SUPREME COURT
EN BANC

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,
***Petitioner*,**

-versus-

G.R. No. L-80609
August 23, 1988

THE NATIONAL LABOR RELATIONS COMMISSION and MARILYN ABUCAY,
***Respondents*.**
x----------x

D E C I S I O N

CRUZ, *J.*:

SEPARATE OPINIONS:

***PADILLA, J., concurring.*:**
***FERNAN, C.J., dissenting.*:**
***GRIÑO-AQUINO, J., dissenting.*:**

The only issue presented in the case at bar is the legality of the award of financial assistance to an employee who had been dismissed for cause as found by the public respondent.

Marilyn Abucay, a traffic operator of the Philippine Long Distance Telephone Company, was accused by two complainants of having demanded and received from them the total amount of P3,800.00 in consideration of her promise to facilitate approval of their applications for telephone installation.[1] Investigated and heard, she was found guilty as charged and accordingly separated from the service.[2] She went to the Ministry of Labor and Employment claiming she had been illegally removed. After consideration of the evidence and arguments of the parties, the company was sustained and the complaint was dismissed for lack of merit. Nevertheless, the dispositive portion of labor arbiter's decision declared:

> "WHEREFORE, the instant complaint is dismissed for lack of merit.
>
> "Considering that Dr. Helen Bangayan and Mrs. Consolacion Martinez are not totally blameless in the light of the fact that the deal happened outside the premises of respondent company and that their act of giving P3,800.00 without any receipt is tantamount to corruption of public officers, complainant must be given one month pay for every year of service as financial assistance."[3]

Both the petitioner and the private respondent appealed to the National Labor Relations Board, which upheld the said decision in toto and dismissed the appeals.[4] The private respondent took no further action, thereby impliedly accepting the validity of her dismissal. The petitioner, however, is now before us to question the affirmance of the above-quoted award as having been made with grave abuse of discretion.

In its challenged resolution of September 22, 1987, the NLRC said:

> "Anent the award of separation pay as financial assistance in complainant's favor, We find the same to be equitable, taking into consideration her long years of service to the company

> whereby she had undoubtedly contributed to the success of respondent. While we do not in any way approve of complainants (private respondent) malfeasance, for which she is to suffer the penalty of dismissal, it is for reasons of equity and compassion that we resolve to uphold the award of financial assistance in her favor."[5]

The position of the petitioner is simply stated: It is conceded that an employee illegally dismissed is entitled to reinstatement and backwages as required by the labor laws. However, an employee dismissed for cause is entitled to neither reinstatement nor backwages and is not allowed any relief at all because his dismissal is in accordance with law. In the case of the private respondent, she has been awarded financial assistance equivalent to ten months pay corresponding to her 10-year service in the company despite her removal for cause. She is, therefore, in effect rewarded rather than punished for her dishonesty, and without any legal authorization or justification. The award is made on the ground of equity and compassion, which cannot be a substitute for law. Moreover, such award puts a premium on dishonesty and encourages instead of deterring corruption.

For its part, the public respondent claims that the employee is sufficiently punished with her dismissal. The grant of financial assistance is not intended as a reward for her offense but merely to help her for the loss of her employment after working faithfully with the company for ten years. In support of this position, the Solicitor General cites the cases of Firestone Tire and Rubber Company of the Philippines vs. Lariosa[6] and Soco vs. Mercantile Corporation of Davao,[7] where the employees were dismissed for cause but were nevertheless allowed separation pay on grounds of social and compassionate justice. As the Court put it in the Firestone case:

> "In view of the foregoing, We rule that Firestone had valid grounds to dispense with the services of Lariosa and that the NLRC acted with grave abuse of discretion in ordering his reinstatement. However, considering that Lariosa had worked with the company for eleven years with no known previous bad record, the ends of social and compassionate justice would be

served if he is paid full separation pay but not reinstatement without backwages by the NLRC."

In the said case, the employee was validly dismissed for theft but the NLRC nevertheless awarded him full separation pay for his 11 years of service with the company. In Soco, the employee was also legally separated for unauthorized use of a company vehicle and refusal to attend the grievance proceedings but he was just the same granted one-half month separation pay for every year of his 18-year service.

Similar action was taken in Filipino, Inc. vs. NLRC,[8] where the employee was validly dismissed for preferring certain dealers in violation of company policy but was allowed separation pay for his 2 years of service. In Metro Drug Corporation vs. NLRC,[9] the employee was validly removed for loss of confidence because of her failure to account for certain funds but she was awarded separation pay equivalent to one-half month's salary for every year of her service of 15 years. In Engineering Equipment, Inc. vs. NLRC,[10] the dismissal of the employee was justified because he had instigated labor unrest among the workers and had serious differences with them, among other grounds, but he was still granted three months separation pay corresponding to his 3-year service. In New Frontier Mines Inc. vs. NLRC,[11] the employee's 3-year service was held validly terminated for lack of confidence and abandonment of work but he was nonetheless granted three months separation pay. And in San Miguel Corporation vs. Deputy Minister of Labor and Employment, et al.,[12] full separation pay for 6, 10, and 16 years service, respectively, was also allowed three employees who had been dismissed after they were found guilty of misappropriating company funds.

The rule embodied in the Labor Code is that a person dismissed for cause as defined therein is not entitled to separation pay.[13] The cases above cited constitute the exception, based upon considerations of equity. Equity has been defined as justice outside law,[14] being ethical rather than jural and belonging to the sphere of morals than of law.[15] It is grounded on the precepts of conscience and not on any sanction of positive law.[16] Hence, it cannot prevail against the expressed provision of the labor laws allowing dismissal of employees for cause and without any provision for separation pay.

Strictly speaking, however, it is not correct to say that there is no express justification for the grant of separation pay to lawfully dismissed employees other than the abstract consideration of equity. The reason is that our Constitution is replete with positive commands for the promotion of social justice, and particularly the protection of the rights of the workers. The enhancement of their welfare is one of the primary concerns of the present charter. In fact, instead of confining itself to the general commitment to the cause of labor in Article II on the Declaration of Principles of State Policies, the new Constitution contains a separate article devoted to the promotion of social justice and human rights with a separate sub-topic for labor. Article XIII expressly recognizes the vital role of labor, hand in hand with management, in the advancement of the national economy and the welfare of the people in general. The categorical mandates in the Constitution for the improvement of the lot of the workers are more than sufficient basis to justify the award of separation pay in proper cases even if the dismissal be for cause.

The Court notes, however, that where the exception has been applied, the decisions have not been consistent as to the justification for the grant of separation pay and the amount or rate of such award. Thus, the employees dismissed for theft in the Firestone case and for animosities with fellow workers in the Engineering Equipment case were both awarded separation pay notwithstanding that the first cause was certainly more serious than the second. No less curiously, the employee in the Soco case was allowed only one-half month pay for every year of his 18 years of service, but in Filipino the award was two months separation pay for 2 years service. In Firestone, the employee was allowed full separation pay corresponding to his 11 years of service, but in Metro, the employee was granted only one-half month separation pay for every year of her 15-year service. It would seem then that length of service is not necessarily a criterion for the grant of separation pay and neither apparently is the reason for the dismissal.

The Court feels that distinctions are in order. We note that heretofore the separation pay, when it was considered warranted, was required regardless of the nature or degree of the ground proved, be it mere inefficiency or something graver like immorality or dishonesty. The benediction of compassion was made to cover a multitude of sins, as

it were, and to justify the helping hand to the validly dismissed employee whatever the reason for his dismissal. This policy should be re-examined. It is time we rationalized the exception, to make it fair to both labor and management, especially to labor.

There should be no question that where it comes to such valid but not iniquitous causes as failure to comply with work standards, the grant of separation pay to the dismissed employee may be both just and compassionate, particularly if he has worked for some time with the company. For example, a subordinate who has irreconcilable policy or personal differences with his employer may be validly dismissed for demonstrated loss of confidence, which is an allowable ground. A working mother who has to be frequently absent because she has also to take care of her child may also be removed because of her poor attendance, this being another authorized ground. It is not the employee's fault if he does not have the necessary aptitude for his work but on the other hand the company cannot be required to maintain him just the same at the expense of the efficiency of its operations. He too may be validly replaced. Under these and similar circumstances, however, the award to the employee of separation pay would be sustainable under the social justice policy even if the separation is for cause.

But where the cause of the separation is more serious than mere inefficiency, the generosity of the law must be more discerning. There is no doubt it is compassionate to give separation pay to a salesman if he is dismissed for his inability to fill his quota but surely he does not deserve such generosity if his offense is misappropriation of the receipts of his sales. This is no longer mere incompetence but clear dishonesty. A security guard found sleeping on the job is doubtless subject to dismissal but may be allowed separation pay since his conduct, while inept, is not depraved. But if he was in fact not really sleeping but sleeping with a prostitute during his tour of duty and in the company premises, the situation is changed completely. This is not only inefficiency but immorality and the grant of separation pay would be entirely unjustified.

We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those

reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it-is called, on the ground of social justice.

A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a like leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution.

The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.

Applying the above considerations, we hold that the grant of separation pay in the case at bar is unjustified. The private respondent has been dismissed for dishonesty, as found by the labor arbiter and affirmed by the NLRC and as she herself has impliedly admitted. The fact that she has worked with the PLDT for more than a decade, if it is to be considered at all, should be taken against her as it

reflects a regrettable lack of loyalty that she should have strengthened instead of betraying during all of her 10 years of service with the company. If regarded as a justification for moderating the penalty of dismissal, it will actually become a prize for disloyalty, perverting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of all undesirables.

The Court also rules that the separation pay, if found due under the circumstances of each case, should be computed at the rate of one month salary for every year of service, assuming the length of such service is deemed material. This is without prejudice to the application of special agreements between the employer and the employee stipulating a higher rate of computation and providing for more benefits to the discharged employee.[17]

WHEREFORE, the Petition is **GRANTED**. The challenged Resolution of September 22, 1987, is **AFFIRMED** in toto except for the grant of separation pay in the form of financial assistance, which is hereby **DISALLOWED**. The Temporary Restraining Order dated March 23, 1988, is **LIFTED**. It is so **ORDERED**.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Gancayco, Bidin, Sarmiento, Cortes and Medialdea, *JJ.*, concur.

---

[1] Rollo, p. 15.
[2] Ibid., pp. 15-16.
[3] Id., p. 17.
[4] Id., p. 22.
[5] Id., p. 21-22.
[6] 148 SCRA 187.
[7] 148 SCRA 526.
[8] 145 SCRA 123.
[9] 143 SCRA 132.
[10] 133 SCRA 752.
[11] 129 SCRA 502.
[12] 145 SCRA 196.
[13] Omnibus Rules Implementing the Labor Code, Book VI, Rule 1, Section 7.
[14] Block's Law Dictionary, Revised 4th Edition, 1968, p. 634.
[15] Ibid.
[16] Id.

[17] See Footnote No. 13.

SEPARATE OPINIONS

PADILLA, J., concurring:

I concur in the decision penned by Mr. Justice Cruz when it disallows separation pay, as financial assistance, to the private respondent, since the ground for termination of employment is dishonesty in the performance of her duties.

I do not, however, subscribe to the view that "the separation pay, if found due under the circumstances of each case, should be computed at the rate of one month salary for every year of service, assuming the length of such service is deemed material." (p. 11, Decision). It is my considered view that, except for terminations based on dishonesty and serious misconduct involving moral turpitude — where no separation pay should be allowed — in other cases, the grant of separation pay, i.e. the amount thereof, as financial assistance to the terminated employee, should be left to the judgment of the administrative agency concerned which is the NLRC. It is in such cases — where the termination of employment is for a valid cause without, however, involving dishonesty or serious misconduct involving moral turpitude — that the Constitutional policy of affording protection to labor should be allowed full play; and this is achieved by leaving to the NLRC the primary jurisdiction and judgment to determine the amount of separation pay that should be awarded to the terminated employee in accordance with the "environmental facts" of each case.

It is further my view that the Court should not, as a rule, disturb or alter the amount of separation pay awarded by the NLRC in such cases of valid termination of employment but with the financial assistance, in the absence of a demonstrated grave abuse of discretion on the part of the NLRC.

FERNAN, C.J., dissenting:

The majority opinion itself declares that the reason for granting separation pay to lawfully dismissed employees is that "our Constitution is replete with positive commands for the promotion of social justice, and particularly the protection of the rights of the workers."[1]

It is my firm belief that providing a rigid mathematical formula for determining the amounts of such separation pay will not be in keeping with these constitutional directives. By computing the allowable financial assistance on the formula suggested, we shall be closing our eyes to the spirit underlying these constitutional mandates that "those who have less in life should have more in law." It cannot be denied that a low-salaried employee who is separated from work would suffer more hardship than a well-compensated one. Yet, if we follow the formula suggested, we would in effect be favoring the latter instead of the former, as it would be the low-salaried employee who would encounter difficulty finding another job.

I am in accord with the opinion of Justice Sarmiento that we should not rationalize compassion and that of Justice Padilla that the awards of financial assistance should be left to the discretion of the National Labor Relations Commission as may be warranted by the "environmental facts" of the case.

FERNAN, C.J., dissenting:

[1] p. 6, Decision.

GRIÑO-AQUINO, J., dissenting:

I dissent. We should not rationalize compassion. I vote to affirm the grant of financial assistance.