Supreme Court E-Library

in LIBRA/DOLPHIN GARMENTS with backwages of not more than three (3) years each and without loss of seniority rights and benefits being enjoyed by them prior to the alleged closure of Lawman's Industrial Corporation.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Paras, JJ.*, concur.

SECOND DIVISION

[G.R. No. 72248. July 22, 1986]

METRO DRUG CORPORATION, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION and TITA C. EDAÑO,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATIONS; EMPLOYMENT; RULES ON TERMINATION OF EMPLOYEES OCCUPYING POSITION OF TRUST AND CONFIDENCE DIFFERENT FROM THOSE OF ORDINARY EMPLOYEES.**— Managerial personnel and other employees occupying positions of trust and confidence are entitled to security of tenure, fair standards of employment, and the protection of labor laws. However, the rules on termination of employment, penalties for infractions, and resort to concerted action are not necessarily the same as those for ordinary employees.

2. **ID.; ID.; TERMINATION THEREOF; LOSS OF CONFIDENCE VALID GROUND; DOES NOT ENTAIL PROOF BEYOND REASONABLE DOUBT.** — In the case of *Dole Philippines Inc. v. National Labor Commissions* (123 SCRA 673) this Court held that: "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

Supreme Court E-Library

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*, L-46732, May 5, 1979, 90 SCRA 92, 111 and *Galsim vs. PNB*, L-23921, August 29, 1969, 29 SCRA 293)." There is absolutely no showing from the records of this case that the termination of Mrs. Edaño's services were based on any other ground except the missing funds. The petitioner did not use the allegation of misappropriation to cloak a desire to get rid of an employee for union activity, to violate rules on promotions, or to avenge personal quarrels. The respondent herself chides her union for its "cool inaction" on her request for union assistance. The Labor Arbiter himself found that the petitioner's loss of confidence in the respondent's integrity was not entirely groundless. Even if the respondent did not misappropriate the P66,512.43, the fact remains that these funds entrusted to her are missing. There was a basis for loss of confidence. The petitioner also points out that bitter exchanges of words during the proceedings in this case led to animosity and ill feeling between the parties. Noting that the relationship is so strained, the Labor Arbiter, inspite of his factual finding, decline to order reinstatement. The rule is that if there is sufficient evidence to show that the employee has been guilty of a breach of trust, or *that his employer has ample reason to distrust him*, the labor tribunal cannot justly deny to the employer the authority to dismiss such employee. (*Reynolds Philippine Corporation v. Eslava*, 137 SCRA 259).

3. **ID.; ID.; ID.; LAXITY IN ACCOUNTING PROCEDURES DOES NOT HAMPER THE RIGHT OF THE EMPLOYER TO TERMINATE EMPLOYEES FOR LACK OF CONFIDENCE.**— On the contention that the petitioner failed to prove that its accounting procedures are sound and effective, we ruled in *San Miguel Corporation v. NLRC*, cited earlier, that laxity in the accounting procedures of the petitioner should not in any case hamper the right of the employer to terminate the employment of its employees on the ground of loss of confidence and breach of trust. Precisely, the accounting procedure which called for improvements was based primarily on trust and confidence. As for the contention that the dismissal of the criminal charges against the respondent laid to rest any doubt against her integrity, we reiterate the rule that acquittal from criminal charges does not necessarily mean that loss of confidence is automatically eliminated as a basis for administrative action (*Philippine Long Distance*

Supreme Court E-Library

Telephone Co. v. National Labor Relations Commission, 129 SCRA 163).

4. ID.; ID.; ID.; EMPLOYEE DISMISSED FOR LOSS OF CONFIDENCE ENTITLED TO SEPARATION PAY.— Considering the respondent's fifteen (15) years of service, the Labor Arbiter was correct in ordering the payment of separation pay equivalent to one-half month pay for every year of service, backwages equivalent to six months basic pay, and unpaid wages.

APPEARANCES OF COUNSEL

Alberto N. Sicangco and Edgardo T. Guenca for petitioner.
Federico C. Leynes for private respondent.

DECISION

GUTIERREZ, JR., *J.*:

The only issue in this case is whether or not the private respondent should be reinstated by the petitioner which terminated her employment on the ground of loss of confidence or breach of trust.

Respondent Tita Edaño started working with the petitioner company as a stock clerk on November 9, 1966. She gradually progressed in her employment until she was appointed on July 1, 1978 as cashier in the petitioner's Pasig branch office. Among her principal duties were to control petty cash disbursements, to accept remittances of cash and check collections from the sales agents and delivery men of the company, to deposit said collections to its bank account, to issue official receipts, and to compute salaries and allowances of personnel, prepare payrolls, and give out salaries on payday.

In March 1982, a preliminary audit conducted by the company's branch auditor revealed a shortage of funds in the custody of respondent amounting to P30,605.38 covering the period from September 1981 to February 1982. At the close of the examination, the missing amount increased to P66,512.43.

Supreme Court E-Library

In a letter dated March 16, 1982, the respondent was informed by the petitioner's president that she had been placed under preventive suspension pending investigation of her case.

On March 31, 1982, however, she received another letter from the company stating that her employment had been terminated as of March 16, 1982.

Thereafter, a complaint for misappropriation of P66,512.43 was filed against her on June 1, 1982 with the Provincial Fiscal's Office at Pasig, Rizal. The case was dismissed for lack of a *prima facie* showing.

Meanwhile, the respondent filed a complaint with the Ministry of Labor and Employment against the company for illegal dismissal, illegal suspension, and unfair labor practice. The Labor Arbiter ruled in favor of the respondent and found that the company had been "precipitate and less than prudent in decreeing the summary deprivation of complainant's constitutional and statutory right to labor." But because the relationship between the parties had been strained, the decision ruled against her reinstatement and ordered instead the payment of backwages for six (6) months and separation pay equivalent to one half-month pay for every year of service. The private respondent appealed the decision. On August 7, 1985, the National Labor Relations Commission modified the decision by ordering reinstatement and the payment of full backwages computed from the time of dismissal to actual reinstatement.

The petitioner company went to this Court on petition for review on November 8, 1985. We treat the comments filed by the public and private respondents as answers and decide the case on its merits.

Managerial personnel and other employees occupying positions of trust and confidence are entitled to security of tenure, fair standards of employment, and the protection of labor laws. However, the rules on termination of employment, penalties for infractions, and resort to concerted action are not necessarily the same as those for ordinary employees.

A special and unique employment relationship exists between a corporation and its cashiers. More than most key positions, that

Supreme Court E-Library

of cashier calls for the utmost trust and confidence. This is especially true in the present case where the employer is a drug company conducting its business through many branches and whose branches in turn employ salesmen, marketing representatives, detail men and a host of other aggressive and independent-minded personnel who cannot be supervised as closely as those in production lines or sedentary occupations. A corporation has the right to wholehearted loyalty from whoever it employs as cashier.

In the case of *San Miguel Corporation v. National Labor Relations Commission* (128 SCRA 180), this Court held that:

x x x As a rule this Court leans over backwards to help workers and employees continue in their employment. We have mitigated penalties imposed by management on erring employees and ordered employers to reinstate workers who have been punished enough through suspension. However, breach of trust and confidence and acts of dishonesty and infidelity in the handling of funds and properties are an entirely different matter.

In *Lepanto Consolidated Mining Co. v. Court of Appeals* (1 SCRA 1251) we held that where an employee occupies a position of trust and confidence, as where he is entrusted with confidential or delicate matters, or with the custody, handling, or care and protection of the employer's property, acts tending to show untrustworthiness may constitute a just cause for dismissal, or of loss of employer's confidence.

The private respondent states that her dismissal was without just cause, based on the pure speculations and conjectures of the company auditor, and constituted deprivation of constitutional and statutory rights accorded to labor.

The petitioner based its termination of Mrs. Edaño's services on its finding of shortages amounting to P66,512.43 in her accounts. Ninety three (93) invoices in varying amounts covering the period December 20, 1980 to February 24, 1982 were stamped "Paid" by the cashier meaning she had received the funds. Tita Edaño also initialed the delivery men's notebooks, salesmen's collection reports and logbook of invoices corresponding to the missing funds. The EDP Collection Reports which indicate the invoices paid for and deposited by the cashier did not include the 93 invoices. The

Supreme Court E-Library

petitioner also asserted that the shortages or non-deposit of P66,512.43 could be proved by its bank deposit slips.

The Labor Arbiter found the evidences of shortages inadequate on the ground that Mrs. Edaño had no participation in the preparation and verification of the EDP Collection Reports. He also stated that copies of the collection reports are sent to the branch statistician and not to her. On the basis of this finding, the NLRC affirmed the decision but modified the judgment by ordering reinstatement with full backwages.

In the case of *Dole Philippines Inc. v. National Labor Commissions* (123 SCRA 673) this Court held that:

"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*, L-46732, May 5, 1979, 90 SCRA 92, 111 and *Galsim vs. PNB*, L-23921, August 29, 1969, 29 SCRA 293)."

There is absolutely no showing from the records of this case that the termination of Mrs. Edaño's services were based on any other ground except the missing funds. The petitioner did not use the allegation of misappropriation to cloak a desire to get rid of an employee for union activity, to violate rules on promotions, or to avenge personal quarrels. The respondent herself chides her union for its "cool inaction" on her request for union assistance.

The Labor Arbiter himself found that the petitioner's loss of confidence in the respondent's integrity was not entirely groundless. Even if the respondent did not misappropriate the P66,512.43, the fact remains that these funds entrusted to her are missing. There was a basis for loss of confidence. The petitioner also points out that bitter exchanges of words during the proceedings in this case led to animosity and ill feeling between the parties. Noting that the relationship is so strained, the Labor Arbiter, inspite of his factual finding, decline to order reinstatement.

Supreme Court E-Library

On the contention that the petitioner failed to prove that its accounting procedures are sound and effective, we ruled in *San Miguel Corporation v. NLRC*, cited earlier, that laxity in the accounting procedures of the petitioner should not in any case hamper the right of the employer to terminate the employment of its employees on the ground of loss of confidence and breach of trust. Precisely, the accounting procedure which called for improvements was based primarily on trust and confidence. As for the contention that the dismissal of the criminal charges against the respondent laid to rest any doubt against her integrity, we reiterate the rule that acquittal from criminal charges does not necessarily mean that loss of confidence is automatically eliminated as a basis for administrative action (*Philippine Long Distance Telephone Co. v. National Labor Relations Commission*, 129 SCRA 163).

The rule is that if there is sufficient evidence to show that the employee has been guilty of a breach of trust, or *that his employer has ample reason to distrust him*, the labor tribunal cannot justly deny to the employer the authority to dismiss such employee. (*Reynolds Philippine Corporation v. Eslava*, 137 SCRA 259).

The respondent Commission showed a surprising failure, in this case, to grasp the realities of the factual situation. When an employee accepts a promotion to a managerial position or to an office requiring full trust and confidence she gives up some of the rigid guaranties available to ordinary workers. Infractions which if committed by others would be overlooked or condoned or penalties mitigated may be visited with more severe disciplinary action. A company's resort to acts of self-defense would be more easily justified. It would be most unfair to require an employer to continue employing as its *cashier* a person whom it reasonably believes is no longer capable of giving full and wholehearted trustworthiness in the stewardship of company funds.

Considering the respondent's fifteen (15) years of service, the Labor Arbiter was correct in ordering the payment of separation pay equivalent to one-half month pay for every year of service, backwages equivalent to six months basic pay, and unpaid wages.

Supreme Court E-Library

WHEREFORE, the decision of the respondent National Labor Relations Commission is hereby set aside. The judgment of the Labor Arbiter is REINSTATED.

SO ORDERED.

Feria (Chairman), Fernan Alampay, and *Paras, JJ.*, concur.

EN BANC

[G.R. No. 65913. July 22, 1986]

RENATO B. TORRES, *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; REASONABLE NECESSITY OF THE MEANS EMPLOYED; WHEN NOT APPRECIATED.— The principal issue is whether or not the second requisite — reasonable necessity of the means employed to prevent or repel the unlawful aggression — is present. On this point the Solicitor General agrees with respondent Sandiganbayan that petitioner did not use reasonable means to repel the attack of the deceased. When the deceased lunged at petitioner the second time, he stumbled and even went past petitioner. At that instant, petitioner could have just struck at the deceased with his gun, or at worse, aimed his gun at a non-vital part of his body to overcome his resistance to arrest. However, petitioner chose to fire at the back of the deceased, thus killing him almost instantly. The Solicitor General invokes the ruling in *People vs. Oanis* (74 Phil. 257, 262), to the effect that a peace officer is never justified in using unnecessary force in effecting arrests or in treating with wanton violence the arrested person or in resorting to dangerous means when the arrest could be effected otherwise. This doctrine was restated in the Rules of Court thus: "No unnecessary or unreasonable force shall be used in making an