SUPREME COURT
SECOND DIVISION

DOMINADOR SANCHEZ,
***Petitioner*,**

-versus-

G.R. No. 124348
August 19, 1999

NATIONAL LABOR RELATIONS COMMISSION and PEPSI COLA PRODUCTS PHILIPPINES, INC.,
***Respondents*.**
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D E C I S I O N

BELLOSILLO, *J.*:

In Coca-Cola Bottlers Philippines, Inc. vs. NLRC[1] we said that the life of a softdrinks company depends not so much on the bottling or production of the product since this is primarily done by automatic machines and personnel who are easily supervised, but upon mobile and far-ranging salesmen who go from store to store all over the

country or region. Salesmen are highly individualistic personnel who have to be trusted and left essentially on their own. A high degree of confidence is reposed in them when they are entrusted with funds or properties of their employer. Such is petitioner Dominador Sanchez who was then a salesman of respondent Pepsi-Cola Products Philippines, Inc. (PEPSI-COLA), until he was terminated after twenty-three (23) years of service for loss of trust and confidence for violation of company rules.

Petitioner Sanchez worked for PEPSI-COLA since 1976. He was a route salesman assigned in the Quezon City Plant. His task consisted of, among others, marketing and merchandising Pepsi-Cola products, collection of sales proceeds, granting of credit extensions to qualified company outlets and delivery of Pepsi-Cola products to his specific area of assignment.

Sometime in June 1990 the transactions of petitioner for the months of April and May 1990 were audited. The audit disclosed a breach of company policy and procedure. An examination of the 3 May 1990 load count of the gate guard and the checker indicated the padding of 200 cases of "empties" during the "load in." "Empties" are the empty bottle containers, while "load in" is the scoring procedure when the salesman returns to the plant after each routing day to have the unsold products ("fulls") as well as the "empties" scored and verified by the gate guard and the checker.

The alleged padding was based on the reconciliation of the "empties" which showed an unaccounted excess of 200 cases worth P13,200.00. In addition, 331 cases of "empties" worth P22,252.00 were inserted in his load sheet.[2] These "empties" can be converted into cash. Petitioner was thus administratively charged with violating company rules and regulations: (1) failure to remit and/or account for all collections from route sales of Pepsi-Cola products at the end of each routing day; (2) borrowing money, "empties" or "fulls" from dealers; and (3) stealing and other forms of dishonesty.[3] Based on company rules and regulations, these violations fell under Group H, the commission of which were punishable with dismissal for cause.[4]

In his letter of 18 July 1990 to the Personnel Manager in compliance with a memorandum served to him, petitioner admitted that he

borrowed 200 cases of "empties" from a dealer, a certain Eliseo P. Gabaldon. He brought them inside the plant and converted the same into cash to defray the medical expenses of his ailing wife. On 16 November 1990, after being accorded procedural due process, petitioner was dismissed from the service.

On 12 April 1993 petitioner instituted a complaint for illegal dismissal. On 27 October 1993 Labor Arbiter Eduardo J. Carpio rendered a Decision in favor of petitioner and ordered respondent PEPSI-COLA to immediately reinstate him actually or in payroll with full back wages computed from 16 November 1990 to payroll or actual reinstatement on the basis of his P6,000.00 monthly salary and other appurtenant benefits. Respondent Pepsi-Cola was likewise ordered to pay petitioner P50,000.00 as moral damages, P25,000.00 as exemplary damages and attorney's fees equivalent to 10% of the total monetary award.[5]

On 22 November 1995 the NLRC, on appeal, reversed and set aside the Decision of the Labor Arbiter and dismissed petitioner's complaint for lack of merit. Respondent PEPSI-COLA was however ordered to pay petitioner separation pay equivalent to one-half (½) month salary for every year of service in recognition of the latter's long years of service.[6] On 29 December 1995 petitioner's motion for reconsideration was denied. Hence, this petition for certiorari.

Petitioner maintains that there was no basis at all for his dismissal. Thus, even respondent NLRC sustained and in fact quoted the findings of the Labor Arbiter that "'no evidence was adduced to show that complainant failed to remit and/or account all collections from route sales products. There is no explanation how said offenses were committed and how much was not remitted or stolen from the company.[7] Indeed, (respondent NLRC has) scoured the records of the case and (did) not find any evidence to substantiate said charges."[8]

Furthermore, petitioner asserts that it was inconceivable on his part to have committed the offenses imputed to him considering the strict security measures set up by the management at the gates of the plant. Every truck, together with its personnel, has to pass through a gauntlet of guards, checkers and arbiters before it enters and leaves

the plant premises. In addition, it has been the practice of the duty supervisor to search all accountable forms for any sign of irregularity. It is only after the supervisor has satisfied himself that all documents related to the day's sales are truly above-board will he allow the salesman, after affixing his signature, to proceed to the cashier for settlement. Anent the borrowing of "empties" from a dealer, petitioner submits that it only becomes a violation under company policy if a dealer files a complaint.

In sum, petitioner contends that his dismissal was not in any way legal since Art. 279 of the Labor Code provides that in cases of regular employment, the employer shall not terminate the services of an employee except for just causes provided under Art. 282 of the Labor Code.

Respondent PEPSI-COLA on the other hand presents the notice of administrative charges, the audit report for the months of April and May 1990 indicating that fraud was committed and the letter of petitioner himself admitting that he brought inside the company premises 200 cases of "empties" which he borrowed from a certain Gabaldon, one of his customers.[9] Respondent PEPSI-COLA submits that petitioner's admission by itself means that the cash collection he remitted for that particular routing day was reduced by as much as P13,200.00. This alone is sufficient for the management to lose trust and confidence in petitioner and cause his eventual dismissal from the service.

Respondent PEPSI-COLA explains that petitioner as a route salesman should account and remit all sales revenue at the end of each routing day. Respondent has reposed trust and confidence in him by placing in his care the route truck and thousands of pesos worth of Pepsi-Cola products which he must account for at the end of each routing day. Because of this, and notwithstanding the strict security measures instituted by the bottling firm, petitioner was still able to commit fraudulent and anomalous transactions in direct contravention of company rules and regulations. As such his dismissal is a fair consequence, and respondent NLRC did not gravely abuse its discretion in upholding petitioner's termination. Thus, the issue before us is whether respondent NLRC gravely abused its discretion in sustaining petitioner's dismissal from the service.

We have said often enough that for the extraordinary remedy of certiorari to lie by reason of grave abuse of discretion, the abuse of discretion must be too patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined or act in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility. The judgment must be rendered in a capricious, whimsical, arbitrary or despotic manner. Abuse of discretion does not necessarily follow a reversal of a decision of a labor arbiter by the NLRC. Corollarily, mere variance in evidentiary assessment between the labor arbiter and the NLRC does not automatically call for a full review of the facts by this Court. The decision of the NLRC, so long as it is not bereft of substantial support from the records, deserves respect from this Court.[10]

In Caoile vs. NLRC[11] we said that law and jurisprudence have long recognized the right of employers to dismiss employees by reason of loss of trust and confidence. As provided for in Art. 282 of the Labor Code, an employer may terminate an employee for fraud or willful breach of the trust reposed in him. Thus, if there is sufficient evidence to show that the employee has been guilty of breach of trust or that his employer has ample reason to distrust him, the labor tribunal cannot justly deny to the employer the authority to dismiss such employee, more so in cases where the latter occupies a position of responsibility.[12]

Loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility or trust and confidence.[13] He must be invested with confidence on delicate matters, such as custody, handling or care and protection of the property and assets of the employer.[14] And, in order to constitute a just cause for dismissal, the act complained of must be "work-related" and shows that the employee concerned is unfit to continue to work for the employer.[15]

In the instant case, it can be gleaned at the outset, even from the letter of petitioner alone, that petitioner disregarded company rules and regulations when he borrowed 200 cases of "empties" from a dealer and converted them into cash. This is a serious offense. The

offense committed, clearly, is "work-related" and to treat it lightly or let it pass will definitely set a bad precedent for the company and will embolden the other salesmen. As we said, the business of a softdrinks company largely rests on the salesmen who are really left on their own with company property and products to sell. They are expected to translate these products into sales for the company. As such they should be considered trustworthy.

In Maranaw Hotel & Resort Corporation vs. NLRC[16] we ruled that in cases of dismissal for breach of trust and confidence, proof beyond reasonable doubt of an employee's misconduct is not required. It is sufficient that the employer has reasonable ground to believe that the employee is responsible for the misconduct, rendering him unworthy of the trust and confidence demanded by his position. In this case, it cannot be doubted that respondent company has sufficiently shown that petitioner has become unworthy of the trust and confidence reposed in him. Indeed while there may be no other evidence to show that petitioner failed to remit or account his collections for that particular day, the fact that he admittedly borrowed "empties" from a dealer, which is a grave offense in itself, and converted these "empties" into cash, is more than sufficient to sow a seed of mistrust and loss of confidence.

Petitioner's long years of service do not help him much either. For, after serving for twenty-three (23) years, he should have been aware of the seriousness of his offense and the company policy regarding this matter. To reiterate the Solicitor General's conclusions, whatever motive may have impelled petitioner to commit such questionable dealings, the act itself constitutes a breach of trust and confidence reposed in him by the company as a salesman. It was thus proper for respondent NLRC to reverse the Decision of the Labor Arbiter and sustain petitioner's termination.

We likewise uphold the payment to petitioner of separation pay. We cannot be unmindful of the fact that he has been an employee of respondent company for twenty-three (23) years. On this singular consideration, the Court deems it proper to afford him some equitable relief. In Magos vs. NLRC[17] we stated that the propriety of such a grant has already been settled in a long line of cases starting with Baby Bus Incorporated vs. Minister of Labor[18] where we said

that it did not necessarily follow that no award for separation pay could be made if there was no illegal dismissal.

WHEREFORE, the Decision of respondent National Labor Relations Commission dated 22 November 1995 dismissing the complaint for lack of merit but ordering respondent Pepsi-Cola Products Philippines, Inc., to pay petitioner Dominador Sanchez separation pay equivalent to one-half (½) month salary for every year of service is **AFFIRMED.**

SO ORDERED.

Mendoza, Quisumbing and Buena, *JJ.*, concur.

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[1] G.R. No. 82580, consolidated with Vega vs. NLRC, G.R. No. 84075, 25 April 1989, 172 SCRA 751, p. 757.
[2] Rollo, p. 62.
[3] Respondent's Position Paper, pp. 3-4; Rollo, pp. 42-43.
[4] Rollo, p. 72.
[5] Decision of the Labor Arbiter; Rollo, p. 93.
[6] Decision of the First Division penned by Commissioner Alberto R. Quimpo, concurred in by Presiding Commissioner Bartolome S. Carale and Commissioner Vicente S.E. Veloso, p. 5; id., p. 24.
[7] Id., p. 3; id., p. 22.
[8] Id., p. 4; id., p. 23.
[9] Rollo, p. 64.
[10] De Paul/King Philip Custom Tailor vs. NLRC, G.R. No. 129824, 10 March 1999, citing Philippine Advertising Counselors, Inc. vs. NLRC, G.R. No. 120008, 18 October 1996, 263 SCRA 395; Taggat Industries, Inc. vs. NLRC, G.R. No. 120971, citing Chua Huat vs. Court of Appeals, G.R. Nos. 53851 and 63863, 9 July 1991, 199 SCRA 1.
[11] G.R. No. 115491, 24 November 1998.
[12] Kwikway Engineering Works vs. NLRC, G.R. No. 85014, 22 March 1991, 195 SCRA 526 (1991), citing Reynolds vs. Eslava, No. L-48814, 27 June 1985, 137 SCRA 259; Lamsan Trading vs. Leogardo, G.R. No. 73245, 30 September 1986, 114 SCRA 571; New Frontier vs. NLRC, G.R. No. 51578, 29 May 1984, 129 SCRA 502; Associated Citizens Bank vs. Hon. Blas F. Ople, No. L-48896, 103 SCRA 130.
[13] Quezon Electric Cooperative vs. NLRC, G.R. Nos. 79718-22, 12 April 1989, 172 SCRA 88.
[14] Panday vs. NLRC, G.R. No. 67664, 20 May 1992, 209 SCRA 122.
[15] Aris Philippines, Inc. vs. NLRC, G.R. No. 97817, 238 SCRA 59.
[16] G.R. No. 110776, 26 May 1995, 224 SCRA 375.

[17] G.R. No. 123421, 28 December 1998.
[18] G.R. No. 54223, 26 February 1988, 158 SCRA 221, cited in Reyes vs. Minister of Labor, No. L-48705, 9 February 1989, 170 SCRA 134.