

**MANILA MIDTOWN COMMERCIAL CORPORATION, PETITIONER, VS.  
NATIONAL LABOR RELATIONS COMMISSION, HONORABLE  
TEODORICO DOGELIO, CESAR O. SINGCO AND ROLANDO NARAL,  
RESPONDENTS.**

*G.R. No. 80347. December 29, 1988*

Ponente: GANCAYCO, J.

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**GANCAYCO, J.:**

The principal question in this petition is whether or not the public respondents committed a grave abuse of discretion when Labor Arbiter Teodorico L. Dodelio, in his Decision dated July 16, 1985 in Case No. NLRC-NCR-6-2284-84, ruled that there was no clear reason to warrant the dismissal of the private respondents from their employment, that they were denied due process, that there was no clear basis for the breach of trust allegedly committed by the employees and that they are entitled to reinstatement, wage adjustments and allowances, unpaid wages, 13th month pay for 1984, cash value of accrued vacation and sick leave benefits under a collective bargaining agreement, if any, or pursuant to existing company policy:[1] and when the First Division of the National Labor Relations Commission (NLRC) affirmed the aforementioned decision on appeal in the Resolution dated May 22, 1987.[2]

On June 25, 1985, private respondent Rolando Naral and Cesar Sinoco filed a complaint against petitioner Manila Midtown Hotel for unfair Labor practice and illegal suspension. On October 5, 1984, private respondents amended their complaint and included charges of unpaid wages, violation of Presidential Decree 851, Wage Order Nos. 2, 3, 4, and 5, non-payment of vacation and sick leave benefits, as well as moral, exemplary, nominal and actual damages. John Gokongwei, Jr. was impleaded as respondent. Private respondents Naral and Singco stated in their position papers that they were hired by petitioner company on November 29, 1980 and April 10, 1979, respectively. They were assigned as protective coordinators under the Protective Services Department of the said hotel and in the course of their employment with the petitioner for more than three years, they were never charged of violating the rules and regulations of said hotel in connection with their duties.

In its position paper, petitioner claimed that several adverse reports were made by some officers of the Protective Services Department regarding the activities of the private respondents. Petitioner also stated therein that private respondents were served with a "notice of offense" relating to an offense allegedly committed on June 20, 1984 and added that private respondents were asked to explain their side regarding the charges and present evidence. Private respondents executed written statements denying the charges against them.

On July 16, 1985, Labor Arbiter Teodorico L. Dogelio rendered a Decision to the effect that private respondents were not guilty of the charges, that they did not commit a breach of trust, and that they are entitled to reinstatement, backwages and other emoluments due them.

An appeal to public respondent NLRC did not succeed. The NLRC affirmed the decision of the labor arbiter. The NLRC observed that on May 23, 1984, private respondent Singco caught Manzano, a security guard, allowing the

entrance of pimps and lady joiners into the hotel, as a result of which Manzano was transferred from his duty post at the Adriatico Street entrance/exit to the parking area of the hotel. The transfer was resented by Manzano. On June 9, 1984, private respondents were told by their supervisor that Manzano made a report against them dated May 18, 1984 concerning their alleged white slavery activities which they denied. Nevertheless, they were suspended on June 28, 1984. On July 2, 1984, the private respondents were invited for a conference by their department manager, but before the conference could be held, the Assistant Manager submitted his final report on the case. On July 23, 1984, private respondents received their notice of dismissal on the ground of breach of trust.

A motion for reconsideration was filed by petitioner but the same was denied on September 11, 1987.

Hence, this petition where the original petitioner in the case has been replaced by the Manila Midtown Commercial Corporation.

Petitioner corporation claims that both decisions of the public respondents and the monetary awards given are contrary to law, evidence and jurisprudence, and that the labor arbiter did not acquire jurisdiction over the person of John Gokongwei, Jr. and Manila Midtown hotel.

The petition is bereft of merit.

Petitioner claims absolute right to terminate the services of employees found guilty of breach of trust because of "pimping activities." We agree that breach of trust is sufficient ground to terminate the services of employees, if there is substantial evidence to this effect. Employees performing security functions must not commit any breach of trust, otherwise they can be removed.

In this case, however, the finding of public respondents show that petitioner's charge of breach of trust against private respondents was based solely on the report rendered by security guard Rodrigo Manzano who was transferred based on the same alleged illegal activities. Manzano had reason to file charges against the private respondents. The private respondents were never given an opportunity to confront Manzano regarding those charges. This is a denial of due process. Due process, we have held time and again, cannot be dispensed with, for it is an essential ingredient in the administration of justice in both judicial and administrative case. Any breach of trust alleged by an employer as a ground for the dismissal of an employee must be predicated on clear and convincing evidence. The right of the employee to confront the witnesses against him and to present evidence to disprove the charge must be assured.

The findings of public respondents is that Sergeant Manzano was not a credible witness and his report cannot inspire belief; that the private respondents were suspended with undue haste; that they were not given the chance to confront Manzano; and that no formal investigation was conducted relating to the report of Manzano.

Under Section 5 of Batas Pambansa Blg. 130, the employer should at all times afford the worker ample opportunity to be heard and to defend himself with the assistance of a representative before he is dismissed.

The public respondent NLRC upheld the Decision of the labor arbiter because of its honest belief that the dismissal in this case "was too harsh, oppressive and precipitate." We agree with its conclusion and We find that both public respondents did not commit any grave abuse of discretion in reaching their decisions.

On the money claims of private respondents, petitioner was not able to disprove the same.

On the question of jurisdiction, We cannot deny that it can be raised at any stage of the proceedings, even on appeal. The inclusion of John Gokongwei, Jr. as respondents was proper. As petitioner now claims, petitioner Manila Midtown Hotel is not a corporation. Apparently it is a business name or common name with John Gokongwei, Jr. as President and General Manager, in which capacity they can be sued.[3]

The filing of this petition by Manila Midtown Commercial Corportion is a revelation. It now claims to be the real employer of private respondents. It is much too late for Manila Midtown Hotel and John Gokongwei, Jr. to claim lack of jurisdiction over them. They submitted to the jurisdiction of the labor arbiter and NLRC. They raised this issue for the first time in a motion for reconsideration before the NLRC.[4]

WHEREFORE, and by reason of the foregoing, the petition is DISMISSED for lack of merit, with costs against petitioner. This Decision is immediately executory.

**SO ORDERED.**

Cruz, (Acting Chairman), Griño-Aquino, and Medialdea, JJ., concur.  
Narvasa, J., on leave.

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[1] Pages 57-63, Rollo.

[2] Pages 65-69, Rollo.

[3] Section 15. Rule 3, Rules of Court: see complaint and position paper of private respondents in the NLRC; Annexes "A", "B" and "C" to petition; pages 28-44, Rollo.

[4] Soco vs. Mercantile Corporation of Davao, 148 SCRA 526 (1987) and Tijam vs. Sibonghanoy, 23 SCRA 29 (1968).

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