

**RICARDO VALLADOLID, PETITIONER, VS. HON. AMADO G. INCIONG,
DEPUTY MINISTER OF LABOR, AND COPACABANA
APARTMENT?HOTEL, RESPONDENTS.**

G.R. No. 52364. March 25, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The Order dated December 26, 1979 of the Deputy Minister of Labor affirming the Order of May 2, 1979 for reinstatement without backwages issued by Regional Director Francisco L. Estrella in Case No. R4-STF-2-1316-79 entitled, "Ricardo C. Valladolid, Jr. vs. Copacabana Apartment-Hotel," is being assailed by the parties in these petitions.

J.R.M. & Co., Inc. (hereinafter referred to as JRM), as petitioner in G.R. No. 53349, is also the respondent in G.R. No. 52364 named therein as Copacabana Apartment-Hotel. JRM originally owned and operated not only Copacabana but also Tropicana Apartment-Hotel. The principal stockholders of JRM were the brothers Joseph, Manuel, Vicente and Roman, all surnamed Yu. Upon the death of Joseph on October 12, 1975, although both Copacabana and Tropicana continued technically as owned by JRM, the controlling (70%) interest in Copacabana was lodged in the surviving heirs of Joseph, with brothers Manuel and Roman having a 15% interest each. JRM was placed under the management of the heirs of Joseph. The brothers Manuel, Roman and Vicente were allowed 100% equity interest in Tropicana, which was operated separately from JRM. Eventually, Tropicana and Copacabana became competing businesses.

Ricardo Valladolid, petitioner in G.R. No. 52364 and respondent in G. R. No. 53349, after the death of Joseph, was employed by JRM in 1977 as a telephone switchboard operator. He was subsequently transferred to the position of clerk-collector by Mrs. Lourdes T. Yu, President of JRM.

According to the affidavit of Daniel T. Yu, Executive Vice-President, attached the position paper submitted by JRM before the Regional Director, the transfer was motivated by the fact:

".....

"That as such switchboard operator numerous telephone conversations and communications relating to business and confidential matters were intercepted and relayed to Tropicana Apartment-Hotel, a competitor;

"That to confirm suspicion on Ricardo Valladolid as the person responsible for said interception and relay, Mrs. Lourdes T. Yu, President of JRM & Co., Inc. sent him on an errand to Manila Hotel to bring flowers on the occasion of Wedding Anniversary of Mr. & Mrs. Yu Hong Ty. Matters which Mrs. Lourdes Yu told him in confidence and admonitions not to tell anyone, reached Tropicana people:

..."[1]

The affidavit further disclosed:

"That while serving in his capacity as clerk/collector, copies of Accounts Receivables, reach Tropicana Management although said copies were not referred to them;

"That conferred (sic) on numerous confidential matters taken in the office of Copacabana Apartment-Hotel reached Tropicana Apartment-Hotel;

"That to finally and fully confirmed suspicions that Ricardo Valladolid was the person responsible for the aforementioned disclosures, a plan for the entrapment was conceived by the management of Copacabana Apartment-Hotel;

"That on November 9, 1979, pursuance of said plan, a cash voucher for P500,000.00 supposedly in payment for representation expenses to myself with the corresponding check were prepared and issued respectively by Juan V. Bermudo, Apartment-Hotel Manager, who thereafter called Ricardo Valladolid and asked the latter to bring the said cash voucher and check to my room which he did; few minutes later I came down to the office and asked Mr. Ricardo Valladolid to prepare the corresponding deposit slip to Pacific Banking Corporation for said check;

"That thereafter, the aforementioned cash voucher, corresponding check and deposit slip were kept in the hotel vault with no either person other than myself, Juan Bermudo and Ricardo Valladolid having any knowledge of preparation and existence thereof;

"That unknown to Ricardo Valladolid, the aforementioned check, cash voucher and deposit slip were cancelled;

"That on December 4, 1978, Mr. Manuel Yu Chua, came to Copacabana Apartment-Hotel as minority stockholder of the latter, vehemently demanding for an accounting of Copacabana books;

"That he strongly charged that information reached him that I received a disbursement of P500,000.00 from Copacabana Apartment-Hotel as representation expenses in my capacity as Executive Vice-President thereof;

"That at this juncture, I brought out the cancelled cash voucher, check and deposit slip; with mouth agape, Manuel Yu Chua, could do nothing else but admit that in fact, his informer within Copacabana Apartment-Hotel was no other than Mr. Ricardo C. Valladolid;

"That I then informed Manuel Yu Chua, that under the circumstances, I could no longer repose any trust whatsoever on Ricardo Valladolid and requested him to take the latter to Tropicana Apartment-Hotel and just swap him with someone else; Mr. Manuel Yu Chua directed me to tell Valladolid to see him;

"That after few days, Ricardo Valladolid came back and told me that Manuel Yu Chua has no place for him at Tropicana Apartment-Hotel; in this conversation, Ricardo Valladolid apologized for having betrayed the trust that we had reposed on him, especially after Mrs. Lourdes T. Yu had told him to stay impartial; that he then having done this for Manuel Yu Chua, the latter could not even accept him in Tropicana Apartment-Hotel;

....."[2]

The entrapment scheme was corroborated by the affidavits of Sofia Mo. Gianan, External Auditor of JRM & Co., Inc., and Juan V. Bermudo, Copacabana Apartment-Hotel Manager, which affidavits formed part of JRM's position paper filed before the agency below.[3] The cancelled Cash Voucher, the uncashed check, and the unused deposit slip, all in the respective amounts of P500,000.00 were also attached to the same position paper as Exhibits "4", "5" and "6".

On December 29, 1978, or after the entrapment scheme had been effected, Valladolid filed a written request for a five (5) day vacation leave starting December 30, 1978 with the Manager of Copacabana, stating therein that he would report for work on January 5, 1979.[4] He did not report for work on January 5 but sent a telegram from

Bicol on January 8, 1979 requesting for 15 days sick leave as he was confined for flu at the Dr. Estrellado Clinic.[5] On January 23, 1979, Valladolid's wife allegedly called up JRM informing the company through its accountant, Eddie Escueta, that her husband was still sick and requested for 30 days sick leave, which was allegedly granted. This was denied by JRM.

Valladolid reported for work on February 16, 1979. The Executive Vice-President, Mr. Daniel Yu, allegedly refused to admit him and instead asked him to resign. JRM maintains that Valladolid left the office that same day and never returned, because he was reprimanded for his unauthorized absences.

On February 22, 1979, Valladolid filed a Complaint for Illegal Dismissal with vacation and sick leave pay.[6]

On February 24, 1979, JRM sent a letter to Valladolid signed by Daniel T. Yu, advising him of his preventive suspension effective February 26, 1979 preparatory to the termination his services 10 days from receipt of a copy of the application for clearance to dismiss him. The grounds given were: (1) Willful Breach of Trust for having divulged, in various instances, confidential business matters to competitors of the company; and (2) Gross Neglect of Duty for having been absent without leave or notice for more than 25 days, to the detriment of the company.[7]

On February 28, 1979, JRM filed said application for clearance with the Ministry of Labor.[8] The application for clearance and Valladolid's complaint for Illegal Dismissal were consolidated and docketed as R4-STF-2-1316-79. The parties submitted their respective position papers and documentary evidence. On May 2, 1979, the Regional Director issued the following challenged Order:

"WHEREFORE, premises considered, the application for clearance with preventive suspension is hereby denied. Respondent is hereby ordered to reinstate complainant to his former position without backwages and without loss of seniority rights. Let the time this case was pending be considered as complainant's suspension for his absences.

The claims for vacation – sick leave pay is dismissed for failure to substantiate the same."

Valladolid appealed the foregoing order to the Minister of Labor seeking modification of the same, praying for the award of backwages from the time he was illegally dismissed on February 16, 1979 to the date of his actual reinstatement. JRM also appealed the said Order.

On December 26, 1979, the Deputy Minister of Labor, in a succinct Order, dismissed both appeals after finding "no sufficient justification or valid reason to alter, modify, much less reverse the Order appealed from."

On January 21, 1980, Valladolid filed a Petition for Certiorari with this Court, docketed as G.R. No. 52364, praying for a modification of the Order of December 26, 1979 of the Deputy Minister of Labor so as to grant him backwages. This Court resolved, on February 4, 1980, to give due course to the petition, and required the parties to submit simultaneous memoranda.

On March 12, 1980, JRM also filed a petition for Certiorari with this Court assailing that same Order. This Court gave due course to the petition and consolidated the same with G.R. No. 52364. Thereafter, the parties filed their respective memoranda.

The non-award of backwages is the only issue being raised by Valladolid claiming that the Orders in question are contrary to law and evidence, and were issued arbitrarily and capriciously with grave abuse of discretion, amounting to excess or lack of jurisdiction.

JRM on the other hand, assails the said Orders on the following grounds:

I

"That respondent Deputy Minister of Labor committed grave abuse of discretion when in his questioned order in effect sustained the finding of respondent Regional Director that there is no evidence to support the dismissal of private respondent.

II

That respondent Deputy Minister Amado Inciong and Regional Director Francisco Estrella committed grave abuse of discretion when they arbitrarily failed to consider in their respective orders under review, established jurisprudence.

III

That respondent Regional Director committed grave abuse of discretion when he held that preventive suspension is equivalent to dismissal.

IV

That the order of respondent Hon. Amado Inciong was a capricious and whimsical exercise of judgment when it failed to state the facts and conclusion of law upon which it is based.

V

That respondent Regional Director Francisco Estrella acted in excess of his jurisdiction when, without any statutory authority or transcending beyond his jurisdiction, he absolutely disregarded procedural requirement in the hearing of the present controversy, thus depriving petitioner of its right to due process."

Valladolid, in his affidavit, dated March 29, 1979, denied having committed any breach of trust.[9] In corroboration, he presented the affidavits of Mr. Manuel Yu dated March 20, 1979 and March 29, 1979, wherein the latter stated that Valladolid was "one of Copacabana's most hard-working and efficient employees"; that Valladolid's work is "mere routinary collection and clerical in nature which do not involve trust (or) confidential business or trade secrets" which he may 'divulge' to other companies." [10]

On this issue, the Regional Director ruled that "there is no evidence on record that Valladolid furnished copies of receivables or divulged confidential business matters to Mr. Manuel Yu and the 'Tropicana People' including the P500,000.00 'entrapment scheme.'

That finding is not supported by the records. The affidavits attached to petitioner's position paper adequately show that JRM did not act on mere suspicion but on the contrary, acted prudently when it first transferred Valladolid from switchboard operator where he could eavesdrop on telephone conversations, to a less crucial position of clerk-collector. But even in the latter capacity, JRM's fears were confirmed as shown by the entrapment scheme. Manuel Yu's certification as to Valladolid's trustworthiness cannot be given much weight not only because it was disproved by the entrapment contrived but more so because even Manuel Yu himself refused to employ him at Tropicana when Daniel Yu had suggested that Tropicana absorb Valladolid because JRM had lost confidence in the latter. And although Manuel Yu, who owns 15% of the equity holding of Copacabana, and being a member of the Board of Directors of JRM, had a right to know the business standing of said establishment, there is basis to believe that he would not have been able to pinpoint the particular "disbursement" of P500,000.00, if the same had not been leaked out to him.

Loss of confidence is a valid ground for dismissing an employee. Proof beyond reasonable doubt of the employee's misconduct is not required, it being sufficient that there is some basis for the same or that the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded of his position.[11] However, as

this was Valladolid's first offense, as found by the Regional Director, dismissal from the service is too harsh a punishment, considering that he had not been previously admonished; warned or suspended for any misdemeanor. Besides as clerk-collector, he need not be given access to facts relative to the business of Copacabana, which, if divulged to Tropicana would be to the former's prejudice.

Moreover, we find basis for the finding of the Regional Director that Valladolid was terminated without prior clearance. JRM sent a memorandum to Valladolid on February 24, 1979 advising him of his preventive suspension effective February 26, 1979 pending approval of the application for clearance to dismiss him. The clearance application was filed on February 28, 1979. However, even prior to that date, or on February 22, 1979, Valladolid had already filed a complaint for Illegal Dismissal. This shows that Valladolid was indeed refused admittance on February 16, 1979 when he reported back to work; so that he was practically dismissed before he was formally notified of his suspension leading to his dismissal, in violation of the requirement of Section 3, Rule XIV, Book V, Rules & Regulation Implementing the Labor Code.[12] And as provided in Section 2 of the same Rule, any dismissal without prior clearance shall be "conclusively presumed to be termination of employment without a just cause."

JRM cannot claim that it was deprived of due process considering that applications for clearance have to be summarily investigated and a decision required to be rendered within ten (10) days from the filing of the opposition.[13] As this Court had occasion to hold there is no violation of due process where the Regional Director merely required the submission of position papers and resolved the case summarily thereafter.[14]

Nor is the questioned Order of the Deputy Minister of Labor violative of Section 9, Article X of the Constitution, which requires a statement of the facts and the conclusions of law upon which it is based. That prescription applies to decisions of Courts of record. The Ministry of Labor an administrative body with quasi-judicial functions. Section 5, Rule XIII, Book V, *ibid.*, states that proceedings in the NLRC shall be non-litigious and summary in nature without regard to legal technicalities obtaining in courts of law. As the Deputy Minister was in full accord with the findings of fact and the conclusions of law drawn from those facts by the Regional Director, there was no necessity of discussing anew the issues raised therein.

JRM admits that Valladolid requested for leave for 5 days from December 30, 1978, and thereafter for 15 days, but denies that he notified the company of his absences subsequent to this. The Regional Director ruled that the absences of Valladolid were unauthorized but did not amount to gross neglect of duty or abandonment of work which requires deliberate refusal to resume employment or a clear showing in terms of specific circumstances that the worker does not intend to report for work.[15] We agree. But as Valladolid had been AWOL, no error was committed by respondent Regional Director in ordering his re-instatement without backwages.[16]

WHEREFORE, both Petitions for Certiorari are hereby denied. No costs.

SO ORDERED.

Plana, Vasquez, Relova and Gutierrez, Jr., JJ., concur.
Teehankee (Chairman), J., took no part.

[1] Exhibit "1", p. 43, Rollo, G.R. No. 53349.

[2] *Ibid.*

[3] Exhibits "2" and "3", Petition, pp. 46-50, *ibid.*

[4] p. 53, *ibid.*

[5] p. 54, *ibid.*

[6] p. 24, Rollo, G.R. No. 52364.

[7] p. 55, Rollo, G.R. No. 53349.

[8] p. 56, *ibid.*

[9] pp. 141-142, *ibid.*

[10] pp. 129, 135-136, *ibid.*

[11] *Reyes vs. Zamora*, 90 SCRA 92 (1979).

[12] "Sec. 3. Application for clearance.— Any application for clearance to shut down or to dismiss employees shall be filed with the Regional office having jurisdiction over the place or employment at least ten (10) days before the intended shutdown or dismissal. . . ."

[13] Section 8, Rule XIV, Book V, Rules and Regulations Implementing the Labor Code.

[14] *Cebu Institute of Technology vs. Minister of Labor*, 113 SCRA 257 (1982).

[15] Rule XIV, Book V, Rules & Regulations Implementing the Labor Code.

[16] *Marinduque Mining & Industrial Corp. vs. Minister of Labor & Employment*, 112 SCRA 280 (1982).

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