

TABACALERA INSURANCE CO. AND ALEJANDRO ROS, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND DOMINGO SIMBORIO, RESPONDENTS.

G.R. No. 72555. July 31, 1987

Ponente: PARAS, J.

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PARAS, J.:

THIS IS A SPECIAL CIVIL ACTION FOR CERTIORARI WITH PRAYER FOR PRELIMINARY INJUNCTION SEEKING TO ANNUL AND SET ASIDE: (A) THE DECISION OF THE RESPONDENT NATIONAL LABOR RELATIONS COMMISSION PROMULGATED ON AUGUST 5, 1985 IN NLRC CASE NO. 7-3092-83 MODIFYING THE DECISION OF LABOR ARBITER ERNILO V. PEÑALOSA AND DIRECTING PETITIONERS TO REINSTATE RESPONDENT DOMINGO SIMBORIO TO HIS FORMER POSITION WITH PAYMENT OF ONE (1) YEAR BACK WAGES, AND (B) THE RESOLUTION OF THE RESPONDENT COMMISSION DATED SEPTEMBER 27, 1985 DENYING PETITIONERS' MOTION FOR RECONSIDERATION.

RESPONDENT DOMINGO SIMBORIO WAS HIRED BY PETITIONER COMPANY ON MARCH 1, 1961 AS CLERK.

ON OCTOBER 1, 1975, RESPONDENT DOMINGO SIMBORIO WAS PROMOTED TO THE POSITION OF CREDIT AND COLLECTION SUPERVISOR ON A SIX-MONTH PROBATIONARY BASIS PER MEMO DATED SEPTEMBER 25, 1975 FROM MR. CARLOS UY, JR., THEN MANAGER OF THE COMPANY (ROLLO, P. 218).

ON APRIL 1, 1976, UPON SUCCESSFULLY COMPLETING THE SAID SIX-MONTH PROBATIONARY PERIOD, RESPONDENT DOMINGO SIMBORIO OBTAINED HIS REGULAR STATUS AS CREDIT AND COLLECTION SUPERVISOR (ROLLO, P. 219).

ON JUNE 28, 1983, RESPONDENT DOMINGO SIMBORIO WAS DISMISSED FROM WORK ON THE GROUNDS OF MISCONDUCT AND LOSS OF CONFIDENCE (ROLLO, P. 248).

RESPONDENT SIMBORIO FILED A COMPLAINT FOR UNFAIR LABOR PRACTICE, REINSTATEMENT AND DAMAGES AGAINST PETITIONERS BEFORE THE NLRC ARBITRATION BRANCH, MANILA, DOCKETED THEREIN AS NLRC CASE NO. 7-3092-83.

IN A DECISION RENDERED ON JANUARY 24, 1984, LABOR ARBITER ERNILO V. PEÑALOSA FOUND THE DISMISSAL NEITHER ILLEGAL NOR CONSTITUTIVE OF ANY UNFAIR LABOR PRACTICE. THE DISPOSITIVE PORTION OF THE DECISION READS:

"WHEREFORE, PURSUANT TO ALL THE FORE-GOING, LET THIS CASE BE, AS IT IS HEREBY DISMISSED WITHOUT PREJUDICE TO COMPLAINANT BEING PAID BY THE RESPONDENT COMPANY HIS SEPARATION PAY IN ACCORDANCE WITH LAW BY WAY OF FINANCIAL

ASSISTANCE.

"SO ORDERED." (LABOR ARBITER'S DECISION, ROLLO, PP. 147-151)

THE CASE WAS APPEALED TO THE NATIONAL LABOR RELATIONS COMMISSION (ROLLO, PP. 152-160) WHICH ON AUGUST 5, 1985, RENDERED A DECISION (ROLLO, PP. 210-216) REINSTATING SAID RESPONDENT TO HIS FORMER POSITION WITH ONE (1) YEAR BACKWAGES. THE DECISION STATES:

"WHEREFORE, THE APPEALED DECISION IS HEREBY MODIFIED IN THAT RESPONDENTS ARE ORDERED TO IMMEDIATELY REINSTATE COMPLAINANT TO HIS FORMER POSITION WITH ONE (1) YEAR BACKWAGES WITHOUT QUALIFICATION AND DEDUCTIONS WHATSOEVER AND WITHOUT LOSS OF SENIORITY RIGHTS AND PRIVILEGES. DECISION AFFIRMED IN ALL OTHER RESPECTS.

"SO ORDERED."

PETITIONER COMPANY MOVED FOR THE RECONSIDERATION OF THE AFORESAID DECISION (ROLLO, PP. 175-184) BUT THE SAME WAS DENIED ON SEPTEMBER 30, 1985 (ROLLO, P. 217).

HENCE, THIS PETITION FILED ON OCTOBER 31, 1985 (ROLLO, PP. 2-14).

THE GROUND RELIED UPON FOR THIS PETITION IS AS FOLLOWS:

THE RESPONDENT COMMISSION GRAVELY ABUSED ITS DISCRETION WHEN IT UNDULY FAVORED PRIVATE RESPONDENT BY ORDERING HIS REINSTATEMENT WITH PAYMENT OF BACKWAGES DESPITE THE CLEAR FINDING OF THE LABOR ARBITER THAT PRIVATE RESPONDENT WAS DISMISSED FOR JUST AND VALID CAUSES.

WITHOUT GIVING DUE COURSE TO THE PETITION THE COURT REQUIRED RESPONDENTS TO COMMENT THEREON (ROLLO, P. 185) AND AS PRAYED FOR, A TEMPORARY RESTRAINING ORDER WAS ISSUED ENJOINING RESPONDENT COMMISSION FROM IMPLEMENTING AND EXECUTING THE QUESTIONED DECISION (ROLLO, P. 186).

ON DECEMBER 3, 1985, IN COMPLIANCE WITH THIS COURT'S RESOLUTION (ROLLO, P. 185) PRIVATE RESPONDENT FILED HIS COMMENT (ROLLO, PP. 196-207) WHILE RESPONDENT COMMISSION FILED ITS COMMENT ON FEBRUARY 17, 1986 (ROLLO, PP. 265-274).

PETITIONERS WERE REQUIRED TO FILE A CONSOLIDATED REPLY (ROLLO, P. 277) WHICH WAS FILED ON APRIL 11, 1986 (ROLLO, PP. 285-294).

ON MAY 13, 1986, PRIVATE RESPONDENT FILED HIS REJOINDER (ROLLO, P. 303), AND PETITIONERS THEIR SUR-RE-JOINDER ON AUGUST 27, 1986 (ROLLO, P. 344).

IN A RESOLUTION DATED NOVEMBER 5, 1986, THE COURT RESOLVED TO GIVE DUE COURSE TO THE PETITION (ROLLO, P. 345).

PRIVATE RESPONDENT, ON DECEMBER 24, 1986, MOVED FOR THE RECONSIDERATION OF THE AFORESAID RESOLUTION (ROLLO, P. 346). ON JANUARY 28, 1987 THE COURT REQUIRED THE PETITIONERS TO COMMENT ON SAID "MOTION FOR RECONSIDERATION" (ROLLO, P. 347).

IN COMPLIANCE THEREWITH PETITIONERS FILED THEIR COMMENT ON MARCH 9, 1987 (ROLLO, P. 350), WHILE PRIVATE RESPONDENT FILED THEIR REPLY THERETO ON MARCH 27, 1987 (ROLLO, P. 351).

FINALLY, ON APRIL 8, 1987, THIS CASE WAS DELIBERATED UPON AND ASSIGNED FOR DECISION (ROLLO, P. 352).

THIS PETITION IS IMPRESSED WITH MERIT.

PETITIONERS CONTEND THAT THEIR DISMISSAL OF PRIVATE RESPONDENT IS LEGALLY VALID. THEIR CONTENTION CLAIMS SUPPORT FROM THE ACTS OF PRIVATE RESPONDENT IN THE COURSE OF HIS EMPLOYMENT AS CREDIT AND COLLECTION SUPERVISOR WHERE HE PROVED HIMSELF TO BE AN UNRULY, UNCOOPERATIVE AND IRRESPONSIBLE MANAGER AS SHOWN BY THE FOLLOWING INSTANCES:

(A) FOR THE PERIOD FROM FEBRUARY 1980 UP TO HIS DISMISSAL IN JUNE 1983 PRIVATE RESPONDENT REPORTED LATE FOR WORK NO LESS THAN 75 TIMES WITH EXCUSES RANGING FROM FLAT TIRES TO FICTITIOUS CUSTOMER CALLS;

(B) PRIVATE RESPONDENT'S USED DISRESPECTFUL AND ABUSIVE LANGUAGE WHEN ADDRESSING HIS SUPERIORS AND CUSTOMERS. MORE SPECIFICALLY, HE UNJUSTIFIABLY USED THREATENING LANGUAGE AGAINST PETITIONERS' PERSONNEL MANAGER AND NO LESS THAN FIVE (5) OF THEIR REGULAR CLIENTS REPORTED THAT PRIVATE RESPONDENT HAD BEEN CONDUCTING HIS TRANSACTIONS WITH THEM IN A VERY UNPROFESSIONAL AND OFFENSIVE MANNER; AND

(C) PRIVATE RESPONDENT WAS PROVED TO HAVE FREQUENTLY HUNG HIS CLOTHES IN THE LADIES' ROOM DESPITE THE LADIES' COMPLAINTS REGARDING HIS PRESENCE THERE. (POSITION PAPER OF PETITIONERS, ROLLO, PP. 31-42)

PETITIONERS ARGUE THAT PRIVATE RESPONDENT'S BEHAVIOR CONSTITUTES SERIOUS MISCONDUCT SUFFICIENT TO WARRANT HIS TERMINATION. THEY CLAIMED THAT THEY HAD TO SEND LETTERS OF APOLOGY TO THEIR CUSTOMERS AND THIS HAS DEFINITELY CAUSED GRAVE PREJUDICE TO THEIR BUSINESS OPERATIONS AND INTERESTS.

ON THE OTHER HAND, IT IS PRIVATE RESPONDENT'S POSITION THAT HIS DISMISSAL WAS THE RESULT OF SEVERAL CONCOCTED OR SIMULATED COMPLAINTS IMPUTED AGAINST HIM BY PETITIONERS AFTER HE AND SOME OF HIS CO-SUPERVISORS JOINED AS MEMBERS OF THE RANK-AND-FILE UNION IN THE COMPANY. HE CLAIMS THAT HE STARTED TO INCUR THE IRE AND IRRITATION OF PETITIONER COMPANY WHEN HE OPPOSED THE REORGANIZATION OF THE COMPANY WHICH TENDED TO LOWER THE CATEGORY OF HIS DEPARTMENT AND WHEN HE LATER DISCOVERED THE WIDE DISPARITY BETWEEN THE SERVICES AND RESPONSIBILITIES OF THE SUPERVISORS AND THEIR CORRESPONDING SALARY INCREASES AS COMPARED TO THOSE OF THE CONTRACTUAL WORKERS UNDER THE COLLECTIVE BARGAINING AGREEMENT, WHICH DISCREPANCIES TRIGGERED THE MOVE OF THE SUPERVISORS FOR A HIGHER SALARY ADJUSTMENT AND FOR INCLUSION IN THE UNION. THE REQUEST FOR INCREASE IN SALARY WAS REJECTED BY THE COMPANY WITH ALLEGED INSINUATION OF DISCIPLINARY ACTION AGAINST PRIVATE RESPONDENT SHOULD THE LATTER PURSUE THE ISSUE FURTHER. AS HE EXPECTED, HE WAS MADE TO EXPLAIN THE COMPLAINTS FILED AGAINST HIM AND WAS PREVENTIVELY SUSPENDED ON JUNE 21, 1983. HIS SERVICES WERE TERMINATED ON JUNE 28, 1983 FOR GROSS MISCONDUCT/LOSS OF CONFIDENCE. (ROLLO, PP. 102-109)

CLAIMING THAT PETITIONERS DID NOT HAVE SUFFICIENT GROUNDS TO TERMINATE HIS

SERVICES, PRIVATE RESPONDENT FILED A COMPLAINT WITH THE REGIONAL OFFICE OF THE NATIONAL CAPITAL REGION OF THE MOLE FOR ILLEGAL DISMISSAL, COUPLED WITH THE CHARGE OF UNFAIR LABOR PRACTICE AND CLAIMS FOR MORAL, ACTUAL AND EXEMPLARY DAMAGE PLUS ATTORNEY'S FEES. (ROLLO, P. 147)

THE FINDINGS OF FACTS OF THE LABOR ARBITER ARE AS FOLLOWS:

"WHETHER OR NOT THE DISMISSAL OF THE COMPLAINANT IS ILLEGAL, A CAREFUL REVIEW OF THE FACTS AND EVIDENCE ON RECORD WILL READILY DISCLOSE A NEGATIVE ANSWER. AS SUPERVISOR, THE COMPLAINANT IS INDEED DUTY BOUND TO MAINTAIN AN IMPECCABLE RECORD OF ATTENDANCE AND PUNCTUALITY NOT ONLY TO BOOST THE MORALE OF HIS PEERS AND SUBORDINATES BUT ALSO FOR HIM TO ATTEND TO IMPORTANT BUSINESS MATTERS THAT MAY ARISE DURING THE FIRST HOURS OF EACH WORK DAY. IN FACT, HIS BEING FOUND TO HAVE BEEN REPORTING LATE FOR WORK FOR NO LESS THAN SEVENTY-FIVE (75) TIMES DURING A TWO-YEAR PERIOD DOES NOT SPEAK WELL OF HIS COMMITMENT TO HIS FUNCTIONS AND RESPONSIBILITIES AS A SUPERVISOR, ESPECIALLY CONSIDERING THE LAME EXCUSES HE USED TO JUSTIFY HIS FREQUENT TARDINESS, E.G., 'FLAT TIRES, PERSONAL MATTERS, CAR REPAIRS, ETC.'

"IN THE SAME BREATH, COMPLAINANT'S RE-ACTION TO THE MEMORANDUM OF THE PERSONNEL MANAGER WHICH ASKED HIM TO REFRAIN FROM ENTERING AND HANGING HIS CLOTHES IN THE LADIES' ROOM CLEARLY CONSTITUTES CONDUCT UN-BECOMING OF A MANAGERIAL EMPLOYEE, FOR INSTEAD OF DISPLAYING A CERTAIN DEGREE OF DECORUM AND RESPECT HE RESPONDED WITH UNCALLED FOR OUTBURST AND LANGUAGE NOT EXPECTED OF HIM BY REASON OF HIS POSITION.

"MOREOVER, AS A CREDIT AND COLLECTION SUPERVISOR WHOSE FUNCTIONS REQUIRE CONSTANT RAPPORT WITH THE CUSTOMERS OF THE RESPONDENT COMPANY, HE WAS EXPECTED TO USE AT ALL TIMES TACT AND DIPLOMACY WHEN DEALING WITH THE CUSTOMERS. BUT CONTRARY TO THIS EXPECTATION, COMPLAINTS WERE RECEIVED FROM REGULAR CLIENTS THAT HE WAS CONDUCTING HIS TRANSACTIONS WITH THE LATTER IN A VERY UNPROFESSIONAL AND OFFENSIVE MANNER, THEREBY FORCING THE RESPONDENTS THRU THEIR ASSISTANT MANAGER TO WRITE LETTERS OF APOLOGY TO SAID COMPLAINING CLIENTS INASMUCH AS SAID UNPROFESSIONAL BEHAVIOUR IS CAUSING GRAVE PREJUDICE TO THE BUSINESS OPERATIONS AND INTERESTS OF THE RESPONDENTS. THIS HAS BEEN AGGRAVATED WHEN HE SHOUTED AT A CLIENT AND EVEN WENT TO THE EXTENT OF CHALLENGING THE LATTER TO A FISTFIGHT.

"UNDER THE FOREGOING FACTS AND CIRCUMSTANCES IT COULD BE SAID THAT IF ON ACCOUNT OF THE ACTS AND UNPROFESSIONAL CONDUCT OF COMPLAINANT HE HAD SHOWN THAT HE COULD NOT EFFECTIVELY PERFORM HIS DUTIES AND RESPONSIBILITIES WHEN QUARRELING WITH THE CLIENTS AND THAT HE COULD NOT SET HIMSELF AS A GOOD EXAMPLE WHEN HE IS THE FIRST ONE TO BREAK THE RULES OF DISCIPLINE AND GOOD CONDUCT, THEN THE RESPONDENTS HAD ENOUGH REASON IN DISPENSING WITH HIS SERVICES DUE TO SERIOUS MISCONDUCT AND TO LOSS OF TRUST AND CONFIDENCE IN HIM."

ON APPEAL, RESPONDENT NATIONAL LABOR RELATIONS COMMISSION REVERSED THE FINDINGS OF THE LABOR ARBITER AND OPTED INSTEAD TO BASE ITS DECISION ON THE POSSIBILITY OR SUPPOSITION THAT THERE WAS A PREMEDITATED PLAN ON THE PART OF MANAGEMENT TO DO AWAY WITH PRIVATE RESPONDENT'S SERVICES. (ROLLO, P. 211)

A CAREFUL REVIEW OF THE RECORDS FAILS TO SHOW HOWEVER, ANY SUPPOSED CONNECTION BETWEEN THE REQUESTS OF PRIVATE RESPONDENT FOR SALARY INCREASE AND FOR AFFILIATION IN THE UNION WITH THE REPLIES AND ACTION OF THE PETITIONER-EMPLOYERS THEREON FROM WHICH SUCH PREMEDITATED PLAN WAS INFERRED. ON THE CONTRARY, PRIVATE RESPONDENT FAILED TO REFUTE THE CHARGES BROUGHT BY THE PETITIONERS AGAINST HIM WHICH ARE BASED ON DOCUMENTARY EVIDENCE. INSTEAD, HE CONFINED HIMSELF TO BARE DENIALS AND COUNTER CHARGES OF TRUMPED-UP INVESTIGATION WHICH ARE NOT SUPPORTED BY THE RECORDS. (ROLLO, PP. 108-110) MORE THAN THAT, HE WAS FOUND TO HAVE ADOPTED DECEPTIVE CLAIMS AND MEASURES WHICH WOULD TEND TO BECLOUD THE ISSUES OF THIS CASE. (ROLLO, PP. 108-110)

THUS THE LABOR ARBITER CORRECTLY FOUND THE FOLLOWING:

"REGARDING COMPLAINANT'S CLAIM THAT HIS DISMISSAL WAS IN RETALIATION AGAINST HIS HAVING FILED A PETITION WITH THE NATIONAL CAPITAL REGION, MINISTRY OF LABOR AND EMPLOYMENT, SEEKING FOR A DECLARATION THAT SUPERVISORS ARE NON-MANAGERIAL EMPLOYEES QUALIFIED FOR MEMBERSHIP IN THE RANK-AND-FILE UNION EXISTING IN THE RESPONDENT COMPANY, IT APPEARS THAT THE FILING OF SAID PETITION ON JUNE 21, 1983, THE VERY SAME DAY COMPLAINANT WAS PLACED UNDER PREVENTIVE SUSPENSION, WAS MORE OF AN ANTICIPATION OF WHATEVER ACTION THE RESPONDENTS MAY TAKE AGAINST HIM SO THAT, AS CONVINCINGLY THEORIZED BY THE RESPONDENTS, ANY SUBSEQUENT TERMINATION ACTION TAKEN AGAINST HIM WOULD BE VIEWED AS A RETALIATORY MEASURE. THIS FACT COULD BE VIEWED FROM HIS DECEPTIVE CLAIM THAT HE WAS JOINED IN SAID PETITION BY FOUR (4) OTHER CO-SUPERVISORS AND YET, THE LATTER HAD EXECUTED INDIVIDUAL AFFIDAVITS DECLARING THAT THE FILING OF THE PETITION WAS WITHOUT THEIR CONSENT AND THAT THEY HAVE NO INTENTION TO SUE THE RESPONDENTS."

UNDER ART. 283 OF THE LABOR CODE, AN EMPLOYER MAY TERMINATE AN EMPLOYMENT FOR ANY OF THE FOLLOWING JUST 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.

LOSS OF CONFIDENCE AS A GROUND FOR DISMISSAL DOES NOT ENTAIL PROOF BEYOND REASONABLE DOUBT OF THE EMPLOYEE'S MISCONDUCT. IT IS ENOUGH THAT THERE BE "SOME BASIS" FOR SUCH LOSS OF CONFIDENCE OR THAT "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, 111 [1979]; GALSIM VS. PNB, 29 SCRA 293 [1969]).

IN THE CASE AT BAR, PRIVATE RESPONDENT OCCUPIED THE POSITION OF CREDIT AND COLLECTION SUPERVISOR, CLASSIFIED UNDER SEC. 5 OF THE COMPANY'S COLLECTIVE BARGAINING AGREEMENT (ROLLO, P. 79) AS MANAGERIAL/SUPERVISORY PERSONNEL. IN ADDITION TO HIS REGULAR FUNCTIONS AS SUCH, HE ALSO HAD THE POWER TO RECOMMEND THE HIRING AND APPOINTMENT OF HIS SUBORDINATES, AS WELL AS THE POWER TO RECOMMEND ANY PROMOTION AND/OR INCREASE (ROLLO, P. 4). OTHERWISE STATED, HE IS "ONE IN WHOM PETITIONER COMPANY HAS GIVEN ITS COMPLETE TRUST AND CONFIDENCE. XXX THE COMPANY, THEREFORE, WAS JUSTIFIED IN EXPECTING THAT HIS ACTUATIONS SHOULD BE ABOVE SUSPICION" (REYES VS. ZAMORA, 90 SCRA 92 [1979]).

MOREOVER, WHILE THERE IS NO QUESTION THAT THE RIGHT OF AN EMPLOYER TO FREELY SELECT OR DISCHARGE HIS EMPLOYEES, IS SUBJECT TO REGULATION BY THE STATE BASICALLY IN THE EXERCISE OF ITS PARAMOUNT POLICE POWER (MANILA TRADING & SUPPLY CO. VS. ZULUETA, ET AL., 69 PHIL. 485, [1940]), THERE IS ALSO AN EQUALLY 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 (MANILA TRADING AND SUPPLY CO. VS. MANILA TRADING LABORERS ASSO., 83 PHIL. 297 [1949]; PECO VS. PECO EMPLOYEES UNION, 107 PHIL. 1003 [1960]; DEVANS VS. CIR, 23 SCRA 1321 [1968]; GAS CORPORATION OF THE HARDWOOD AND VENEER CO. OF THE PHIL. VS. LEOGARDO, 117 SCRA 967 [1982]; DOLE PHIL. INC. VS. NLRC, 123 SCRA 673, 677 [1983]).

THE RECORDS REVEAL THAT PRIVATE RESPONDENT HAS THE KNACK FOR SAYING HARSH AND ROUGH WORDS BOTH TO HIS SUPERIORS AND TO THE COMPANY'S CLIENTS. WHEN HIS ATTENTION WAS CALLED BY THE ASSISTANT MANAGER OF PETITIONER COMPANY CONCERNING HIS ENTERING THE LADIES' ROOM TO HANG UP HIS CLOTHES, HE REPLIED IN THIS WISE:

"WHAT FORCED ME TO ENTER THE LADIES ROOM TO HANG-UP MY CLOTHES IS THE VERY INHUMAN ACTS COMMITTED AGAINST ME BY SOMEBODY IN THIS OFFICE WHO HAD, ON TWO INSTANCES, THROWN MY CLOTHES INSIDE THE MEN'S ROOM. (PASALAMAT SIYA HINDI KO NAHULI SA ACTO). FINALLY, IF YOU ARE THINKING THAT I'M UP TO DOING SOMETHING BAD AGAINST OUR LADIES IN THIS OFFICE, REST-ASSURED THAT THIS WILL NOT HAPPEN, FOR, AS YOU ARE WELL AWARE, ALL OF THEM DO NOT MEET MY STANDARD AND NONE OF THEM FOR THAT MATTER, WILL GET MY SYMPATHY NOR TEMPT ME TO COMMIT A WRONG." (ANNEX "D", ROLLO, P. 67)

WITH THIS FRAME OF MIND, IT CAN HARDLY BE DOUBTED THAT HE HAS BREACHED THE TRUST AND CONFIDENCE REPOSED IN HIM BY HIS EMPLOYER RESULTING IN ACTS INIMICAL TO THE INTERESTS OF THE COMPANY. IN THE CASE OF SEA-LAND SERVICE, INC. VS. NLRC, 136 SCRA 544 (1985), THE COURT IN SUSTAINING THE DISMISSAL OF ONE JOSELITO REYES, A WAREHOUSE CLERK RULED THAT IT IS SUFFICIENT THAT THE EMPLOYER SHOULD HAVE A BASIS FOR BELIEVING THAT THE EMPLOYEE 'BREACHED THE TRUST AND CONFIDENCE REPOSED IN HIM' BY HIS EMPLOYER WITHIN THE MEANING OF SECTION 283 (C) OF THE LABOR CODE. THIS FACT NEED NOT BE PROVEN BEYOND REASONABLE DOUBT.

PREMISES CONSIDERED, THE ASSAILED DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION DATED AUGUST 5, 1985, AND ITS RESOLUTION DATED SEPTEMBER 27, 1985, ARE HEREBY SET ASIDE, AND THE DECISION OF THE LABOR ARBITER DATED JANUARY 24, 1984, IS HEREBY REINSTATED.

SO ORDERED.

Teehankee, C.J., (Chairman), Narvasa, Cruz, and Gancayco, JJ., concur.

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