

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

RUFINA SORIANO,
Petitioner,

-versus-

**G.R. No. 75510
October 27, 1987**

**THE NATIONAL LABOR RELATIONS
COMMISSION and KINGLY
COMMODITIES TRADERS AND
MULTI-RESOURCES, INC.,**
Respondents.

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RESOLUTION

FELICIANO, J.:

Petitioner started working with respondent commodities trading Corporation in November 1977 as Investment Counselor and eventually became Vice-President, Marketing. On 18 September 1984, petitioner was charged with allowing or failing to supervise and monitor certain activities of investment counselors in her department, which included the signing of a contract opening an account for a client by an investment counselor without authority from the client, transfers of funds from one account to another without the knowledge and authority of the clients involved, unauthorized transactions in foreign currency with clients of the

respondent Corporation, unauthorized approval of leave for members of her department, and resulting in loss of confidence in petitioner. Petitioner was preventively suspended and required to explain her acts or failure to act. Two (2) days later, petitioner submitted her detailed answer or explanation. On 27 September, 1984, the Executive Vice-President and General Manager of respondent Corporation found petitioner's written explanation unsatisfactory and notified petitioner that the Corporation had lost confidence in her ability to discharge the functions of her office and accordingly terminated her services.

Petitioner filed a complaint for illegal suspension and dismissal against respondent Corporation and Mr. Guil Rivera, Senior Vice-President, and Mr. Richard Tan, Executive Vice-President and General Manager. She asked for reinstatement with backwages, as well as moral and exemplary damages, medical expenses, attorney's fees and other litigation expenses.

On 8 July 1986, Labor Arbiter A.L. Sevilla rendered a Decision requiring the respondent Corporation to pay petitioner: (1) separation pay in the amount of P10,500.00; (2) six (6) months backwages in the amount of P120,000.00; (3) moral damages in the amount of P500,000.00; (4) exemplary damages in the amount of P100,000.00; and (5) attorney's fees equivalent to 10% of the award.

On appeal by the private respondents, public respondent NLRC, in a Decision dated 10 March 1986, modified the Labor Arbiter's award by deleting the award of moral and exemplary damages and requiring respondent Corporation to pay: (1) separation pay amounting to P21,000.00; (2) three (3) months backwages without qualification and deduction amounting to P9,000.00; and (3) 10% of the award as attorney's fees.

Both the Labor Arbiter and respondent NLRC found that because of the strained relations between petitioner and respondent Corporation, reinstatement of petitioner was not feasible. Respondent Corporation had alleged that petitioner had immediately found employment with Onapal Philippines Commodities, which had not been denied or refuted by petitioner. Because respondent Corporation had failed to specify the definite date of her employment, respondent

NLRC granted petitioner three (3) months backwages without qualification and deduction.

In the present Petition for Certiorari, petitioner seeks the annulment of the Decision of respondent NLRC dated 10 March 1986 and the revival or reinstatement of the Decision of Labor Arbiter Sevilla dated 8 July 1985.

Petitioner claims that respondent Corporation acted in bad faith in suspending and terminating her services. Petitioner asserts that:

1. respondent Corporation had violated her right to due process by suspending her immediately without the benefit of hearing. She argues that the notice of preventive suspension served her on 18 September 1986 was “living proof” that the corporation had already concluded she was guilty of the charges levelled against her even before she could submit her written explanation.
2. the “true reason” for her “illegal dismissal” was the “personal grudge which Rivera harbored against her.”
3. respondent Corporation’s bad faith was also demonstrated in discrimination against her in relation to other employees of the Corporation who had been in the past similarly charged with alleged infractions of the corporation’s rules. More specifically, petitioner asserts discrimination against herself consisting of the failure of the respondent Corporation to dismiss the two (2) immediate supervisors of the investment counselor who had carried out the unauthorized manipulations of clients’ accounts in petitioner’s department.
4. petitioner also charges respondent Corporation with having misrepresented the extent of her participation in or the scope of her duties in respect of unauthorized acts and transactions of her subordinates in the marketing department of respondent company.

The Court considers that petitioner has failed to show a grave abuse of discretion, or an act performed without or in excess of jurisdiction, on the part of the respondent NLRC.

In respect of Item 1, preventive suspension does not in itself prove that the company had prejudged that petitioner was guilty of the charges she was asked to answer and explain. Preventive suspension may be necessary for the protection of the company, its operations and assets, pending investigation of the alleged malfeasance or misfeasance on the part of officers or employees of the company and pending a decision on the part of the company (See Sec. 3 of Rule XIV, Book V, of the Omnibus Rules Implementing the Labor Code). Considering the very senior and sensitive character of petitioner's position as head of a Department, a line position as distinguished from a staff or planning position, and considering the unauthorized transactions then just discovered by the respondent Corporation, we do not believe that the preventive suspension was an arbitrary and capricious act amounting to bad faith on the part of the respondent Corporation.

In respect of Item 2, the alleged personal motive behind petitioner's dismissal — personal envy or feelings of personal insecurity on the part of Guil Rivera, Senior Vice-President, respondent NLRC found that petitioner had not sufficiently established her assertion. Petitioner's assertion on this point appears no more than a conjecture or supposition and does not afford an adequate basis for overturning respondent NLRC's finding on this point. Further, if petitioner had clearly proven such personal ill-will on the part of Mr. Rivera, a serious question would arise as to whether the respondent Corporation (as distinguished from Mr. Rivera) could be held liable at all for Mr. Rivera's acts in the absence of clear authorization for, or approval or adoption of, such act by the respondent Corporation with knowledge of the personal malice on the part of Mr. Rivera.

In respect of Item 3, respondent NLRC's decision was silent. The Court believes, however, that respondent Corporation must be accorded reasonable latitude in determining who among erring officers or employees should be punished by the company and to what extent. In the instant case, respondent Corporation presumably found it was not necessary to terminate the services also of the two

(2) section heads in petitioner's department, who clearly are much lower in the corporate hierarchy than petitioner.

With respect to the last and most important of the above listed items, the scope of petitioner's responsibility for the operations of her department and the extent of her supervisory authority over her subordinates in the marketing department, respondent NLRC set forth the following discussion and evaluation:

“Appellants stressed the point that complainant, as vice president, marketing, is actually a department head of one of the company's sales department (sic). As such, her basic function is the supervision and monitoring the daily activities of her department and the employees she supervises (sic). By the nature of the company's business, complainant as a department head should see to it that the clients' trust and confidence in the company is upheld through above board transactions, untainted relations, satisfactory servicing and unquestioned integrity of its officers and staff, aside from the promotion of cordial employee relations among her personnel through unbiased and uniform implementation of company policies affecting employee benefits and welfare.

According to the appellants, the finding of the Labor Arbiter that 'complainant is not expected to keep an eye or be aware of all day-to-day transactions of her workers particularly Investment Consultants in her department' does not conform to the facts prevailing in this case.

In the Panemanglor case, which is the crucial point at issue, Panemanglor opened an account with the respondent corporation on June 28, 1984 by depositing the amount of P50,000 00 through Sofia Nazareno, investment counsellor. Instead of the client signing the Customers Agreement, it was Nazareno who signed the agreement and the signature card in the name of the client, which is highly irregular. Had she exercised prudence in the supervision of her investment consultants, the irregularity could have been earlier detected. As a result, the sum of P25,000.00 from Panemanglor's account was transferred by Nazareno to the account of Ramon Lopez,

without the knowledge of Panemanglor on July 9, 1984. On July 13, 1984 the said client withdrew the sum of P25,000.00 through a Payment Instruction Form that was approved by the complainant. On August 6, 1984, the amount of P4,052.59 was transferred by Nazareno to the account of Panemanglor from the account of Ramon Lopez. This transaction was with the approval of the complainant. On September 3, 1984. Panemanglor demanded the payment of the balance of P25,000.00 from the respondent company to close his account and the letter of Panemanglor was referred to complainant by respondent Guil Rivera for necessary action. In her memorandum to senior vice president Guil Rivera, complainant confirmed the irregularity in the handling of the account of Panemanglor, but she failed to take appropriate action against the erring employee which was within her power to discipline employees under her supervision. Later on February 4, 1985, a complaint was filed before the Securities and Exchange Commission by Panemanglor for the recovery of the P25,000.00 plus damages against the respondent corporation, contrary to her claim that the client will not file a recovery suit against the corporation since the obligation was purely personal to Nazareno.

Respondents contend that complainant could have immediately discovered the unauthorized signature of Sofia Nazareno that led to the illegal transfers of fund, had she followed the company procedure and practice for her to be personally acquainted with new clients and her admission that she was not aware of the complained acts has brought to light that she was remiss in her supervisory and monitoring function. On top of this, she failed to institute disciplinary action against the erring employee.

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As head of one of the company's sales department (sic) and a managerial employee at that, complainant is expected to monitor the daily activities of the investment counsellors and the transactions of clients in her department. As a matter of practice and procedure, complainant, as vice-president-

marketing, is always informed of new clients for her to be personally acquainted with the client. We agree with the appellants that had the complainant adhered to this procedure, she could have immediately noticed the unauthorized signature by Sofia Nazareno that enabled her to transfer funds from one account to another. Likewise, since the complainant approved the payment instruction for P25,000.00 on July 13, 1984, the transfer of P4,052.59 on August 6, 1984 from the account of Ramon Lopez to Panemanglor's account, and the withdrawal of the transferred amount on August 7, 1984, she could have easily suspected that something was irregular with the transaction. Yet, it took several months before she knew of the anomaly and it took her superior, respondent Guil Rivera, to bring the matter to her attention. Under the circumstances, it cannot be truthfully said that complainant has not been without any fault whatsoever. For this reason, the basis for the award of the moral and exemplary damages has not been sufficiently or satisfactorily established by the complainant. And besides the dismissal of the complainant by the respondent was done in good faith." (Emphasis supplied).

Petitioner's argument that, because she was head of the entire marketing (sales) department, she could not be expected to monitor the detailed or day-to-day acts and behavior of the staff members of her department, does not address what appears to be the thrust of the respondent NLRC's decision. And that is, that as head of the department, it was her responsibility to adopt ways and means of keeping herself sufficiently informed of the activities of her staff members so as to prevent or at least discover at an early stage, e.g., unauthorized or illegal transactions and manipulation of clients' accounts. On the one hand, the above position taken by the respondent NLRC cannot be regarded as so obviously unreasonable and despotic as to constitute a grave abuse of discretion, given the character of the business of a commodities trading company and the fact that very substantial sums of money are handled daily by petitioner's department. Upon the other hand, petitioner's logic would lead to the conclusion that the more senior the management position, the slighter the responsibility for malfeasance or nonfeasance that can be laid upon the position-holder; the chief

executive officer of a corporation would effectively have, under this logic, little or no responsibility at all.

Turning to the specific award made by respondent NLRC, the salary base properly used in computing the separation pay and the backwages due to petitioner should include not just the basic salary but also the regular allowances that petitioner had been receiving (See Santos vs. National Labor Relations Commission, G.R. No. 76721, 21 September 1987). In petitioner's case, the base figure properly includes her: (a) basic salary of P3,000.00 a month; and (b) living allowance of P2,400 a month (petitioner's Affidavit, dated 12 April 1985, Exhibit "G", Rollo, p. 105). The commissions also claimed by petitioner ("override commission" plus "net deposit incentive") are not properly includible in such base figure since such commissions must be earned by actual market transactions attributable to petitioner. Neither should "travels equivalent" [an unusual and unexplained term; P10,000.00 a month] and "commission in trading personal clients" [P3,000.00 a month] he included in such base figure. Considering that the charge of bad faith on the part of private respondents was not proven the respondent NLRC having, on the contrary, made a finding that petitioner's dismissal was made in good faith there appears no real basis for the award of attorney's fees (Art. 2208 [5], Civil Code). This award should not exceed a nominal amount which we set at P1,500.00.

Thus, the appropriate computation would be:

| | |
|---|-----------------|
| A. Separation pay — P5,400.00/month x 7 = | P37,800.00 |
| in view of petitioner's seven (7) | |
| years of service) | |
| | |
| B. Backwages — P5,400.00/month x 3 mos. = | P16,200.00 |
| | ----- |
| Sub-Total | P54,000.00 |
| | |
| plus nominal attorney's fees | <u>1,500.00</u> |
| TOTAL | P55,500.00 |
| | ===== |

ACCORDINGLY, the Court Resolved to **DISMISS** the Petition for Certiorari for lack of merit. The Decision of the respondent NLRC dated 10 March 1986 is modified so as to award petitioner the following items: a) separation pay in the amount of P37,800.00; b) backwages for three (3) months in the amount of P16,200.00: and c) attorney s fees of P1,500.00, making a total of P55,500.00.

SO ORDERED.

Fernan, Gutierrez, Jr., Bidin and Cortes, *JJ.*, concur.

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