

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**SAN MIGUEL CORPORATION,
*Petitioner,***

-versus-

**G.R. No. 143136-37
July 11, 2002**

**ALFREDO B. LAO,
*Respondent.***

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DECISION

VITUG, J.:

Petitioner assails in the instant Petition, the Decision and the Resolution, dated 31 January 2000 and the 14 April 2000, respectively, of the Court of Appeals, affirming the judgment of the National Labor Relations Commission (“NLRC”) which has awarded retirements benefits to respondent under “the company’s retirement plan if any or, if none, separation pay at the rate of one half (1/2) month salary for every year of service.”

The factual antecedents were synthesized by the Court of Appeals in its decision.

“As borne out by the records, the following facts given credence by the labor arbiter reveal that Alfredo B. Lao had worked as

Materials Planner for San Miguel Corporation, Inc. (SMC for brevity) whose responsibility includes procurement of cullets (“bubog”), raw materials used by the company for its glass plant. On December 10, 1995, Rogerio Ibanes, Security Detachment Commander of the Sentinel Watchman and Protective Agency, received information that some deliveries of cullets were being misdeclared. Acting on this tip, Mr. Ibanes conducted surveillance work on deliveries of cullets made by Four Sisters, the Company’s biggest supplier of cullets. Mr. Ibanes and Larry Ventura, a store staff of the company, personally witnessed the attempt by the employees of Four Sisters to divert three (3) truck loads of unwashed cullets earlier delivered to the company but were backloaded and brought to Marilao, Bulacan for washing purposes.

“On January 19, 1996, Mr. Ibanes recounted that at about 9:30 o’clock in the evening, three (3) trucks owned by Four Sisters and loaded with cullets, arrived at the SMC’s Manila Glass Plant in Binondo, Manila. Covered by corresponding delivery receipts, these cullets after being weighed were sent off to Marilao, Bulacan for washing purposes. However, these cullets were brought to Cabuyao, Laguna which prodded Mr. Ibanes to report the matter to the Cabuyao Police who immediately apprehended the delivery truck drivers as they neared the plant of Asia Brewery located in that area. While the drivers were undergoing investigation at the Cabuyao Police Station, Alfredo B. Lao and Henry Ordinanza, owner of Four Sisters Bottle dealer arrived. Upon their arrival, Alfredo Lao confronted Ibanes and asked him what made him apprehend the cullets belonging to Mr. Ordinanza. Ibanes immediately answered that the cullet delivery is slated at Marilao, Bulacan for washing purposes but to his surprise, it went to Cabuyao, Laguna.

“Upon intercession of Alfredo Lao, the three trucks and its drivers and crew were released from the police custody the next day.

“In the administrative investigation that ensued, SMC required Alfredo B. Lao to submit a written explanation why he

interceded for the release of the drivers, helpers and the three (3) truck loads of unwashed cullets from police custody.

“Finding unsatisfactory the explanation given by Lao, he was terminated (sic) by SMC on May 15, 1996, for violation of the rule prohibiting removal of any company property without proper authorization.”^[1]

Aggrieved, respondent Alfredo B. Lao filed a complaint for illegal dismissal. In the proceedings below, Lao admitted that he did intercede for the release of the cullets to Mr. Henry Ordinanza but, he said, only after having been assured by the latter that he (Ordinanza) would personally take the matter up with petitioner San Miguel Corporation (SMC) the next business day. Lao claimed that the company did not incur any loss because of his action considering that the cullets did not as yet belong to SMC and the supplier of the cullets still retained control and possession of the items. SMC belittled the contention and argued that when Lao made strong representations, under cloak of authority, to the Cabuyao Police that the cullets belonged to Ordinanza and were intended for delivery to a rival firm, he committed an act of disloyalty and willful breach of trust.

The labor arbiter dismissed the complaint for illegal dismissal and ruled that Lao deviated from his responsibility to ensure adequate inventory and supply of cullets to the glass plant of SMC. The labor arbiter concluded that the act of Lao in causing the delivery of the cullets into the hands of a competitor was an act of disloyalty that justified the termination of his employment. On appeal to it, the NLRC, in its resolution of 05 June 1998, affirmed the decision of the labor arbiter but, taking into account his track record of twenty-seven (27) years of employment and the fact that it was the first time that he had committed an act adverse to SMC, the commission ordered the latter to pay Lao his retirement benefits under its retirement plan if any, or, if none, to pay him separation pay at the rate of one-half (1/2) month salary for every year of service. Dissatisfied, SMC appealed the decision to the Court of Appeals. The appellate court, in its now assailed decision and resolution, dismissed the petition and affirmed the ruling of the NLRC.

The Court of Appeals debunked SMC's argument that the directive to pay respondent retirement benefits could not be legally carried out because of the provision in the retirement plan prohibiting the award of retirement benefits to any member dismissed for cause attributable to his own fault, negligence, misconduct or fraud. Relying on the case of Razon, Jr. vs. NLRC,^[2] the appellate court held that management discretion with regard to the implementation of the retirement plan could not be exercised arbitrarily or capriciously on the premise that, upon acceptance of employment, a contractual relationship was established that gave employees an enforceable vested interest in the retirement fund.

In its petition, SMC argues that the offense committed by Lao constitutes serious misconduct and an act of betrayal against his employer, and he does not deserve to be rewarded with an immense and sizable financial benefit after his culpability has been established in two decisions of competent labor tribunals. If it were to be held otherwise, even in the name of compassion, it would be, SMC submits, to send a wrong signal that one can unjustly derive benefit at the expense of another in the name of social justice. In his comment, Lao has stressed that the Court of Appeals did not commit serious error by ordering payment of retirement benefits in his favor on the basis of social and compassionate justice as so ruled in a number of cases.

The central issue before the Court thus focuses on the propriety of the award of either retirement benefits or separation pay to Alfredo B. Lao.

To begin with, the award of separation pay is authorized in the situations dealt with in Article 283^[3] and Article 284^[4] of the Labor Code and in cases where there is illegal dismissal but reinstatement would no longer be feasible under Section 4(b), Rule I, Book VI, of the Implementing Rules and Regulations of the Labor Code.^[5] When an employee is dismissed for any of the just causes enumerated in Article 282 of the Labor Code, the rule is that he would not be entitled to the payment of separation pay. Article 282 of the Labor Code reads.

“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;
- “d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- “e. Other causes analogous to the foregoing.”

Section 7, Rule I, Book VI, of the Omnibus Rules Implementing the Labor Code, similarly provides:

“Sec. 7. Termination of employment by employer. — The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective bargaining agreement with the employer or voluntary employer policy or practice.”

Exceptionally, however, separation pay is granted to stand as a “measure of social justice” even when the employee is validly dismissed for cause so long as it is not for serious misconduct or those other causes that reflect on his moral character.

In *Soco vs. Mercantile Corporation of Davao*,^[6] separation pay was granted to an employee who had been dismissed for using the company vehicle for a private purpose. In *Tanala vs. National Labor*

Relations Commission^[7] the payment of separation pay to an employee who had been dismissed for quarreling with a fellow worker outside the company premises was sustained. Likewise, in *Filipro, Inc. vs. NLRC*,^[8] an award of separation pay was decreed in favor of an employee who had been validly dismissed for preferring certain dealers in violation of company policy. The Court, however, disallowed the grant of separation pay to employees dismissed for serious misconduct or for some other causes reflecting on his moral character.^[9] In the case of *Philippine Long Distance Telephone Co. (PLDT) vs. NLRC and Abucay*,^[10] the Court clarified a perceived incongruence in its several pronouncements by stating thusly:

“We hold that henceforth 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 or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

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“The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense.”^[11]

The dictum was followed in *Philippine National Construction Corporation vs. NLRC*,^[12] where the Court deleted an award of separation pay to an employee who had been found guilty of dishonesty for having stolen company property. *Cosmopolitan Funeral Homes, Inc. vs. Maalat*^[13] disallowed the grant of separation pay to an employee who was dismissed for dishonesty for an understatement of reported contract price against the actual contract price charged to and paid by the customers and for misappropriation of funds or collections. A similar holding was reached in *Zenco Sales, Inc. vs. NLRC*,^[14] where the dismissed employee was found guilty of

gross misconduct for having used his employer's property, equipment and personnel in his personal business. The Court reversed the decision of the NLRC in *San Miguel Corporation vs. NLRC*,^[15] granting an employee, dismissed for dishonesty, the privilege to retire from the company with a right to avail himself of 100% of the benefits the company had offered to retiring employees. Quite recently, in *Edge Apparel, Inc. vs. NLRC*,^[16] the Court, categorizing the two causes for the dismissal of an employee — “just causes” under Article 282 of the Labor Code and “authorized causes” under Article 283 and 284 of the same code — reiterated that an employee whose employment was terminated for a just cause would not be so entitled as a matter of right to the payment of separation benefits.

While it would be compassionate to give separation pay to a salesman if he were dismissed for his inability to fill his quota, surely, however; he does not deserve such generosity if his offense is the misappropriation of the receipts of his sales.^[17] Where the cause for the termination of employment cannot be considered as one of mere inefficiency or incompetence but an act that constitutes an utter disregard for the interest of the employer or a palpable breach of trust reposed in him, the grant by the Court of separation benefits is hardly justifiable.

In the case at bar, respondent is found by the labor arbiter and the NLRC to have been properly dismissed for his willful breach of trust and confidence. These findings, which have been affirmed by the Court of Appeals, cannot simply be ignored; indeed, such findings possess a degree of conclusiveness on, or at the very least must be accorded respect by, this Court.^[18]

Unfortunately for respondent, neither can he claim benefits due from the employer under the company's retirement plan which concededly prohibits the award of retirement benefits to an employee dismissed for a just cause, a proscription that binds the parties to it. The appellate court's reliance on *Razon, Jr. vs. NLRC*^[19] is misplaced. In *Razon*, the employer's refusal to give the employee his retirement benefits is based on the provision of the retirement plan giving management wide discretion to grant or not to grant retirement benefits, a prerogative that obviously cannot be exercised arbitrarily or whimsically.

The Court, nevertheless, understands and shares the plight of respondent who has spent the best years of his useful life with petitioner. The Court commiserates with him but it can do no more than to appeal to an act of compassion by SMC and to ask it to see its way clear to affording some form of financial assistance to respondent who has served it for almost three decades with no previous blemished record.

WHEREFORE, the Petition is **GRANTED**, and the assailed Decision and Resolution of the Court of Appeals insofar as it decrees the payment of retirement benefits or separation pay to respondent Lao, affirming that of the National Labor Relations Commission, is hereby **REVERSED** and **SET ASIDE**. It is hoped, however, that petitioner will heed the Court's call for compassion. No costs.

SO ORDERED.

Davide, Jr., C.J., Kapunan, Ynares-Santiago, and Austria-Martinez, JJ., concur.

[1] Rollo, p. 46.

[2] 185 SCRA 44.

[3] ART. 283. Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

- [4] ART. 284. Disease as ground for termination. — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.
- [5] Sec. 4. Reinstatement to former position. — . . .
(b) In case the establishment where the employee is to be reinstated has closed or ceased operations or where his former position no longer exists at the time of reinstatement for reasons not attributable to the fault of the employer, the employee shall be entitled to separation pay equivalent at least to one month salary or to one month salary for every year of service, whichever is higher, a fraction of at least six months being considered as one whole year.
- [6] 148 SCRA 526; see also *Firestone Tire and Rubber Co. vs. Lariosa*, 148 SCRA 187.
- [7] 252 SC RA 314.
- [8] 145 SCRA 123.
- [9] *PNCC vs. NLRC* 307 SCRA 218; *United South Dockhandlers, Inc. vs. NLRC*, 267 SCRA 401; *Philippine Airlines vs. NLRC*, 282 SCRA 536; *CJC Trading, Inc. vs. NLRC*, 246 SCRA 724.
- [10] 164 SCRA 671.
- [11] *PLDT vs. NLRC*, 164 SCRA. 671, 682.
- [12] 170 SCRA 207.
- [13] 187 SCRA 108 see also *Cathedral School of Technology vs. NLRC*, 214 SCRA 551.
- [14] 234 SCRA 689.
- [15] 255 SCRA 580.
- [16] 286 SCRA 302.
- [17] *PLDT vs. NLRC and Abucay*, supra.
- [18] *Reyes vs. Minister of Labor*, 170 SCRA 134; *Suarez vs. NLRC*, 293 SCRA 496.
- [19] 185 SCRA 44.