

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**ANTONIO I. RODRIGUEZ, JR. and the
BOARD OF DIRECTORS OF THE FIRST
COMMUNITY COOPERATIVE (FICCO),
*Petitioners,***

-versus-

**G.R. No. 153947
December 5, 2002**

**NATIONAL LABOR RELATIONS
COMMISSION (NLRC), 5th DIVISION
and ESTELA G. GADIAN,
*Respondents.***

X-----X

DECISION

MENDOZA, J.:

Private respondent Estela G. Gadian was hired on September 6, 1993 as an internal auditor by petitioner First Community Cooperative (FICCO). It appears that during the period from August to November 1997, private respondent took grocery items and other merchandise worth P13,842.25 from the consumer store, of FICCO. Three personnel of the consumer store, Norma Carton, Allan Pagara and Hamilcar Gabaca, executed a joint affidavit stating that private respondent took the goods in question without paying for them, and

that she did not sign any grocery loan application nor instruct the cashier to deduct the cost of the goods from her salary. On the basis of the affidavit, FICCO filed two cases against private respondent, one, an administrative case for grave misconduct, and another, a criminal case for qualified theft.

In the administrative case, an investigation was conducted by a special investigating committee of FICCO on January 31, 1998. Private respondent was found guilty of grave misconduct and, on February 6, 1998, was dismissed from the company. Hence, on February 13, 1998, private respondent filed before the Labor Arbiter's Office a complaint for illegal dismissal with money claims and damages against herein petitioners, Antonio I. Rodriguez, Jr. and the Board of Directors of FICCO.

Meanwhile, the City Prosecutor of Cagayan de Oro City dismissed the case for qualified theft against private respondent on the ground that even after conducting an inventory of the goods in its consumer store from the period of August to November 1997, FICCO failed to report any loss due to theft or pilferage. On the other hand, the monthly payrolls of the company showed that the value of the goods taken by private respondent had been deducted from her monthly salary from August to November 1997. The resolution of the City Prosecutor was affirmed by the Regional State Prosecutor and later by the Secretary of Justice.

On November 27, 1998, the labor arbiter declared petitioners guilty of illegal dismissal and ordered the immediate reinstatement of private respondent to her former position without loss of seniority rights and the payment to her of backwages in the amount of P440,804.10. The pertinent portions of his decision state:

Considering complainant's dismissal was done with bad faith and considering further the anti-social manner complainant was terminated from her job, and the humiliation she suffered by reason of the unwarranted dismissal, which complainant elaborated during clarificatory hearing, the BRANCH deemed it necessary to award complainant moral damages in the amount of Two Hundred Thousand Pesos (P200,000.00). To deter respondents from terminating their employees in the manner

they have terminated complainant, an award of One Hundred Thousand Pesos (P100,000.00), as exemplary damages, shall likewise be granted to complainant. As prayed for, complainant shall be reimbursed of the litigation fee she incurred due to the filing of this case in the amount of Five Thousand Pesos (P5,000.00). Inasmuch as complainant was forced to hire the services of a lawyer to protect her rights and interests, attorney's fees of not more than ten percent (10%) of the total amount awarded shall be accorded to complainant.

Accordingly, complainant's awarded monetary benefits are computed, hereunder:

Backwages	P 86,831.00
13 th Month Pay	8,900.00
Moral damages	200,000.00
Exemplary damages	100,000.00

Subtotal:	P400,731.00

Add: 10% Attorney's fees	40,073.10

Total:	P440,804.10
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WHEREFORE, judgment is hereby rendered:

1. declaring complainant Estela G. Gadian illegally dismissed from her job;
2. directing respondents Antonio I. Rodriguez, Jr., the Board of Directors and the First Community Credit Cooperative, Inc. (FICCO) to immediately REINSTATE complainant Gadian to her former position without loss of seniority rights; and
3. ordering respondents Antonio I. Rodriguez, Jr., the Board of Directors, and the First Community Credit Cooperative, Inc. (FICCO) to immediately pay

complainant the total amount of FOUR HUNDRED FORTY THOUSAND EIGHT HUNDRED FOUR PESOS and 10/100 (P440,804.10), as computed above.

SO ORDERED.^[1]

On appeal, the NLRC, on October 19, 1999, affirmed the decision of the labor arbiter with modification. The dispositive portion of its resolution reads:

WHEREFORE, the judgment appealed from is affirmed, with the modification that moral and exemplary damages be deleted for lack of legal and factual justification. Being illegally dismissed, complainant is thus entitled to the remedy of full backwages to include allowances and other benefits, from the date she was illegally dismissed up to [the] date she is actually reinstated. Furthermore, she is entitled to reinstatement to her original and former position without loss of seniority rights and privileges, nor to diminution in rank, pay or responsibility. The award of 13th month pay is likewise affirmed. The award of attorney's fees in favor of complainant is likewise affirmed but correspondingly reduced equivalent to 10% of the reduced monetary award.

SO ORDERED.^[2]

Petitioners moved for partial reconsideration, but their motion was denied by the NLRC in its resolution of May 18, 2000. On review, the Court of Appeals affirmed the resolutions of the NLRC. As their motion for reconsideration was also denied, petitioners filed this petition for review on certiorari.

It appears that private respondent's complaint for illegal dismissal was assigned to Labor Arbiter Rexel Pacuribot, against whom an action for collection of a sum of money had earlier been filed by FICCO in the Municipal Trial Court, Branch 5, Cagayan de Oro City.^[3] For this reason, petitioners sought his inhibition from this case. In the present appeal, petitioners contend that Labor Arbiter Pacuribot never resolved the motion for his inhibition and that they doubt his impartiality in rendering a decision in favor of private respondent.

They maintain that private respondent was validly dismissed for willful breach of the trust reposed in her by the company; that private respondent's dismissal was made only after due investigation during which she was assisted by a counsel of her choice, one Atty. Manuel A. Akut; and that she was furnished a copy of the decision informing her that her employment would be terminated.

On the other hand, private respondent avers that the petition for review of petitioners violates Rule 45, § 4 of the 1997 Rules of Civil Procedure because it impleads the NLRC as a public respondent; that it is not accompanied by proof of the veracity of the statement of the material dates; and that it fails to set forth concisely the matters involved and the reasons or arguments relied upon. Further, private respondent claims that the petition also violates Rule 45, § 1 of the Rules because it alleges facts not considered during the trial of the case, such as the decision of MTC, Branch 5 in Civil Case No. 15410 and the answer with counterclaim of Atty. Rexel Pacuribot in that case.

1. Technical Defects in the Petition. — The averments of private respondent as to the alleged procedural defects in the petition in this case are not proper grounds for its dismissal. The fact that the petition included the NLRC as public respondent is of no consequence as, the same can be considered a mere surplusage. Rule 45, §4 requires, among others, that the petition indicate the material dates showing when the notice of the assailed judgment or final order or resolution was received, when a motion for reconsideration, if any, was filed and when notice of denial thereof was received. The petition complied with these matters. Proof of the veracity of the statement is unnecessary because the statement is in fact verified.

Nevertheless, the petition should be denied because the verification and certification of non-forum shopping attached to it are signed and sworn to by Vicente B. Rana, General Manager of FICCO, without any proof of his authority to act on behalf of petitioners FICCO and Antonio I. Rodriguez.

Under Rule 45, §§ 1 and 4(e) of the 1997 Rules of Civil Procedure, a petition filed in this Court by a petitioner shall be

verified and shall contain a sworn certification against forum shopping as provided in the last paragraph of Rule 42, § 2, in relation to Rule 7, §§ 4 and 5. Otherwise, the petition would be dismissed. Rule 46, § 3 also requires the petitioner, not any other person, to sign the certification of non-forum shopping. This is because the petitioner is in the best position to certify whether a similar action involving the same issues has previously been commenced in any other court, tribunal or agency.^[4] The requirement makes no distinction whether petitioner is a natural or a juridical person. Thus, if, as in this case, the petitioner is a corporation, a board resolution authorizing a corporate officer to execute the certification against forum shopping is necessary. This requirement means that the certification should be signed “by a duly authorized director or officer of the corporation.”^[5]

The present petition contains a certification of non-forum shopping signed by one Vicente B. Rana without appending a copy of any board resolution authorizing him to file said petition. A certification not signed by a duly authorized person tenders the petition subject to dismissal.^[6]

2. *Lack of Merit of the Petition.* — More importantly, the petition should be denied for lack of showing that the Court of Appeals committed any reversible error.

To constitute a valid dismissal, two requisites must concur, namely: (a) the dismissal must be for any of the causes stated in Art. 282 of the Labor Code, and (b) the employee must have been accorded due process, basic of which is the opportunity to be heard and to defend himself.^[7] Art. 282 of the Labor Code provides that an employer may terminate the services of an employee on the ground of fraud or willful breach by the employee of the trust reposed in him by his employer or its duly authorized representative. Petitioners do not dispute the fact that the goods taken by private respondent were duly paid for by her through salary deductions during the period from August to November 1997. Nor do they deny that from August to November 1997, FICCO did not report any loss due to theft or pilferage involving the merchandise of FICCO. As the termination of private respondent’s employment was based on the alleged loss of the

subject goods which she had fully paid through salary deductions, justice and equity demand that she be reinstated and paid backwages. For indeed, the petitioner failed to discharge the burden of proving by clear and convincing evidence its allegation of dishonesty against private respondent.

Neither was private respondent given due notices before her dismissal. The investigating committee of FICCO found private respondent guilty of grave misconduct. Hence, her employment was terminated effective February 6, 1998. No notice of the decision to dismiss private respondent was given, as required by the rules implementing the Labor Code. Indeed, two notices are required before an employee may be validly dismissed: (a) written notice containing a statement of the cause for termination, to afford the employee an opportunity to be heard and defend himself with the assistance of his representative, if he desires; and (b) if the employer decides to terminate the services of the employee, written notice must be given to the employee stating clearly the reason therefor.^[8]

The failure to give the notices in question, let alone the lack of just cause for terminating the services of private respondent renders her dismissal illegal.^[9]

Under Art. 279 of the Labor Code, an employee who is unjustly dismissed is entitled to reinstatement, without loss of seniority rights and other privileges, and to the payment of his full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him (which, as a rule, is from the time of his illegal dismissal) up to the time of his actual reinstatement.^[10]

Petitioners' allegation that because of a case they had filed against him they could not have expected justice from Labor Arbiter Pacuribot has no basis. In the decision, dated February 24, 1995, it appears that the Municipal Trial Court approved a compromise agreement entered into by plaintiff (FICCO) and the defendants in that case, among whom was Labor Arbiter Rexel Pacuribot. There was thus an amicable settlement of the case. 11 In the absence of clear and convincing proof showing partiality on the part of the labor arbiter towards private respondent, his factual findings should be upheld.

Moreover, as pointed out by private respondent, since this question was not raised before the proceedings in the NLRC and in the Court of Appeals, it cannot be raised before this Court for the first time.

WHEREFORE, the petition is **DENIED** and the decision of the Court of Appeals is **AFFIRMED**.

SO ORDERED.

Bellosillo, Quisumbing, Austria-Martinez and Callejo, Sr., JJ., concur.

[1] Rollo, pp. GS-66.

[2] Rollo, p. 55.

[3] Docketed as Civil Case No. 15410 and entitled “First Community Credit Cooperative, Inc. vs. Atty. Rexel Pacuribot, et al.”

[4] Santos vs. Court of Appeals, 360 SCRA 521 (2001); Digital Microwave Corporation vs. Court of Appeals, 328 SCRA 286 (2000).

[5] Zulueta vs. Asia Brewery, Inc., 328 SCRA 286 (2001).

[6] MC Engineering, Inc. vs. NLRC, 360 SCRA 183 (2001).

[7] RDS Trucking vs. NLRC, 294 SCRA 623 (1998).

[8] “C & A Construction Co., Inc: vs. National Labor Relations Commission, 318 SCRA 784 (1999); Kams International Inc. vs. National Labor Relations Commission, 315 SCRA 316 (1999); Arboleda vs. National Labor Relations Commission, 303 SCRA 38 (1999).

[9] RDS Trucking vs. NLRC, 294 SCRA 623 (1998).

[10] Bustamante vs. National Labor Relations Commission, 265 SCRA 61 (1996), cited in Prudential Bank and Trust Company vs. Reyes, 352 SCRA 316 (2001), Jardin vs. National Labor Relations Commission, 326 SCRA 299 (2000), Philippine Industrial Security Agency Corporation vs. Dapiton, 320 SCRA 124 (1999), Rutaquio vs. National Labor Relations Commission, 317 SCRA 1 (1999), Pepsi-Cola Products Philippines, Inc. vs. NLRC, 315 SCRA 587 (1999), Jardine Davies, Inc. vs. NLRC, 311 SCRA 289 (1999), Times Transit Credit Cooperative, Inc. vs. National Labor Relations Commission, 304 SCRA 11 (1999), Highway Copra Traders vs. National Labor Relations Commission, 293 SCRA 350 (1998).

[11] Rollo, pp. 40-41.