

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
THIRD DIVISION**

**PEPSI-COLA DISTRIBUTORS OF THE  
PHILIPPINES, INC.,**

*Petitioner,*

*-versus-*

**G.R. No. 106831**

**May 6, 1997**

**NATIONAL LABOR RELATIONS  
COMMISSION, THIRD DIVISION,  
HON. JOSE B. BOLISAY, EXECUTIVE  
LABOR ARBITER, REGIONAL  
ARBITRATION, BRANCH No. 1, SAN  
FERNANDO, LA UNION and PEDRO B.  
BATIN,**

*Respondents.*

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**DECISION**

**FRANCISCO, J.:**

Before the Court is a Petition for *Certiorari* whereby petitioner Pepsi-Cola imputes grave abuse of discretion to public respondent National Labor Relations Commission (NLRC) in sustaining the findings of the Labor Arbiter that private respondent Pedro B. Batin was illegally dismissed from work.

The facts are as follows:

Sometime in 1978, private respondent was employed by petitioner as a salesman of its softdrink products. On March, 1985, he was promoted as Field Sales Manager assigned by petitioner at its Warehouse in Urdaneta, Pangasinan.<sup>[1]</sup>

Three (3) years later, on May, 1988, private respondent received various memoranda from petitioner suspending him from work due to the following acts:

- negligence in performance of duties particularly, his incomplete and improper accomplishment of Route Sales Report;<sup>[2]</sup>
- failure to achieve sales commitments, and
- unauthorized extension of credit (IOU's) to customers.<sup>[3]</sup>

In two memoranda, private respondent was suspended for a total of 3 days (May 9, 10, and 24, 1988) due to said acts.<sup>[4]</sup> In a third memorandum, he was meted with another suspension for an unspecified duration effective May 25, 1988.<sup>[5]</sup> He was also notified to explain his side on the case.<sup>[6]</sup>

Earlier, on May 23, 1988, the salesmen and helpers at the Urdaneta Warehouse signed a letter address to the Regional Sales Manager (Mr. Ernesto Cabuco) charging private respondent with the following acts and requesting that he be transferred to another station:<sup>[7]</sup>

- sleeping inside the route truck during route rides instead of alighting from the vehicle to talk to customers;
- obligating his men to pay for his meals and demanding their meal receipts for his own reimbursement from the company;
- fictitiously purchasing 2,000 cases of petitioner's assorted Pepsi products knowing that the price thereof will increase and later selling them at the adjusted price using petitioner's resources for his own benefit;

- inhuman treatment of the salesmen and helpers who are his subordinates.

Later, on June 6, 1988, private respondent received from petitioner a “notice of preventive suspension” stating the above charges and placing him anew under preventive suspension status retroactive on the same date of May 25, 1988. This notice also informed him of the following:

“Administrative investigation on your case shall be conducted at the Plant at 9:00 A.M. on June 10, 1988. It is understood that your failure and/or refusal to appear in said hearing shall be deemed as a waiver of your right to be heard, in which case, we shall decide on your case on the basis of available records/evidence.”<sup>[8]</sup>

Private respondent received another notice requiring him to answer the salesmen’s charges.<sup>[9]</sup> In response thereto, he submitted a position paper.<sup>[10]</sup>

Administrative investigations conducted by petitioner on private respondent’s case showed that the following acts were allegedly committed by the latter:<sup>[11]</sup>

- a) grave abuse of authority, gross misbehavior and conduct unbecoming of a managerial employee — by requiring his subordinates to provide for his meals without reimbursing their expenses, sleeping instead of alighting from the truck during route rides and slapping, scolding and insulting his subordinates.
- b) conflict of interest and dishonesty by personally purchasing 2,000 cases of petitioner’s products knowing of the impending price increase — made it appear as purchased by Motolite Urdaneta as well as by a customer named Mamerto Urmoza — private respondent sold these products at the adjusted price for his profit.

The investigation likewise showed that a disciplinary action of suspension was imposed on private respondent for neglecting his accountability, sales commitments and unauthorized IOU's.<sup>[12]</sup>

These administrative charges were contained in a letter received by private respondent from the Regional Sales Manager which letter also contained a statement that his services were terminated effective October 7, 1988.<sup>[13]</sup>

Arguing that his dismissal was illegal, private respondent sued petitioner before the Labor Arbiter praying for backwages, reinstatement, payment of 13<sup>th</sup> month pay and other claims. After hearing, the Labor Arbiter<sup>[14]</sup> rendered a decision dated February 26, 1991, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, judgment is hereby granted:

- 1) Declaring the termination of complainant's services as illegal;
- 2) Ordering respondent Pepsi-Cola Distributors of the Philippines, Inc. to reinstate complainant Pedro B. Batin, even pending appeal, to his former position or substantially equivalent thereof, without loss of seniority rights, or, at the option of the respondent, to include complainant in the payroll with his position's corresponding present salary, in accordance with R.A. 6715;
- 3) Ordering said respondent to pay complainant Batin his backwages for one (1) years, (sic) together with his money claims and remuneration for the period of his suspension in excess of the 30-day limit, as follows:

(a) Backwages (Oct. 7/88 to Oct. 6/89	P66,000.00
(b) Backwages for the period of suspension beyond 30 days (June 25-Oct. 6/88)	18,516.63

(c) 13 <sup>th</sup> month pay:		
1988	P5,500.00	
1989	4,216.66	9,716.66

(d) Unused vacation and sick leave pay of 73 days		<u>13,383.09</u>
TOTAL		P107,616.38
		=====

4) Ordering the same respondent to pay complainant the money equivalent of his 12 sets of uniforms (6 sets for 1988 and 6 sets for 1989).

SO ORDERED.<sup>[15]</sup>

Aggrieved, petitioner, whose juridical personality ceased on July 24, 1989,<sup>[16]</sup> appealed to respondent NLRC which affirmed the Labor Arbiter's decision.<sup>[17]</sup> Upon denial by the NLRC of its Motion for Reconsideration, petitioner comes to this Court via *certiorari* raising substantially two issues, namely:

- 1) Whether private respondent was denied due process before he was dismissed?
- 2) Whether the dismissal was premised on lawful cause?

The Court will resolve both issues jointly. The validity of private respondent's dismissal hinges on the satisfaction of the two substantive requirements for a lawful termination of an employee's services, to wit:<sup>[18]</sup> (1) the employee was accorded due process, basic of which are opportunity to be heard and to defend himself,<sup>[19]</sup> and (2) the dismissal must be for any of the causes provided in Article 282 of the Labor Code.<sup>[20]</sup>

On the first requirement, contrary to the findings of public respondents, evidence on record shows that private respondent was accorded due process before his dismissal on October 7, 1988. Administrative due process does not require an actual hearing. The essence thereof is simply an opportunity to be heard.<sup>[21]</sup> In this case,

private respondent was not only given two opportunities to explain his case, but actually availed thereof by submitting his position paper.<sup>[22]</sup>

Petitioner also complied with the twin procedural requirement of written notices to effect a valid dismissal viz.: (1) a notice entitled “preventive suspension” was given to private respondent in accordance with Section 2 Rule XIV Book V of the Omnibus Rules<sup>[23]</sup> apprising him of the acts and omissions for which his dismissal is sought, and (2) a subsequent notice<sup>[24]</sup> after investigation informing private respondent of petitioner’s (employer) decision to dismiss him.<sup>[25]</sup> Respondent NLRC’s ruling that that “notice of preventive suspension” does not satisfy the first written notice required<sup>[26]</sup> is erroneous. Although, as a general rule findings of facts of an administrative agency which has acquired expertise in the particular field of its endeavor, are accorded great weight on appeal, such rule cannot be applied with respect to the assailed findings on due process in this case. Rather, what applies is the recognized exception that if such findings are not supported by substantial evidence, the Court can make its own independent evaluation of the facts.<sup>[27]</sup> Upon scrutiny of the evidence on record, particularly the “notice of preventive suspension,” the ruling below that there was no due process before the dismissal cannot stand. In conformity with Article 277(b) of the Labor Code, the said notice specifically and particularly stated the acts leveled against private respondent and also informed him that a hearing is set on a specific time and date for him to explain his version.

After its investigation, petitioner further complied with the mandate of Section 6, Rule XIV of Book V of the Omnibus Rules<sup>[28]</sup> by sending private respondent another notice enumerating the causes of his dismissal which notice categorically informed the latter of the employer’s decision to terminate his employment. With these notices, it cannot be said that petitioner failed to observe due process before dismissing private respondent.

With respect to the second requirement, petitioner asserts that private respondent was dismissed on two grounds: (1) grave abuse of authority and gross misbehavior in allegedly accepting bribes, fighting and inflicting bodily harm to other employees, and (2)

conflict of interest and dishonesty by allegedly making unauthorized extension of credit to customers and in creating fictitious sales of 2,000 cases of assorted Pepsi products.

First, for the charge of misbehavior and abuse of authority, there is scant evidence on record which would show that private respondent is guilty thereof. Mere accusations and declarations by certain persons that the latter attempted to bribe or had engaged in fistfight, cannot support a finding that he indeed committed such acts. Unsubstantiated accusation without more is not synonymous with guilt. As for the acts of unauthorized extension of credit, private respondent adequately explained that the subject extension of credit or IOUs is a practice tolerated by the management, especially when they lag behind their sales objective, as in this case. Nonetheless, this questioned IOU was even promptly collected and no evidence was shown that petitioner's business incurred damage.

With respect to the charge of dishonesty and conflict of interest, evidence on record shows that private respondent purchased 2,000 cases of Pepsi products in his personal capacity, aware that the prices thereof (Pepsi products) will increase. However, he made it appear that said products was bought by a certain customer who later executed an affidavit denying such purchase. When the price of Pepsi products increased, private respondent sold as his own the 2,000 cases at the adjusted price thereby accruing benefit to himself. In said fictitious sale, he utilized petitioner's resources and company time for which the former was duly paid. By making such transaction, he also engaged himself in business competing with his employer and thus comes in conflict of interest against petitioner. He cannot serve himself and petitioner at the same time all at the expense of the latter. It would be unfair to compensate private respondent who does not devote his time and effort to his employer. The primary duty of the employee is to carry out his employer's policies.<sup>[29]</sup> Moreover, the fictitious sale is an act of dishonesty. Route salesman, like private respondent, is a highly individualistic personnel who roam around doing field work of selling softdrinks, deal with customers practically on their own and are entrusted with large amounts of funds and properties of the employer.<sup>[30]</sup> There is a high degree of trust and confidence repose on them and when that confidence is breach, as in this case, proper disciplinary actions may be taken. The foregoing acts

of dishonesty and conflict of interest justifies disciplinary sanctions provided it is commensurate with the gravity of the act. Under the factual milieu of this case a disciplinary sanction less punitive than the harsh penalty of dismissal meted on private respondent would suffice, considering his ten (10) years of service with petitioner and this being the first time he was charged with and investigated for such acts.<sup>[31]</sup> There is no evidence that he has committed infractions against the company before this incident, otherwise, he would not have been promoted in the first place. Moreover, private respondent was already penalized with suspensions in some of the infractions imputed to him in this case, like sleeping while on route rides, incomplete accomplishment of sales report and his failure to achieve sales commitments. He cannot again be penalized for those misconduct. The foregoing acts cannot be added to support the imposition of the ultimate penalty of dismissal which must be based on clear and not on ambiguous and ambivalent ground.<sup>[32]</sup>

Private respondent's preventive suspension since May 25, 1988 which extended beyond his dismissal on October 7, 1988, is more than the maximum period of 30 days set by Sec. 4, Rule XIV, Book V of the Omnibus Rules.<sup>[33]</sup> Preventive suspension cannot last indefinitely. In the case at bench, that long period of preventive suspension which lasted for more than a year where private respondent remained unemployed is herein considered as the commensurate penalty for the dishonest act and conflict of interest. Forthwith, the award of backwages will no longer have any basis. Nonetheless, for violating the maximum period of preventive suspension, a sanction should be imposed on petitioner.<sup>[34]</sup>

**WHEREFORE**, premises considered, the Decision of respondent NLRC is **AFFIRMED** in all other respect **EXCEPT** that the award of backwages is deleted and the award of thirteenth (13<sup>th</sup>) month pay should be recomputed based on the annual salary that private respondent actually received from petitioner for the years 1988 and 1989. For violating the rules on the imposition of the maximum period of preventive suspension, petitioner is also ordered to pay private respondent a penalty of three thousand pesos (P3,000.00).

**SO ORDERED.**

**Narvasa, C.J., Davide, Jr., and Melo, JJ., concur.  
Panganiban, J., Took no part.**

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- [1] Rollo, pp. 60-61.
- [2] Rollo, p. 62.
- [3] Rollo, pp 74-76.
- [4] Annexes “C & D”; Rollo, pp. 74-75.
- [5] Annex “E”, Rollo, p. 76.
- [6] Ibid.
- [7] Annex “F”.
- [8] Annex “G”, Petition; Rollo, p. 79.
- [9] Annex “J”, Petition; Rollo, p. 88.
- [10] Rollo, pp. 80-82.
- [11] Rollo, p. 99.
- [12] Ibid.
- [13] Annex “M”, Petition; Rollo, p. 99.
- [14] Jose Bolisay.
- [15] Labor Arbiter’s Decision, pp 14-15; Rollo, pp. 73-74.
- [16] Rollo, p. 3.
- [17] Resolution of NLRC promulgated June 29, 1992 penned by Comsr. Ireneo Bernardo with Comsr. Lourdes Javier, concurring Comsr. Rogelio Rayala was on leave (Rollo, pp 49-59).
- [18] Jones vs. NLRC, 250 SCRA 668 (1995); Oania vs. NLRC, 244 SCRA 668 (1995).
- [19] Article 277(b) of the Labor Code provides in part that “the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself . . .” (Emphasis supplied).
- [20] 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) . . .
  - (e) other causes analogous to the foregoing.
- [21] Navarro III vs. Damasco, 246 SCRA 260 (1995); Vallende vs. NLRC, 245 SCRA 662; GT Printers vs. NLRC, 208 SCRA 321.
- [22] Rollo, pp. 80-82.
- [23] Notice of Dismissal. Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omissions constituting the grounds for his dismissal.
- [24] Annex “G” Petition.

- [25] See *Jones vs. NLRC*, supra.; *Pampanga II Electric Cooperative, Inc. vs. NLRC*, 250 SCRA 31 (1995).
- [26] *Rollo*, p. 58.
- [27] *Balayan Colleges vs. NLRC*, 255 SCRA 1 (1996); *Bontia vs. NLRC*, 255 SCRA 167 (1996).
- [28] Omnibus Rules Implementing the Labor Code: “The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.”
- [29] *Filipino, Inc. vs. NLRC*, 145 SCRA 123, 131 (1986).
- [30] *Coca-Cola Bottlers Philippines Inc. vs. NLRC*, 172 SCRA 751 (1989).
- [31] See *Pacific Products/Fortuna Employees and Workers Association vs. Pacific Products, Inc.*, 154 SCRA 113 (1987); *North Camarines Lumber, Inc. vs. Barredo*, 153 SCRA 245 (1987).
- [32] *Pantranco North Express vs. NLRC*, 252 SCRA 237 (1996).
- [33] Period of Preventive Suspension. “No preventive suspension shall last longer than 30 days . . . *Pacific Cement Co., Inc. et. al. vs. NLRC*, 173 SCRA 192 (1989).
- [34] *JRS Business Corporation vs. NLRC*, 246 SCRA 445 (1995).