

THIRD DIVISION

[G.R. No. 154503, February 29, 2008]

**UNIWIDE SALES WAREHOUSE CLUB and VIVIAN M. APDUHAN,
Petitioners, vs. NATIONAL LABOR RELATIONS COMMISSION and
AMALIA P. KAWADA, Respondents.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by Uniwide Sales Warehouse Club (Uniwide) and Vivian M. Apduhan (Apduhan) seeking to annul the Decision^[1] dated November 23, 2001 and the Resolution^[2] dated July 23, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 64581.

The facts of the case:

Amalia P. Kawada (private respondent) started her employment with Uniwide sometime in 1981 as a saleslady. Over the years, private respondent worked herself within Uniwide's corporate ladder until she attained the rank of Full Assistant Store Manager with a monthly compensation of P13,000.00 in 1995.

As a Full Assistant Store Manager, private respondent's primary function was to manage and oversee the operation of the Fashion and Personal Care, GSR Toys, and Home Furnishing Departments of Uniwide, to ensure its continuous profitability as well as to see to it that the established company policies and procedures were properly complied with and implemented in her departments.^[3]

Sometime in 1998, Uniwide received reports from the other employees regarding some problems in the departments managed by the private respondent.^[4] Thus, on March 15, 1998, Uniwide, through Store Manager Apduhan, issued a Memorandum addressed to the private respondent summarizing the various reported incidents signifying unsatisfactory performance on the latter's part which include the commingling of good and damaged items, sale of a voluminous quantity of damaged toys and ready-to-wear items at unreasonable prices, and failure to submit inventory reports. Uniwide asked private respondent for concrete plans on how she can effectively perform her job.^[5] In a letter^[6] dated March 23, 1998, private respondent answered all the allegations contained in the March 15, 1998 Memorandum.

Unsatisfied, Apduhan sent another Memorandum^[7] dated March 30, 1998 to private respondent where Apduhan claimed that the answers given by the private respondent in her March 23, 1998 letter were all hypothetical and did not answer directly the allegations attributed to her.^[8] Apduhan elaborated the incidents

contained in the March 15, 1998 Memorandum.

On June 30, 1998, Apduhan sent another Memorandum^[9] seeking from the private respondent an explanation regarding the incidents reported by Uniwide employees and security personnel for alleged irregularities committed by the private respondent such as allowing the entry of unauthorized persons inside a restricted area during non-office hours, falsification of or inducing another employee to falsify personnel or company records, sleeping and allowing a non-employee to sleep inside the private office, unauthorized search and bringing out of company records, purchase of damaged home furnishing items without the approval from superior, taking advantage of buying damaged items in large quantity, alteration of approval slips for the purchase of damaged items and abandonment of work.^[10] In a letter^[11] dated July 9, 1998, private respondent answered the allegations made against her.

On July 27, 1998, private respondent sought medical help from the company physician, Dr. Marivelle C. Zambrano (Dr. Zambrano), due to complaints of dizziness.^[12] Finding private respondent to be suffering from hypertension, Dr. Zambrano advised her to take five days sick leave.^[13]

On July 30, 1998, private respondent was able to obtain from Dr. Zambrano a certificate of fitness to work,^[14] which she presented to Apduhan the following day.^[15] It turned out that Dr. Zambrano inadvertently wrote "Menia," the surname of the company nurse, in the medical certificate instead of private respondent's surname.^[16] Thereafter, private respondent claims that Apduhan shouted at her and prevented her from resuming work because she was not the person referred to in the medical certificate.^[17] After private respondent left Apduhan's office, a certain Evelyn Mague, Apduhan's assistant, approached the private respondent to get the certification so that it may be photocopied. When she refused to give the certification, private respondent claims that Apduhan once again shouted at her which caused her hypertension to recur and eventually caused her to collapse. Private respondent's head hit the edge of the table before she fell down on the ground for which she suffered contusions at the back of her head, as evidenced by the medical certificate^[18] issued by Dr. George K. C. Cheu of the Chinese General Hospital & Medical Center.^[19]

On August 1, 1998, private respondent reported the confrontation between her and Apduhan to the Central Police District.^[20] Likewise, private respondent was able to obtain from Dr. Zambrano the corrected certification^[21] together with the clarification that the name "Amalia Menia" written on the July 30, 1998 certification referred to Amalia Kawada.^[22]

Thereafter, counsel for private respondent sent a letter^[23] dated August 1, 1998 to Apduhan stating that the latter's alleged continued harassment and vexation against private respondent created a hostile work environment which had become life threatening, and that they had no alternative but to bring the matter to the proper forum.^[24]

On August 2, 1998, Apduhan issued a Memorandum,^[25] received on the same day by Edgardo Kawada, the husband of private respondent, advising the latter of a hearing scheduled on August 12, 1998 to be held at the Uniwide Office in Quirino Highway, and warning her that failure to appear shall constitute as waiver and the case shall be submitted for decision based on available papers and evidence.^[26]

On August 3, 1998, private respondent filed a case for illegal dismissal before the Labor Arbiter (LA).^[27]

Counsel for private respondent sent a letter^[28] dated August 8, 1998 to Apduhan claiming that the August 2, 1998 Memorandum was a mere afterthought, in an attempt to justify private respondent's dismissal; and that on August 3, 1998, private respondent had already filed charges against Uniwide and Apduhan (petitioners).

On August 8, 1998, Apduhan sent a letter addressed to private respondent, which the latter received on even date, advising private respondent to report for work, as she had been absent since August 1, 1998; and warning her that upon her failure to do so, she shall be considered to have abandoned her job.^[29]

On September 1, 1998, Apduhan issued a Memorandum^[30] stating that since private respondent was unable to attend the scheduled August 12, 1998 hearing, the case was evaluated on the basis of the evidence on record; and enumerating the pieces of evidence of the irregularities and violations of company rules committed by private respondent, the latter's defenses and the corresponding findings by Uniwide. Portions of the Memorandum read:

VIOLATIONS:

1. *Allowing entry of Unauthorized person inside a Restricted Area during non-office hours (night-time)*

x x x x

FINDINGS:

Towards these evidence, Ms. A. Kawada only raised questions as to the propriety of the entries on the logbook, but the offense itself was not even denied categorically by the employee concerned. Hence, the fact remains that the employee concerned indeed allowed the entries of Mr. Ed Kawada on different occasions. The Security personnel when asked why they did not report those incidents immediately, answered: They hesitated to report them because they were afraid as the employee concerned is a manager, whom they thought knows better than them.

Violation – No. 9 Type C, Code of Discipline

2. *Falsification of or Inducing another employee to falsify personnel or company records.*

x x x x

FINDINGS:

In her answer, Ms. A. Kawada again only questioned the propriety of the entries on the logbook, but there were clear indications that the violation was indeed committed as shown by the abovestated pieces of evidence.

The testimonies by the witnesses' are very explicit of what really transpired, specifically security guard Dennis Venancio, who just performs his duty of reporting any unusual incident that occurred within his jurisdiction. The fact that they failed to report it at an earlier time, in understandable, since they were hesitant, that the manager might get back at them, or simply because of their respect for Ms. A. Kawada, as a Manager.

Violation – No. 8 Type F, Code of Discipline

3. *Sleeping during overnight work last August 17, 1997.*

x x x x

FINDINGS:

Based on the records and reports submitted, there is no doubt that the concerned employee committed such an offense. The witnesses stated their testimonies only in accordance with what they have seen and witnessed during those stated periods.

Violation – No. 7 Type D, Code of Discipline

4. *Unauthorized Search, Bringing Out and taking of Company Records, March 18, 1998 and March 20, 1998.*

x x x x

FINDINGS:

It is established that 15 approval slips were taken by the employee concerned, however, only 11 approval slips were surrendered or returned.

Violation – No. 1 Type F, Code of Discipline

5. *Purchases of Dented or Sub-standard items of Home Furnishing without approval from authorized Supervisor, February 3, 1998.*

x x x x

FINDINGS:

Towards this accusation subject employee countered that she only asked Ms. Melanie Laag why she was not able to sign said approval slip but not for the purpose of letting her sign it. By this, it only means that indeed the said approval slip does not contain the necessary approval prior to the purchase. This could be related to the other charge against the subject employee on unauthorized search and bringing out of company records, for based on the circumstances there was such a search conducted to look for and retrieve approval slips of subject employee, as there are really approval slips of subject employee which does not bear the necessary approval. The search must have been probably made to cover up and/or suppress such evidence against her.

6. *Altering Approval slips dated January 17, 1998.*

a) #1 original quantity – 7 pieces changed to 2 pieces – amount was altered from Php14.00 to Php10.00.

b) #2 erasures on the number of quantity whether 15, 5 or 7 pieces.

x x x x

FINDINGS:

Towards this accusation Ms. A. Kawada submitted no plausible explanation, indicating that said employee concerned might have really committed the acts complained of.

Violation of Company Rules on the proper procedure in selling of dented merchandise.

7. *Making Reservations of Dented Items – January to February 1998.*

x x x x

FINDINGS:

There was no direct explanation submitted by Ms. A. Kawada on this. Thus, it becomes clear that Ms. Kawada had violated the company rule on No Reservation.

8. *Conduct unbecoming of a manager in cornering and/or bringing large quantity of damaged items (toys, furniture, RTW, appliances and Home Furnishing items), causing demoralization among the store crew and tainting management's image to its personnel.*

x x x x

FINDINGS:

The report that were submitted by the witnesses proved that Ms.