

JANSSEN PHARMACEUTICA, Petitioner, vs. BENJAMIN A. SILAYRO, Respondent.*G.R. No. 172528. February 26, 2008*

Ponente: CHICO-NAZARIO, J.

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This is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Decision,[1] dated 8 February 2006, promulgated by the Court of Appeals in CA-G.R. SP No. 81983, reversing the Decision[2] dated 7 May 2003 of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000880-99. The Court of Appeals, in its assailed Decision, adjudged the dismissal of respondent Benjamin Silayro by petitioner Jansen Pharmaceutica as illegal for being an excessive and unwarranted penalty. The appellate court determined that the suspension of the respondent for five months without salary as just penalty.

Petitioner is the division of Johnson & Johnson Philippines Inc. engaged in the sale and manufacture of pharmaceutical products. In 1989, petitioner employed respondent as Territory/Medical Representative. During his employment, respondent received from petitioner several awards and citations for the years 1990 to 1997, such as Territory Representative Award, Quota Buster Award, Sipag Award, Safety Driver's Award, Ring Club Award, and a Nomination as one of the Ten Outstanding Philippine Salesmen.[3] On the dark side, however, respondent was also investigated for, and in some cases found guilty of, several administrative charges.

Petitioner alleged that in 1994, respondent was found guilty of granting unauthorized premium/free goods to and unauthorized pull-outs from customers.[4] Petitioner failed to attach records to support its allegation and to explain the nature of and the circumstance surrounding these infractions. Respondent, for his part, admitted to have been guilty of granting unauthorized premium/free goods, but vehemently denied violating the rule on, or having been charged with, unauthorized pull-outs from customers.[5]

The respondent was also investigated for dishonesty in connection with the Rewards of Learning (ROL) test. The ROL test is a one-page take-home examination, with two questions to be answered by an enumeration of the standards of performance by which territory representatives are rated as well as the sales competencies expected of territory representatives.[6] It was discovered that respondent's answers were written in the handwriting of a co-employee, Joedito Gasendo. Petitioner's management then sent respondent a Memo dated 27 July 1998 requiring an explanation for the incident.[7]

Soon thereafter, petitioner sent a subsequent Memo dated 20 August 1998 to respondent requiring the latter to explain his delay in submitting process reports.[8]

On 8 September 1998, respondent submitted a written explanation to the petitioner stating that the delay in the submission of reports was caused by the deaths of his grandmother and his aunt, and the hospitalization of his mother. He also averred that he had asked his co-employee Joedito Gasendo to write his answers to the ROL test because at the time when the examination was due, he already needed to leave to see his father-in-law, who was suffering from cancer and confined in a hospital in Manila.[9]

Respondent was sent a new Memorandum dated 20 October 1998 for his delayed submission of process reports due on 14 October 1998.[10]

Respondent was issued another Memo also dated 20 October 1998 regarding the discrepancies between the number of product samples recorded in his Daily/Weekly Coverage Report (DCR) and the number of product samples found in his possession during the 14 October 1998 audit.[11] The actual number of sample products found in respondent's possession exceeded the number of sample products he reported to petitioner.

Respondent explained, through a "Response Memo" dated 24 October 1998, that he failed to count the quantity of samples when they were placed in his custody. Thus, he failed to take note of the excess samples from previous months. He, likewise, admitted to committing errors in posting the samples that he distributed to some doctors during the months of August and September 1998.[12]

On 20 November 1998, petitioner issued a Notice of Disciplinary Action finding respondent guilty of the following offenses (1) delayed submission of process reports, for which he was subjected to a one-day suspension without pay, effective 24 November 1998;[13] and (2) cheating in his ROL test, for which he was subjected again to a one-day suspension.[14]

On the same date, petitioner likewise issued a Notice of Preventive Suspension against respondent for "Dishonesty in Accomplishing Other Accountable Documents" in connection with the discrepancy between the quantities of sample products in respondent's report and the petitioner's audit for the September 1998 cycle. In addition, the Notice directed the respondent to surrender to the petitioner the car, promotional materials, and all other accountabilities on or before 25 November 1998. It was also stated therein that since this was respondent's third offense for the year, he could be dismissed under Section 9.5.5(c) of petitioner's Code of Conduct.[15]

Before 25 November 1998 or the date given by petitioner for respondent to surrender all his accountabilities, a Memorandum dated 24 November 1998 was issued to respondent for the following alleged infractions: (1) Failure to turn over company vehicles assigned after the receipt of instruction to that effect from superiors, and (2) Refusing or neglecting to obey Company management orders to perform work without justifiable reason.[16]

Respondent wrote a letter dated 26 November 1998 addressed to the petitioner explaining that he failed to surrender his accountabilities because he thought that this was tantamount to an admission that the charges against him were true and, thus, could result in his termination from the job.[17]

An administrative investigation of the respondent's case was held on 3 December 1998. Respondent was accompanied by union representative Lyndon Lim. The parties discussed matters concerning the discrepancy in respondent's report and petitioner's audit on the number of product samples in respondent's custody in September 1998. They were also able to clarify among themselves respondent's failure to return his accountabilities and, as a consequence, respondent promised to surrender the same. They further agreed that another administrative hearing will be set, but no further hearings were held.[18]

In line with his promise to surrender his accountabilities, respondent wrote a letter, dated 9 December 1998, asking his superiors where he should return his accountabilities.[19] Union representative Dominic Regoro also made requests, on behalf of respondent, for instructions, to whom petitioner's District Supervisor Raymond Bernardo replied via electronic mail on 16 December 1998. According to Bernardo, he was still in the process of making arrangements with Ruben Cauton, petitioner's National Sales Manager, in connection with the return of respondent's accountabilities.[20] Respondent maintained that he did not receive any instructions from petitioner.

In a letter dated 28 December 1998, petitioner terminated the services of respondent.[21] Petitioner found respondent guilty of dishonesty in accomplishing the report on the number of product samples in his possession

and failing to return the company vehicle and his other accountabilities in violation of Sections 9.2.9 and 9.2.4 of the Code of Conduct.[22] Petitioner also found respondent to be a habitual offender whose previous offenses included: (1) Granting unauthorized premium/free goods to customer in 1994; (2) Unauthorized pull-out of stocks from customer in 1994; (3) Delay in submission of reports despite oral admonition and written reprimand in 1998; and (4) Dishonesty in accomplishing other accountable documents or instruments (in connection with the ROL test) in 1998.

Even after respondent's termination from employment, there was still contact between petitioner and respondent regarding the latter's accountabilities still in his possession. Sometime in early 1999, in a telephone conversation, respondent informed petitioner that he will return his accountabilities only upon demand from the proper governmental agency.[23] A demand letter dated 3 February 1999 was sent to respondent by petitioner ordering the return of the company car, promotional materials, samples, a slide projector, product manuals, product monographs, and training binders.[24]

On 14 January 1999, respondent filed a Complaint[25] against petitioner and its officers, Rafael Besa, Rueben Cauton, Victor Lapid, and Raymond Bernardo before the Sub-Regional Arbitration Branch of the NLRC in Iloilo City for (a) Unfair Labor Practice; (b) Illegal Dismissal; (c) Reimbursement of operating and representation expenses under expense reports for October and November 1998; (d) Nonpayment of salary, bonuses and other earned benefits for December 1998 like rice allocation, free goods allocation, etc.; and (e) Damages and attorney's fees.

In a Decision dated 31 August 1999, the Labor Arbiter ruled that respondent committed infractions which breached company rules, and which were sufficient grounds for dismissal. However, the Labor Arbiter found the penalty of dismissal to be too harsh considering the respondent's circumstances and ordered his reinstatement without payment of back wages.[26] The dispositive portion of the Decision states that:

WHEREFORE, premises considered, judgment is rendered ordering respondents firm to reinstate complainant to his former or equivalent position without backwages.

All other claims are hereby dismissed.[27]

On appeal, the NLRC modified the Decision of the Labor Arbiter by declaring that reinstatement was improper where respondent was dismissed for just and authorized causes.[28] In a Decision dated 7 May 2003, it pronounced that:

WHEREFORE, premises considered, complainant's appeal is hereby DISMISSED. The decision of the Labor Arbiter is hereby AFFIRMED with MODIFICATION deleting the award of reinstatement.[29]

Respondent filed a Petition for Certiorari under Rule 65 of the Rules of Court before the Court of Appeals. In reversing the Decision of the NLRC, the appellate court pronounced that the causes were insufficient for the dismissal of respondent since respondent's acts were not motivated by dishonesty, but were caused by mere inadvertence. Thus, it concluded that the offenses committed by respondent merited only a penalty of suspension for five months without pay. The appellate court also noted that petitioner committed some lapses in its compliance with procedural due process. It further took into account the successive deaths and sickness in respondent's family.[30] The dispositive part of the decision reads:

WHEREFORE, premises considered, the petition is GRANTED. Thus, the Decision and Resolution respectively dated 7 May 2003 and 14 October 2003 are hereby SET ASIDE. Accordingly, Judgment is hereby rendered:

a)

Declaring petitioner's dismissal to be illegal;

b)

Reinstating petitioner to the same or equivalent position without loss of seniority rights and other privileges;

c)

Ordering the payment of backwages (inclusive of allowances and other benefits or their monetary equivalent), computed from the time compensation was withheld up to the time of actual reinstatement; Provided that, from such computed amount of backwages, a deduction of five (5) months' (sic) salary be made to serve as penalty; and

d)

If reinstatement is no longer feasible, ordering the payment of separation pay comprising of one month salary per year of service computed from date of employment up to finality of this decision, in addition to the award of backwages.

Let the records of this case be remanded to the Labor Arbitration Panel for the proper computation of the foregoing.[31]

Hence, this Petition, wherein the following issues were raised:

I

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE UNIFORM FACTUAL FINDINGS OF THE NLRC AND THE LABOR ARBITER.

II

WHETHER OR NOT RESPONDENT'S DISMISSAL FOR HIS FAILURE TO TRUTHFULLY ACCOMPLISH REPORTS, DELIBERATE AND REPEATED FAILURE TO SUBMIT REQUIRED REPORTS AND HIS DELIBERATE DISREGARD OF HIS SUPERIOR'S ORDER TO SURRENDER HIS ACCOUNTABILITIES TANTAMOUNT TO DISHONESTY, GROSS AND HABITUAL NEGLECT OF DUTY, WILLFUL DISOBEDIENCE OF COMPANY POLICY, AND BREACH OF TRUST AND CONFIDENCE REPOSED IN HIM BY THE COMPANY UNDER THE PROVISIONS OF THE LABOR CODE WAS LEGAL, VALID AND CARRIED OUT WITH DUE PROCESS

III

WHETHER OR NOT THE TOTALITY OF INFRACTIONS COMMITTED BY RESPONDENT FURTHER MERITED HIS TERMINATION FROM THE COMPANY'S EMPLOY

IV

WHETHER OR NOT THE RESPONDENT HAS ANY BASIS FOR CLAIMING AN AWARD OF REINSTATEMENT AND BACKWAGES.[32]

This petition is without merit.

The main question in this case is whether or not sufficient grounds existed for the dismissal of the respondent. To constitute a valid dismissal from employment, two requisites must concur: (1) the dismissal must be for any of the causes provided in Article 282 of the Labor Code; and, (2) the employee must be given an opportunity to be heard and to defend himself.[33]

In this case, the Court must re-examine the factual findings of the Court of Appeals, as well as the contrary findings of the NLRC and Labor Arbiter. While it is a recognized principle that this Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during trial, this rule allows for exceptions.[34] One of these exceptions covers instances when the findings of fact of the trial court, or in this case of the quasi-judicial agencies concerned, are conflicting or contradictory with those of the Court of Appeals.[35]

In the termination letter dated 28 December 1998, respondent was dismissed on the ground that he committed the following offenses: (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 in violation of Sections 9.2.9 and 9.2.4 of the Code of Conduct. In addition to these offenses, petitioner took into account that the petitioner committed the following infractions in the past: (1) granting unauthorized premium/free goods in 1994; (2) unauthorized pull-outs from customers in 1995; (3) cheating during the ROL exam in 1998; and (4) three infractions of delayed process reports in 1998.

Initially, the Court must determine whether the respondent violated the Code of Conduct with his dishonesty in accomplishing his report on product samples and/or failure to return the company vehicle and other such accountabilities. The records of this case negate a finding of such culpability on the part of the respondent.

Petitioner failed to present evidence that respondent was guilty of dishonesty in accomplishing the DCR, wherein he was supposed to indicate the number of product samples in his possession for August and September 1998. Petitioner merely relied on the fact that the number of product samples the respondent reported was incorrect, and the number of product samples later found in his possession exceeded that which he reported. Respondent admitted that when the product samples had arrived, he failed to check if the number of product samples indicated in the DCR corresponded to the number actually delivered and that he made mistakes in posting the product samples distributed during the period in question.

In termination cases, the burden of proof rests with the employer to show that the dismissal is for just and valid cause. Failure to do so would necessarily mean that the dismissal was not justified and therefore was illegal.[36] Dishonesty is a serious charge, which the employer must adequately prove, especially when it is the basis for termination.

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 samples. 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.[37] In addition, the subsequent acts of respondent belie a design to misappropriate product samples. 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.[38] 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.

In the Memorandum dated 20 November 1998, petitioner ordered respondent to return the company vehicle and all other accountabilities by 25 November 1998. Petitioner issued its first notice on 24 November 1998, even before respondent was obligated to return his accountabilities. Hence, respondent could not yet have committed

any offense when petitioner issued the first notice. Confused by petitioner's arbitrary action, respondent did not return his accountabilities, but immediately explained in a letter dated 26 November 1998 his reasons for failing to return his accountabilities on 25 November 1998 as previously ordered by the petitioner.

During the company hearing held on 3 December 1998, respondent offered to return his accountabilities in accordance with the instructions to be given by the petitioner. In a letter dated 9 December 1998 addressed to the petitioner, respondent reiterated his request for instructions on the return of his accountabilities. There is no showing that petitioner replied to respondent's letter. The letter written by petitioner's District Supervisor Raymond Bernardo to union representative Dominic Regoro sent through electronic mail on 16 December 1998 still provided no definite instructions to the respondent for the return of his accountabilities. This is the last communication between the parties on the matter until petitioner wrongfully dismissed the respondent on 28 December 1998 for deliberately refusing to surrender his accountabilities, among other grounds. The petitioner does not refer in its pleadings to any instance after the company hearing was held and before the respondent was dismissed wherein it had finally instructed the respondent as to how he may turn over his accountabilities. Per petitioner's pleadings, belated demands for the surrender of respondent's accountabilities were made in January and February 1999, after respondent had already been dismissed. Clearly, the charge against respondent of insubordination to the petitioner's instructions for the surrender of his accountabilities was unfounded since the respondent was still waiting for said instructions when he was dismissed.

Moreover, petitioner failed to observe procedural due process in connection with the aforementioned charge. Section 2(d) of Rule 1 of The Implementing Rules of Book VI states that:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i)

A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii)

A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii)

A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. (Emphases supplied.)

From the aforecited provision, it is implicit that these requirements afford the employee an opportunity to explain his side, respond to the charge, present his or her evidence and rebut the evidence presented against him or her.

The superficial compliance with two notices and a hearing in this case cannot be considered valid where these notices were issued and the hearing made before an offense was even committed. The first notice, issued on 24 November 1998, was premature since respondent was obliged to return his accountabilities only on 25 November 1998. As respondent's preventive suspension began on 25 November 1998, he was still performing his duties as territory representative the day before, which required the use of the company car and other company equipment. During the administrative hearing on 3 December 1998, both parties clarified the confusion caused by the petitioner's premature notice and agreed that respondent would surrender his accountabilities as soon as the petitioner gave its instructions. Since petitioner's ostensible compliance with the procedural requirements of notice and hearing took place before an offense was even committed, respondent was robbed of his rights to

explain his side, to present his evidence and rebut what was presented against him, rights ensured by the proper observance of procedural due process.

Of all the past offenses that were attributed to the respondent, he contests having committed the infraction involving the unauthorized pull-outs from customers, allegedly made in 1994. Again, the records show that petitioner did not provide any proof to support said charge. It must be emphasized at this point that the onus probandi to prove the lawfulness of the dismissal rests with the employer,[39] and in light of petitioner's failure to discharge the same, the alleged offense cannot be given any credence by this Court. As for the three remaining violations, it is unquestioned that respondent had committed and had already been punished for them.

While a penalty may no longer be imposed on offenses for which respondent has already been punished, these offenses, among other offenses, may still be used as justification for an employee's dismissal. Hence, this Court must now take into consideration all the offenses that respondent committed during his employment and decide whether these infractions, taken together, constitute a valid cause for dismissal.

Undoubtedly, respondent was negligent in reporting the number of product samples in his custody for August and September 1998. He also committed three other offenses in the past. First, he was found guilty of and penalized for granting unauthorized free goods in 1994. Secondly, he incurred delays in submitting his process reports for August, September and October 1998, for which charge he was punished with one-day suspension. Lastly, he cheated in an ROL test in July 1998 for which he was punished with another one-day suspension.

Respondent's offense of granting unauthorized free goods was vaguely discussed. Petitioner did not offer any evidence in this connection; it was given credence only because of respondent's admission of the same. What acts constituted this offense and the circumstances surrounding it were not explained. However, the records show that in the same year it was committed, in 1994, petitioner still gave respondent two awards: membership to the Wild Boar Society and the Five-Year Service Award.[40] Absent any explanation which would give this offense substantial weight and importance, it can only be presumed that petitioner did not consider the offense as sufficiently momentous to disqualify respondent from receiving an award or to even just issue the respondent a warning that a subsequent offense would result in the termination of his employment.

The rest of the infractions imputed to the respondent were committed during the time he was undergoing serious family problems. 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.

Petitioner's inability to keep up with his deadlines and his carelessness with his report on product samples during a difficult time in his life are in no way comparable to the transgressions in the cases cited by petitioner involving other territory representatives – *Chua v. National Labor Relations Commission*[41] and *Gustilo v. Wyeth Philippines*.[42] In the *Chua* case, it was not a mere case of delay in the submission of reports and the occasional mistakes in the DCR, but an established pattern of inattention in the submission and accomplishing of his reports. The employee therein did not even submit some of the DCRs, while other DCRs were belatedly submitted in batches covering two to three months. Doctors' call cards lacked either the corresponding dates or the signatures of the doctors concerned. In the *Gustillo* case, the employee falsified his application form, a gasoline receipt, a report of his trade outlet calls, and misused his leaves. Evidently, the employee in this case misappropriated company resources by making claims for falsified expenses and making personal calls in lieu of trade outlet calls. In this case, respondent had not defrauded the petitioner of its property.

The gravest charge that the respondent faced was cheating in his ROL test. Although he avers that he formulated

the answers himself and that he merely allowed his co-employee Joedito Gasendo to write down his answers for him, this Court finds this excuse to be very flimsy. The ROL test consists of one page and two straightforward questions, which can be answered by more or less ten sentences. Respondent could have spared the few minutes it would take to write the examination. If he had lacked the time due to a family emergency, a request for an extension would have been the more reasonable and honest alternative.

Despite the disapproving stance taken by this Court against dishonesty, there have been instances when this Court found the ultimate penalty of dismissal excessive, even for cases which bear the stigma of deceit.

In *Philippine Long Distance Telephone Company v. National Labor Relations Commission*,^[43] an employee intervened in the anomalous connection of four telephone lines. It was, likewise, established in *Manila Electric Company v. National Labor Relations Commission*,^[44] that the employee was involved in the illegal installation of a power line. In both cases, the violations were clearly prejudicial to the economic activity of his employer. Finally, in *National Labor Relations Commission v. Salgarino*,^[45] a school teacher tampered with the grades of her students, an act which was prejudicial to the school's reputation. Notably, the Court stopped short of dismissing these employees for offenses more serious than the present case.

In this case, the ROL test is a take-home examination intended to check a territory representative's understanding of information already contained in their Sales Career Manual, wherein the examinees are even instructed to refer to their manuals. The improper taking of this test, while it puts into question the examinee's moral character, does not result in any potential loss of property or damage to the reputation of the employer. Nor does respondent's previous performance show lack of knowledge required in his sales career. Additionally, the dishonesty practiced by the employee did not involve company property that was placed in his custody. Furthermore, the gravity of this offense is substantially diminished by the fact that petitioner itself had thought it unimportant enough to merit only a one-day suspension. The respondent's ten years of commendable performance cannot be cancelled out by a single mistake made during a difficult period of his life, a mistake that did not pose a potential danger to his employer.

The special circumstances of this case -- respondent's family crises, the duration of his employment, and the quality of his work during the previous years -- must necessarily influence the penalty to be meted out to the respondent. It would be a cruel disregard of the constitutional guarantee of security of tenure to impose the penalty of dismissal, without giving due consideration to the ill fortune that may befall a normally excellent employee.

In *National Labor Relations Commission v. Salgarino*,^[46] special consideration was given to the fact that the respondent therein had been in the employ of the petitioners therein for 10 years and that she was a recipient of numerous academic excellence awards and recognized by her students and some of her peers in the profession as a competent teacher. The Court, in other cases, has repeatedly ruled that in determining the penalty to be imposed on an erring employee, his or her length of service must be taken into account.^[47] In *Brew Master International, Inc., v. National Federation of Labor Unions*,^[48] the emotional, psychological, spiritual and physical stress and strain undergone by the employee during a family crisis were regarded as special circumstances which precluded his dismissal from service, despite his prolonged absence from work. The Court explains the circumspection it exercises when faced with the imposition of the extremely severe penalty of dismissal thus:

The employer's prerogative to discipline its employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding. While an employer has the inherent right to discipline its employees, we have always held that this right must always be exercised humanely, and the penalty it must impose should be commensurate to the offense involved and to the degree of its infraction. The employer should bear in mind that, in the exercise of such right, what is at stake is not the employee's

position but her livelihood as well. The law regards the workers with compassion. Even where a worker has committed an infraction, a penalty less punitive may suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. This is not only the law's concern for workingman. There is, in addition, his or her family to consider. Unemployment brings untold hardships and sorrows upon those dependent on the wage-earner.[49]

Respondent's violations of petitioner's Code of Conduct, even if taken as a whole, would not fall under the just causes of termination provided under Article 282 of the Labor Code.[50] They are mere blunders, which may be corrected. Petitioner failed to point out even a potential danger that respondent would misappropriate or improperly dispose of company property placed in his custody. It had not shown that during his employment, respondent took a willfully defiant attitude against it. It also failed to show a pattern of negligence which would indicate that respondent is incapable of performing his responsibilities. At any other time during his employment, respondent had shown himself a commendable worker.

Nonetheless, the infractions committed by the respondent, while disproportionate to a penalty of dismissal, will not be overlooked. The suspension of five months without pay, imposed by the Court of Appeals, would serve as a sufficient and just punishment for his violations of the company's Code of Conduct.

IN VIEW OF THE FOREGOING, the instant Petition is DISMISSED and the assailed Decision of the Court of Appeals in CA-G.R. SP No. 81983, promulgated on 8 February 2006, is AFFIRMED. Costs against the petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Arsenio J. Magpale with Associate Justices Vicente L. Yap and Apolinario D. Bruselas, Jr. concurring; rollo, pp. 66-87.

[2] Rollo, pp. 555-575.

[3] Id. at 735-736.

[4] Id. at 10.

[5] Records, p. 159.

[6] Rollo, p. 691.

[7] Id. at 692.

[8] Id. at 689.

[9] Id. at 693.

[10] Id. at 696.

[11] Id. at 697.

[12] Id. at 700.

[13] Id. at 702.

[14] Id. at 707.

[15] Id. at 703.

[16] Id. at 704.

[17] Records, p. 44.

[18] Rollo, pp. 706-707.

[19] Id. at 708.

[20] Records, p. 165.

[21] Rollo, p. 375-376.

[22] Section 9.2.9 of the Code of Conduct reads:

Failure to turn over company vehicle assigned after receipt of instructions to that effect.

Section 9.2.4 of the Code of Conduct reads:

Refusing or neglecting to obey Company management orders to perform work without justifiable reason.

[23] The date when this telephone call took place is not clear. In the letter dated 3 February 1999, written by petitioner to respondent, it is alleged that this telephone call took place on 1 February 1999, while in the (pleading with date) it took place sometime in January 1999.

[24] Rollo, p. 711.

[25] Records, p. 1-2.

[26] Rollo, pp. 264-265.

[27] Id. at 266.

[28] Id. at 216-217.

[29] Id at 575.

[30] Id. at 78-85.

[31] Id. at 85-86.

[32] Id. at 1276-1277.

[33] *Molato v. National Labor Relations Commission*, 334 Phil. 39, 41-42 (1997).

[34] The following have been recognized as exceptions to the rule that the findings of facts of the Court of Appeals are conclusive and binding: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of facts are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (*Pilipinas Shell Petroleum Corporation v. Gobonseng, Jr.*, G.R. No. 163562, 21 July 2006, 496 SCRA 305, 316.)

[35] *Litonjua v. Fernandez*, G.R. No. 148116, 14 April 2004, 427 SCRA 478, 489.

[36] *National Labor Relations Commission v. Salgarino*, G.R. No. 164376, 31 July 2006, 497 SCRA 361, 383.

[37] Department of Labor Manual, Section 434301(3)

[38] Black's Law Dictionary, 8[th] ed, 1999.

[39] *National Labor Relations Commission v. Salgarino*, supra note 36.

[40] Records, p. 7.

[41] G.R. No. 146780, 11 March 2005, 453 SCRA 244.

[42] G.R. No. 149629, 10 January 2005.

[43] 362 Phil. 352 (1999).

[44] G.R. No. 78763, 12 July 1989, 175 SCRA 277.

[45] Supra note 36 at 361.

[46] Id.

[47] *De Guzman v. National Labor Relations Commissions*, 371 Phil. 192 (1999); *Philippine Long Distance Telephone Company v. National Labor Relations Commission*, supra note 43 at 360.

[48] 337 Phil. 728, 735-736 (1997).

[49] *De Guzman v. National Labor Relations Commissions*, supra note 47 at 205.

[50] Article 282. Termination by employer. -

An employer may terminate an employment for any of the following causes:

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

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