

FILIPRO, INCORPORATED, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND DANILO C. PARINO, RESPONDENTS.*G.R. No. 70546. October 16, 1986*

Ponente: ALAMPAY, J.

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This is a petition for certiorari pursuant to Rule 65, Section 1 of the Rules of Court excepting to the decision of the respondent National Labor Relations Commission, promulgated on June 18, 1982, ordering the reinstatement of the private respondent to his former position without backwages.

Acting on said petition, as well as on the comment thereon by the Solicitor General for the public respondent, this Court, under its resolution dated May 12, 1986, resolved to give due course to the petition; to consider public respondent's comment to the petition as its Answer, and to require the parties to file simultaneous memoranda, within twenty (20) days from notice.

There is no dispute regarding the facts of this case. Private respondent Danilo C. Parino was hired as salesman of Petitioner Filipro, Inc. (now known as Nestle Philippines, Inc.) on September 25, 1978. After undergoing the mandatory probationary period of six (6) months, he became a regular employee on March 25, 1979.

Sometime in the latter part of March, 1980, petitioner received several telephone complaints from its customers and its dealers in the area assigned to private respondent. They averred that they were not being served by the latter. These complaints led to diverse investigations conducted on March 27 and 29, 1980 by Mr. Raymond P. Velasco, petitioner's sales supervisor for the Metro Manila area. Mr. Velasco discovered that private respondent committed "table distribution" by misreporting fictitious sales and that the latter sought monetary benefits from one dealer who in return would be extended more favorable treatment than other customers.

"Table distribution" is the practice of selling the respondent's products to one or few customers only, but making it appear that they were sold to many customers. This practice is contrary to the petitioner company's policy of distributing its goods to as many customers as possible. Such practice would necessarily involve misrepresentations in the salesmen's reports. Tied up with "table distribution" is private respondent's report of alleged sales to fictitious stores in order to hide the sale of large stocks to the favored store or stores (Labor Arbiter's Decision, pp. 4-5; Rollo, pp. 30-31).

Private respondent was stated to have sold on March 14, 17 and 21, 1980 large quantities of Filipro products to only one customer/dealer even as he made it appear in his daily sales slips that he distributed the said products to many business establishments whose owners, however, denied having ordered or received such goods or to stores that were in fact inexistent. Specifically, on March 17, 1980, private respondent Danilo C. Parino was attributed to have sold 23 cases of Nescafe coffee to a certain R. Reyes store in Bangkal, Makati, and in return for this favor, private respondent solicited and received P180.00 from the store's owner because the price of that product was about to increase. To avoid detection, private respondent entered the purchases in three daily sales slips. The stores covered by the two other daily sales slips were non-existent. In private respondent's sales distribution

reports dated March 14, 17 and 21, 1980, he recorded having sold stocks to several business establishments evidenced by daily sales slip which were also subsequently found to be fictitious. Furthermore, private respondent sold on February 11, 1980 several products to one store in the aggregate sum of P1,624.60 but did not issue any daily sales slip to cover the transaction. Instead, he issued his own computation on a plain Nescafe stationery where he deliberately over valued one product - a Nescafe 50 grams. As on previous occasions, private respondent resorted to the practice of "table distribution." (Ibid, p. 3; Rollo, p. 29)

In a confidential memorandum dated April 1, 1980, Mr. Velasco, the company's supervisor demanded an explanation from the private respondent for his misdeeds which violate petitioner company's policies and which are detrimental to the company's interest. In a handwritten reply dated April 7, 1980, private respondent admitted his mistakes in the following manner: "I cannot deny the facts to the errors committed as to your findings. I am but human who could do false against good." (Ibid, p. 5; Rollo, p. 24-31)

It is relevant to note that the aforesated infractions by private respondent were not the first of such nature committed by him. Petitioner manifested also in its position paper submitted to the Labor Arbiter, dated July 9, 1980 that in May of 1979, private respondent had committed "table distribution" and falsely informed the company of fictitious sales (Rollo, pp. 23-26). When asked by Mr. Velasco to explain such acts, private respondent replied that the "table distribution was intentionally done." (Ibid, Rollo, p. 25). For this initial infraction, private respondent was suspended for a period of two weeks beginning June 28 until July 13, 1979 and warned that a repetition thereof would merit a more severe penalty (Ibid, Rollo, pp. 25-26).

On March 31, 1980, private respondent was again placed under preventive suspension due to the repetition of the same offense. On May 8, 1980, petitioner company filed with the Ministry of Labor and Employment an application for clearance to dismiss private respondent from employment on the ground of dishonesty and loss of confidence.

All the aforesated averments of petitioner remain uncontroverted by respondents.

On May 16, 1980, private respondent filed a complaint with the Ministry of Labor and Employment, protesting his illegal suspension and also included therein his Opposition to petitioner's application for clearance. He also prayed for his reinstatement.

On February 5, 1981, the Labor Arbiter to whom the case was assigned rendered his decision dismissing the private respondent's Complaint-Opposition and granted clearance for petitioner to terminate private respondent's employment. This decision was appealed to the National Labor Relations Commission. The NLRC, on June 18, 1982, adopted the findings of facts of the Labor Arbiter, but modified the dispositive portion of the decision with regard to the penalty of dismissal. Respondent NLRC stated -

"We differ, however, to the imposition of the supreme penalty of dismissal. We cannot sustain the argument that the penalty of dismissal should be left entirely to the discretion of the company. The employees are entitled to know in advance the company rules. The reason for this is obvious. Since the company rules failed to provide the penalty for such offense, we are inclined to adopt a progressive penalty of suspension for a longer period such that the preventive suspension from the date of this decision is considered a sufficient penalty.

"WHEREFORE, the decision appealed from is Modified. The complainant is hereby ordered reinstatement to his former position or equivalent position without backwages." (NLRC Decision, pp. 5-6; Rollo, p. 80-81).

Petitioner filed a Motion for Reconsideration of the above decision which was denied on January 9, 1985. Hence, this petition.

The petitioner's stand is hinged on Article 283 (c) of the Labor Code which provides:

"ART. 283. Termination by employer. - An employer may terminate an employment for any of the following just cases:

"(a) xxx xxx

(b) xxx sss

(c) Fraud or wilful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) xxx xxx

(e) xxx xxx" (Underling supplied)

Petitioner submits that in numerous instances, this Court had sanctioned the dismissal of an employee when "the employer has reasonable grounds to believe, if not to entertain, the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position." (Reyes vs. Zamora, 90 SCRA 92, 11; Galsim vs. PNB 29 SCRA 293; Dole Philippines vs. NLRC, 123 SCRA 673, 676-677).

Petitioner avers that the continued employment of private respondent would be patently inimical to the interest of petitioner company as it had already lost its trust and confidence in said employee. The practice of "table distribution" is submitted to be a grave offense because the policy of distributing petitioner's products to an many dealers as possible is given a high priority as this would reflect the ability of the company to supply and satisfy the demands of the consuming public. Petitioner underscores the fact that the infractions committed by private respondent were not initial violations of company policy because in May, 1979, petitioner had already been warned that his repetition of the same practice would merit a more drastic penalty. As it is beyond doubt that the offense of "table distribution" upon respondent's own admission, was committed deliberately and not through negligence, oversight or ignorance, the private respondent's second offense was therefore considered by petitioner as an indication of the latter's incorrigible nature and his predeliction for ignoring and violating company rules.

In the case at bar, both the Labor Arbiter and the National Labor Relations Commission found that the private respondent had actually committed infractions or violation of company's policies on no less than two (2) separate occasions. Private respondent was in fact suspended twice for said violations. The Labor Arbiter found sufficient evidence to support the employer's application to terminate the employment of private respondent. Public respondent NLRC realizing the faults of private respondent, however, bent backwards and held the view that, because the company rules failed to provide a penalty for the stated offenses, the private respondent's dismissal was too severe a penalty on him and, therefore, the latter's reinstatement should be decreed.

We differ strongly and disagree with public respondent National Labor Relations Commission's judgment. Although the Court often takes a lenient view when it considers the employee to be in a less advantageous position as his employer, this consideration, however, should not be applied in this case where there is clearly an attendant breach of trust and confidence almost equivalent to dishonesty and infidelity in the handling of the company's products. The irregularities done by private respondent have far reaching effect. Private respondent, as a salesman charged with the distribution of petitioner's products is the principal person with whom the buyers of petitioner's products have to deal with. In the final analysis, the consideration, goodwill, and marketability of the products of petitioner company would depend on the fairness and behavior displayed by private respondent. He is a key man and the importance of his role in the organization cannot be minimized. His misdeeds cannot be glossed over as trivial.

The initial decision of the Labor Arbiter decreeing the dismissal of private respondent herein is fully justified by the provisions of Article 283 (c) of the Labor Code, already above quoted. Pronouncements made by this Court in this regard are as follows:

"It is an established principle that an employer cannot be compelled to continue in employment an employee guilty of acts inimical to the interest of the employer and justifying loss of confidence in him (International Hardwood and Veneer Company of the Philippines v. Leogardo, 117 SCRA 967, 971-972 (1982))." (Manila Trading and Supply Co. v. Galsim v. PNB, 23 SCRA 293; PECO v. PECO Employees Union, 107 Phil. 1003; Nevans v. Court of Industrial Relations, 23 SCRA 1321; Gas Corporation of the Philippines v. Inciong, 93 SCRA 652).

"A company has the right to dismiss its erring employees if only as a measure of self-protection against acts inimical to its interest." (Manila Trading & Supply Co. vs. Zulueta 69 Phil. 485 and International Hardwood and Veneer Co. of the Phil. vs. Leogardo, G.R. No. 57429, October 28, 1982, 117 SCRA 967).

"We concede that the right of the employer to freely select or discharge his employees, is subject to regulation by the State basically in the exercise of its paramount police power. But much as we should expand beyond the economic doxy, we hold that an employer cannot be legally compelled to continue with the employment of a person who admittedly was guilty of misfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interest. The law in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer." (Manila Trading Co. v. Zulueta, 69 Phil. 485, 486-487 (1940))

We find it extremely difficult to understand or comprehend the sense of values which prompt the public respondent, represented by the Office of the then Solicitor General, to insinuate that this Court should also condone practices that are beyond any moral justification and actually promotes distortion of the truth.

We reject as utterly devoid of legal and moral basis the submissions made by the public respondent in this case, that -

"xxx xxx. The selling of the company's products to a few customers, perhaps for a fee, is not a grave offense. During these hard times, what is so terribly wrong with a salesman making a little extra money on the side? For as long as its products are being sold it matters little if occasionally one or a few customers are given special treatment. And if Parino tampered with his reports by making it appear that he sold the products to several dealers when in truth they were sold to only a few favored dealers, no economic loss was suffered by the Company by virtue of said acts of Parino." (Comment, p. 3; Rollo, p. 100)

This Court should help stamp out, rather than tolerate, the commission of irregular whenever these are noted. Malpractices should not be allowed to continue but should be rebuked. It is not proper to suggest that an employee may extend special treatment to a few customers on the specious reasoning that there is nothing wrong with a salesman making a little extra-money on the side during these hard times and that, after all no economic loss was suffered by the company. It is well-worth stating that it is the primary duty of the employee to carry out the policies laid out by his employer and it is not given to the former to accept and agree to said policy but reserve for himself the prerogative of ignoring and violating the same just so he can favor some customers over others and obtain hidden profits for himself. Such wrong would be apart from the inevitable false reports that are attendant to the deceit. The continuation or tolerance of such practice could produce erosion of discipline among company personnel and an unstable marketing policy for the petitioner company and its customers. All these infractions would lead to an obviously undesirable situation. Above all, the Court should not permit pernicious practice to prosper. As petitioner company appropriately decried, these would in effect, "encourage misfeasance, malfeasance, dishonesty, infidelity, falsification of private document and even theft xxx." (Rollo, p. 156)

If at all, consideration is to be extended to private respondent because there was no economic loss that accrued to

the company, the most that should be allowed him is his separation pay but his dismissal must imperatively be decreed.

WHEREFORE, the decision of the National Labor Relations Commission (NLRC) is REVERSED and SET ASIDE. The decision of the Labor Arbiter dated February 5, 1981, granting petitioner's clearance to terminate the employment of herein respondent DANILO C. PARINO, is hereby reinstated and only with the modification that the latter should be granted separation pay.

SO ORDERED.

Feria, Acting C.J., (Chairman), Fernan, Gutierrez, Jr., and Paras, JJ., concur.

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