

FIRST DIVISION

[G.R. No. 133259, February 10, 2000]

WENIFREDO FARROL, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND RADIO COMMUNICATIONS OF THE PHILIPPINES INC. (RCPI), RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

Petitioner Wenifredo Farrol was employed as station cashier at respondent RCPI's Cotabato City station. On June 18, 1993, respondent RCPI's district manager in Cotabato City informed their main office that "Peragram funds"^[1] from said branch were used for the payment of retirement benefits of five employees. On October 1, 1993, petitioner verified as correct RCPI's Field Auditor's report that there was a shortage of P50,985.37 in their branch's Peragram, Petty and General Cash Funds. Consequently, petitioner was required by the Field Auditor to explain the cash shortage within 24 hours from notice.^[2] The next day, petitioner paid to RCPI P25,000.00 of the cash shortage.

On October 16, 1993, RCPI required petitioner to explain why he should not be dismissed from employment.^[3] Two days thereafter, petitioner wrote a letter to the Field Auditor stating that the missing funds were used for the payment of the retirement benefits earlier referred to by the branch manager and that he had already paid P25,000.00 to RCPI. After making two more payments of the cash shortage to RCPI, petitioner was informed by the district manager that he is being placed under preventive suspension.^[4] Thereafter, he again paid two more sums on different dates to RCPI leaving a balance of P6,995.37 of the shortage.

Respondent RCPI claims that it sent a letter to petitioner on November 22, 1993 informing him of the termination of his services as of November 20, 1993 due to the following reasons:

- "a) Your allegation that part of your cash shortages was used for payment of salaries/wages and retirement benefits is not true because these have been accounted previously per auditor's report;
- "b) As Station Cashier you must be aware of our company Circular No. 63 which strictly requires the daily and up-to-date preparation of Statistical Report and depositing of cash collections twice a day. But these procedures - more particularly on depositing of cash collections twice a day - was completely disregarded by you;
- "c) Deliberate withholding of collections to hide shortages/malversation or misappropriation in any form, as

emphasized under Section No. 20 of our Rules and Regulations, is penalized by immediate dismissal;
"d) The position of Station Cashier is one which requires utmost trust and confidence.^[5]

Unaware of the termination letter, petitioner requested that he be reinstated considering that the period of his preventive suspension had expired.

Sometime in September 1995, petitioner manifested to RCPI his willingness to settle his case provided he is given his retirement benefits. However, RCPI informed petitioner that his employment had already been terminated earlier as contained in the letter dated November 22, 1993. The conflict was submitted to the grievance committee. Despite the lapse of more than two years, the case remained unresolved before the grievance committee, hence, it was submitted for voluntary arbitration.

After hearing, the Voluntary Arbitrator ruled that petitioner was illegally dismissed from employment and ordered RCPI to pay him backwages, separation pay, 13th month pay and sick leave benefits.^[6] Aggrieved, RCPI filed a petition for *certiorari* before the Court of Appeals (CA), which reversed the ruling of the arbitrator and dismissed the complaint for illegal dismissal.^[7] Upon denial of petitioner's motion for reconsideration by the CA,^[8] he filed the instant petition for review on *certiorari* on the grounds that his dismissal was illegal because he was not afforded due process and that he "cannot be held liable for the loss of trust and confidence reposed in him" by RCPI.^[9]

The Court is called upon to resolve the validity of petitioner's dismissal. In cases involving the illegal termination of employment, it is fundamental that the employer must observe the mandate of the Labor Code, *i.e.*, the employer has the burden of proving that the dismissal is for a cause provided by the law^[10] and that it afforded the employee an opportunity to be heard and to defend himself.^[11]

Anent the procedural requirement, Book V, Rule XIV, of the *Omnibus Rules Implementing the Labor Code* existing at the time petitioner was discharged from work, outlines the procedure for termination of employment, to wit:

"Sec. 1. *Security of tenure and due process.* - No worker shall be dismissed except for a just or authorized cause provided by law and after due process.

"Sec. 2. *Notice of Dismissal.* - Any employer who seeks to dismiss a worker shall furnish him a *written notice stating the particular acts or omissions* constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

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"Sec. 5. *Answer and hearing.* - The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The *employer shall afford the worker ample opportunity to be heard and to defend himself* with the assistance of his

representatives, if he so desires.

"Sec. 6. *Decision to dismiss.* - The employer shall immediately notify a worker in writing of a decision to dismiss him *stating clearly the reasons* therefor.

"Sec. 7. *Right to contest dismissal.* - Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the Regional Branch of the Commission.

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"Sec. 11. *Report on dismissal.* - The employer shall submit a monthly report to the Regional Office having jurisdiction over the place of work all dismissals effected by him during the month, specifying therein the names of the dismissed workers, the reasons for their dismissal, the dates of commencement and termination of employment, the positions last held by them and such other information as may be required by the Ministry (Department) for policy guidance and statistical purposes."
(Italics supplied).

As set forth in the foregoing procedures, the employer must comply with the twin requirements of two notices and hearing.^[12] The first notice is that which apprises the employee of the particular acts or omissions for which his dismissal is sought, and after affording the employee an opportunity to be heard, a subsequent notice informing the latter of the employer's decision to dismiss him from work.^[13]

As regards the first notice, RCPI simply required petitioner to "explain in writing why he failed to account" for the shortage and demanded that he reconstitute the same.^[14] On the assumption that the foregoing statement satisfies the first notice, the second notice sent by RCPI to petitioner does not "clearly" cite the reasons for the dismissal, contrary to the requirements set by the above-quoted Section 6 of Book V, Rule XIV of the *Omnibus Rules*.

A perusal of RCPI's dismissal notice reveals that it merely stated a conclusion to the effect that the withholding was deliberately done to hide alleged malversation or misappropriation without, however, stating the facts and circumstances in support thereof. It further mentioned that the position of cashier requires utmost trust and confidence but failed to allege the breach of trust on the part of petitioner and how the alleged breach was committed. On the assumption that there was indeed a breach, there is no evidence that petitioner was a managerial employee of respondent RCPI. It should be noted that the term "trust and confidence" is restricted to managerial employees.^[15] It may not even be presumed that when there is a shortage, there is also a corresponding breach of trust. Cash shortages in a cashier's work may happen, and when there is no proof that the same was deliberately done for a fraudulent or wrongful purpose, it cannot constitute breach of trust so as to render the dismissal from work invalid.

Assuming further that there was breach of trust and confidence, it appears that this is the first infraction committed by petitioner. Although the employer has the