

ENRIQUE R. ROSELLO, JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND PEPSI COLA DISTRIBUTORS OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 91447, October 18, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Is the dismissal of an employee for breach of trust and loss of confidence proper? This is the issue in this petition.

Petitioner is employed as salesman by private respondent Pepsi Cola Distributors of the Philippines with a monthly salary of P1,441.85 and cost of living allowance in the amount of P510.00.

On July 25, 1985 petitioner was placed under preventive suspension for alleged violation of company rules and regulations.

An administrative investigation was conducted by private respondent wherein it was found among others, that: (1) petitioner created fictitious credit extensions in the account of Chin Chin Store by forging the signature of its owner, Mr. Dizon; and (2) petitioner failed to remit the collections in the amount of P16,857.50.

Thus, on July 14, 1986 private respondent dismissed petitioner from the service for violation of company rules and regulations, breach of trust and loss of confidence. The period of petitioner's preventive suspension was considered service without pay.

Petitioner then filed a complaint for illegal dismissal in the National Labor Relations Commission wherein in due course, on October 7, 1988, labor arbiter Ariel C. Santos rendered a decision directing the reinstatement of petitioner to his former position with full backwages and without loss of seniority rights from July 14, 1986 until actual reinstatement, and further of all the sums owing to petitioner is also awarded to him as attorney's fees.

Private respondent appealed to the respondent National Labor Relations Commission (NLRC). On September 29, 1989 respondent NLRC rendered its decision reversing the appealed decision. A motion for reconsideration thereof filed by petitioner was denied by the NLRC on November 10, 1989.

Hence this special civil action for certiorari, which was erroneously denominated as a petition for review on certiorari, wherein petitioner alleges that the respondent NLRC committed the following alleged errors:

"I THAT THE RESPONDENT NLRC DID NOT ACQUIRE ANY JURISDICTION TO ENTERTAIN PRIVATE RESPONDENT'S APPEAL BEFORE THEM;

II GRANTING THAT IT HAS JURISDICTION THE RESPONDENT NLRC COMMITTED A GRAVE ERROR WHEN IT DISREGARDED THE CONCLUSION REACHED BY HONORABLE LABOR ARBITER ARIEL SANTOS INSPITE SUBSTANTIAL EVIDENCE TO SUPPORT IT;

III THAT THE RESPONDENT NLRC COMMITTED A GRAVE ERROR WHEN IT IMPOSED THE SUPREME ADMINISTRATIVE PENALTY OF DISMISSAL ON YOUR PETITIONER;

IV THAT THE RESPONDENT NLRC BREACHED THE CONSTITUTIONAL PROVISION AGAINST CRUEL AND UNUSUAL PUNISHMENT;

V AND LASTLY, THE RESPONDENT NLRC COMMITTED A SERIOUS ERROR IN NOT AFFIRMING THE LABOR ARBITER'S DECISION OF OCTOBER 7, 1988 IN FAVOR OF YOUR PETITIONER.

The petition is devoid of merit.

No doubt the NLRC has appellate jurisdiction over the decision of the labor arbiter which is being assailed to be erroneous and not supported by the evidence constituting as it does a grave abuse of discretion.[1]

In this case respondent NLRC did not err in disregarding the conclusions reached by the labor arbiter because its findings are not supported by substantial evidence.

Petitioner admits that he delivered Pepsi Cola products to the store of Mr. Martin Concepcion at 2593 Beata Street, Pandacan, Manila, on April 2 and 12, 1985, but he made it appear that the products were delivered to Chin Chin store. He also admitted having failed to remit part of his collections amounting to P16,857.00.

Petitioner advances the lame excuse that he was only acting upon instructions of his supervisor, Mr. Concepcion and he did not want to incur the ire of his superior for fear of being dismissed from the service.

Assuming his claim to be true, he had no duty to follow instructions of his superior that is not only anomalous and contrary to rules and regulations of the company but is certainly unlawful. Instead he should have reported the matter to higher authorities. In electing to obey the unlawful instructions of his superior he thereby assumed responsibility for his acts.

The petitioner was duly investigated by the private respondent for these infractions of the rules and regulations of the company and after having been afforded due process he was dismissed from the service.

No doubt it is the right of an employer to dismiss an employee for breach of trust and loss of confidence as in this case. The security of tenure accorded to labor under the Constitution does not embrace infractions of the rules amounting to breach of trust and loss of confidence as in this case.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Narvasa, (Chairman) Cruz, Griño-Aquino, and Medialdea, JJ., concur.

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