CHANROBLES PUBLISHING COMPANY

SUPREME COURT
SECOND DIVISION

SHANGRI-LA HOTEL,
***Petitioner*,**

-versus-

G.R. No. 141900
April 20, 2001

CATHERINE B. DIALOGO,
***Respondent*.**
x----------x

D E C I S I O N

BELLOSILLO, *J.*:

This Petition for Review on *Certiorari* seeks to reverse and set aside the Decision of the Court of Appeals of 9 August 1999 affirming the assailed Resolution of the National Labor Relations Commission (NLRC) and its Resolution of 28 January 2000 denying Reconsideration thereof.

Respondent Catherine Dialogo, a receptionist at the Zu Disco of petitioner Shangri-la Hotel, went on sick leave from 8 to 11 June 1995. However, when she received her salary for 31 July 1995 it included an amount for overtime pay for work supposedly rendered beyond eight (8) hours on 11 June 1995. In short, respondent received overtime pay for 11 June 1995 without rendering overtime work. For

this, respondent was dismissed from the service for alleged dishonesty.

In her complaint for illegal dismissal and non-payment of 13th month pay filed on 23 October 1995, respondent maintained that she signed the list that was subsequently attached to the overtime authorization form before she went on sick leave on 8 June 1995. She claimed that she did not know then that her salary for 31 July 1995 would include the amount of P254.90[1] as overtime pay for work supposedly rendered on 11 June 1995 on which date she was on sick leave.

But the Labor Arbiter was not persuaded and consequently found respondent guilty of dishonesty and, as a consequence, dismissed her complaint for lack of merit[2] —

> Complainant tried to feign oblivious of the time of signing of the list attached to overtime authorization form and pretended unaware of overtime pay as part of her salary received yet evidence belied her pretensions.
>
> The Sworn Affidavit of Mylene M. Vitalli clearly spells out that she prepared the overtime list after 11 June 1995 because she based the list on Zu Attendance Logbook. That Ms. Vitalli based the list on the Zu Attendance Logbook has remained uncontroverted. That she prepared the names except complainant's is shown by the dissimilarity of the printed name "CATHERINE DIALOGO" compared to the rest of the printed names. Finally, that she prepared the list after 11 June 1995 is logical because it was based on the Zu Attendance Logbook dated 11 June 1995. Ergo, complainant could not have signed the same document before 11 June 1995.[3]
>
> We cannot buy complainant's pretensions that she was unaware of the overtime pay, for "it is presumed that a person takes ordinary care of his concerns (Sec. 5 (c),[4] Rule 131 of the Rules of Court). Hence, often than not, employees counter-check and/or verify their earnings from the pay slip.[5]

Nevertheless, petitioner was ordered to pay an indemnity of P5,000.00 to respondent for its failure to comply with the

requirements of due process, and another P5,000.00 as financial assistance to respondent who had no known derogatory record and to satisfy the ends of social and compassionate justice.

The NLRC reversed the Labor Arbiter, ruling that respondent could not be held guilty of dishonesty precisely because she did not know that the blank form where she signed her name was an overtime authorization form for 11 June 1995. She also had no knowledge that her salary for 31 July 1995 included the overtime pay for 11 June 1995 which she did not render. The NLRC explained that —

> Dishonesty is an expression of a broad and expansive meaning. Presumably, on this reason, the contending parties and the Labor Arbiter, presented criteria, standards and hallmarks of dishonesty in more specific connotations, acts or process. These hallmarks of dishonesty possess a common element which is knowledge. More specifically, the alleged offense of complainant is "knowingly claiming and receiving overtime pay for unrendered overtime service on June 11, 1995." The amount of overtime pay was barely P300.0[6] nonetheless the Hotel's Code of Discipline punishes any form of dishonesty with dismissal.

An examination of the pieces of evidence to support knowledge, as an element of dishonesty, requires a detailed analysis of the Hotel's operational activities which include the procedure in claiming overtime pay; the supervision of the Hotel's responsible officers on their laxity, the process of computerization of the employee's work schedule, their payrolls or vouchers.

The Labor Arbiter a quo failed to observe this method rendering his impugned Decision useless.[7]

Accordingly, the NLRC directed petitioner to reinstate respondent without loss of seniority and with full back wages from the time of her dismissal until her actual reinstatement.

The Court of Appeals[8] sustained the NLRC thus —

> Grave abuse of discretion is committed when the judgment is rendered in a capricious, whimsical, arbitrary or despotic manner. An abuse of discretion does not necessarily follow just because there is a reversal by the NLRC of the decision of the Labor Arbiter. Neither does the mere variance in the evidentiary assessment of the NLRC and that of the Labor Arbiter would, as a matter of course, so warrant another full review of facts. The NLRC's decision, as long as it is not bereft of support from the records, deserves respect from the Court.[9]

We have reviewed the records and found the NLRC correct in its assessment that respondent is not guilty of dishonesty, much less, that she should be dismissed from the service. As the facts show, she did not deliberately make petitioner believe that she rendered overtime work on 11 June 1995. She only affixed her name and signature on a blank piece of paper which was not the official overtime authorization form used by petitioner. There is no basis therefore for the conclusion of the Labor Arbiter that respondent knew that the blank piece of paper she signed served as the overtime authorization form. The subject piece of paper contained only the names, signatures and identification numbers of petitioner's employees without any indication that it served as a substitute for the official overtime authorization form.

But granting that the subject piece of paper containing the names of personnel authorized to render overtime work served as an annex to the official overtime authorization form, still, respondent could not be held guilty of dishonesty that would warrant a dismissal. Ms. Mylene M. Vitalli, the attendant who prepared the overtime authorization form, stated in her affidavit[10] that she prepared the overtime list after 11 June 1995. However, we find this assertion suspect and self-serving considering that the date indicated in the overtime authorization form was 5 June 1995. Ms. Vitalli, whose loyalty, presumably, was still with her employer, unsatisfactorily explained this lapse in this wise —

> 9. I could not recall why I wrote "June 5, 1995" as the date of the overtime form. I did not even realize the error until the same was subsequently brought to my attention.[11]

The most that we can gather from all these is that the overtime list was prepared before 11 June 1995 and respondent affixed her name and signature thereto also before 11 June 1995, or before she went on sick leave. At that time, respondent did not yet know that she would go on sick leave from 8 to 11 June 1995. It was just a case therefore of an ordinary employee expecting to earn more by rendering overtime work but got sick during the designated time.

The overtime authorization form showed that it was verified by respondent's Department Head, certified by her Division Head, and acknowledged by her Personnel and Training Manager. If, indeed, these persons examined the pertinent documents supporting the overtime authorization form they would have found out right there and then that respondent did not render overtime work on 11 June 1995 because she was on sick leave. Her name did not appear on the Attendance Logbook simply because she was absent.

We cannot give full credence to Ms. Vitalli's claim that the overtime authorization form was prepared after 11 June 1995 based on the Attendance Logbook. The policy of the company was to require the preparation of the overtime authorization form before the designated date the overtime work was supposed to be rendered. The overtime work must first be authorized before it could be rendered. Hence, that allegation of Ms. Vitalli that they rendered overtime work without first securing an authorization cannot be believed as it is contrary on all fours to company policy.

Although respondent's salary for 31 July 1995 included overtime pay for 11 June 1995, we cannot concur with the Labor Arbiter when he ruled —

> We cannot buy complainant's pretensions that she was unaware of the overtime pay for it is presumed that a person takes ordinary care of his concerns. Hence, often than not, employees countercheck and/or verify their earnings from the payslip.[12]

An ordinary employee, quite understandably, examines her payslip everytime she receives her salary. But we cannot always expect respondent to go further as to determine if her overtime pay, which was not much anyway, was properly computed up to the last centavo

or whether the overtime pay pertained to a particular day the work was rendered. The amount in controversy was only P254.90. Considering that respondent's salary was not fixed as it fluctuated from time to time due to the varying amounts of tips, commissions and overtime pay received, it would not have been right to assume always that respondent would examine every detail of the computation of her salary. Needless to say, the blame should not be laid solely on respondent because the mistake was not hers alone. The mistake resulted from the collective laxity of petitioner's accounting personnel and inadvertence on the part of respondent. Mr. Danny Dyquiangco, petitioner's paymaster, even admitted their unwitting participation in the perpetuation of the mistake —

> 6. Were it not for the audit conducted by Shangri-la International Management, the discrepancy in Ms. Dialogo's overtime claim and sick leave will remain unnoticed and will not be discovered.
>
>   The Payroll Department's inability to detect the discrepancy was due to the deficiency in the payroll's computer program and our failure to manually verify the overtime claim against the attendance records.

Our office failed to verify the overtime claim with the attendance record because if we were to observe the same procedure for all the overdue overtime forms our office has to do this manually and it will require a substantial amount of time. In good faith we encoded the overtime and relied on the signatures of the managers which indicated that they have reviewed the overtime form.[13]

WHEREFORE, the Petition is **DENIED**. The assailed Decision of the Court of Appeals upholding the Resolution of the National Labor Relations Commission declaring the dismissal of respondent Catherine B. Dialogo illegal and ordering her reinstatement without loss of seniority and benefits, with full back wages computed from the time of dismissal until her actual reinstatement is **AFFIRMED**. However, the amount of P254.90 corresponding to the unserved overtime pay should be deducted from whatever amount may be due respondent.

Costs against petitioner Shangri-La Hotel.

SO ORDERED.

Mendoza, Quisumbing and Buena, *JJ.*, concur.
De Leon, Jr., *J.*, is on leave.

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[1] See Annex "F," Rollo, p. 66.
[2] Rollo, pp. 31-43.
[3] Id., pp. 38-39.
[4] Should be Sec. 3 (d).
[5] Rollo, p. 40.
[6] The exact amount was P254.90.
[7] Rollo, pp. 48-49.
[8] Decision penned by Associate Justice Romeo A. Brawner, concurred in by Justices Martin S. Villarama Jr. and Candido V. Rivera; Rollo, pp. 23-27.
[9] Rollo, p. 24; cited cases omitted.
[10] Id., p. 113.
[11] Ibid.
[12] Id., p. 40.
[13] Id., pp. 133-134.

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