

BRISTOL MYERS SQUIBB (PHILS.), INC., PETITIONER, VS. RICHARD NIXON A. BABAN, RESPONDENT.

G.R. No. 167449. December 17, 2008

Ponente: REYES, R.T., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-167449/>

REYES, R.T., J.:

A MEDICAL representative should distribute his employer's products per company directions or risk termination. The willful breach of the trust reposed in him by his employer is a cause for the termination of his employment.

In this petition for review on certiorari under Rule 45, petitioner seeks to set aside the following dispositions of the Court of Appeals (CA) in CA-G.R. CV No. 66590: (a) Decision[1] dated September 24, 2004 which annulled and set aside the Decision[2] of the National Labor Relations Commission (NLRC), and (b) Resolution[3] dated March 9, 2005 which denied petitioners' motion for reconsideration.

In 1992, petitioner Bristol Myers Squibb Philippines, Inc. hired respondent Richard Nixon A. Baban as district manager of the company. He was assigned to handle the company's clients in Cagayan de Oro-Northern Mindanao area and its immediate vicinities. His duties included the promotion of nutritional products of petitioner to medical practitioners, sale to drug outlets and the supervision of territory managers detailed in his district.

On June 22, 1998, while conducting a field audit in Mindanao, petitioner's auditor, Sheela Torreja, found twenty (20) packs of "Mamacare" samples in the baggage compartment of a company car with an accompanying note with political overtones. A note stapled on the package reads:

"Maskin perdido, muchos gracias por el suporta. Con ustedes ta despidi 36 anos de servicio public. Ay continua ayuda para bien del pueblo Zambo.

Atty. Ricardo S. Baban, Jr."

The English translation of the above notation is as follows:

"Even if I've lost (sic) thank you so much for the support. Bidding you farewell for 36 years of public service. Will continue to help for the good of the city of Zamboanga.

Atty. Ricardo S. Baban, Jr."

Atty. Ricardo S. Baban, Jr., referred to in the note, is respondent's father who had served as councilor in Zamboanga City for thirty-six (36) years but lost in his bid for the vice-mayoralty post in the May 11, 1998 elections. Apparently, respondent's father was thanking supporters through distribution of company sample products.

On July 2, 1998, the auditor reported the incident, prompting the company's Medical Sales Director, Ferdinand Sarfati, to issue a Memorandum requiring respondent to explain in writing within seventy-two (72) hours from notice why he should not be terminated for the infraction.

On July 10, 1998, respondent admitted that he had caused the attachment of the notes to the product samples. He argued that there was no unauthorized distribution of the samples since he intended to give them only to doctors who requested them. To support his claim, he asserted that the samples found by Ms. Torreja were actually to be given to Dr. Kibtiya Gustahan and to Rosita Jacoba, a registered midwife of Sta. Catalina Health Center, Zamboanga City, for distribution to the center.

Furthermore, respondent admitted that he committed an honest mistake, an irresponsible act to have succumbed to the suggestion of Dr. Gustahan. He pleaded for consideration for the lapse, insisting that he has not caused any damage nor injury to the image of the company as the samples were not, in fact, distributed and that no gain was derived by him or his family.

In a private conference held on July 27, 1998 with Mr. Sarfati, respondent was asked to explain the incident. On July 29, 1998, he was required by Atty. Hilario Marbella, manager, to appear for a conference to be held on August 6, 1998. He was given the chance to submit evidence and to be assisted by counsel during the conference. On August 25, 1998, he received under protest the company's memorandum dismissing him from employment.

Questioning the validity of his dismissal, respondent filed a complaint for illegal dismissal with a claim for moral and exemplary damages plus attorney's fees with the Regional Arbitration Branch No. 10 of the National Labor Relations Commission (NLRC) against petitioner. Likewise impleaded were the company's General Manager, Medical Sales Director, HR Director, Personnel Manager, Auditor and Finance Director.[4]

Labor Arbiter Disposition

On August 30, 1999, the Labor Arbiter dismissed respondent's complaint. The dispositive portion of the Decision reads:

WHEREFORE, IN VIEW OF THE FOREGOING, judgment is hereby rendered ordering the dismissal of the above-captioned case for lack of merit.

However, Respondent Bristol Myers Squibb Phils., Inc., through a responsible officer, is hereby ordered to pay Complainant the total amount of P297,009.84 representing admitted monetary liabilities.

SO ORDERED.[5]

In sustaining the validity of respondent's dismissal, the Labor Arbiter ruled that respondent had violated company rules and regulations by his unauthorized use of its property. Petitioner is therefore justified to declare respondent unworthy of the trust and confidence formerly imposed in him. Not satisfied with the Decision, petitioner appealed to the NLRC.

NLRC Disposition

In a Resolution dated March 15, 2000, the NLRC modified the Labor Arbiter's decision as follows:

WHEREFORE, premises considered, the decision appealed from is hereby modified:

- Declaring illegal the dismissal from the service of the complainant;
- Suspending complainant for a period of one (1) month effective 20 August 1998 without pay;
- Ordering respondent Bristol Myers Squibb Phils., Inc., to reinstate Complainant Richard Nixon A. Baban, without loss of seniority rights, to pay him backwages without qualification or deduction from the time his suspension had lapsed until his reinstatement to include 13th month pay and other benefits, allowances and incentives due him attached to his position as District Manager;

- The award of P297,009.84 as admitted monetary liabilities is hereby affirmed in toto;
- Ordering respondent to pay complainant the amount of P50,000.00 as moral damages and P30,000.00 as exemplary damages and ten (10%) percent attorney's fee.

SO ORDERED.[6]

Petitioner filed a motion for reconsideration. In a Resolution dated October 23, 2000, the NLRC disposed in the following tenor:

WHEREFORE, the foregoing considered, we hereby MODIFY and SET ASIDE our pertinent findings in the Decision dated March 15, 2000, and hereby enter a new one thus:

- The Decision of the Labor Arbiter dated 30 August 1999, upholding the termination of complainant, is hereby reinstated;
- The award of P297,009.84 as admitted liability of respondent is affirmed;
- An award of financial assistance in favor of complainant by way of separation pay equivalent to one (1) month pay for every year of service covering the period from the date of his regular employment up to 25 August 1998, a fraction of six (6) months being considered one (1) year;
- All other claims of the complainant are hereby dismissed.

SO ORDERED.[7]

Respondent moved for reconsideration but the NLRC denied the same in a Resolution dated August 3, 2001.

Unconvinced, respondent then filed a petition for certiorari under Rule 65 with the CA.

CA Disposition

In a Decision dated September 24, 2004, the CA reinstated the original NLRC Decision dated March 15, 2000.

In ruling in favor of respondent, the CA reasoned that the right of a worker to security of tenure is constitutionally guaranteed. It further declared that, "when a person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary deprivation of his job." In sum, the CA found the penalty of dismissal unjustified, much too harsh and not commensurate with the alleged infraction.

The motion for reconsideration having been denied in a Resolution dated March 9, 2005, petitioner filed the instant petition.

Issue

Petitioner raises a solitary question for Our consideration: May the CA order the reinstatement, with full backwages and damages, of a confidential employee whom it had found to be guilty of breach of trust?[8]

Our Ruling

Petitioner argues that respondent, an employee occupying a position of trust and confidence, admitted attaching his father's political thank you note on the product samples. Respondent likewise confirmed his intention to distribute them to his father's political supporters to thank them for their help in the last election. The act constituted an infraction of company rules. Respondent had breached his employer's trust, meriting a penalty of dismissal.

Articles 282, 283, and 284 of the Labor Code enumerate the just and authorized causes for the dismissal of an

employee. Article 282 provides:

ART. 282. 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 his duly authorized representative.

It is clear that Article 282(c) of the Labor Code allows an employer to terminate the services of an employee for loss of trust and confidence. The right of employers to dismiss employees by reason of loss of trust and confidence is well established in jurisprudence.[9]

The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence. Verily, We must first determine if respondent holds such a position.

There are two (2) classes of positions of trust.[10] The first class consists of managerial employees.[11] They are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions.[12] The second class consists of cashiers, auditors, property custodians, etc.[13] They are defined as those who in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[14]

In this case, respondent was employed as district manager for Cagayan de Oro-North Mindanao and its immediate vicinities.[15] It is not the job title but the actual work that the employee performs.[16] He was employed to handle pharmaceutical products for distribution to medical practitioners and sale to drug outlets.[17] As a result of his handling of large amounts of petitioner's samples, respondent is, by law, an employee with a position of trust, falling under the second class.[18]

The second requisite is that there must be an act that would justify the loss of trust and confidence.[19] Loss of trust and confidence to be a valid cause for dismissal must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary.[20]

Respondent's act of stapling a thank you note from his father warrants the loss of petitioner's trust and confidence. As the supervisor of fellow medical representatives, he had the duty to set a good example to his colleagues. A higher standard of confidence was reposed in him.

There is no doubt that respondent willfully breached the trust and confidence reposed in him by not asking for permission before using company property for his own or another's benefit, as required in the Company Standards of Business Conduct.[21] Moreover, when respondent failed to turn over the samples left in his care and stapled the political "thank you" note with the intention of distributing them to his father's supporters, he had, in effect appropriated company property for personal gain and benefit.

Respondent anchors his plea of mercy on filial loyalty to his father and the fact that the samples were still going to the proper parties. His father's loss is of no moment since petitioner has a right not to associate their product with winning or losing politicians. It has every right to ensure that the distribution of medical samples is done in the manner exactly prescribed. Moreover, his claim that the samples would have still gone to the proper parties is wrong. These products were supposed to have been returned to petitioner or one of its agents.

The CA apparently granted his plea for mercy when it ruled that his action while censurable did not merit termination.[22] The CA characterized his action as a mere lapse of human frailty considering the elections were over.[23] Moreover, the stapling of the thank you notes did not give rise to any undue advantage to respondent or his father.[24]

The CA anchored its leniency on *Caltex Refinery Employees Association (CREA) v. National Labor Relations Commission (Third Division)*.^[25] In *Caltex*, an employee named Arnelio M. Clarete was found to have willfully breached the trust and confidence in him by taking a bottle of lighter fluid.^[26] However, the Court refrained from imposing the supreme penalty of dismissal since Clarete had no violations in his eight (8) years of service and the value of the lighter fluid was minimal compared to his salary.^[27]

The CA reliance on *Caltex* is misplaced. A closer examination of the two cases reveals that the facts are different. The only similarity is that both respondent and Clarete had no prior violations. However, unlike Clarete, respondent qualifies as a confidential employee. It bears emphasis that there is a well-settled distinction between the treatment of a confidential employee and rank-and-file personnel, insofar as the application of the doctrine of trust and confidence is concerned.^[28] There was also no finding that the value of the goods was minimal compared to respondent's salary. Another glaring difference between the two cases is that respondent had people under his supervision and he engaged them to help commit his infraction.^[29]

The two requisites for dismissal for loss of trust and confidence having been met, petitioner is well within its rights to dismiss respondent. While the State can regulate the right of an employer to select and discharge his employees, an employer cannot be compelled to continue the employment of an employee in whom there has been a legitimate loss of trust and confidence.^[30]

In *Atlas Fertilizer Corporation v. National Labor Relations Commission*,^[31] We held that as a general rule, employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature require the employer's full trust and confidence. Mere existence of basis for believing that the employee has breached the trust and confidence of the employer is sufficient and does not require proof beyond reasonable doubt. Thus, when an employee has been guilty of breach of trust or his employer has ample reason to distrust him, a labor tribunal cannot deny the employer the authority to dismiss him.

However, while We find that the dismissal is valid, We are not deaf to respondent's plea for mercy. In a line of cases We have held that separation pay may be awarded as some equitable relief in consideration of the past services rendered.^[32] Since respondent was validly dismissed for a cause other than serious misconduct or those that negatively reflect on his moral character,^[33] the award of separation pay is justifiable. This award is merely to coat the bitter termination experienced by respondent with a little social justice.^[34] Separation pay at the rate of one month salary for every year of service is proper.^[35]

WHEREFORE, the petition is GRANTED. The Court of Appeals decision is REVERSED AND SET ASIDE. The Resolution of the National Labor Relations Commission as modified on October 23, 2000 is REINSTATED.

SO ORDERED.

Ynares-Santiago, Chico-Nazario, and Nachura, JJ., concur.
Austria-Martinez, J., See dissenting opinion.

[1] Rollo, pp. 48-61. Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Mariflor P. Punzalan Castillo and Sesinando E. Villon, concurring.

- [2] NLRC CA No. M-005184-99 dated August 3, 2001.
- [3] Rollo, pp. 141-143. Penned by Associate Justice Jose L. Sabio, with Associate Justices Mariano C. Del Castillo and Noel G. Tijam, concurring.
- [4] Id. at 179-180.
- [5] Id. at 94.
- [6] Id. at 115.
- [7] Id. at 167.
- [8] Id. at 23.
- [9] Etcuban , Jr. v. Sulpicio Lines, Inc., G.R. No. 148410, January 17, 2005, 448 SCRA 516, 528-529.
- [10] Mabeza v. National Labor Relations Commission, G.R. No. 118506, April 18, 1997, 271 SCRA 670.
- [11] Id.
- [12] Id.
- [13] Id.
- [14] Id.
- [15] Rollo, p. 8.
- [16] Estiva v. National Labor Relations Commission, G.R. No. 95145, August 5, 1993, 225 SCRA 169.
- [17] Rollo, p. 8.
- [18] Mabeza v. National Labor Relations Commission, supra note 10.
- [19] Equitable Banking Corporation v. National Labor Relations Commission, G.R. No. 102467, June 13, 1997, 273 SCRA 352.
- [20] Garcia v. National Labor Relations Commission , G.R. No. 113774, April 15, 1998, 289 SCRA 36.
- [21] Rollo, p. 215.

XV. USE OF COMPANY PROPERTY OR SERVICES FOR PERSONAL BENEFIT

Employees may not use Company property or services for their own or another's personal benefit. Sometimes, the line between personal and Company benefits may be difficult to draw, since activities sometimes create both personal and Company benefits. In such cases, seek approval when using Company property or services that do not solely benefit the Company. Immediate supervisors should be consulted for such approval.

- [22] Id. at 58.
- [23] Id.
- [24] Id.
- [25] G.R. No. 102993, July 14, 1995, 246 SCRA 271.
- [26] Caltex Refinery Employees Association (CREA) v. National Labor Relations Commission (Third Division),

id. at 277.

[27] Id. at 279-280.

[28] Philippine Long Distance Telephone Company v. Buna, G.R. No. 143688, August 17, 2007, 530 SCRA 444.

[29] Rollo, pp. 49-50.

[30] Tabacalera Insurance Co. v. National Labor Relations Commission, G.R. No. L-72555, July 31, 1987, 152 SCRA 667.

[31] G.R. No. 120030, June 17, 1997, 273 SCRA 551.

[32] Tanala v. National Labor Relations Commission, G.R. No. 116588, January 24, 1996, 252 SCRA 314; Soco v. Mercantile Corporation of Davao, G.R. Nos. L-53364-65, March 16, 1987, 148 SCRA 526; Cruz v. Medina, G.R. No. 73053, September 15, 1989, 177 SCRA 565; Philippine Long Distance Telephone Company v. National Labor Relations Commission, G.R. No. L-80609, August 23, 1988, 164 SCRA 671.

[33] Philippine Long Distance Telephone Company v. National Labor Relations Commission, *supra*.

[34] Id.

[35] Id. at 683.

DISSENTING OPINION

With due respect to the ponente, I vote for the denial of the petition and the affirmance of the CA Decision.

The ponencia holds that "[r]espondent's act of stapling thankyou note from his father warrants the loss of petitioner's trust and confidence."

It brings to mind a decision the Third Division promulgated just recently: *Janssen Pharmaceutica v. Silayro*.^[1] herein respondent Benjamin Silayro was a Territory/Medical Representative who was dismissed by Janssen for "(1) dishonesty in accomplishing the report on the number of product samples in his possession; and (2) his failure to return the company vehicle and other accountabilities x x x granting unauthorized premium/free goods in 1994; (2) unauthorized pill-outs from customers in 1995; x x x) cheating during the ROL exam in 1998; and xxx three infractions of delayed process reports in 1998." On the first ground, the ruling of the Court was:

In this case, petitioner had not been able to identify an act of dishonesty, misappropriation, or any illicit act, which the respondent may have committed in connection with the erroneously reported product sample. While respondent was admittedly negligent in filling out his August and September 1998 DCR, his errors alone are insufficient evidence of a dishonest purpose. Since fraud implies willfulness or wrongful intent, the innocent non-disclosure of or inadvertent errors in declaring facts by the employee to the employer will not constitute a just cause for the dismissal of the employee. In addition, the subsequent acts of respondent belie a design to misappropriate product sample. So as to escape any liability, respondent could have easily just submitted for audit only the number of product samples which he reported. Instead, respondent brought all the product samples in his custody during the audit and, afterwards, honestly admitted to his negligence. Negligence is defined as the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation. To this Court, respondent did not commit any willful violation, rather he merely failed to exercise the standard care required of a territory representative to carefully count the number of product samples delivered to him in August and September 1998 [2]
(Emphasis supplied)

Moreover, the Court in *Janssen Pharmaceutica* took into account the family situation of respondent Silayro at the time he committed the infraction for which he was dismissed, thus:

His inability to comply with the deadlines for his process reports and his lack of care in accounting for the product samples in his custody are understandably the result of his preoccupation with very serious problems. Added to the pressure brought about by the numerous charges he found himself facing, his errors and negligence should be viewed in a more compassionate light. [3]

Petitioner Bristol Myers Squibb (Phil.), Inc. (petitioner) terminated the employment of Richard Nixon Baban (respondent) as a District Manager (not a medical representative) for willful breach of trust resulting from an incident in that "petitioner's auditor, Sheila Torreja, found 20 packs of "Mamacare" samples in the baggage compartment of a company car with an accompanying note with political overtones" signed by respondent's father and conveying the latter's appreciation for the community's support in the last election, Respondent admitted that he had caused the attachment of the notes to the product samples but explained that said act did not constitute distributed to the medical professionals for whom they were intended; that no personal gain was derived by the respondent, and no damage was suffered by petitioner.

During the investigation by petitioner, it merged that respondent would have avoided all the trouble had he inquired from his immediate superior whether it was proper to attach political notes to the product samples.

FAS:

Oo kasama sya duon, kasi.. you ask, you ask amo eh... alam mo Richard, anytime na mayruon kang doubt, dapat you should be, be ah, seek the advise of your superior. If you will seek an advise even from me, kung sakali sasabihin mo sa akin - boss puwede ko bang gawin 'to? I would immediately say to you - no.

RAB:

Yun nga, yun nga ang mali ko sir, hindi ko talaga akalain na big deal siya. That was a very irresponsible.

In essence therefore, respondent's error was brought about by a lack of good judgment, not to breach the truth and confidence reposed upon him by petitioner.

As held in numerous cases, the Court has distinguished willful breach of trust from a mere infraction: breach of trust must be based on substantial evidence of the commission of specific act of breach, done willfully, intentionally and knowingly, without any justifiable excuse, as distinguished from an act done carelessly, thoughtlessly or inadvertently. [4] Ordinary breach does not suffice. [5] Moreover, the breach of trust must be actual. [6]

Much like in *Janssen*, respondent was impelled by nothing more than poor judgment. He entertained no intention to purposely or willfully violate the trust of petitioner. This is demonstrated by the fact that respondent kept the product samples within the company promises even during the audit that was conducted by petitioner. Had he harbored any ill motives, he could have easily slipped out with the products or prevented access to them by the auditor. Moreover, respondent readily admitted to his error, explaining that it was the circumstances of his father that led him to impetuous decision, Besides, it should be noted that the intended recipients of the subject samples were not shown by petitioner to be not qualified under the rules of petitioner to receive such samples.

Thus, the CA is correct in upholding the National Labor Relations Commission in meting out one month suspension on respondent.

[1] G.R. No. 172528, February 26, 2008, 546 SCRA 628.

[2] Id. at 642.

[3] Janssen Pharmaceutica v. Silayro, *supra* note 1, at 646.

[4] Cruz, Jr. v. Court of Appeals, G.R. No. 14854, July 12, 2006, 494 SCRA 643, 654-655; Philippine National Construction Corporation v. Matias, G.R. No. 156283, May 6, 2005, 458 SCRA 148, 159.

[5] Salas v. Aboitiz One, Inc., G.R. No. 178236, June 27, 2008.

[6] Manila Memorial Park Cemetery, Inc. v. Pamado, G.R. No. 167118, June 15, 2006, 490 SCRA 751, 768, citing Dela Cruz v. National Labor Relations Commission, 335 Phil. 932, 942-943 (1997); Molina v. Pacific Plans, Inc., G.R. No. 165476, March 10, 2006, 484 SCRA 498, 518.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.