

**BRISTOL LABORATORIES EMPLOYEES, ASSOCIATION-DFA AND
RICO G. GATA, PETITIONERS, VS. THE NATIONAL LABOR RELATIONS
COMMISSION, BRISTOL LABORATORIES (PHILS.), INC., F.A.
MARIAZETA, ...**

G.R. No. 87974. July 02, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

The petitioners in this special civil action for certiorari and mandamus assail the Resolutions dated March 7, 1989 and April 10, 1989 of the National Labor Relations Commission in NLRC-NCR Case No. 00-08-02892--87, which set aside the decision of the Labor Arbiter and ordered the latter to receive further evidence.

On June 8, 1983, petitioner Rico G. Gata was employed by Bristol Laboratories (Phils.), Inc. (hereinafter referred to as "the company") as Territory Manager for the Pangasinan-Baguio area. In January 1987, he was transferred to the Ilocos Norte, Ilocos Sur and Abra area. He was receiving a monthly salary of P4,750.00. As territory manager, his job was to promote the company's specific product brands by conducting an aggressive promotional campaign.

On March 16, 1987, the company's Northern Luzon district manager, F.A. Mariazeta, Jr., reported to the company, through its Region Sales Manager, P.C. Ong, that Gata had withdrawn stocks, without authority, from two company customers: (1) Customer No. 10590 - Farmacia Carillo in Alaminos, Pangasinan in the amount of P25,603.60 per Invoice No. 619085 dated August 25, 1986 (Exhibits B, C, D and E), for which Gata issued two (2) personal checks which later bounced; and (2) Customer No. 10661 - the Dr. Gregorio de Guzman Medical Clinic in San Fabian, Pangasinan, in the amount of P16,527.50 as per Invoice No. 61959 dated September 18, 1986 (Exhibit 1), for which Gata issued three (3) personal checks, two of which bounced upon maturity.

Gata was able to replace one of the checks he issued to Farmacia Carillo by paying two installments of P5,000 each.

Gata's immediate supervisor, District Manager J.L. Atanacio, conducted a separate investigation on the matter and thereafter submitted a report dated March 20, 1987, confirming the findings of District Manager Mariazeta, Jr. Acting on the reports, the company's Personnel Manager, J.F. Fuentes, Jr., issued a memorandum on March 30, 1987 directing Gata to explain in writing within ten days (or until April 12, 1987) why his employment should not be terminated for cause in view of the unauthorized withdrawals. He was also placed under preventive suspension for an indefinite period.

Gata made a vague general denial of the charges against him.

A formal investigation was conducted by the personnel department on April 29, 1987, during which Gata, represented by counsel Atty. Nitura and the union president, Santiago Espino, was confronted with twelve (12) documents (Annexes 5 to 16 of the written reports) evidencing the unauthorized stock withdrawals in violation of the company's Rules on Conduct With Physicians and its Trade/Outlet Policy of Stock Withdrawal. In the face of

Gata's reiterated denials, the company issued a memorandum dismissing him for serious misconduct and wilful breach of trust.

On August 19, 1987, Gata filed in the Ministry of Labor and Employment a complaint for illegal dismissal, illegal suspension, withholding of benefits and violation of the CBA. After five (5) hearings, the Labor Arbiter issued a decision dated July 28, 1988, dismissing the complaint for lack of merit but nonetheless ordering the payment to Gata of separation pay equivalent to one month for every year of service, computed at P19,000 (pp. 26-38, Rollo).

Gata and the union appealed to the NLRC in NCR Case No. 00-08-02892-87. The company opposed the appeal, attaching thereto various supporting documentary evidence.

On March 7, 1989, the NLRC issued a resolution vacating and/or setting aside the labor arbiter's decision and remanding to the labor arbiter the entire records of the case for reception of evidence and further proceedings, "for proper evaluation of the evidence adduced in line with the requirements of due process." (pp. 21-23, Rollo.) The complainants' motion for reconsideration of the resolution was denied by the NLRC on April 10, 1989 (p. 24, Rollo), hence, this petition for certiorari.

Petitioners allege that the NLRC gravely abused its discretion:

1. in considering respondent's unverified opposition to the appeal with the evidence introduced for the first time on appeal; and
2. in remanding the case to the labor arbiter and in not resolving the case on the merits.

There is no merit in the petition.

The records show that although the respondent-employer failed to submit a position paper, it was not declared in default, as no motion to declare it in default was filed by the petitioners. Procedural technicalities do not strictly apply to proceedings before labor arbiters for they may avail themselves of all reasonable means to speedily ascertain the facts of a controversy (Art. 221, Labor Code).

No grave abuse of discretion may be attributed to the NLRC for having considered additional documentary evidence submitted by the respondent-employer on appeal, to prove breach of trust and loss of confidence as bases for the dismissal of the petitioner. But even if that additional evidence were to be disregarded, its effect being merely cumulative inasmuch as the evidence in the records was sufficient to support the Labor Arbiter's finding of legal and justifiable grounds for terminating the employment of petitioner Gata, it was error for the NLRC to remand the case to the Labor Arbiter for further proceedings. It could, and should, have resolved the appeal on the merits. In *Columbia Development Corporation vs. MOLE*, 146 SCRA 421, where certain balance sheets and income statements were submitted by the company only on appeal, we held that they should have been considered by the Minister of Labor "in keeping with the directive of Art. 221 of the Labor Code." The Court reiterated an earlier ruling to the same effect in *Haverton Shipping Ltd. vs. NLRC*, 135 SCRA 685.

On the basis of the evidence in the records, the Labor Arbiter made the following findings of fact:

"Going now to the charge of illegal dismissal, this Office finds that Complainant was dismissed for justifiable causes and was given the opportunity to explain and defend his side. Respondent BLPI charged Complainant with unauthorized stock withdrawals on the basis of reports from its two (2) district managers who separately conducted an investigation. The reports contained detailed accounts of the transactions made by the Complainant with two (2) outlets/customers of Respondent BLPI, which reports clearly convinced Respondent BLPI that Complainant personally withdrew stocks from said outlets in violation of company policy. It appears that under company policy, products can only be withdrawn from outlets upon prior approval of the National Sales Manager and to be implemented by the District Manager. Respondent BLPI, therefore, had a basis for

believing that Complainant is responsible for the misconduct which rendered him absolutely unworthy of the trust and confidence demanded by his position. In several instances, the 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 V. ZAMORA 30 SCRA 92; GALSIM V. PNB, 29 SCRA 293; DOLE PHILS V. NLRC, 123 SCRA 673).

"xxx xxx xxx

"Complainant holds a position of responsibility. As a territory manager, Complainant has the responsibility of assisting in the effective distribution of Respondent firm's products. Complainant's position therefore entails the trust and confidence of his employer and breach of such trust is a justifiable cause for dismissal. In LAMSAN TRADING V. HON. VICENTE LEOGARDO, JR. ET. AL., G.R. No. 73245, September 30, 1986, it was held that:

'xxx If the private respondents are cashiers, managers, supervisors, salesmen, or other per-sonnel occupying positions of responsibility, the requirement that an employee should enjoy the trust and confidence of his employer may justify their termination. (Under-lining supplied).'

Being the person with whom the buyers/outlets of Respondent BLPI had to deal with, Complainant's behaviour in the field has a great bearing on Respondent's goodwill and the marketability of its products. Thus, Complainant has the primary duty to carry out the policies laid out by his employer. It is not difficult to see that non-compliance with company policies would not only erode discipline among company personnel but would also adversely affect the distribution of products of the company.

"It is also seen from the records that Complainant was afforded due process in accordance with B.P. 130. Complainant was issued a memorandum requiring him to explain his side relative to the reported stock withdrawals made by him and was further subjected to an investigation by the company Personnel Officer." (pp. 34-36, Rollo.)

The findings of the Labor Arbiter that the petitioner was dismissed for a lawful cause with due process are supported by substantial evidence, hence, they are binding on this Court. The Labor Arbiter's order awarding separation pay to the petitioner is erroneous because one who is dismissed for cause is not entitled to that benefit. However, as the private respondent BLPI did not appeal that decision, it is not entitled to affirmative relief (American International Underwriters (Phil.), Inc. vs. CIR, 55 SCRA 227; Philippine Air Lines, Inc. vs. Court of Appeals and Natividad Vda. de Padilla, G.R. No. L-54470, May 8, 1990).

WHEREFORE, the petition is granted. The Resolution of the NLRC remanding the case to the labor arbiter for further proceedings is hereby set aside. The labor arbiter's decision dismissing the complaint is affirmed. No costs.

SO ORDERED.

Narvasa, Acting C.J., Cruz, Gancayco, and Medialdea, JJ., concur.

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