

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**PEPSICO, INC.,  
*Petitioner,***

***-versus-***

**G.R. No. 51632  
September 7, 1989**

**NATIONAL LABOR RELATIONS  
COMMISSION and JOSE S. LAPID,  
*Respondents.***

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**DECISION**

**NARVASA, J.:**

Jose S. Lapid occupied the position of “Director of Leasing” in petitioner firm, PEPSICO, Inc. He had a salary of P4,200.00 a month,<sup>[1]</sup> enjoyed certain fringe benefits including a “car plan,” and had the following duties and functions,<sup>[2]</sup> to wit:

- “A. Canvass potential applicant/lessees, mainly from personal contacts.
- B. Surveys the applicant’s business.

- C. Communicates and order(s) the equipment with a supplier or in the case of a sale and leaseback, physically inspect(s) the applicant's equipment.
- D. Requests and follow(s) up on approval of the lease application handling all documents for leasing until approval of the credit committee.
- E. Receives collections from the lessee (even) without using any receipt.
- F. Handles the repossession and sale of equipment for lessees in default."

It having been discovered that he had purchased for PEPSICO various types of machinery and equipment which he represented to be brand new but which, on subsequent inspection were discovered to be if not second-hand, over-valued, and that of twenty-four (24) lease agreements he had executed as PEPSICO's Director of Leasing, fourteen (14) had turned out to be "bad accounts," all said transactions involving an amount of more than P7 million, his employer terminated his services on account of loss of confidence in his competence and reliability.<sup>[3]</sup>

Thereafter, Lapid, through an attorney, wrote to PEPSICO requesting that he be reinstated or, alternatively, that he be allowed to retire under the company's retirement plan.<sup>[4]</sup> His request was turned down, PEPSICO asserting that as shown by indubitable documentary evidence, he had "been grossly and habitually negligent in processing a number of leasing agreements with company customers and such gross and habitual neglect on (his part in the) performance of his duties (had) resulted in enormous losses to the company for which reason the latter could no longer retain him in its employ."<sup>[5]</sup>

Lapid then filed a complaint against PEPSICO and Reginald M. Pointon (a PEPSICO official, and member of its Credit Committee)<sup>[6]</sup> with the Labor Regional Office praying that his dismissal be pronounced illegal, and that he be reinstated and paid damages.<sup>[7]</sup> The verdict went against him, however. The Labor Arbiter found, after a thoroughgoing analysis of the evidence, that Lapid was a

managerial employee, that there was sufficient basis for his employer's loss of confidence in him, and, being a managerial employee, his dismissal required no prior clearance from the Department of Labor. Nonetheless, the Labor Arbiter ordered the payment to him of financial assistance in the sum of P56,700.00, viz.:

“WHEREFORE, pursuant to the above dispositions, the respondents are hereby ordered to pay complainant Jose S. Lapid the amount of FIFTY SIX THOUSAND SEVEN HUNDRED PESOS (P56,700.00) by way of financial assistance.”<sup>[8]</sup>

On Appeal,<sup>[9]</sup> the NLRC reversed the judgment of the Labor Arbiter, categorizing Lapid as a rank-and-file employee, not managerial, and declaring that he had been illegally dismissed as no clearance had been secured from the Labor Department prior to the termination of his services. He was consequently awarded separation pay as well as back wages from the time of his separation from employment until the finality of the decision.<sup>[10]</sup>

This judgment is assailed as having been rendered by the NLRC with grave abuse of discretion, in the instant special civil action of *certiorari*. PEPSICO's petition alleges that in decreeing payment to Lapid of back wages and separation pay, the NLRC had unwarrantedly and capriciously disregarded the evidence persuasively establishing Lapid's status as a managerial employee, as well as the facts constituting adequate foundation for PEPSICO's loss of confidence in him. The petition has merit. The writ of *certiorari* prayed for will issue.

The evidence relative to Lapid's employment classification is incapable of no interpretation except that of his being a managerial employee. This is evident from the nature of the duties and functions attached to his position as “Director of Leasing;” he was in charge of purchasing and leasing industrial machinery and equipment which, as the Labor Arbiter points out, was his employer's principal activity in the Philippines; he managed his own department and had well nigh plenary authority and discretion to enter into contracts in his employer's behalf and binding on the latter, indeed he did execute a number of contracts involving an aggregate amount of more than

seven million pesos. Under these circumstances, it is absurd to even think of categorizing such an employee as a rank-and-file employee, rather than a managerial and primarily confidential one.

The evidence of his incompetence and negligence, is equally convincing; he had bought machinery which he represented to his employer as brand new but which was later discovered to be second-hand; he had foisted a fictitious supplier upon the company; he had purchased equipment at prices higher than those of the same type quoted to him by other sellers; he had caused enormous losses to his employer. These facts suffice by any standards to cause his employer to lose trust and confidence in him, in his ability and his trustworthiness, justifying his dismissal from employment,<sup>[11]</sup> a dismissal which, it must be added, concerning as it did a managerial employee, required no prior clearance from the Department of Labor.<sup>[12]</sup>

The record demonstrates no adequate basis, to repeat, for respondent Commission to disregard the evidence on record and reverse the judgment of the Labor Arbiter. In doing so, the Commission acted with grave abuse of discretion. Thus, its decision must itself be, as it is hereby nullified.

It is noteworthy that PEPSICO does not ascribe any dishonesty or moral turpitude to Lapid. Neither has the Labor Arbiter done so. What PEPSICO ascribes to Lapid is “gross negligence in the performance of his duties resulting in tremendous losses” to it.<sup>[13]</sup> The award by the Labor Arbiter of “financial assistance” to Lapid is not therefore proscribed by the doctrine laid down in PLDT vs. NLRC, G.R. No. 80609, August 23, 1988, reiterated in Osias Academy vs. Department of Labor and Employment, G.R. No. 83234, April 18, 1989, that financial assistance or “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” but not where the cause for termination of employment reflects on his personal integrity or morality. Such financial assistance is specially appropriate in this case, considering that Lapid, who had served PEPSICO for a considerable length of time, is now in his middle sixties, and is reportedly suffering from incurable emphysema and is in difficult economic straits.<sup>[14]</sup>

**WHEREFORE**, the Decision of the respondent Commission dated August 31, 1979 is **NULLIFIED AND SET ASIDE**, and that of the Labor Arbiter **REINSTATED** and **CONFIRMED**, without pronouncement as to costs.

**Cruz, Gancayco, Griño-Aquino and Medialdea, JJ., concur.**

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- [1] A not inconsiderable sum at the time, 1975.
- [2] Respondent's Comment, Feb. 2, 1980, pp. 10-12.
- [3] Rollo, pp. 405-408.
- [4] Id., p. 39; Exh. G, Annex C.
- [5] Id.; Exh. H, Annex C.
- [6] Rollo, p. 39.
- [7] Id., p. 296.
- [8] Id., p. 39.
- [9] Docketed as NLRC Case No. RO-IV-11519-77.
- [10] Annex H, ibid. pp. 10-12; Decision dated Aug. 31, 1979.
- [11] Riker vs. Ople, 155 SCRA 92 [1987].
- [12] ART. 267(b), Labor Code; Victoria vs. Inciong, 157 SCRA 345 [1987].
- [13] Rollo, p. 39; SEE footnote 2, page 2, supra.
- [14] Rollo, p. 578.