof from petitioner as to her use of any other properties belonging to the company. It is safe to assume that respondent received personal mail using the address of petitioner because, since it pertained to the same ejectment suit which the former top PNCC officers authorized her to litigate, the handling of the said case would be more convenient. As there is no express prohibition under the PNCC Code of Employee Discipline as to the use of the company's address to receive personal mail, and, more importantly, there is no clear and convincing proof presented by petitioner as to the prejudice it suffered from such respondent's act, the charge of violation of the PNCC Code of Employee Discipline, Sec. 8(A)(1) should fall.

With respect to petitioner's claim that respondent's appearance in the same ejectment case was in conflict with the interests of the company, the NLRC correctly found that she was able to refute the allegation by submitting evidence that the constructive dismissal case of Mr. Ramirez was handled by Saguisag & Associates.[25] The petitioner's assertion is, thus, belied by the record.

We likewise disagree with petitioner's position that, in addition to the ascribed violations of the PNCC Code of Employee Discipline, it was justified in terminating respondent from employment because of her alleged frequent tardiness and absences, her inability to get along with some of her co-workers, and her misrepresentations in the resume she submitted to Malacañang. The respondent properly concluded that the claim of frequent absences and tardiness due to attendance to her private cases, and her inability to get along well with some co-workers were not amply substantiated, as they were, in fact, rebutted by her performance rating for the period July 1996 to April 1997 indicating that she was "[p]roficient in the duties of her position." [26] Anent her alleged misrepresentations in her resume submitted to Malacañang to gain a favorable endorsement for promotion, we note that this was

raised by petitioner for the first time in the proceedings before the LA, the same not being included in the charges enumerated in the June 2, 1998 Memorandum. In other words, these causes were merely an afterthought, resorted to by petitioner in a futile attempt to justify its decision to terminate respondent's employment on the ground of loss of trust and confidence.

Long recognized is the right of employers to dismiss employees by reason of loss of trust and confidence, particularly in cases of personnel occupying positions of responsibility. The burden of proof required in labor cases, however, must be amply discharged. Ordinarily, with respect to managerial employees, the mere existence of a basis for believing that such employee has breached the trust of his employer would be enough, such as when there is a 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.[27]

Be that as it may, we must stress herein that to be a valid ground for dismissal, the loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Loss of trust and confidence must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion, otherwise, the employee would forever remain at the mercy of the employer. The employer, thus, carries the burden of clearly and convincingly establishing the facts upon which loss of confidence in the employee is made to rest. [28]

Loss of trust and confidence as a ground of dismissal has never been intended to afford an occasion for abuse because of its subjective nature. It should not be used as a subterfuge for causes which are illegal, improper, and unjustified. It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith. Let it not be forgotten that what is at stake is the means of livelihood, the name, and the reputation of the employee. To countenance an arbitrary exercise of that prerogative is to negate the employee's constitutional right to security of tenure.[29]

However, it should be remembered that petitioner is a government-owned and controlled corporation. The handling by the lawyers in its employ of cases of its employees, whether for a fee or not, and despite the "knowledge and approval" of management, while not absolutely prohibited is, nonetheless, discouraged, as it could only breed corruption and cause distraction from the very duties that the lawyers were precisely hired for. The fact that a number of lawyers in petitioner's employ have handled private cases, obviously with the tolerance of petitioner, does not validate the practice or make it an acceptable rule of conduct. A wrong done by many does not make a right.

In light of the foregoing, we find that respondent, although not entirely faultless, was indeed illegally dismissed from employment by petitioner. Consequently, she is entitled to reinstatement without loss of seniority rights and other privileges, and to full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time of the withholding of the employee's compensation up to the time of actual reinstatement. If reinstatement is not possible due to the strained relations between the employer and the employee, separation pay should instead be paid the employee equivalent to one month salary for every year of service, computed from the time of engagement up to the finality of this decision.

WHEREFORE, the Decision dated May 29, 2002 and the Resolution dated November 10, 2003 of the Court of Appeals in CA-G.R. SP No. 63166 are **AFFIRMED** .

SO ORDERED.

Quisumbing, Ynares-Santiago, Austria-Martinez, and Tinga, JJ., concur.

[*]In lieu of Associate Justice Minita V. Chico-Nazario, per Special Order No. 508, dated June 25, 2008.

[**] In lieu of Associate Justice Ruben T. Reyes, per Raffle dated June 25, 2008.

[1] Rollo, pp. 39-70.

[2] Penned by Associate Justice Ruben T. Reyes (now Associate Justice of the Supreme Court), with Associate Justices Renato C. Dacudao and Amelita G. Tolentino, concurring. *id.* at 73-81.

[3] *Id.* at 83-84.

[4] Records, p. 34.

[5] *Id.*

[6] *Id.* at 38-39.

[7] *Id.* at 42.

[8] *Id.* at 33.

[9] *Id.* at 1-2.

[10] Rollo, pp. 97-105.

[11] *Id.* at 87-95.

[12] *Id.* at 27.

[13] *Id.* at 73-81..

[14] 403 Phil. 228 (2001).

[15] Rollo, pp. 49-50.

[16] Eastern Telecommunications Phils., Inc. v. Diamse, G.R. No. 169299, June 16, 2006, 491 SCRA 239, 243-244.

[17] Skippers United Pacific, Inc. v. Maguad, G.R. No. 166363, August 15, 2006, 498 SCRA 639, 657.

[18] Per the June 2, 1998 Memorandum, *supra* note 4.

[19] Records, pp. 46-48.

[20] Philippine Constitution, Art. 13, Sec. 3.

[21] Labor Code (as amended), Art. 227(b).

[22] Bouncing Checks Law.

[23] Rollo, pp. 160 and 161.

[24] *Supra* note 14.

[25] Annexes "B" and "C" to respondent's Appeal Memorandum before the NLRC; Records, pp. 177-197 and

198-200, respectively.

[26] Rollo, pp. 162-163.

[27] Etcuban, Jr. v. Sulpicio Lines, Inc., G.R. No. 148410, January 17, 2005, 448 SCRA 516, 529-530.

[28] AMA Computer College, Inc. v. Garay, G.R. No. 162468, January 23, 2007, 512 SCRA 312, 316-317.

[29] Philippine National Construction Corporation v. Matias, G.R. No. 156283, May 6, 2005, 458 SCRA 148, 163.

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