

THIRD DIVISION

[G.R. No. 172528, February 26, 2008]

JANSSEN PHARMACEUTICA, Petitioner, vs. BENJAMIN A. SILAYRO, Respondent.

DECISION

CHICO-NAZARIO, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision,^[1] dated 8 February 2006, promulgated by the Court of Appeals in CA-G.R. SP No. 81983, reversing the Decision^[2] dated 7 May 2003 of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000880-99. The Court of Appeals, in its assailed Decision, adjudged the dismissal of respondent Benjamin Silayro by petitioner Jansen Pharmaceutica as illegal for being an excessive and unwarranted penalty. The appellate court determined that the suspension of the respondent for five months without salary as just penalty.

Petitioner is the division of Johnson & Johnson Philippines Inc. engaged in the sale and manufacture of pharmaceutical products. In 1989, petitioner employed respondent as Territory/Medical Representative. During his employment, respondent received from petitioner several awards and citations for the years 1990 to 1997, such as Territory Representative Award, Quota Buster Award, Sipag Award, Safety Driver's Award, Ring Club Award, and a Nomination as one of the Ten Outstanding Philippine Salesmen.^[3] On the dark side, however, respondent was also investigated for, and in some cases found guilty of, several administrative charges.

Petitioner alleged that in 1994, respondent was found guilty of granting unauthorized premium/free goods to and unauthorized pull-outs from customers.^[4] Petitioner failed to attach records to support its allegation and to explain the nature of and the circumstance surrounding these infractions. Respondent, for his part, admitted to have been guilty of granting unauthorized premium/free goods, but vehemently denied violating the rule on, or having been charged with, unauthorized pull-outs from customers.^[5]

The respondent was also investigated for dishonesty in connection with the Rewards of Learning (ROL) test. The ROL test is a one-page take-home examination, with two questions to be answered by an enumeration of the standards of performance by which territory representatives are rated as well as the sales competencies expected of territory representatives.^[6] It was discovered that respondent's answers were written in the handwriting of a co-employee, Joedito Gasendo. Petitioner's management then sent respondent a Memo dated 27 July 1998 requiring an explanation for the incident.^[7]

Soon thereafter, petitioner sent a subsequent Memo dated 20 August 1998 to

respondent requiring the latter to explain his delay in submitting process reports.^[8]

On 8 September 1998, respondent submitted a written explanation to the petitioner stating that the delay in the submission of reports was caused by the deaths of his grandmother and his aunt, and the hospitalization of his mother. He also averred that he had asked his co-employee Joedito Gasendo to write his answers to the ROL test because at the time when the examination was due, he already needed to leave to see his father-in-law, who was suffering from cancer and confined in a hospital in Manila.^[9]

Respondent was sent a new Memorandum dated 20 October 1998 for his delayed submission of process reports due on 14 October 1998.^[10]

Respondent was issued another Memo also dated 20 October 1998 regarding the discrepancies between the number of product samples recorded in his Daily/Weekly Coverage Report (DCR) and the number of product samples found in his possession during the 14 October 1998 audit.^[11] The actual number of sample products found in respondent's possession exceeded the number of sample products he reported to petitioner.

Respondent explained, through a "Response Memo" dated 24 October 1998, that he failed to count the quantity of samples when they were placed in his custody. Thus, he failed to take note of the excess samples from previous months. He, likewise, admitted to committing errors in posting the samples that he distributed to some doctors during the months of August and September 1998.^[12]

On 20 November 1998, petitioner issued a Notice of Disciplinary Action finding respondent guilty of the following offenses (1) delayed submission of process reports, for which he was subjected to a one-day suspension without pay, effective 24 November 1998;^[13] and (2) cheating in his ROL test, for which he was subjected again to a one-day suspension.^[14]

On the same date, petitioner likewise issued a Notice of Preventive Suspension against respondent for "Dishonesty in Accomplishing Other Accountable Documents" in connection with the discrepancy between the quantities of sample products in respondent's report and the petitioner's audit for the September 1998 cycle. In addition, the Notice directed the respondent to surrender to the petitioner the car, promotional materials, and all other accountabilities on or before 25 November 1998. It was also stated therein that since this was respondent's third offense for the year, he could be dismissed under Section 9.5.5(c) of petitioner's Code of Conduct.^[15]

Before 25 November 1998 or the date given by petitioner for respondent to surrender all his accountabilities, a Memorandum dated 24 November 1998 was issued to respondent for the following alleged infractions: (1) Failure to turn over company vehicles assigned after the receipt of instruction to that effect from superiors, and (2) Refusing or neglecting to obey Company management orders to perform work without justifiable reason.^[16]

Respondent wrote a letter dated 26 November 1998 addressed to the petitioner

explaining that he failed to surrender his accountabilities because he thought that this was tantamount to an admission that the charges against him were true and, thus, could result in his termination from the job.^[17]

An administrative investigation of the respondent's case was held on 3 December 1998. Respondent was accompanied by union representative Lyndon Lim. The parties discussed matters concerning the discrepancy in respondent's report and petitioner's audit on the number of product samples in respondent's custody in September 1998. They were also able to clarify among themselves respondent's failure to return his accountabilities and, as a consequence, respondent promised to surrender the same. They further agreed that another administrative hearing will be set, but no further hearings were held.^[18]

In line with his promise to surrender his accountabilities, respondent wrote a letter, dated 9 December 1998, asking his superiors where he should return his accountabilities.^[19] Union representative Dominic Regoro also made requests, on behalf of respondent, for instructions, to whom petitioner's District Supervisor Raymond Bernardo replied *via* electronic mail on 16 December 1998. According to Bernardo, he was still in the process of making arrangements with Ruben Cauton, petitioner's National Sales Manager, in connection with the return of respondent's accountabilities.^[20] Respondent maintained that he did not receive any instructions from petitioner.

In a letter dated 28 December 1998, petitioner terminated the services of respondent.^[21] Petitioner found respondent guilty of dishonesty in accomplishing the report on the number of product samples in his possession and failing to return the company vehicle and his other accountabilities in violation of Sections 9.2.9 and 9.2.4 of the Code of Conduct.^[22] Petitioner also found respondent to be a habitual offender whose previous offenses included: (1) Granting unauthorized premium/free goods to customer in 1994; (2) Unauthorized pull-out of stocks from customer in 1994; (3) Delay in submission of reports despite oral admonition and written reprimand in 1998; and (4) Dishonesty in accomplishing other accountable documents or instruments (in connection with the ROL test) in 1998.

Even after respondent's termination from employment, there was still contact between petitioner and respondent regarding the latter's accountabilities still in his possession. Sometime in early 1999, in a telephone conversation, respondent informed petitioner that he will return his accountabilities only upon demand from the proper governmental agency.^[23] A demand letter dated 3 February 1999 was sent to respondent by petitioner ordering the return of the company car, promotional materials, samples, a slide projector, product manuals, product monographs, and training binders.^[24]

On 14 January 1999, respondent filed a Complaint^[25] against petitioner and its officers, Rafael Besa, Rueben Cauton, Victor Lapid, and Raymond Bernardo before the Sub-Regional Arbitration Branch of the NLRC in Iloilo City for (a) Unfair Labor Practice; (b) Illegal Dismissal; (c) Reimbursement of operating and representation expenses under expense reports for October and November 1998; (d) Nonpayment of salary, bonuses and other earned benefits for December 1998 like rice allocation, free goods allocation, etc.; and (e) Damages and attorney's fees.

In a Decision dated 31 August 1999, the Labor Arbiter ruled that respondent committed infractions which breached company rules, and which were sufficient grounds for dismissal. However, the Labor Arbiter found the penalty of dismissal to be too harsh considering the respondent's circumstances and ordered his reinstatement without payment of back wages.^[26] The dispositive portion of the Decision states that:

WHEREFORE, premises considered, judgment is rendered ordering respondents firm to reinstate complainant to his former or equivalent position without backwages.

All other claims are hereby dismissed.^[27]

On appeal, the NLRC modified the Decision of the Labor Arbiter by declaring that reinstatement was improper where respondent was dismissed for just and authorized causes.^[28] In a Decision dated 7 May 2003, it pronounced that:

WHEREFORE, premises considered, complainant's appeal is hereby **DISMISSED**. The decision of the Labor Arbiter is hereby **AFFIRMED** with **MODIFICATION** deleting the award of reinstatement.^[29]

Respondent filed a Petition for *Certiorari* under Rule 65 of the Rules of Court before the Court of Appeals. In reversing the Decision of the NLRC, the appellate court pronounced that the causes were insufficient for the dismissal of respondent since respondent's acts were not motivated by dishonesty, but were caused by mere inadvertence. Thus, it concluded that the offenses committed by respondent merited only a penalty of suspension for five months without pay. The appellate court also noted that petitioner committed some lapses in its compliance with procedural due process. It further took into account the successive deaths and sickness in respondent's family.^[30] The dispositive part of the decision reads:

WHEREFORE, premises considered, the petition is **GRANTED**. Thus, the Decision and Resolution respectively dated 7 May 2003 and 14 October 2003 are hereby **SET ASIDE**. Accordingly, Judgment is hereby rendered:

- a) Declaring petitioner's dismissal to be illegal;
- b) Reinstating petitioner to the same or equivalent position without loss of seniority rights and other privileges;
- c) Ordering the payment of backwages (inclusive of allowances and other benefits or their monetary equivalent), computed from the time compensation was withheld up to the time of actual reinstatement; Provided that, from such computed amount of backwages, a deduction of five (5) months' (sic) salary be made to serve as penalty; and
- d) If reinstatement is no longer feasible, ordering the payment of separation pay comprising of one month salary per year of service computed from date of

employment up to finality of this decision, in addition to the award of backwages.

Let the records of this case be remanded to the Labor Arbitrator a quo for the proper computation of the foregoing.^[31]

Hence, this Petition, wherein the following issues were raised:

I

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE UNIFORM FACTUAL FINDINGS OF THE NLRC AND THE LABOR ARBITER.

II

WHETHER OR NOT RESPONDENT'S DISMISSAL FOR HIS FAILURE TO TRUTHFULLY ACCOMPLISH REPORTS, DELIBERATE AND REPEATED FAILURE TO SUBMIT REQUIRED REPORTS AND HIS DELIBERATE DISREGARD OF HIS SUPERIOR'S ORDER TO SURRENDER HIS ACCOUNTABILITIES TANTAMOUNT TO DISHONESTY, GROSS AND HABITUAL NEGLECT OF DUTY, WILLFUL DISOBEDIENCE OF COMPANY POLICY, AND BREACH OF TRUST AND CONFIDENCE REPOSED IN HIM BY THE COMPANY UNDER THE PROVISIONS OF THE LABOR CODE WAS LEGAL, VALID AND CARRIED OUT WITH DUE PROCESS

III

WHETHER OR NOT THE TOTALITY OF INFRACTIONS COMMITTED BY RESPONDENT FURTHER MERITED HIS TERMINATION FROM THE COMPANY'S EMPLOY

IV

WHETHER OR NOT THE RESPONDENT HAS ANY BASIS FOR CLAIMING AN AWARD OF REINSTATEMENT AND BACKWAGES.^[32]

This petition is without merit.

The main question in this case is whether or not sufficient grounds existed for the dismissal of the respondent. To constitute a valid dismissal from employment, two requisites must concur: (1) the dismissal must be for any of the causes provided in Article 282 of the Labor Code; and, (2) the employee must be given an opportunity to be heard and to defend himself.^[33]

In this case, the Court must re-examine the factual findings of the Court of Appeals, as well as the contrary findings of the NLRC and Labor Arbitrator. While it is a recognized principle that this Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during trial, this rule allows for exceptions.^[34] One of these exceptions covers instances when the findings of fact of the trial court, or in this case of the quasi-judicial agencies concerned, are conflicting or contradictory with those of the Court of Appeals.^[35]