

ISETANN DEPARTMENT STORE, INC., PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION, SECOND DIVISION AND ROSITA BAUTISTA, RESPONDENTS.

G.R. No. 95080, November 10, 1993

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

Petitioner Isetann Department Store, Inc. seeks to annul and set aside the Resolution issued on August 29, 1990 by the Second Division of the National Labor Relations Commission[1] in NLRC Case No. 00-01-0071-88, entitled "Rosita R. Bautista, Complainant-Appellee vs. Isetann Department Store, Inc., Respondent-Appellant." It is alleged that the assailed resolution, which dismissed the appeal of petitioner Isetann from the decision of Labor Arbiter Felipe P. Pati dated July 31, 1989, was rendered arbitrarily, capriciously and with grave abuse of discretion because contrary to law and the evidence.[2]

We agree with this assessment.

Private respondent Rosita Bautista was Floor Supervisor at the third floor of petitioner's store at Carriedo, Manila. Her sister, Yolanda Chan, was a regular supplier of shoes to petitioner. On June 2, 1987, Yolanda Chan delivered to petitioner assorted styles of ladies shoes consisting of 1,379 pairs of "Valencia" shoes and 940 pairs of deerskin shoes. The "Valencia" shoes were priced at P22.00 a pair, or a total of P30,338.00, while the deerskin shoes were priced at P25.00 a pair, or a total of P23,500.00, adding up to P53,838.00 overall.

Because of the difference in price and material, the shoes had to be sorted out, which task was undertaken beginning June 13, 1987 under the supervision of Head of Stock, Connie Capua. Sorting, however, was completed under another Head of Stock, Iglesia (Liza) Mangoba, as Capua went on leave. After the shoes had been sorted out, Mangoba prepared a Purchase Order erroneously listing the number of "Valencia" shoes at 940 pairs and the deerskin shoes at 1,379 pairs and giving these a total value of P55,155.00.

The switch in figures was discovered sometime in July, 1987 when the shoes were transferred to petitioner's Cubao branch. The purchase order was cancelled and a new check for the correct amount of P53,838.00 was prepared and paid to Yolanda Chan, who continued to supply shoes to petitioner until September, 1987. When confronted with the error by Alice Luro, Buyer, and Mr. K. C. Tan, Merchandiser, Mangoba admitted her mistake in sorting out the shoes and in preparing the purchase order.

Subsequently, however, on November 28, 1987, Mangoba executed a written statement stating inter alia that when she took over the sorting job from Connie Capua, she was instructed by the latter to mix some "Valencia" shoes with the deerskin shoes so that Yolanda Chan would not lose from the transaction. She did as instructed, but when she was preparing the purchase order, private respondent approached her and seeing that the "Valencia" shoes still outnumbered the deerskin shoes, told her to interchange the respective numbers indicated for the Valencia and deerskin shoes. When subsequently confronted with the switched figures, she had to own the error and take the blame because private respondent Bautista was staring at her.[3]

On the basis of Mangoba's written statement, petitioner conducted a preliminary investigation, in the course of which, Capua likewise executed a written statement on December 2, 1987 stating that she was instructed by private respondent to mix the "Valencia" shoes with the deerskin shoes to avert loss on the part of Chan, and had given the same instruction to Mangoba when the latter took over the sorting job. She was given P400.00 and a pair of shoes by respondent Bautista for her cooperation.[4]

Bautista was asked to explain her alleged participation in the incident. Hearings were conducted on December 11, 14 and 16, 1987. On December 24, 1987, petitioner wrote Bautista, terminating her services effective December 28, 1987, for:

"willful breach of the trust reposed on you by the Company thru violations you have committed against our Company Rules and Regulations as provided below:

Rule XIV - Sec. 2. Bribery or offering or accepting anything of value in exchange for a job work, assignment, work location, or favorable condition or employment.

Rule XIV - Sec. 32. Engaging or conniving in anomalous transactions.

Rule XVIII - Sec. 9. Using Company time, or materials or equipment to do unauthorized work within or without the Company premises for personal gain.

Rule XIV - Sec. 17. Causing loss of time/and/or money to the Company because of negligence or inefficiency in the performance of official duties or persistently doing unsatisfactory work."[5]

Bautista contested her dismissal through a complaint filed before the NLRC NCR Arbitration Branch. No amicable settlement having been reached, hearing on the merits ensued.

On July 31, 1989, Labor Arbiter Felipe P. Pati rendered judgment "ordering the respondent (Isetann) to reinstate the complainant to her former position without loss of seniority rights and to pay her full backwages and other benefits from the time she was illegally dismissed until actual reinstatement plus ten (10) percent of the total award as Attorney's fees payable to counsel."[6] The Labor Arbiter ruled that no fraud or anomaly attended the accomplishment of the purchase order of Chan's June 2, 1987 shoe delivery but only an error in its preparation as admitted by Mangoba when first confronted therewith. No credence was given to the testimonies of Capua and Mangoba that they were instructed by private respondent to mix the shoes to avoid loss on the part of Chan because nobody would "agree to outrightly transact or enter into a losing proposition or business" and Chan herself testified that she would already be getting a marginal profit from the correct price of the shoes. Moreover, Arbiter Pati noted that petitioner's own version that the anomaly was discovered in July, 1987 was irreconcilable with the fact that Chan was paid the correct amount as early as June, 1987 and she was still allowed to supply shoes to petitioner until September 1987. In fine, the Labor Arbiter concluded that petitioner Isetann had failed to substantiate the charges imputed to private respondent and that there was no basis for her dismissal on the ground of loss of trust and confidence.

On appeal by petitioner Isetann, the National Labor Relations Commission sustained the Arbiter's conclusion that the fact of payment on June 29, 1987 of the cost of the delivery rendered incredible the testimonies of Capua and Mangoba that after the anomaly was discovered either in July or November, the purchase order was cancelled and a new check for the correct amount was prepared and their conflicting testimonies that the anomaly was discovered in July or November, as Chan was allowed to deliver shoes to petitioner until September, 1987. The NLRC also considered as grounds for rejecting the confessions of Mangoba and Capua the delay in their execution as well as the statement of Mangoba during her cross-examination that "they were threatening me", "they" being taken to mean petitioner. Taking note of the amount involved, the NLRC found the testimony of

respondent Bautista that she had nothing to do with the alleged fraudulent mixing of shoes easier to believe since she would not risk her supervisory job and seven years of service for a measly sum of P1,317.00.

In the petition at bar, petitioner assails the affirmance by the NLRC of the Labor Arbiter's decision as constituting grave abuse of discretion because the Arbiter not only failed to accord due weight to petitioner's testimonial and documentary evidence, but more importantly, misapprehended the same, thereby drawing conclusions that were entirely incongruent and fallacious.

The recognized rule is that the employer has a distinct prerogative to dismiss an employee if the former has ample reason to distrust the latter or if there is sufficient evidence to show that the employee has been guilty of breach of trust. The law does not require proof beyond reasonable doubt of the employee's misconduct before the employer can invoke such authority. It is sufficient that there is some basis for the loss of trust or that the employer has reasonable grounds to believe that the employee is guilty of misconduct and that the nature of the employee's action renders him or her unworthy of the trust and confidence demanded by the position.[7]

In the case at bar, Bautista's involvement in the anomaly complained of was sufficiently shown by the corroborating testimonies of Capua and Mangoba. Both the Labor Arbiter and the NLRC gravely abused their discretion in rejecting said testimonies, acting as they did under gross misapprehension of facts. No contradiction arises from the fact of payment on June 29, 1987 and petitioner's witnesses' statement that the anomaly was discovered in July or November of the same year. What was discovered in July was only the switch of figures in the purchase order then ascribed to nothing more than inattention or carelessness. It was not until November, when Mangoba executed her written statement, that respondent Bautista's hand in said interchanging was discovered. Only then when what appeared to be a mere error in the preparation of the purchase order was revealed to be an aborted fraudulent scheme involving private respondent. Thus, it was likewise not illogical that Chan continued to supply shoes to petitioner until September.

Another reason given by the Labor Arbiter for rejecting the testimonies of Capua and Mangoba is that nobody would "agree to outrightly transact or enter into a losing proposition or business." [8] This exemplifies what petitioner terms an incongruous and fallacious conclusion. Whether or not Chan really stood to lose in the transaction if no switch in figures was made is immaterial. What matters is not the truth or falsity of that statement, but rather that this was the reason given by private respondent in urging and convincing Capua to fraudulently mix the "Valencia" with the deerskin shoes.

Equally "incongruous and fallacious" is the interpretation given by the NLRC to the following portion of Mangoba's cross examination:

"ATTY. FULE:

Q. Madam witness, in your statement you stated therein and I quote the last paragraph, 'Sana po ay maunawaan po ninyo ang aking katayuan sa hindi ko po pagtatapat kaagad.' What do you mean by the term 'katayuan'?

"Witness:

A. Because I was afraid because they are threatening me." [9]

Said the labor tribunal:

"The revelation, coming as it does from Isetann's principal witness on cross-examination, is worthy of belief. It is also significant because threat having been employed -- to be sure by Isetann's management for to suppose otherwise would lead to absurdity -- the credibility of the so-called confession has been reduced to naught, more so considering that absence of any plausible reason why it took Iglesia Mangoba several months to come up with the alleged confession for the same reason, the alleged confession of Connie Capua, made after

Mangoba's confession, could hardly be considered also."^[10]

Contrarily, this response of Mangoba strengthened, rather than diminished her credibility, as it explained why it took her several months to disclose private respondent's involvement in the anomaly. In fact, she was asking management to understand her plight in not revealing the scheme sooner because respondent Bautista was threatening her. "They" in her response did not refer to management, but to private respondent and her husband, the latter reputedly a policeman. We echo petitioner's observation that it would be absurd to suppose that the reason Mangoba did not immediately report the anomalous activity of private respondent is because she was threatened by petitioner. For why would petitioner prevent Mangoba from divulging said information when such disclosure would certainly redound to its benefit? Would it not serve management's interest if an anomaly in the company is reported immediately to it once discovered?

It was, therefore, grave abuse of discretion on the part of respondent NLRC to affirm the conclusions reached by the Labor Arbiter based on gross misapprehension of facts and itself to reach conclusions clearly contrary to the evidence presented. We rule that petitioner has shown by sufficient evidence respondent Bautista's involvement in the fraudulent transaction. There was valid cause for petitioner's losing the trust and confidence reposed upon her as a supervisory employee, and consequently, in dismissing her from its service.

WHEREFORE, the petition is hereby GRANTED. The assailed Resolution of the NLRC Second Division, and decision of the Labor Arbiter are ANNULLED and SET ASIDE, and private petitioner's complaint for illegal termination of employment DISMISSED.

SO ORDERED.

Padilla, Regalado, Nocon, and Puno, JJ., concur.

[1] Composed of Presiding Commissioner Edna Bonto Perez, Commissioners Rustico L. Diokno (Ponente) and Domingo H. Zapata.

[2] Petition, p. 8. Rollo, p. 9.

[3] Annex "B", Petition, Rollo, pp. 36-42.

[4] Annex "C", Petition, Rollo, pp. 43-46.

[5] Annex "F", Petition, Rollo, p. 53.

[6] Annex "I". Petition, Rollo, pp. 77-78.

[7] Top Form Mfg. Co. Inc. vs. NLRC, G.R. No. 6655706, December 11, 1992, 216 SCRA 313; citing Valladolid vs. Inciong, 121 SCRA 205 [1983]; DOLE Philippines. Inc. vs. NLRC, 123 SCRA 673 [1983]; Ocean Terminal Services, Inc. vs. NLRC, 197 SCRA 491 [1991]; Baguio Country Club Corporation vs. NLRC and GENOVE, G. R. No. 102397, September 4, 1992.

[8] p. 6, Labor Arbiter's Decision, Annex "I" Petition, p. 76, Rollo.

[9] TSN, p. 32,, April 25, 1988; italics supplied

[10] page 9, NLRC Resolution, Annex "A", Petition, p. 35, Rollo.

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