SUPREME COURT
THIRD DIVISION

SCHERING EMPLOYEES LABOR UNION (SELU) and LUCIA P. SERENEO,
***Petitioners*,**

-versus-

G.R. No. 142506
February 17, 2005

SCHERING PLOUGH CORPORATION, EPITACIO TITONG, JR., JOSE L. ESTINGOR, DANNY T. YU, LEO LOQUINARIO and ROBERTO TADA,
***Respondents*.**
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D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated December 10, 1999 and Resolution[2] dated March 14, 2000 rendered by the Court of Appeals in CA-G.R. SP No. 51361, entitled "Schering Employees Labor Union (SELU) and Lucia Sereneo vs. National Labor Relations Commission, Schering Plough Corporation, Epitacio Titong, Jr., Jose L. Estingor, Danny T. Yu, Leo Loquinario, and Roberto Tada."

The facts are:

The instant controversy stemmed from a complaint for unfair labor practice and illegal dismissal filed with the Labor Arbiter by Schering Employees Labor Union (SELU) and Lucia P. Sereneo, SELU's president, petitioners, against Schering Plough Corporation, Epitacio Titong, Jr., Jose L. Estingor, Danny T. Yu, Leo Loquinario, and Roberto Tada, respondents, docketed as NLRC NCR Case No. 00-10-06497-96.

Petitioners, in their complaint, alleged that sometime in January 1977, petitioner Lucia P. Sereneo was employed as a professional medical representative by respondent company. Eventually, she became a field sales training manager with a monthly salary of P22,200.00. During her employment, she received several awards from respondent in recognition of her remarkable marketing excellence. However, on January 22, 1996, when she was elected president of SELU and started the re-negotiation with respondent company on the collective bargaining agreement (CBA), respondents suddenly became dissatisfied with her sales performance. On August 12, 1996, respondent company sent her a notice asking her to submit an explanation why she failed to implement marketing projects. Again, on September 13, 1996, she was required to comment on the complaint charging her with misappropriation of company funds, falsification and tampering of company records, and submission of false reports. This prompted petitioner SELU to file with the National Conciliation and Mediation Board (NCMB) a notice of strike on the grounds of unfair labor practice and union busting. But the notice of strike was dismissed by the NCMB in its Resolution dated October 2, 1996. Subsequently, respondents sent petitioner Sereneo a Memorandum dated October 11, 1996 terminating her services for loss of trust and confidence.

In their answer, respondents denied the allegations in the complaint. They claimed that petitioner Sereneo, being a professional medical representative, performed various functions to ensure a profitable sale of its pharmaceutical products. These are: visiting hospitals and physicians concerned; preparing and submitting periodic reports of her call visits to various doctors, itinerary, and expenses. However,

she failed to perform these duties, prompting respondent company to send her two (2) letters dated September 5, 1996 and September 13, 1996, charging her with willful violation of company rules and regulations[3] and directing her to submit a written explanation. But she refused to submit her explanation, prompting respondents to evaluate her records. They found her guilty of dishonesty, willful breach of trust and willful disobedience. Respondents then sent her a notice terminating her services effective October 11, 1996.

On June 27, 1997, the Labor Arbiter rendered a Decision finding respondents guilty of unfair labor practice for dismissing petitioner Sereneo illegally and ordering them (1) to reinstate her to her former position of medical representative without loss of seniority rights and other privileges; and (2) to pay her, jointly and severally, backwages and attorney's fee equivalent to 10% of the monetary awards, thus:

> "WHEREFORE, judgment is hereby rendered declaring respondents guilty of unfair labor practice in dismissing complainant, ordering respondents to reinstate complainant to her position as professional medical representative without loss of seniority rights and other privileges, and sentencing respondents, jointly and severally, to pay complainant full backwages from October 11, 1996 up to the date of her actual reinstatement and a sum equivalent to ten (10%) percent of the monetary awards as attorney's fees, all other claims are hereby ordered dismissed.
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> SO ORDERED."

Upon appeal, the National Labor Relations Commission (NLRC) promulgated a Decision dated February 27, 1998 reversing the Arbiter's Decision and dismissing petitioner Sereneo's complaint.

Petitioners then filed a motion for reconsideration but was denied by the NLRC in a Resolution dated April 30, 1998. Hence, they filed with this Court a petition for certiorari which we referred to the Court of Appeals pursuant to our ruling in St. Martin's Funeral Home vs. NLRC.[4]

On December 10, 1999, the Appellate Court rendered a Decision affirming the NLRC's Decision.

The Court of Appeals held:

> "After thoroughly reading the pleadings and annexes especially the questioned decision and resolution, this Court found no trace at all of grave abuse of discretion on the part of the respondent Commission. Instead, this Court found the Commission's verdict to be supported by substantial evidence and in accordance with the law.
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> x x x
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> Furthermore, this Court fully agrees with the observations of respondent NLRC:
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> > 'Moreover, on the issue of willful disobedience to a lawful order, records also disclosed that despite two (2) memos issued by the respondent to the complainant, the latter never bothered to answer nor explain her side to the former. Of course complainant tried to justify her inaction by claiming that it would have been futile anyway to explain since respondent was bent in getting rid of her. Such reaction, however, in the light of what we perceived as lack of substantial evidence to warrant a finding of unfair labor practice only gives an impression that complainant had indeed been remised in her duties. This impression can clearly be gleaned from the alterations in the copies of call cards submitted. If at all, complainant's failure to refute point by point the specific charges leveled against her worked to her disadvantage. All told, it would appear that it was not respondent who relied on the general principles of law but rather the complainant and unfortunately the Labor Arbiter a quo who opted to brush aside the claim of valid dismissal through a sweeping statement that no supporting substantial evidence were presented by respondent when in truth and in fact, there were. Relatedly, even the claim of denial of due process should not have escaped the Labor Arbiter's judicious

> eyes had he been more prudent. The records clearly show that complainant was accorded the right to be heard as she was given ample time to explain and answer the charges against her but opted not to on account of the mistaken notion that to do so would only be an exercise in futility. It has already been ruled by the highest court due process simply means the opportunity to be heard before judgment is rendered. Respondent could, therefore, not be faulted if it decided to exercise its management prerogative to impose discipline on an erring employee.'

This Court rejects the contention of petition that the decision of respondent NLRC is null and void because it was prepared by only two Commissioners. Sec. 4 (b), Rule VII of the New Rules of Procedure of the National Labor Relations Commission states:

> 'The presence of at least two (2) Commissioners of a Division shall constitute a quorum to decide any case/matter before it. The concurrence of two (2) Commissioners of a Division shall be necessary for the pronouncement of a judgment or resolution.
>
> Whenever the required membership in a Division is not complete and the concurrence of two (2) Commissioners to arrive at a judgment or resolution cannot be obtained, the Chairman shall designate such number of additional Commissioners from the other Divisions as may be necessary from the same sector.'

The petitioners have not sufficiently shown grounds that may urge this Court to issue the prerogative writ of certiorari.

WHEREFORE, for lack of merit, the petition is DISMISSED.

SO ORDERED."

On January 12, 2000, petitioners filed a motion for reconsideration, but was denied by the Appellate Court in a Resolution dated March 14, 2000.

The basic issue for our determination is whether petitioner Sereneo was illegally dismissed from employment.

After a close review of the records, we sustain the findings of the NLRC, affirmed by the Court of Appeals, that she falsified company call cards by altering the dates of her actual visits to physicians. On August 27, 1997, she was found guilty of misappropriation of company funds by falsifying food receipts. These infractions show that she is dishonest. Clearly, she breached the trust reposed in her by respondents. Hence, her dismissal from the service is in order.

Under Article 282 of the Labor Code, as amended,[5] fraud or willful breach by the employee of trust reposed in him by his employer or duly authorized representative is a ground for terminating an employment. Petitioners' accusation of union busting is bereft of any proof. We scanned the records very carefully and failed to discern any evidence to sustain such charge.

In Tiu vs. NLRC,[6] we held:

> "X x x. It is the union, therefore, who had the burden of proof to present substantial evidence to support its allegations (of unfair labor practices committed by management).
>
> "X x x.
>
> "X x x, but in the case at bar the facts and the evidence did not establish even at least a rational basis why the union would wield a strike based on alleged unfair labor practices it did not even bother to substantiate during the conciliation proceedings. It is not enough that the union believed that the employer committed acts of unfair labor practice when the circumstances clearly negate even a prima facie showing to warrant such a belief."

WHEREFORE, the petition is **DENIED**. The assailed Decision dated December 10, 1999 and Resolution dated March 14, 2000 of the Court of Appeals in CA-G.R. SP No. 51361 are hereby **AFFIRMED**. Costs against petitioners.

SO ORDERED.

Panganiban, *J., (Chairman)*, Corona, Carpio-Morales, and Garcia, *JJ.*, concur.

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[1] Penned by Justice Hilarion L. Aquino, (retired) and concurred in by Justices Ramon Mabutas, Jr. (retired) and Elvi John S. Asuncion, Annex "J" of the Petition, Rollo at 358-366.
[2] Annex "L", id. at 370-372.
[3] The specific charges are: misappropriation of company funds; falsification, alteration, and tampering of company call cards; submission of false reports; and willful refusal to return company call cards.
[4] G.R. No. 130866, September 16, 1998, 295 SCRA 494. In this case, we held that appeal from the NLRC should be initially filed with the Court of Appeals, no longer with this Court, pursuant to the doctrine of hierarchy of courts.
[5] 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.
[6] G.R. No. 123276, August 18, 1997, 277 SCRA 680, 687, cited in Samahang Manggagawa sa Sulpicio Lines, Inc. – NAFLU, et al. vs. Sulpicio Lines, Inc., G.R. No. 140992, March 25, 2004 at 9-10.
