SUPREME COURT
THIRD DIVISION

PEPSI-COLA BOTTLING CO., ANTHONY SIAN and VIRGILIO CASTILLO,
***Petitioners*,**

-versus-

G.R. No. 101900
June 23, 1992

NATIONAL LABOR RELATIONS COMMISSION, Fourth Division, Cebu City; OSCAR T. ENCABO, and HON. JESSELITO B. LATOJA, in his capacity as Exec. Labor Arbiter of Regional Arbitration Br. VIII, Tacloban City,
***Respondents*.**
x----------x

D E C I S I O N

GUTIERREZ, JR., *J.*:

The instant Petition seeks to annul the April 15, 1991 Decision of the National Labor Relations Commission (NLRC) and its Resolution dated August 14, 1991 affirming the decision of Executive Labor Arbiter Jesselito B. Latoja in Case No. 5-0224-88 entitled "Oscar T. Encabo vs. Pepsi-Cola Bottling Co., et al." promulgated on November 27, 1990. The dispositive portion of the decision reads as follows:

x x x

"WHEREFORE, judgment is hereby rendered ORDERING respondent PEPSI-COLA DISTRIBUTORS IN THE PHILIPPINES, Mr. Virgilio S. Castillo and Mr. A. C. Sian, to reinstate complainant, ENGR. OSCAR ENCABO, to his former position as Maintenance Manager at respondent's plant at Sto. Niño, Tanauan, Leyte, immediately upon receipt of this Decision; and to pay complainant his backwages and attorney's fees (10%) computed as follows:

1988 =	May 25, 1988 to December 1988 7 months and 7 days (P5,425.00 x 7 mos. & 7 days)	= P39,240.83
1989 =	January to December 1989 (P5,425.00 x 12 mos.)	= 65,100.00
1990 =	January to November 1990 (P5,425.00 x 10 mos.)	= 54,250.00
10% Attorney's Fees		= 15,859.08
T O T A L		P174,449.00"

(Rollo, p. 85)

The circumstances which led to the private respondent's dismissal are accurately recounted by the Office of the Solicitor-General in its comment as follows:

x x x

"On September 1, 1986, private respondent, a licensed mechanical and electrical engineer, was employed by petitioner corporation as maintenance manager of its beverage plant at Tanauan, Leyte (p. 1, Annex "E", Petition).

"Sometime in January 1988, the plant CEM-72 soaker machine needed rehabilitation. A contractor, Precision Machinist Corporation (PREMACOR) offered a bid to rehabilitate said machine and submitted a quotation dated January 29, 1988. The offer was accepted by petitioner corporation. Thus, on February 5, 1988, the Plant General Manager of the company, petitioner Sian, wired co-petitioner Castillo to prepare a complete list of spare parts needed for the overhaul of the soaker machine. The former also informed the latter that by the last week of February, Mr. Doromal, the maintenance manager of the Pepsi-Cola plant in Iloilo, will come over to handle the work in three (3) weeks. Petitioner Castillo thereafter transmitted the wired instruction to private respondent who subsequently prepared and submitted Purchase Requisition Orders as required by the contractor. These requisition orders were revised by Doromal and personally brought by him to Manila for the corresponding purchase. Rehabilitation work on the soaker machine was commenced about the middle of March 1988 by a crew of fifteen (15) to twenty (20) men from PREMACOR, headed by their project engineer, Bong Canizares, but supervised by Doromal. However. PREMACOR failed to make the soaker machine fully operational (pp. 2-3, Ibid).

"Petitioner Castillo then asked private respondent to take over the work. Assisted by the men directly under him, private respondent did so and in three weeks time, the soaker machine became operational again at an efficiency rate of sixty-five per cent [65%] (p. 3, ibid).

"On May 9, 1988, Leah Danaquel, personnel manager of the company informed private respondent that this position may be sacrificed because of the delay in the rehabilitation of the soaker machine. Disappointed, private respondent want on leave from May 9 to 17, 1988 (ibid).

"On May 17, 1988, private respondent had a talk with the personnel manager. Private respondent was told to resign and offered the amount of P12,000.00 if he did. Private respondent rejected the offer. Danaquel extended his leave to May 25, 1988.

> On May 25, 1988, a latter of termination was sent to private respondent through a security guard of the company (ibid).
>
> "On May 30, 1988, private respondent filed a complaint for illegal dismissal and unfair labor practice against petitioners before the National Labor Relations Commission, Regional Office No. 8, Tacloban City (Annex "C", Petition).
>
> "In his Position Paper dated July 25, 1988, private respondent stated that his dismissal from the company was illegal. He claimed that he was denied due process because he was not 'formally and priority' charged (p. 4, Annex "E", Petition).
>
> "On the other hand, petitioners, in their Position Paper also dated July 25, 1988, alleged that private respondent was terminated from employment for: (a) negligence in failing to install preventive measures in maintenance thus resulting in machine breakdown and line stoppages; and (b) negligent repair of CEM-72 Soaker Machine by allowing outside contractors to repair the same without his close supervision (p. 1, Annex "D", Petition)." (Rollo, pp. 143-146)

From the decision of the Labor Arbiter ruling in favor of the private respondent, the petitioners appealed to the NLRC which dismissed the appeal on April 15, 1991.

Meanwhile, Pepsi-Cola Products Philippines, Inc. (PCPPI) filed a manifestation with the NLRC stating that it received a writ of execution dated February 18, 1991, addressed to Pepsi-Cola Bottling Co. (PBC) and ordering Pepsi-Cola Distributors of the Philippines (PCD) to reinstate Oscar T. Encabo. PCPPI further stated that it was returning the writ unsatisfied since it is a corporation separate and distinct from PBC or PCD, making it an inappropriate party to which the writ of execution should be served.

In the motion for reconsideration filed with the NLRC, the petitioners alleged that reinstatement is no longer possible since the petitioner company closed down its business on July 24, 1989 and the new franchise holder, Pepsi-Cola Products Philippines (PCPPI) is a new entity.

On August 14, 1991, the NLRC issued a resolution denying the motion for reconsideration on the ground that the cessation of the business was never raised in the arbitration level and can not now be entertained on appeal. Thus, the petitioner company and its successor-in-interest PCPPI were held liable for the reinstatement of the private respondent.

Consequently, the petitioners filed the instant petition for *certiorari* with a prayer for the issuance of a writ of preliminary injunction predicated on the following grounds:

I

> PUBLIC RESPONDENTS ACTED IN GRAVE ABUSE OF DISCRETION IN RULING THAT PETITIONERS DID NOT ACCORD PRIVATE RESPONDENT DUE PROCESS REGARDING HIS NEGLIGENCE IN THE SOAKER MACHINE'S BREAKDOWN.

II

> PUBLIC RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT PRIVATE RESPONDENT WAS TERMINATED PROM EMPLOYMENT WITHOUT JUST CAUSE.

III

> PUBLIC RESPONDENT NLRC ACTED IN GRAVE ABUSE OF DISCRETION AND IN EXCESS OF JURISDICTION IN RULING THAT PETITIONER PEPSI COLA CO. AND PEPSI-COLA PRODUCTS PHIL. ARE LIABLE FOR THE REINSTATEMENT.

The petitioners maintain that loss of trust and confidence is a valid ground for termination citing City Trust Finance Corp. vs. NLRC (157 SCRA 87 [1988]).

While it is true that loss of trust and confidence is one of the just causes for termination, such loss of trust and confidence must however have some basis (Gubac vs. NLRC, 187 SCRA 412 [1990]). Proof beyond reasonable doubt is not required. It is sufficient that there is some basis for such loss of confidence or that there must be some 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 trust and confidence demanded by his position. (City Trust Finance Corp. vs. NLRC, supra; Reyes vs. Minister of Labor, 170 SCRA 137 [1989]; San Miguel vs. NLRC, 128 SCRA 18 [1984]).

The petitioners allege that they lost confidence in private respondent's work proficiency as maintenance manager, since the latter failed to undertake preventive measures to avoid breakdowns and line stoppages in the bottling operations. He also failed to supervise the work of an outside contractor who rehabilitated the CEM Soaker Machine. The financial losses suffered by the petitioner company are allegedly attributable to the negligence of the private respondent in the performance of his duties and responsibilities as maintenance manager.

The Labor Arbiter however found it difficult to see the basis of the loss of confidence in the light of the evidence presented by both parties. His findings are worth quoting, to wit:

x x x

> "We are not convinced of respondent's postulations. Their assertions leave more unanswered questions rather than facts. What does 'a few months before his termination' mean. Complainant was dismissed on May 1988. Would it be two, three or four months prior, which would be as far back, say, January of 1988. Or could it be November or December of 1987. Respondent's allegation is vague, have (sic) not signified exactly when did complainant fail to install preventive measure; and for how many times had he omitted to do it, if respondent did in fact call his attention to it. Not a single written memorandum was ever issued by respondents purporting to show that he had

failed to install preventive measures, or for that matter criticizing him for his omissions and failure to perform his functions. If we shall refer to year 1987, that would be too far back as a 'few months' would connote. Besides, in that year that particular machine was still functioning and doing its job. If it was, then the Maintenance Manager, Engr. Encabo must have been doing quite a job in coaxing and maintaining an ancient machine (Model 1968) to do its work. This would also imply that complainant was in fact installing preventive measures to insure the functioning and good condition of the machine.

"Knowing fully well the unstable and dilapidated condition of that bottle cleaner, Barry Wehmiller, Model 640, PT 1966, as far back as the end of the year 1987, negotiations were started by respondent to rehabilitate the machine. In fact, one such bidder, the Precision Machinist Corporation sent its quotation dated January 29, 1988, (Annex "B", p. 14-15, Record) to the Plant General Manager, Mr. A. C. Sian.

"From the time that work on the rehabilitation of the soaker machine started in the middle of March, 1988, to its completion date sometime in May, 1988, which could be considered as 'a few months before his termination,' the question is likely to arise: How can complainant possibly initiate or install what respondent calls 'preventive measure', when at that period of time, that particular machine had stopped functioning as it was already undergoing and being subjected to repair and overhauling by the contractor? That is a completely improbable situation.

"On the second ground for respondent's loss of trust and confidence, it is alleged that complainant 'did not look closely into the repair of the CEM-72 soaker machine, but instead 'delegated' the matter to outside contractor.

"For clarity, the first portion of the contractor's letter says:

> 'We are pleased to submit our lowest price for the supply of labor, tools, materials equipment and other facilities, consumables, jigs, and fixtures including strict

> supervision and quality control in the complete fabrication and installation of parts intended for the REHABILITATION OF BOTTLE CLEANER-BARRY WEHMILLER, MODEL 640 PT 1966 with the following scope of work." (emphasis supplied) (Annex "B", p. 14, Record)

"The implication is that the contractor had complete and absolute control over the work being done. Any outside assistance including that of complainant, other than from the contractor's own people, would be superfluous, if not entirely unnecessary. The inclusion however, of Mr. Doromal, Iloilo Plant Maintenance Manager, was not at complainant's behest or request. It came from respondent, to assist in the work, even as complainant was not notified. But, it did not mean that complainant completely left everything to Doromal and the contractor. As resident Maintenance Manager, he too made suggestions and comments on the work being done while attending also to keeping in good running condition the other machines of the plant which was in full operation. But his offered suggestions were brushed aside by the contractor who was supposed to be knowledgeable on those matters and knew better than complainant.

"We know for a fact that it was respondents who initiated the move to hire outside contractor to 'rehabilitate' the machine. The scope of work (p. 13, Record), shows that this was not just an ordinary repair work but a complete overhauling. Complainant was not even consulted on this. Neither was he involved in the negotiations to hire the contractor. His involvement, as records disclose, was only in the requisition of parts to be used. In short, it was all and entirely respondents' show.

"As records again prove, that machine did not work even after the contractor was supposed to be through with the work. It became operational only after co-respondent V. S. Castillo acknowledged the contractor's failure and ultimately requested complainant to take over the work.

"So, without Iloilo Plant Maintenance Manager, Doromal, who practically raised his hands in utter-helplessness, and to quote his words, 'wala na raw ibubuga', complainant, together with only 3 or 4 people from PREMACOR assisted by men directly-under him, made the CEM-72 operational and functioning at an efficiency rate of 65 per cent. He had shown to his superiors that he could do the job. But he did not know what was in store for him.

"Respondents, A.C. Sian and V. S. Castillo, feeling that they had probably been remiss in their duties, and blundered costing the company so much money for a job which could have well been performed by complainant and his people had they not been completely bypassed and ignored, must now find a scapegoat for that failure. The sacrificial lamb was complainant. So, like the gods of Mt. Olympus, summary judgment must be passed to pronounce complainant unworthy of their trust and confidence.

"The fact stands that respondent assigned the task of rehabilitating the soaker machine to an outside contractor, not to complainant.

"Respondent's anemic allegations have failed to adequately sustain the charges against complainant.

> 'Where the charges against the employee are not substantiated, there is no other alternative but to hold that the so called 'loss of confidence' is without basis. Loss of confidence has never been intended to afford an occasion for abuse because of its subjective nature to dismiss employees in contravention of the 'protection to labor' clause of the Constitution. Atlas Consolidated Mining and Development Corporation vs. NLRC, 167 SCRA 758.'" (Rollo, pp. 75-80)

Well-settled is the rule that findings of facts of quasi-judicial agencies which have acquired expertise because their jurisdiction is confined to specific matters are accorded not only respect by this court but at times even finality if such findings are supported by evidence. (Chua vs. NLRC, 182 SCRA 353 [1990]). The Court does not find any cogent

reason to digress from the settled rule in this case. There is substantial evidence to support the decision.

Apart from the Labor Arbiter's finding that there is no sufficient basis for the petitioners to justify private respondent s dismissal on the ground of loss of trust and confidence, it appears that the dismissal of the private respondent was merely an afterthought to cover up management's embarrassment. The private respondent was by-passed and ignored in the task of rehabilitating the soaker machine and he is now being punished for the mistake of management and the failure of its hired contractor and its favored supervisor.

There is no evidence to show that the private respondent was remiss in his duties.

The loss of trust and confidence must rest on an actual breach of duty committed by the employee and not on the employer s caprices. As held in General Bank and Trust Co., vs. CA, 135 SCRA 569 [1985]:

> "Loss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal or unjustified. Loss of confidence may not be arbitrarily asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify earlier action taken in bad faith."

There is also no showing that the requirements of due process were adequately met by the petitioners.

The law requires that the employer must furnish the worker sought to be dismissed with two (2) written notices before termination of employment can be legally effected: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer s decision to dismiss him. (Sec. 13, BP 130; Sec. 2-6 Rule XIV, Look V, Rules and Regulations Implementing the Labor Code as amended). Failure to comply with the requirements taints the dismissal with illegality. This procedure is mandatory; in the absence of which, any judgment reached by management is void and inexistent (Tingson, Jr. vs. NLRC, 185 SCRA 498 [1990]; National

Service Corp. vs. NLRC, 168 SCRA 122 [1988]; Ruffy vs. NLRC, 182 SCRA 365 [1990]).

In the instant case, the petitioners failed to furnish the private respondent with the first of the required two (2) notices which could have apprised him of the petitioners' intention to dismiss him. The petitioners contend that during the conference held with the company's personnel manager on March 17, 1988, the private respondent was verbally apprised of the charges against him specifically his poor work performance. Due process was allegedly accorded him since he was given the opportunity to be heard with the assistance of counsel. It is claimed that there was substantial compliance with the requirements of notice and hearing.

The petitioners' contention is untenable. The law is clear on the matter. The consultations or conferences are not a substitute for the actual observance of notice and hearing. In fact, when private respondent's lawyer called up Danaquel by phone to inquire categorically if he "had been or was about to be dismissed" Danaquel emphatically answered "No". Then a few days later or on May 25, 1988, the private respondent was handed his termination letter. The employer's action was drastic. Under the circumstances it cannot be stated that the private respondent was given the opportunity to prepare for his defense.

We, therefore, find no grave abuse of discretion committed by the public respondents in declaring Oscar T. Encabo's dismissal from employment as illegal.

With respect to the third issue, PCPPI claims that the public respondent committed grave abuse of discretion in holding it liable for the reinstatement of the private respondent considering that PCPPI is an entirely separate and distinct entity from the PCD.

On the ground of serious business losses, PCD alleged that it ceased to operate on July 24, 1989 and PCPPI, a company separate and distinct from PCD acquired the franchise to sell the Pepsi-Cola products.

Pepsi-Cola Distributors of the Philippines may have ceased business operations and Pepsi-Cola Products Philippines Inc. may be a new company but it does not necessarily follow that no one may now be held liable for illegal acts committed by the earlier firm. The complaint was filed when PCD was still in existence. Pepsi-Cola never stopped doing business in the Philippines. The same soft drinks products sold in 1988 when the complaint was initiated continue to be sold now. The sale of products, purchases of materials, payment of obligations, and other business acts did not stop at the time PCD bowed out and PCPPI came into being. There is no evidence presented showing that PCPPI, as the new entity or purchasing company is free from any liabilities incurred by the former corporation.

In fact we agree with the public respondent s observation that in the surety bond (Rollo, p. 86) put up by the petitioners as appeal bond, both PCD and PCPPI bound themselves to answer the monetary awards of the private respondent in case of an adverse decision of the appeal, which clearly implies that the PCPPI as a result of the transfer of the franchise bound itself to answer for the liability of PCD to its employees.

Moreover, the liability of petitioners A. C. Sian and Virgilio Castillo as Plant General Manager and Manufacturing Manager respectively of PCD is beyond question as they are the architects of the dismissal of private respondent. The petitioners acted arbitrarily and wantonly in dismissing the private respondent on the mere basis of loss of trust and confidence. The records reveal that they were the ones responsible for bypassing the private respondent in the rehabilitation of the soaker machine and at the end, blaming the latter for the company's financial losses. Castillo's affidavit is not only self-serving but baseless. While a manager's right to fire an employee is recognized as an inherent part of the position such right must be exercised with utmost prudence and with humane consideration. (Sibal vs. Notre Dame of Greater Manila, 182 SCRA 538 [1990]) The petitioners dismally failed in this respect.

With the finding that PCD was guilty of dismissing the private respondent without just cause, the public respondent's order for reinstatement should follow as a matter of right. (Globe-Mackay

Cable and Radio Corporation vs. NLRG and Imelda Salazar, G.R. No. 82511, March 3, 1992; Carandang vs. Dulay, 188 SCRA 792 [1990]; Santos vs. NLRC, 154 SCRA 166 [1987]).

However, to order reinstatement at this juncture would serve no prudent purpose considering the supervening facts and circumstances of the case. Not only is PCPPI a new corporation continuing the business and operations of PCD, there is also no doubt that the relationship between the petitioners and the private respondent has been strained by reason of their respective imputations of bad faith which is quite evident from the vehement and consistent stand of the petitioners in refusing to reinstate the private respondent. Thus, in order to prevent further delay in the execution of the decision to the prejudice of the private respondent and to spare him the agony of having to work anew with the petitioners under an atmosphere of antagonism, and so that the latter do not have to endure the continued services of the private respondent in whom they have lost liking and, at this stage, confidence, the private respondent should be awarded separation pay as an alternative to reinstatement. (Sealand Services, Inc. vs. NLRC, 190 SCRA 347 [1990])

WHEREFORE, the Decision and the Resolution of the NLRC, dated April 15, 1991 and August 14, 1991 respectively are **MODIFIED**. Backwages limited to three (3) years are hereby awarded and in lieu of reinstatement, the private respondent, Oscar T. Encabo is **GRANTED** separation pay equivalent to one (1) month for every year of service plus attorney's fees in the amount of P10,000.00 with costs against the petitioners. The writ of execution dated February 18, 1991 and the alias writ of execution dated November 8, 1991 are hereby **NULLIFIED** and **SET ASIDE**. The temporary restraining order issued on November 25, 1991 is made permanent. This judgment is immediately executory.

SO ORDERED.

Feliciano, Bidin, Davide, Jr. and Romero, *JJ.*, concur.