

## SECOND DIVISION

[ G.R. NO. 165465, September 13, 2006 ]

**LOIDA V. MALABAGO, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION AND PACIFICA AGRIVET SUPPLIES,  
INC., RESPONDENTS.**

### D E C I S I O N

**PUNO, J.:**

This is a petition for review of the decision of the Court of Appeals in CA-G.R. SP No. 79225 which modified the decision of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000580-2000. The NLRC affirmed the decision of the Labor Arbiter dismissing the complaint for illegal dismissal filed by petitioner Loida V. Malabago against private respondent Pacifica Agrivet Supplies, Inc. *On certiorari* before the Court of Appeals, the appellate court affirmed the dismissal of the complaint but ordered private respondent to grant separation pay to petitioner as financial assistance.

The facts are as follows:

Petitioner was the OIC-Store Supervisor at private respondent's Torres Branch in Tacloban City. On September 29, 1999, petitioner took out twenty (20) heads day-old chicks, one-half (½) bag of Chick Booster Mash (CBM)-Vitarich and one (1) 113-gram bottle of Vetracin. She intended to use the chicks for the first birthday celebration of her child. Petitioner instructed the branch clerk, Rex Regaton, not to issue a charge invoice for the items as she promised to pay the cost on October 15, 1999.

On October 7, 1999, Jennifer Doit replaced Regaton as branch clerk. Petitioner immediately informed Doit of her procurement. She, however, failed to pay for the items on October 15, 1999. Instead, she got one (1) bag of Boiler Finisher Crumble (BFC)-General and told Doit to charge the same to her account.

Petitioner made a partial payment on November 15, 1999. She paid only for the CBM-Vitarich and Vetracin, and told Doit that she would settle the balance on December 8, 1999, upon the release of their 13th month pay.

On November 19, 1999, petitioner again took one (1) bag of BFC-Vitarich. She instructed the store utility man to inform Doit about the matter as the latter was off duty at the time.

On November 20, 1999, Doit and utility man Allan Baldeza made a written report<sup>[1]</sup> to Ms. Nimfa Buenafe, Area Manager, Leyte, regarding petitioner's act of taking out stocks without issuing cash slips or sales invoices. They also reported that petitioner paid only a fraction of her debt at a later date using the cost price and not the

selling price, and that petitioner overpriced the items sold to customers to offset the items taken out without cash slips or sales invoices.

Acting on the report, the Area Manager issued a memorandum dated November 23, 1999 directing petitioner to explain why she did not make the proper documentation for the items that she took from the store's stock. The memorandum also stated that releasing stocks without any cash slip or charge invoice is a Type D offense under the company policy, punishable with dismissal.<sup>[2]</sup>

Petitioner submitted her explanation on the same date. She admitted the allegations in Doit's and Baldeza's report. She however argued that only releasing stocks to customers without charge slip or sales invoice is considered as Type D offense under their company policy. The act is not punishable if the items are released to the company's employees like herself. She also highlighted the fact that she always informed her co-workers every time that she took out items from the store to show her good faith.<sup>[3]</sup>

On November 24, 1999, the Area Manager issued a memorandum <sup>[4]</sup> suspending petitioner for fifteen (15) days pending the investigation of her case, thus:

TO : LOIDA MALABAGO  
FROM : AREA MANAGER / OFFICE OF THE  
AVP  
SUBJECT : SUSPENSION

It was noted that you have done a very grievous offense by releasing stocks without proper documentation. I think you are fully aware that disciplinary action of this offense is DISMISSAL.

You are hereby suspended for fifteen (15) days effective today, November 24, 1999 to December 8, 1999 without pay.

Further evaluation of this case shall be done during your suspension period.

Please report directly to the undersigned, your Area Manager, after expiration of your suspension period which will be on December 9, 1999 for further review and discussion.

(sgd) MA. NIMFA BUENAFE Noted by  
AREA MANAGER (sgd) ISABEL R. BUNAC  
Eastern Visayas - Leyte Asst. Vice-Presiden

On November 29, 1999, petitioner received another memorandum from the Area Manager advising her to report to the Cebu Main Office on December 3, 1999 in connection with the ongoing investigation of her case.<sup>[5]</sup>

Petitioner appeared before a panel of investigators at the company's main office on December 3, 1999. The investigators apprised petitioner of the charges against her and asked her to explain her side. Petitioner

reiterated her position in her letter dated November 23, 1999.<sup>[6]</sup>

On December 7, 1999, Assistant Vice President Isabel Bunac issued a memorandum<sup>[7]</sup> informing petitioner that private respondent has approved the recommendation of the investigating committee for her dismissal due to the following offenses:

1. Releasing of stocks without proper documentation;
2. Paying a portion of the stocks taken after attention was called using the cost price only and not the company's selling price;
3. Overpricing of some items to offset the items not being issued with cash slip or sales invoice.

Accordingly, petitioner's employment was immediately terminated.

Petitioner filed a complaint for illegal dismissal against private respondent on December 13, 1999.<sup>[8]</sup> She also included in the complaint claims for overtime pay, separation pay, service incentive leave pay, vacation/sick leaves, moral and exemplary damages, and attorney's fees. Petitioner alleged that she was deprived of due process before her dismissal. She also argued that her act of taking out stocks from the store without cash slip or sales invoice may not be considered as just cause for termination of employment under the Labor Code as she had no intention to defraud or cause damage to the company and that she acted in utmost good faith.<sup>[9]</sup>

The Labor Arbiter, in a decision dated March 30, 2000, dismissed the complaint for lack of merit.<sup>[10]</sup>

Petitioner appealed to the NLRC. The Commission, however, dismissed the appeal and affirmed the decision of the Labor Arbiter.<sup>[11]</sup> It likewise denied petitioner's motion for reconsideration.<sup>[12]</sup>

Petitioner filed a petition for certiorari before the Court of Appeals, again raising the same arguments.

The Court of Appeals upheld the validity of petitioner's dismissal on the ground of violation of a company policy, which violation is punishable by dismissal under the employees' manual. It, however, found appropriate the award of separation pay to petitioner as financial assistance.<sup>[13]</sup>

Petitioner filed a petition for review before this Court on the following grounds:

1. The Honorable Court of Appeals erred in ruling that there exists a valid ground to terminate petitioner's employment;
2. The Honorable Court of Appeals erred in ruling that private respondent has observed procedural due process; and
3. The Honorable Court of Appeals erred in not awarding overtime fee to the petitioner in addition to the other monetary awards as a consequence of the