

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
EN BANC**

**GAUDENCIO MAPALO,
*Petitioner,***

-versus-

**G.R. No. 107940
June 17, 1994**

**NATIONAL LABOR RELATIONS
COMMISSION and METRO DRUG
CORPORATION,**

Respondents.

X-----X

DECISION

VITUG, J.:

Herein petitioner, Gaudencio Mapalo, is here before us in this Petition for *Certiorari*, praying that we set aside the Decision, dated 17 June 1992, of public respondent National Labor Relations Commission (“NLRC”) which modified the Decision of the Labor Arbiter of 27 February 1987.

The contractual relationship between private respondent Metro Drug Corporation (“Metro Drug”), as employer, and Mapalo, as its “veterinary cosmetics salesman-collector,” formally started on 30 June 1981. Mapalo was initially assigned to the Isabela branch of Metro Drug.^[1] He performed his task with such zeal as to win for himself the company’s top performer salesman award in 1982 and to be the recipient of several other citations.^[2]

On 30 June 1983, a memorandum was sent to petitioner informing him of his transfer to the La Union branch office of Metro Drug effective the day following. With his sudden transfer, he was unable to properly effect the turnover of “invoices and accountabilities to customers” to his successor at the Isabela branch office.

On 31 December 1983, amounts reflected in unsurrendered invoices and collection statements in the sum of P4,928.37 were charged to the account of petitioner. On 02 February 1984, a letter was sent by Metro Drug to petitioner notifying him of his immediate suspension for an indefinite period for dishonesty, due to alleged uncollected invoices totaling P7,636.90, and because of a supposed forgery of the signature of a certain Dr. Delfin Quiblan. In another letter, dated 21 February 1984, petitioner’s suspension, however, was lifted effective 27 February 1984 until final decision could have been reached by Metro Drug on the matter. In a letter of 01 March 1984, received by petitioner on 14 March 1984, Metro Drug ultimately terminated the services of petitioner. Metro Drug applied the P10,000.00-bond of petitioner to his stated liability in the amount of P10,387.78, and it thereupon demanded the balance of P387.78.

On 16 March 1984, petitioner filed a complaint for illegal dismissal. After the submission of position papers, the Labor Arbiter, on 27 February 1987, rendered judgment; thus —

“WHEREFORE, in the light of all the foregoing considerations, us (sic) hereby order the respondents to reinstate complainant without loss of seniority rights with full backwages of basic pay and ECOLA, including 13th month pay, if any, but not to exceed three years plus ten percent attorney’s fees of the total of his award, if only to render meaning to the constitutional guarantee

of the workingman's security of tenure, of affording protection to labor, and of promoting the principle of social justice.

“Respondent is finally ordered to present proof of compliance with this order within ten days from receipt of this decision.”

The decision was appealed by Metro Drug to the NLRC which, in a decision, dated 17 June 1992, held petitioners' dismissal to be valid but it ordered Metro Drug to indemnify petitioner in the sum of P3,000.00 by way of damages on account of said company's failure to observe the rudiments of due process.^[3] Petitioner's Motion for Reconsideration was denied by NLRC in its resolution of 23 June 1992.^[4]

Hence this recourse by Mapalo.

We find for petitioner.

Two requisites must occur so as to constitute a valid dismissal from employment: (1) the dismissal must be for any of the causes expressed in Article 282 of the Labor Code,^[5] and (2) the employee must be given an opportunity to be heard and to defend himself.^[6]

Among the valid causes specified in Article 282 of the Labor Code is loss of trust and confidence on an employee who is entrusted with fiducial matters, or with the custody, handling or care and protection of the employer's property.^[7] In these cases, we have recognized an employer's authority to sever the relationship with an employee ^[8]

There hardly can be any dispute that, being a salesman-collector of respondent company, Mapalo holds a fiduciary position. Although loss of trust and confidence constitutes a valid cause for termination, it must, nonetheless, rest on solid grounds that reasonably evince an actual breach thereof by an employee. The law certainly did not intend a privation of the employee's legally invested security of tenure. The burden of proof lies on an employer to first convincingly establish valid bases for that loss of trust and confidence.

Metro Drug anchors its dismissal on Mapalo's alleged dishonesty. On this score, the findings of the Labor Arbiter and NLRC are openly discordant. The Labor Arbiter has said:

“Neither do we find the alleged offenses imputed against the complainant substantiated by the respondents. The losses in Isabela and La Union branches allegedly caused by complainant did not really exist because, in the end, the La Union Branch Manager and the respondents' internal auditor finally gave him a 'clean bill of health.' The alleged dishonesty, therefore, did not exist.”

NLRC, upon the other hand, has concluded:

“A review of the records shows that respondent had sufficient cause to lose its trust and confidence in complainant after the latter was found to have unsurrendered collection invoices and had failed to return in full stocks withdrawn from a client. From complainant's own evidence it has likewise been shown that stocks covered by invoices billed to client was received by said complainant.”

The Court, after closely examining the records, is inclined to agree with the Labor Arbiter. The delays in the settlement of petitioner's accountabilities is understandable due to his abrupt transfer from private respondent's Isabela branch to La Union branch office, i.e., just a day following the notice to him of his change of assignment. It should come to no surprise, therefore, if petitioner has been unable to clear within a span of 24 hours his outstanding accounts and collectibles. On record, nevertheless, are certifications issued on 21 June 1984 and 29 January 1985 by the La Union branch manager, Mr. Perfecto Santos, and the Internal Auditor, Carlito Fajardo, respectively, clearing petitioner of any liability to the company. The collectibles in both the Isabela and La Union branches, in any case, have all apparently been fully settled by customers concerned. The NLRC itself, in its decision, has expressed agreement with the Labor Arbiter's finding that no actual damage or prejudice has been suffered by Metro Drug. In fine, Metro Drug has failed to establish such sufficient legal basis for its loss of confidence in Magpalo as to warrant his dismissal.

No less than consequential has been the failure of private respondent to observe the requirements of due process. The law mandates that an employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally carried out: (1) due notice which apprises the employee of the particular acts or omissions by reason of which his dismissal is sought; and (2) the notice after due hearing, which informs the employee of the employer's decision to dismiss him.^[9] The Labor Arbiter and the NLRC have concurrently expressed that, indeed, Mapalo has been deprived of his right to due process. Metro Drug has precipitately suspended him on 02 February 1984 for an indefinite period. The suspension may have been lifted on 21 February 1984 but it became no more than a mere gesture for, in a letter, dated 01 March 1984, Metro Drug ultimately severed Mapalo's employment effective 15 March 1994. In both instances of suspension and termination, there has virtually been an absence of opportunity on the part of Mapalo to controvert the grounds relied upon by Metro Drug.

With our finding that Magpalo has been illegally dismissed, an award of three (3) years backwages, without qualification and deduction,^[10] is, consequently, proper. In addition to backwages, an illegally dismissed employee is entitled to (1) either reinstatement, if viable, or separation pay if reinstatement is not viable.^[11] In the case at bench, the strained relationship of the private parties hereto renders no longer feasible, in our view, the continued working relationship between them; we, accordingly, see the rationale for awarding instead to petitioner separation pay equivalent to one-half (1/2) month's pay for every year of service, in lieu of reinstatement.^[12] The amount of such separation pay is to be computed based on the period from 30 June 1981 (start of employment) to 15 March 1987 (three years from date of illegal dismissal).^[13]

WHEREFORE, the Petition is **GRANTED**. The Decisions of both the National Labor Relations Commission and the Labor Arbiter are **SET ASIDE**, and a new one is entered **ORDERING** private respondent to pay to petitioner separation pay equivalent to one-half (1/2) month's pay for every year of service, computed from 30 June 1981 to 15 March 1987, and a sum equivalent to three (3) years of backwages without deduction and qualification.

No costs.

SO ORDERED.

Feliciano, Bidin, Romero, Melo and Vitug, JJ., concur.

- [1] Rollo, 29.
- [2] Some of these awards are the following: (a) Quota Buster for November 1982; (b) Lipovitan Special Bonus Prize “Trip to Japan,” in 1982 from Taisho Pharmaceutical Company; (c) Cash Incentive Award of P500.00 from Abbot Laboratories (Phil.); (d) Commendation for achieving 116% in his assigned target sales for 1983.
- [3] Appendix “A”, Petition, Rollo, 28-37.
- [4] Appendix “C”, Ibid., ibid., 48-50.
- [5] Art. 282. Termination by employer. — An employer may terminate an employment for any of the following causes:
- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
 - (b) Gross and habitual neglect by the employee of his duties;
 - (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
 - (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
 - (e) Other causes analogous to the foregoing.
- [6] See Sec. 2 and Sec. 5, Rule XIV, Book 4, Implementing Rules; Imperial Textile Mills, Inc. vs. NLRC, 217 SCRA 237; Estiva vs. NLRC, G.R. No. 95145, 05 August 1993.
- [7] Panday vs. NLRC, 209 SCRA 122; San Miguel Corporation vs. NLRC, 211 SCRA 353.
- [8] Top Form Manufacturing Co., Inc. vs. NLRC, 216 SCRA 313; Imperial Textile Mills, Inc. vs. NLRC, 217 SCRA 237.
- [9] Pepsi-Cola Bottling Co. vs. NLRC, 210 SCRA 277.
- [10] Maranaw Hotels and Resorts Corporation vs. Court of Appeals, 215 SCRA 501.
- NOTE: Petitioner Mapalo was dismissed on 15 March 1984; Republic Act No. 6715, granting full backwages, became effective only on 21 March 1989.
- [11] Torillo vs. Leogardo, Jr., 197 SCRA 471.
- [12] Santos vs. NLRC, 154 SCRA 166.
- [13] The amount of separation pay includes allowances regularly paid by the employer: Santos vs. NLRC, supra., note 12; Manila Midtown Commercial Corporation vs. NUWHRAIN, 159 SCRA 212; Soriano vs. NLRC, 155 SCRA

124; Century Textile Mills, Inc. vs. NLRC, 161 SCRA 528; Hydro Resources Contractors Corporation vs. Pagalilawan, 172 SCRA 399.

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