SUPREME COURT
SECOND DIVISION

DANILO J. MAGOS,
***Petitioner*,**

-versus

G.R. No. 123421
December 28, 1998

NATIONAL LABOR RELATIONS COMMISSION, HON. MARISSA MACARAIG-GUILLEN and PEPSI COLA PRODUCTS PHILS., INC.,
***Respondents*.**
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D E C I S I O N

BELLOSILLO, *J.*:

This Special Civil Action for *Certiorari* pleads for reversal of the Resolutions[1] of the National Labor Relations Commission (Cagayan de Oro City) dated 16 May 1995 and 29 August 1995. The earlier resolution upheld the 18 March 1993 Decision[2] of the Labor Arbiter affirming the dismissal from employment of petitioner for cause by private respondent Pepsi Cola Products Phil., Inc. (PEPSI). The later resolution denied the motions for reconsideration of both parties.

Danilo J. Magos became an employee of PEPSI on 5 April 1987. He rose from the ranks until he was appointed Route/Area Manager covering different areas in Northern Mindanao. On 1 March 1991 he was assigned to handle the Butuan Plant in Surigao City.

In July 1991 PEPSI entered into a Sales and Distributorship Agreement with one Edgar Andanar covering the entire Siargao Island. The Agreement included, among others, the following terms: (a) that the Distributor shall be the sole agent of PEPSI in the entire Siargao Island, Surigao City, and (b) that PEPSI would not directly or indirectly sell to or serve anybody in the covered territory of the Distributor unless extremely necessary.

On 8 April 1992 Andanar complained formally to the Plant General Manager Val Lugti that petitioner was still serving Tony Chua and Boy Lim, clients who were both within the area of the agreement. On 15 April 1992 District Manager Reynaldo Booc issued a memorandum to petitioner to stop effective immediately "giving deals to Siargao Island dealers, unless and only, if Andanar cannot supply them due to unavoidable circumstances beyond his control," and only up to a specified limit.[3]

On 17 May 1992 Magos reported to Booc a negative trend in the sales of PEPSI in Siargao Island as a result of Andanar's shortage of stocks and the conversion to Coke of several wholesalers, notably Boy Lim.

On 16 and 24 June 1992 Ramonito Endozo and Ramon Ganzon, respectively, reported the sales of Pepsi products by salesman Prudencio Palen to Boy Lim at "7:1" deal allegedly upon instructions of petitioner. Such sales were either made to fictitious dealers or diverted to other dealers without receipts.

On the basis of these reports, Magos was notified by Booc of his temporary recall effective 1 July 1992 on the ground of his "continued refusal to follow orders/instructions of a superior after 2 or more successive reminders or warnings."[4] He was also required to submit a written explanation, which he did on 30 June 1992 citing among others: (a) the lack of proper turnover of jurisdiction to distributor and guidelines thereto; (b) the rapid conversion to Coke of previous

big account dealers like Boy Lim in Siargao; and, (c) the lack of ability of Andanar to supply such dealers.[5]

Finding Magos' explanation insufficient PEPSI on 27 July 1992 notified Magos of an administrative investigation against him on grounds of disobedience and breach of trust and confidence as shown by the reports of Endozo and Ganzon, the audit reports of the Home Office Auditors, the complaint of Andanar and the memorandum of Booc.[6] On 7 September 1992, Magos was notified of his termination for disobedience and breach of trust and confidence.[7]

On 25 September 1992 Magos filed a complaint for illegal dismissal and non-payment of wages, 13th month pay, premium pay for holidays and rest days, night shift pay and allowances.[8]

After petitioner waived his right to a formal hearing, the Labor Arbiter set a date for the submission of position papers. However, petitioner failed to submit a position paper even after his two motions for extension to file the same were granted. After the lapse of the extended period by nine (9) days, the Labor Arbiter issued an order submitting the case for resolution and considering the petitioner to have waived his right to submit evidence.[9] Petitioner's subsequent motion for reconsideration was denied on the ground that such a motion was not allowed by the NLRC rules.[10]

On 18 March 1993 the Labor Arbiter ruled that the dismissal was valid on grounds of insubordination and loss of confidence upon proof of Magos' sale of PEPSI products despite the opposition of his superiors. Magos' claims for 13th month pay, holiday pay, rest day pay and night shift differentials were denied as he was a managerial employee. The Labor Arbiter, however, found that Magos was dismissed without due process as it was done in an arbitrary and perfunctory manner without any investigation to provide him with an opportunity to present his side. Accordingly, PEPSI was ordered to give Magos financial assistance of P2,000.00.[11]

Petitioner appealed to the NLRC imputing grave abuse of discretion to the Labor Arbiter for denying him the right to present evidence on his behalf and for sustaining the legality of his dismissal.[12]

On 16 May 1995 the NLRC also found that the dismissal of petitioner was done in an arbitrary manner as there was no record of any investigation conducted. However, the Commission opined that there was enough breach of confidence to justify Magos' dismissal considering that he was duty-bound to follow and obey the instructions of his superiors irrespective of his personal convictions. Thus, inspite of a finding of good faith on Magos' part and lack of damage on PEPSI, it affirmed the Arbiter's finding of illegal dismissal and the award of indemnity. Additionally, in consideration of Magos' good faith and long service, the Commission also awarded him one-half (½) month separation pay for every year of service.[13]

Both parties sought reconsideration. Magos faulted the NLRC for its failure to award him the reliefs prayed for in his complaint, while PEPSI questioned the grant of separation pay in Magos favor. On 29 August 1995 the NLRC denied both motions for reconsideration.

After a thorough examination of the records, we find no grave abuse of discretion on the part of the Labor Arbiter and the NLRC in upholding the legality of Magos' dismissal.

Admittedly, petitioner served as a Route Manager, a managerial level position. The test of managerial status has been defined as an authority to act in the interest of the employer, which authority is not merely routinary or clerical in nature but requires independent judgment.[14]

Petitioner contends that as a managerial employee he was supposed to reason out and exercise his discretion for the welfare of the company. It is in the light of exercising his managerial discretion that he deemed the sales in question as within the circumstance of "extreme cases," an exception provided under PEPSI's Sales and Distributorship Agreement with Andanar.

Private respondent, however, maintains that petitioner was guilty of willful insubordination. He was already prohibited from selling within the distributor's area at the time of the questioned sales. His continued transactions exposed PEPSI to possible law suits due to a breach of the distributorship agreement with Andanar.

As a managerial employee, Magos was unquestionably clothed with the discretion to determine the circumstances upon which he could implement the policies of the company. However, this managerial discretion was not without limits. Its parameters were contained the moment his discretion was exercised and then opposed by the immediate superior officer/employer as against the policies and welfare of the company. Any action in pursuit of the discretion thus opposed ceased to be discretionary and could be considered as willful disobedience. We held in AHS/Philippines, Inc. vs. CA,[15] —

> Willful disobedience of the employer's lawful orders, as a just cause of dismissal of an employee, envisages the concurrence of at least two (2) requisites: the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.

Clear from the records is that Magos admitted having sold PEPSI products in the areas covered by the Andanar agreement even after he received the memorandum of Booc limiting his discretion. Neither is it denied that Magos' superiors expressed their opposition to the questioned sales. Yet, Magos still pursued the same course of action as evidenced by the tenor of his letters and his 30 June 1992 explanation. Apparently, his stubborn insistence on his personal conviction is now a matter of pride rather than concern for the welfare of the company. Magos then willfully disobeyed the lawful orders of his superiors.

Even if the allegations of dishonesty were never established by PEPSI, the admitted disobedience by Magos, serious as it was, is enough basis for the loss of trust and confidence on him by the company. Moreover, the law does not require proof beyond reasonable doubt of the employee's misconduct to invoke such justification. It is sufficient that there be some basis for the loss of trust or that the employer has reasonable grounds to believe that the employee is responsible for the misconduct which renders him unworthy of the trust and confidence demanded of his position.[16] As the nature of his position is grounded on the trust and confidence reposed on him by his employer, the

latter is given a wide latitude of discretion in terminating him for lack or absence thereof.[17]

What is most important is that before termination, an employee must be given the twin requirements of due process — proper notice and hearing. The essence of due process is that a party be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense.[18]

Both the NLRC and the Labor Arbiter found that no formal hearing was conducted regarding petitioner's dismissal. Although a hearing is essential to due process, in Bernardo vs. NLRC[19] we did hold that no formal hearing was necessary when the petitioner had already admitted his responsibility for the act he was accused of.

Even though petitioner in this case never admitted the accusations of dishonesty against him, he impliedly acknowledged his insubordination as shown in his petition[20] —

> During the investigation, Petitioner had however admitted as a sign of good faith, the various 'saving measures' that he undertook to prevent the competitors from easing out Private Respondent from its dominant market hold in Siargao Island.
>
> 23. Petitioner was subsequently terminated despite all the pertinent explanations he had given to his immediate superiors for alleged violation of the above-mentioned Company Rules and Regulations and for alleged loss of trust and confidence.

Evidently, Magos regarded his sales to Siargao Island dealers covered by the Sales and Distributorship Agreement with Andanar as "saving measures." As a consequence, he earned the ire of his superiors for persistently ignoring the agreement. He further risked losing his job by presenting what he deemed as "pertinent explanations" to justify the questioned sales. Thus, even if no hearing was conducted on Magos' disobedience, the requirement of due process was sufficiently met where petitioner was accorded the chance to explain his side. The award of indemnity in the sum of P2,000.00 therefor is no longer warranted in the light of this finding.

As the dismissal is with just cause, back wages cannot be awarded. Separation pay may however be granted as a form of equitable relief. The propriety of such a grant has already been settled in a long line of cases,[21] starting with Baby Bus Incorporated vs. Minister of Labor[22] where we said that it did not necessarily follow that no award for separation pay may be made if there was no illegal dismissal.

WHEREFORE, the Resolutions of the National Labor Relations Commission of 16 May 1995 and 29 August 1995 are **AFFIRMED** with the **MODIFICATION** that the award of P2,000.00 as indemnity is deleted.

The NLRC Regional Arbitration Branch No. X of Cagayan de Oro City is **DIRECTED** to compute the amount of separation pay to be paid to petitioner DANTILO J. MAGOS by respondent PEPSI COLA PRODUCTS PHIL., INC., equivalent to one-half (½) month salary for every year of service inclusive of allowances, if any, with twelve percent (12%) interest per annum from the date of promulgation of this Decision until fully paid.

SO ORDERED.

Puno, Mendoza and Martinez, *JJ.*, concur.

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[1] Penned by Presiding Commissioner Musib M. Buat and concurred in by Commissioner Oscar N. Abella and Leon G. Gonzaga, Jr., Records, pp. 295-303; 405-412.
[2] Penned by Labor Arbiter Marissa Macaraig-Guillen, NLRC Case No. SRAB-10-10-00146-92, NLRC Sub-Regional Arbitration Br. X, Butuan City, id., pp. 156-172.
[3] Records p. 70.
[4] Id., p. 78-A.
[5] Id., pp. 111-112.
[6] Id., pp. 113-114.
[7] See Note 2, 157.
[8] Records, pp. 1-2.
[9] Id., p. 125.
[10] Id., pp. 146-147.
[11] See Note 2.
[12] Records, pp. 222-231.
[13] Id., pp. 295-303.

[14] Pier 8 Arraste and Stevedoring Services Inc. vs. Hon. Ma. Nieves Roldan-Confessor, G.R. No. 110854, 13 February 1995, 241 SCRA 294,304.
[15] G.R. No. 111807, 14 June 1996, 257 SCRA 319, 330.
[16] ComSaving Bank vs. NLRC, G.R. No. 98456, 14 June 1996, 257 SCRA 307, 316.
[17] San Antonio vs. NLRC, G.R. No. 100829, 28 November 1995, 250 SCRA 359.
[18] Garcia vs. NLRC, G.R. No. 110494, 18 November 1996, 264 SCRA 261, 269.
[19] G.R. No. 105819, 15 March 1996, 255 SCRA 108, 118.
[20] Rollo, p. 13.
[21] Midas Touch Food Corporation vs. NLRC, G.R. No. 111639, 29 July 1996, 259 SCRA 652, 658.
[22] Reyes vs. Minister of Labor G.R. No. 48705, 9 February 1989, 170 SCRA 134; San Miguel Corporation vs. Deputy Minister of Labor and Employment, G.R. Nos. 61232-33, 29 December 1983, 126 SCRA 483; Soco vs. Mercantile Corporation of Davao, G.R. Nos. 53364-65, 16 March 1987, 148 SCRA 526.