

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**PHILIPPINE AEOLUS AUTO-MOTIVE
UNITED CORPORATION and/or
FRANCIS CHUA,**

Petitioners,

-versus-

**G.R. No. 124617
April 28, 2000**

**NATIONAL LABOR RELATIONS
COMMISSION and ROSALINDA C.
CORTEZ,**

Respondents.

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DECISION

BELLOSILLO, J.:

This Petition seeks to set aside the Decision of 15 February 1996 and the Resolution of 28 March 1996 of public respondent National Labor Relations Commission in NLRC NCR CA No. 009753-95 (NLRC NCR Case No. 00-12-08759-94) which modified the decision of the Labor Arbiter finding petitioners not guilty of illegal dismissal.

Petitioner Philippine Aeolus Automotive United Corporation (PAAUC) is a corporation duly organized and existing under Philippine laws, petitioner Francis Chua is its President while private

respondent Rosalinda C. Cortez was a company nurse^[1] of petitioner corporation until her termination on 7 November 1994.

On 5 October 1994 a memorandum was issued by Ms. Myrna Palomares, Personnel Manager of petitioner corporation, addressed to private respondent Rosalinda C. Cortez requiring her to explain within forty-eight (48) hours why no disciplinary action should be taken against her (a) for throwing a stapler at Plant Manager William Chua, her superior, and uttering invectives against him on 2 August 1994; (b) for losing the amount of P1,488.00 entrusted to her by Plant Manager Chua to be given to Mr. Fang of the CLMC Department on 23 August 1994; and, (c) for asking a co-employee to punch-in her time card thus making it appear that she was in the office in the morning of 6 September 1994 when in fact she was not. The memorandum however was refused by private respondent although it was read to her and discussed with her by a co-employee. She did not also submit the required explanation, so that while her case was pending investigation the company placed her under preventive suspension for thirty (30) days effective 9 October 1994 to 7 November 1994.

On 20 October 1994, while Cortez was still under preventive suspension, another memorandum was issued by petitioner corporation giving her seventy-two (72) hours to explain why no disciplinary action should be taken against her for allegedly failing to process the ATM applications of her nine (9) co-employees with the Allied Banking Corporation. On 21 October 1994 private respondent also refused to receive the second memorandum although it was read to her by a co-employee. A copy of the memorandum was also sent by the Personnel Manager to private respondent at her last known address by registered mail.

Meanwhile, private respondent submitted a written explanation with respect to the loss of the P1,488.00 and the punching-in of her time card by a co-employee.

On 3 November 1994 a third memorandum was issued to private respondent, this time informing her of her termination from the service effective 7 November 1994 on grounds of gross and habitual

neglect of duties, serious misconduct and fraud or willful breach of trust.^[2]

On 6 December 1994 private respondent filed with the Labor Arbiter a complaint for illegal dismissal, non-payment of annual service incentive leave pay, 13th month pay and damages against PAAUC and its president Francis Chua.^[3]

On 10 July 1995 the Labor Arbiter rendered a decision holding the termination of Cortez as valid and legal, at the same time dismissing her claim for damages for lack of merit.^[4]

On appeal to the NLRC, public respondent reversed on 15 February 1996 the decision of the Labor Arbiter and found petitioner corporation guilty of illegal dismissal of private respondent Cortez. The NLRC ordered petitioner PAAUC to reinstate respondent Cortez to her former position with back wages computed from the time of dismissal up to her actual reinstatement.^[5]

On 11 March 1996 petitioners moved for reconsideration. On 28 March 1996 the motion was denied;^[6] hence, this petition for certiorari challenging the NLRC Decision and Resolution.

The crux of the controversy may be narrowed down to two (2) main issues: whether the NLRC gravely abused its discretion in holding as illegal the dismissal of private respondent, and whether she is entitled to damages in the event that the illegality of her dismissal is sustained.

The Labor Code as amended provides specific grounds by which an employer may validly terminate the services of an employee,^[7] which grounds should be strictly construed since a person's employment constitutes "property" under the context of the constitutional protection that "no person shall be deprived of life, liberty or property without due process of law" and, as such, the burden of proving that there exists a valid ground for termination of employment rests upon the employer.^[8] Likewise, in light of the employee's right to security of tenure, where a penalty less punitive than dismissal will suffice, whatever missteps may have been committed by labor ought not to be visited with a consequence so severe.^[9]

A perusal of the termination letter indicates that private respondent was discharged from employment for “serious misconduct, gross and habitual neglect of duties and fraud or willful breach of trust.” Specifically —

1. On August 2, 1994, you committed acts constituting gross disrespect to your superior Mr. William Chua, the Plant Manager.
2. On August 23, 1994, the Plant Manager entrusted you the amount of P1,488.00 to be sent to CLMC for Mr. Fang but the money was allegedly lost in your possession and was not recovered.
3. On September 6, 1994, you caused someone else to punch-in time card to show that you were at work when in fact you were doing a personal errand for Richard Tan. As per time card you were in at 8:02 A.M. but you only arrived at 12:35 P.M.
4. On July 28, 1994, you received an amount of P900.00 from Miss Lucy Lao to open an ATM card of nine (9) employees. On September 24, 1994, one of the employees complained by the name of Tirso Aquino about the status of his ATM Card and upon query from the bank it was found out that no application and no deposit for said person has been made. Likewise, it was found out that you did not open the ATM Card and deposit the P800.00 for the 8 other employees. It turned out that said deposit was made after a month later.^[10]

As to the first charge, respondent Cortez claims that as early as her first year of employment her Plant Manager, William Chua, already manifested a special liking for her, so much so that she was receiving special treatment from him who would oftentimes invite her “for a date,” which she would as often refuse. On many occasions, he would make sexual advances — touching her hands, putting his arms around her shoulders, running his fingers on her arms and telling her she looked beautiful. The special treatment and sexual advances continued during her employment for four (4) years but she never

reciprocated his flirtations, until finally, she noticed that his attitude towards her changed. He made her understand that if she would not give in to his sexual advances he would cause her termination from the service; and he made good his threat when he started harassing her. She just found out one day that her table which was equipped with telephone and intercom units and containing her personal belongings was transferred without her knowledge to a place with neither telephone nor intercom, for which reason, an argument ensued when she confronted William Chua resulting in her being charged with gross disrespect.^[11]

Respondent Cortez explains, as regards the second charge, that the money entrusted to her for transmittal was not lost; instead, she gave it to the company personnel in-charge for proper transmittal as evidenced by a receipt duly signed by the latter.^[12]

With respect to the third imputations private respondent admits that she asked someone to punch-in her time card because at that time she was doing an errand for one of the company's officers, Richard Tan, and that was with the permission of William Chua. She maintains that she did it in good faith believing that she was anyway only accommodating the request of a company executive and done for the benefit of the company with the acquiescence of her boss, William Chua. Besides, the practice was apparently tolerated as the employees were not getting any reprimand for doing so.^[13]

As to the fourth charge regarding her alleged failure to process the ATM cards of her co-employees, private respondent claims that she has no knowledge thereof and therefore denies it. After all, she was employed as a company nurse and not to process ATM cards for her co-employees.

The Supreme Court, in a litany of decisions on serious misconduct warranting dismissal of an employee, has ruled that for misconduct or improper behavior to be a just cause for dismissal (a) it must be serious; (b) must relate to the performance of the employee's duties; and, (c) must show that the employee has become unfit to continue working for the employer.^[14] The act of private respondent in throwing a stapler and uttering abusive language upon the person of the plant manager may be considered, from a lay man's perspective,

as a serious misconduct. However, in order to consider it a serious misconduct that would justify dismissal under the law, it must have been done in relation to the performance of her duties as would show her to be unfit to continue working for her employer. The acts complained of, under the circumstances they were done, did not in any way pertain to her duties as a nurse. Her employment identification card discloses the nature of her employment as a nurse and no other.^[15] Also, the memorandum informing her that she was being preventively suspended pending investigation of her case was addressed to her as a nurse.^[16]

As regards the third alleged infraction, i.e., the act of private respondent in asking a co-employee to punch-in her time card, although a violation of company rules, likewise does not constitute serious misconduct. Firstly, it was done by her in good faith considering that she was asked by an officer to perform a task outside the office, which was for the benefit of the company, with the consent of the plant manager. Secondly, it was her first time to commit such infraction during her five (5)-year service in the company. Finally, the company did not lose anything by reason thereof as the offense was immediately known and corrected.

On alleged infraction No. 4, as may be gleaned from and admitted in the memorandum of petitioners to private respondent date 20 October 1994^[17] and the notice of termination dated 3 November 1994, the money entrusted to her was in fact deposited in the respective accounts of the employees concerned, although belatedly. We agree with the submission of the Solicitor General that —

The mere delay/failure to open an ATM account for nine employees is not sufficient, by itself, to support a conclusion that Rosalinda is guilty of gross and habitual neglect of duties. First, petitioner did not show that opening an ATM is one of her primary duties as company nurse. Second, petitioner failed to show that Rosalinda intentionally, knowingly, and purposely delayed the opening of ATM accounts for petitioner's employees. It is of common knowledge that a bank imposes upon an applicant certain requirements before an ATM account can be opened, i.e. properly filled up application forms, identification cards, minimum deposit etc. In the instant case,

petitioner did not prove that the delay was caused by Rosalinda's neglect or willful act. (*Emphasis supplied*)^[18]

Gross negligence implies a want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.^[19] The negligence, to warrant removal from service, should not merely be gross but also habitual. Likewise, the ground "willful breach by the employee of the trust reposed in him by his employer" must be founded on facts established by the employer who must clearly and convincingly prove by substantial evidence the facts and incidents upon which loss of confidence in the employee may fairly be made to rest.^[20] All these requirements prescribed by law and jurisprudence are wanting in the case at bar.

On the issue of moral and exemplary damages, the NLRC ruled that private respondent was not entitled to recover such damages for her failure to prove that petitioner corporation had been motivated by malice or bad faith or that it acted in a wanton, oppressive or malevolent manner in terminating her services. In disbelieving the explanation proffered by private respondent that the transfer of her table was the response of a spurned lothario, public respondent quoted the Labor Arbiter —

Complainant's assertion that the cause of the altercation between her and the Plant Manager where she threw a stapler to him and uttered invectives against him as her refusal to submit to his advances to her which started from her early days of employment and lasted for almost four years, is hardly believable. For indeed, if there was such harassment, why was there no complaints (sic) from her during that period? Why did she stay there for so long? Besides, it could not have taken that period for the Plant Manager to react. This assertion of the complainant deserves no credence at all.^[21]

Public respondent in thus concluding appears baffled why it took private respondent more than four (4) years to expose William Chua's alleged sexual harassment. It reasons out that it would have been more prepared to support her position if her act of throwing the stapler and uttering invectives on William Chua were her immediate

reaction to his amorous overtures. In that case, according to public respondent, she would have been justified for such outburst because she would have been merely protecting her womanhood, her person and her rights.

We are not persuaded. The gravamen of the offense in sexual harassment is not the violation of the employee's sexuality but the abuse of power by the employer. Any employee, male or female, may rightfully cry "foul" provided the claim is well substantiated. Strictly speaking, there is no time period within which he or she is expected to complain through the proper channels. The time to do so may vary depending upon the needs, circumstances, and more importantly, the emotional threshold of the employee.

Private respondent admittedly allowed four (4) years to pass before finally coming out with her employer's sexual impositions. Not many women, especially in this country, are made of the stuff that can endure the agony and trauma of a public, even corporate, scandal. If petitioner corporation had not issued the third memorandum that terminated the services of private respondent, we could only speculate how much longer she would keep her silence. Moreover, few persons are privileged indeed to transfer from one employer to another. The dearth of quality employment has become a daily "monster" roaming the streets that one may not be expected to give up one's employment easily but to hang on to it, so to speak, by all tolerable means. Perhaps, to private respondent's mind, for as long as she could outwit her employer's ploys she would continue on her job and consider them as mere occupational hazards. This uneasiness in her place of work thrived in an atmosphere of tolerance for four (4) years, and one could only imagine the prevailing anxiety and resentment, if not bitterness, that beset her all that time. But William Chua faced reality soon enough. Since he had no place in private respondent's heart, so must she have no place in his office. So, he provoked her, harassed her, and finally dislodged her, and for finally venting her pent-up anger for years, he "found" the perfect reason to terminate her.

In determining entitlement to moral and exemplary damages, we restate the bases therefor. In moral damages, it suffices to prove that the claimant has suffered anxiety, sleepless nights, besmirched

reputation and social humiliation by reason of the act complained of.^[22] Exemplary damages, on the other hand, are granted in addition to, inter alia, moral damages “by way of example or correction for the public good”^[23] if the employer “acted in a wanton, fraudulent, reckless, oppressive or malevolent manners.”^[24]

Anxiety was gradual in private respondent’s five (5)-year employment. It began when her plant manager showed an obvious partiality for her which went out of hand when he started to make it clear that he would terminate her services if she would not give in to his sexual advances. Sexual harassment is an imposition of misplaced “superiority” which is enough to dampen an employee’s spirit in her capacity for advancement. It affects her sense of judgment; it changes her life. If for this alone private respondent should be adequately compensated. Thus, for the anxiety, the seen and unseen hurt that she suffered, petitioners should also be made to pay her moral damages, plus exemplary damages, for the oppressive manner with which petitioners effected her dismissal from the service, and to serve as a forewarning to lecherous officers and employers who take undue advantage of their ascendancy over their employees.

All told, the penalty of dismissal is too excessive and not proportionate to the alleged infractions committed considering that it does not appear that private respondent was an incorrigible offender or that she inflicted serious damage to the company, nor would her continuance in the service be patently inimical to her employer’s interest.^[25] Even the suspension imposed upon her while her case was pending investigation appears to be unjustified and uncalled for.

WHEREFORE, the Decision of public respondent National Labor Relations Commission finding the dismissal of private respondent Rosalinda C. Cortez to be without just cause and ordering petitioners Philippine Aeolus Automotive United Corporation and/or Francis Chua to pay her back wages computed from the time of her dismissal, which should be full back wages, is **AFFIRMED**. However, in view of the strained relations between the adverse parties, instead of reinstatement ordered by public respondent, petitioners should pay private respondent separation pay equivalent to one (1) month salary for every year of service until finality of this judgment. In addition, petitioners are ordered to pay private respondent P25,000.00 for

moral damages and P10,000.00 for exemplary damages. Costs against petitioners.

SO ORDERED.

Mendoza, Quisumbing, Buena and De Leon, Jr., JJ., concur.

- [1] See private respondent Cortez' Employment Identification Card, Annex "A;" Original Records, p. 18.
- [2] Memorandum of petitioner, pp. 2-5; Rollo, pp. 142-145.
- [3] Rollo, p. 203.
- [4] Decision penned by Labor Arbiter Eduardo J. Carpio; Rollo, p. 56.
- [5] Decision penned by Commissioner Vicente S. E. Veloso, concurred in by Presiding Commissioner Bartolome S. Carale and Commissioner Alberto R. Quimpo; Rollo, p. 31.
- [6] Rollo, pp. 33-34.
- [7] 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; and, (d) Commission of a crime or offense by employer or duly authorized representative; and (e) Other causes analogous to the foregoing.
- [8] *Agoy vs. NLRC*, G.R. No. 112096, 30 January 1996, 252 SCRA 588.
- [9] *Almira vs. B.F. Goodrich Philippines, Inc.*, No. L-34974, 25 July 1974, 58 SCRA 120.
- [10] Original Records, p. 20.
- [11] *Id.*, pp. 11-12.
- [12] *Id.*, p. 12.
- [13] *Id.*, p. 13.
- [14] *Molato vs. NLRC*, G.R. No. 113085, 2 January, 1997, 266 SCRA 42; *Aris Philippine Inc. vs. NLRC*, G.R. No. 97817, 10 November 1994, 238 SCRA 59.
- [15] See Note 1.
- [16] See Memorandum on Preventive Suspension; Rollo, p. 37.
- [17] Memorandum requiring her to explain the delayed application of the ATM cards.
- [18] Memorandum of the Solicitor General, p. 7; Rollo, p. 225.
- [19] *Samar II Electric Cooperative, Inc. vs. NLRC*, G.R. No. 116692, 21 March 1997, 270 SCRA 290.
- [20] *Equitable Banking Corporation vs. NLRC*, G.R. No. 102467, 273 SCRA 352.
- [21] Rollo, p. 55.
- [22] Art. 2217, New Civil Code of the Philippines.
- [23] Art. 2229. *id.*

[24] Art. 2232, id.

[25] Rubberworld (Phils.), Inc. vs. NLRC, G.R. No. 75704, 19 July 1989, 175 SCRA 450.

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