

LOIDA V. MALABAGO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND PACIFICA AGRIVET SUPPLIES, INC., RESPONDENTS.

G.R. NO. 165465. September 13, 2006

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for review of the decision of the Court of Appeals in CA-G.R. SP No. 79225 which modified the decision of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000580-2000. The NLRC affirmed the decision of the Labor Arbiter dismissing the complaint for illegal dismissal filed by petitioner Loida V. Malabago against private respondent Pacifica Agrivet Supplies, Inc. On certiorari before the Court of Appeals, the appellate court affirmed the dismissal of the complaint but ordered private respondent to grant separation pay to petitioner as financial assistance.

The facts are as follows:

Petitioner was the OIC-Store Supervisor at private respondent's Torres Branch in Tacloban City. On September 29, 1999, petitioner took out twenty (20) heads day-old chicks, one-half (½) bag of Chick Booster Mash (CBM)-Vitarich and one (1) 113-gram bottle of Vetracin. She intended to use the chicks for the first birthday celebration of her child. Petitioner instructed the branch clerk, Rex Regaton, not to issue a charge invoice for the items as she promised to pay the cost on October 15, 1999.

On October 7, 1999, Jennifer Doit replaced Regaton as branch clerk. Petitioner immediately informed Doit of her procurement. She, however, failed to pay for the items on October 15, 1999. Instead, she got one (1) bag of Boiler Finisher Crumble (BFC)-General and told Doit to charge the same to her account.

Petitioner made a partial payment on November 15, 1999. She paid only for the CBM-Vitarich and Vetracin, and told Doit that she would settle the balance on December 8, 1999, upon the release of their 13th month pay.

On November 19, 1999, petitioner again took one (1) bag of BFC-Vitarich. She instructed the store utility man to inform Doit about the matter as the latter was off duty at the time.

On November 20, 1999, Doit and utility man Allan Baldeza made a written report[1] to Ms. Nimfa Buenafe, Area Manager, Leyte, regarding petitioner's act of taking out stocks without issuing cash slips or sales invoices. They also reported that petitioner paid only a fraction of her debt at a later date using the cost price and not the selling price, and that petitioner overpriced the items sold to customers to offset the items taken out without cash slips or sales invoices.

Acting on the report, the Area Manager issued a memorandum dated November 23, 1999 directing petitioner to explain why she did not make the proper documentation for the items that she took from the store's stock. The memorandum also stated that releasing stocks without any cash slip or charge invoice is a Type D offense under the company policy, punishable with dismissal.[2]

Petitioner submitted her explanation on the same date. She admitted the allegations in Doit's and Baldeza's report. She however argued that only releasing stocks to customers without charge slip or sales invoice is considered as Type D offense under their company policy. The act is not punishable if the items are released to the company's employees like herself. She also highlighted the fact that she always informed her co-workers every time that she took out items from the store to show her good faith.[3]

On November 24, 1999, the Area Manager issued a memorandum[4] suspending petitioner for fifteen (15) days pending the investigation of her case, thus:

TO : LOIDA MALABAGO

FROM : AREA MANAGER / OFFICE OF THE AVP

SUBJECT : SUSPENSION

It was noted that you have done a very grievous offense by releasing stocks without proper documentation. I think you are fully aware that disciplinary action of this offense is DISMISSAL.

You are hereby suspended for fifteen (15) days effective today, November 24, 1999 to December 8, 1999 without pay.

Further evaluation of this case shall be done during your suspension period.

Please report directly to the undersigned, your Area Manager, after expiration of your suspension period which will be on December 9, 1999 for further review and discussion.

(sgd) MA. NIMFA BUENAFE Noted by
AREA MANAGER (sgd) ISABEL R. BUNAC
Eastern Visayas - Leyte Asst. Vice-President

On November 29, 1999, petitioner received another memorandum from the Area Manager advising her to report to the Cebu Main Office on December 3, 1999 in connection with the ongoing investigation of her case.[5]

Petitioner appeared before a panel of investigators at the company's main office on December 3, 1999. The investigators apprised petitioner of the charges against her and asked her to explain her side. Petitioner reiterated her position in her letter dated November 23, 1999.[6]

On December 7, 1999, Assistant Vice President Isabel Bunac issued a memorandum[7] informing petitioner that private respondent has approved the recommendation of the investigating committee for her dismissal due to the following offenses:

- Releasing of stocks without proper documentation;
- Paying a portion of the stocks taken after attention was called using the cost price only and not the company's selling price;
- Overpricing of some items to offset the items not being issued with cash slip or sales invoice.

Accordingly, petitioner's employment was immediately terminated.

Petitioner filed a complaint for illegal dismissal against private respondent on December 13, 1999.[8] She also included in the complaint claims for overtime pay, separation pay, service incentive leave pay, vacation/sick leaves, moral and exemplary damages, and attorney's fees. Petitioner alleged that she was deprived of due process before her dismissal. She also argued that her act of taking out stocks from the store without cash slip or sales

invoice may not be considered as just cause for termination of employment under the Labor Code as she had no intention to defraud or cause damage to the company and that she acted in utmost good faith.[9]

The Labor Arbiter, in a decision dated March 30, 2000, dismissed the complaint for lack of merit.[10]

Petitioner appealed to the NLRC. The Commission, however, dismissed the appeal and affirmed the decision of the Labor Arbiter.[11]It likewise denied petitioner's motion for reconsideration.[12]

Petitioner filed a petition for certiorari before the Court of Appeals, again raising the same arguments.

The Court of Appeals upheld the validity of petitioner's dismissal on the ground of violation of a company policy, which violation is punishable by dismissal under the employees' manual. It, however, found appropriate the award of separation pay to petitioner as financial assistance.[13]

Petitioner filed a petition for review before this Court on the following grounds:

- The Honorable Court of Appeals erred in ruling that there exists a valid ground to terminate petitioner's employment;
- The Honorable Court of Appeals erred in ruling that private respondent has observed procedural due process; and
- The Honorable Court of Appeals erred in not awarding overtime fee to the petitioner in addition to the other monetary awards as a consequence of the illegal dismissal. [14]

Private respondent, meanwhile, filed a motion for reconsideration of the decision of the Court of Appeals. It sought to set aside the award of separation pay to petitioner.[15]

The Court of Appeals did not rule on the motion for reconsideration in view of this Court's resolution giving due course to the petition at bar. It instead elevated the records of the case to this Court.[16]

Hence, the issues that need to be resolved in this case are:

- Whether petitioner's dismissal was valid;
- Whether petitioner is entitled to overtime pay; and
- Whether the award of separation pay to petitioner is proper.

We affirm the decision of the Court of Appeals.

First, we find that petitioner's dismissal was valid. Two requisites must concur for the valid termination of an employee's services: (a) the dismissal must be for any of the causes provided for in Article 282 of the Labor Code; and (b) the employee must be afforded an opportunity to be heard and defend himself.[17]

In the case at bar, petitioner was dismissed for having been found guilty of taking out items from the store without proper documentation. Petitioner admitted this during the investigation conducted by the company, although she tried to find excuses for her deed. Petitioner knew very well that releasing of items from the store's stock without the corresponding documents is classified as Type D offense and is punishable by dismissal for the first offense under the company's Manual of Policies.

We have held that it is the employer's prerogative to prescribe reasonable rules and regulations necessary or proper for the conduct of its business or concern, to provide certain disciplinary measures to implement said rules and to assure that the same be complied with. At the same time, it is the duty of the employee to obey all reasonable rules, orders, and instructions of the employer, and willful or intentional disobedience thereto, as a

general rule, justifies rescission of the contract of service and the peremptory dismissal of the employee.[18] Private respondent requires its store personnel to issue corresponding cash slips or invoices for every item that is brought out of the store to allow it to monitor its inventory and to protect the company from theft or unauthorized releases of its merchandise. The employees' manual did not qualify whether the goods are released to customers or to its employees. As Store Supervisor, petitioner had the heavier burden to be faithful to company rules and policies not only to protect the company's business but also to set a good example to her subordinates. Under Article 282 of the Labor Code, willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work is a ground for terminating an employment.[19] Petitioner's violation of the company's regulations regarding the release of its stock constitutes a valid ground for terminating her services.

Petitioner's averment that she was deprived of due process before her dismissal is likewise unfounded. Records show that on November 23, 1999, the Area Manager issued a memorandum to petitioner informing her of the report against her and directing her to explain why she did not make the proper documentation for the items that she took from the store's stock. The memorandum also informed petitioner of the nature of the offense and the imposable penalty thereon. Petitioner submitted her explanation on the same date. On November 24, 1999, the Area Manager issued another memorandum suspending petitioner for fifteen (15) days pending the investigation of her case. On November 29, 1999, petitioner was advised to appear at the Cebu Main Office for a formal investigation. A formal investigation took place on December 3, 1999 at the company's main office where petitioner was allowed to explain her side before a panel of investigators. On December 7, 1999, Assistant Vice President Isabel Bunac issued a memorandum terminating the employment of petitioner and stating the grounds therefor.

The essence of due process in administrative proceedings is an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of. Before an employee can be dismissed, the Labor Code requires the employer to furnish the employee a written notice containing a statement of the causes for termination and to afford said employee ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires. If, after investigation, the employer decides to terminate the services of the employee, the employer must notify the worker in writing of the decision to dismiss him, stating clearly the reasons therefor.[20] Private respondent has complied with all the procedural requirements for dismissal of an employee.

As regards petitioner's claim for overtime pay, we find nothing in the records to support her demand except her self-serving allegation that she had rendered service beyond eight (8) hours. She did not present any official record of the time that she had rendered work to the company. In the absence of sufficient evidence, we cannot sustain petitioner's claim.

Finally, with respect to the award of separation pay, we sustain the ruling of the Court of Appeals. Under the Labor Code, an employee dismissed for any of the just causes enumerated in Article 282 of the Labor Code is not entitled to separation pay. Exceptionally however, separation pay, in the form of financial assistance, is granted as a measure of social justice even when the employee is validly dismissed for cause as long as it is not for serious misconduct or those other causes that reflect on his moral character.[21]

In the case at bar, we agree with the findings of the Court of Appeals that the cause for petitioner's dismissal did not reflect on her moral character. The appellate court said:

In the instant case, the cause of petitioner's dismissal was the violation of company policy on releasing stocks without any cash slip or charge slip. While petitioner was found to have violated the said offense, the same however, does not reflect on her moral character. The Court accords due consideration to petitioner's honesty

in informing the branch clerks of the items she took out and her further act of paying the value of the items. However and to reiterate, her honesty does not absolve her from any liability she may have incurred for violating a known company policy. The Court also considers [the] fact that petitioner's record of employment with private respondent for more than five (5) years is entirely unblemished. Hence, the consequent award of separation pay.

Thus, we find that the Court of Appeals did not err in rendering its assailed decision.

IN VIEW WHEREOF, the petition is DENIED. The decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna and Garcia, JJ. concur.

[1] Rollo, pp. 110-112.

[2] Rollo, p. 113.

[3] Rollo, pp. 114-115.

[4] Rollo, p. 116.

[5] Rollo, p. 117.

[6] Rollo, pp. 119-122.

[7] Original Record, p. 89.

[8] Original Record, p. 1.

[9] Original Record, pp. 81-99.

[10] Original Record, pp. 135-142.

[11] Original Record, pp. 217-224.

[12] Original Record, p. 258.

[13] Rollo, pp. 21-28.

[14] Rollo, p. 9.

[15] CA rollo, pp. 320-325.

[16] CA rollo, pp. 422-423.

[17] Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals, G.R. No. 158232, March 31, 2005, 454 SCRA 737; Alcazaren v. Univet Agricultural Products, Inc., G.R. No. 149628, November 22, 2005, 475 SCRA 636; Pizza Hut / Progressive Development Corp. v. NLRC, G.R. No. 117059, January 29, 1996, 252 SCRA 531.

[18] Gustilo v. Wyeth Philippines, Inc., G.R. No. 149629, October 4, 2004, 440 SCRA 67; Family Panning Organization of the Phils., Inc. v. NLRC, G.R. No. 75907, March 23, 1992, 207 SCRA 415.

[19] Picar v. Shangri-La Hotel, G.R. No. 146367, December 14, 2005, 477 SCRA 732.

[20] Pizza Hut / Progressive Development Corp. v. NLRC, *supra* note 17.

[21] Ha Yuan Restaurant v. NLRC, G.R. No. 147719, January 27, 2006, 480 SCRA 328; San Miguel Corporation v. Lao, G.R. Nos. 143136-37, July 11, 2002, 384 SCRA 504; PepsiCo, Inc. v. NLRC, G.R. No. 51632, September 7, 1989, 177 SCRA 308; Philippine Long Distance Telephone Co. v. NLRC, No. L-80609, August 23, 1988, 164 SCRA 671.

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