

FIRST DIVISION

[G.R. No. 112630, September 05, 1997]

**CORAZON JAMER AND CRISTINA AMORTIZADO, PETITIONERS,
VS. NATIONAL LABOR RELATIONS COMMISSION, ISETANN
DEPARTMENT STORE AND/OR JOHN GO, RESPONDENTS.**

D E C I S I O N

HERMOSISIMA, JR., J.:

The decision^[1] of public respondent National Labor Relations Commission (NLRC)^[2] in NLRC NCR CA 002074-91,^[3] promulgated on November 12 1993, is herein sought to be annulled for having been rendered with grave abuse of discretion, it having reversed and set aside the decision^[4] of Labor Arbiter Pablo C. Espiritu, Jr. by dismissing the petitioners' complaint for illegal dismissal against private respondent Isetann Department Store (Isetann, for brevity). The decretal part of the NLRC decision reads:

WHEREFORE, premises considered, the appealed decision is hereby set aside and new one promulgated declaring that the dismissal from the service of complainants Corazon Jamer and Cristina Amortizado was valid and for cause. Consequently, the order of reinstatement with backwages and attorney's fees are likewise vacated and set aside."^[5]

Although the Labor Arbiter^[6] and the NLRC reached contrary conclusions, both agree on the following facts:

Complainant, Corazon Jamer was employed on February 10, 1976 as a Cashier at "Joy Mart," a sister company of Isetann. After two (2) years, she was later on promoted to the position of counter supervisor. She was transferred to Isetann, Carriedo Branch, as a money changer. In 1982 she was transferred to the Cubao Branch of Isetann, as a money changer, till her dismissal on August 31, 1990.

Complainant Cristina Amortizado, on the other hand, was employed also at "Joy Mart" in May, 1977 as a sales clerk. In 1980 she was promoted to the position as counter cashier. Thereafter, she was transferred to 'Young Un Department Store' as an assistant to the money changer. Later on, or in 1985, she transferred to Isetann, Cubao Branch where she worked as a Store Cashier till her dismissal on August 31, 1990.

Both complainants were receiving a salary of P4,182.00 for eight (8) hours work at the time of their dismissal.

Respondent Isetann Department Store on the other hand, is a

corporation duly organized and existing under laws of the Philippines and is engaged in retail trade and the department store business. Individual respondent, John Go is the President/General (Manager) of respondent Department Store.

This complaint arose from the dismissal of the complainants by the respondents. They were both dismissed on August 31, 1990 on the alleged ground of dishonesty in their work as Store Cashiers.

Complainant's (sic) function as Store Cashiers is to accumulate, at the end of daily operations, the cash sales receipts of the selling floor cash register clerks. At the close of business hours, all the cash sales of the floor cash register clerks are turned over by them to the Store Cashiers, complainants herein, together with the tally sheets prepared by the cash register clerks. Thereafter, complainants will reconcile the cash sales with the tally sheets to determine shortages or coverages(sic) and deposit the same with the bank depositor(sic) of respondent's company. Thereafter, the recorded transactions are forwarded to the main branch of respondent's company at Carriedo for counter-checking.

On July 16, 1990, complainants discovered a shortage of P15,353.78. It was complainant Corazon Jamer who first discovered the shortage. In fact at first, she thought that it was merely a P1,000.00 shortage but when she reconciled the cash receipts, from the cash register counters, with the tally sheets and the actual money on hand, the shortage amounted to P15,353.78. She informed her co-store cashier, complainant Cristina Amortizado, about the shortage. Cristina Amortizado also reconciled and re-counted the sale previous to July 16, 1990 and she also confirmed that there was a discrepancy or a shortage of P15,353.78.. They did not, (sic) immediately report the shortage to management hoping to find the cause of the shortage but to no avail they failed to reconcile the same. Hence, they had no other alternative but to report the same to the management on July 17, 1990.

Complainants, together with another Store Cashier, Lutgarda Inducta, were asked to explain and they submitted their respective written explanations for the shortage of P15,353.78. and the P450.00 under deposit last July 14, 1990.

Respondents placed both complainants and their co-store cashier Lutgarda Inducta under preventive suspension for the alleged shortages. Thereafter, respondents conducted an administrative investigation. Finding the explanation of the complainants to be unsatisfactory, respondent dismissed the complainants from the service on August 31, 1990. Aggrieved and not satisfied with the decision of management terminating their services, complainant instituted this present action on September 26, 1990 for illegal dismissal praying for reinstatement with payment of backwages and other benefits. [7]

In justifying complainants' dismissal from their employment, respondents alleged:

'When the transactions for July 15, 1990 were being reconciled, a shortage of P15,353.78 was discovered. Also uncovered was an under-deposit of P450.00 of cash receipts for July 14, 1990.

Considering that the foregoing deficits were attributable to herein appellees and to another store cashier, Mrs. Lutgarda Inducta, who were the ones on duty those days respondent Isetann's Human Resources Division Manager, Teresita A. Villanueva, issued letters (Exh. '1' and '5') individually addressed to herein appellees and Mrs. Inducta requiring them to submit written explanations in regard to their above malfeasance within 48 hours from receipt thereof. Pursuant to said letters, they were likewise placed under preventive suspension.

Thereafter, the Committee o Discipline of appellant Isetann conducted a series of investigations probing appellees' and Mrs. Inducta's aforesated shortages. In addition to the shortage of P15,353.78(sic) and underdeposit of P450.00, said investigation also included the following sums which appellees failed to turnover or account for:

- a) P1,000.00- amount borrowed by Lutgarda Inducta from Corazon Jamer;
- b) P 70.00- over replenishment of petty cash expenses incurred by Cristina Amortizado.

After the administrative investigation, the Committee on Discipline rendered its decision (Exhs. '3,' '3-A,' to '3-D') dated August 23, 1990 duly approved by the General Manager of respondent Isetann, finding the appellees and Mrs. Inducta responsible for said shortages and consequently requiring them to restitute the same to respondent Isetann. This Decision and the notices of termination were sent by respondent Isetann to the appellees, and which the latter admittedly received.'

On the other hand, the complainants account of the factual antecedents that let (sic) to their dismissal is as follows:

'Aside from the foregoing persons, Alex Mejia had and was allowed by management to have uncontrolled access to the said room including the vault. Ostensibly, the purpose was to assist in the bringing in or taking out of coin bags, monies, etc.

There were therefore, at a minimum at least six (6) persons who could have had access to the company funds. To ascribe liability to the store cashiers alone, in the absence of a clear proof of any wrongdoing is not only unfair and discriminatory but is likewise illegal.

Parenthetically, and within the parameters of their assigned tasks, herein complainants could not be faulted in any way for the said shortage as there is no showing that the loss occurred at the time they were in control of the funds concerned.

Complainants do not dispute the fact that there appeared to be a shortage of P15.373.78(sic) for the July 15, 1990 (a Sunday) sales and which were tallied and the loss discovered on the following day, July 16, 1990. They however vehemently deny any culpability or participation in any kind, directly or indirectly, in regard to the said loss or shortage. Given the kind of trust reposed upon them by respondents

for fourteen and thirteen years respectively they were not about, although they could have done so before given the negligence and laxity of management in regard to the control and handling of funds of the store, to break said trust.

At the time the persons who had access either to the vault the money and/or the keys aside from herein complainants, were: 1) Lutgarda Inducta, also a store cashier on duty at the time; 2) the SOM Mrs. Samonte, the supervisor in charge; 3) Alex Mejia, an employee assigned as utility man; and 4) Boy Cabatuando.

There were (sic) three (3) keys to the money changer's room, and these keys were assigned and distributed to: a) master key is or was with the SOM's (Mrs. Samonte) room at the 3rd floor of the building; b) another key is or was in the possession of the keeper of the keys, i.e. Boy Cabatuando; and c) the third and last key is any of the store cashiers depending on who is on duty at the time.

Likewise, there were four (4) persons who were aware and knew of the vault combination. These were the three store cashiers, i.e. herein complainants, Lutgarda Inducta and their SOM, Mrs. Samonte."^[8]

On July 23, 1991, Labor Arbiter Nieves V. de Castro, to whom the instant controversy was originally assigned, rendered a decision^[9] in favor of herein petitioners, finding that petitioners had been illegally dismissed, the dispositive portion of which reads:

WHEREFORE, respondents are hereby directed to reinstate complainants to service effective August 1, 1991 with full backwages and without loss of seniority rights.

SO ORDERED."^[10]

Expectedly, respondents Isetann and John Go appealed the aforesaid decision to the NLRC. On January 31, 1992, the NLRC issued a resolution^[11] remanding this case to the NLRC National Capital Region Arbitration Branch for further proceedings in the following manner:

WHEREFORE, premises considered, the challenged decision is hereby SET ASIDE and VACATED.

The entire records of this case is hereby remanded to the NLRC National Capital Region Arbitration Branch for further proceedings.

Considering that the Labor Arbiter a quo rendered a decision in this case and in order to dispel any suspicion of pre-judgment of this case, the Executive Labor Arbiter is hereby directed to have this case re-raffled to another Labor Arbiter.

SO ORDERED."^[12]

Consequently, the present case was then re-raffled to Labor Arbiter Pablo C. Espiritu, Jr. After a full-blown trial, the said Labor Arbiter found for the petitioners and declared that there was no justification, whether in fact or in law, for their dismissal. The decretal part of the decision^[13] dated March 31, 1993, states:

WHEREFORE, above premises considered, judgement(sic) is hereby rendered finding the dismissal of complainants, Cristina Amortizado and Corazon Jamer to be illegal and concomitantly, (r)espondents are hereby ordered to pay complainants, Corazon Jamer the amount of P125,460.00 and Cristina Amortizado the amount of P125,460.00, representing full backwages from the time of their dismissal (August 31, 1990) till actual or payroll reinstatement at the option of the respondent (computed until promulgation only). Respondents are also hereby further ordered to reinstate the complainants to their former position as Store Cashiers without loss of seniority rights, privileges and benefits, failure to do so backwages shall continue to run but in no case to exceed three (3) years.

Respondents are also ordered to pay complainants the amount of P25,092.00 representing 10% attorney's fees based in the total judgement(sic) award of P250,920.00.

SO ORDERED.”^[14]

Dissatisfied over the decision of the Labor Arbiter which struck private respondents as grossly contrary to the evidence presented, the herein private respondents once again appealed to the NLRC. And, as earlier stated, the NLRC rendered the challenged decision^[15] on November 12, 1993, vacating the decision of the Labor Arbiter and entering a new one dismissing the petitioners' complaint.

Hence, this petition wherein the main issue to be resolved is whether NLRC committed grave abuse of discretion in finding that petitioners were validly dismissed on the ground of loss of trust and confidence.

At the outset, the Court notes petitioners inexcusable failure to move for the reconsideration of respondent NLRC's decision. Thus, the present petition suffers from a procedural defect that warrants its outright dismissal. While in some exceptional cases we allowed the immediate recourse to this Court, we find nothing herein that could warrant an exceptional treatment to this petition which will justify the omission. This premature action of petitioners constitutes a fatal infirmity as ruled in a long line of decisions,^[16] most recently in the case of Building Care Corporation vs. National Labor Relations Commission, et al.:^[17]

the filing of such a motion is intended to afford public respondent an opportunity to correct any actual or fancied error attributed to it by way of a re-examination of the legal and factual aspects of the case. Petitioner's inaction or negligence under the circumstances is tantamount to a deprivation of the right and opportunity of the respondent Commission to cleanse itself of an error unwittingly committed or to vindicate itself of an act unfairly imputed. xxx

xxx And for failure to avail of the correct remedy expressly provided by law, petitioner has permitted the subject Resolution to become final and executory after the lapse of the ten day period within which to file such motion for reconsideration.”