

## FIRST DIVISION

[ G.R. NO. 147719, January 27, 2006 ]

### HA YUAN RESTAURANT, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND JUVY SORIA, RESPONDENTS.

#### D E C I S I O N

##### AUSTRIA-MARTINEZ, J.:

Respondent Juvy Soria worked as a cashier in petitioner's establishment located inside the SM Food Court Makati. On January 11, 1998, respondent assaulted her co-worker Ma. Teresa Sumalague resulting in a scuffle between the two. Despite the intervention of their supervisor Fiderlie Recide, they were not pacified, prompting Recide to call for security assistance. The two were then brought to the SM Food Court Administration Office where they continued to cast tirades at each other notwithstanding the request of the SM Food Court Manager to stop. Because they refused to be mollified, they were brought to the Customer Relations Office for further investigation. As a result of the incident, the SM Food Court Manager banned the two from working within the SM Food Court's premises.

Respondent then filed with the Labor Arbiter a complaint for illegal dismissal, salary differentials, service incentive leave, separation pay and damages. It was dismissed by the Labor Arbiter for lack of merit in a Decision dated December 4, 1998.<sup>[1]</sup>

On appeal to the National Labor Relations Commission (NLRC), the Labor Arbiter's decision was affirmed with the modification that respondent was awarded separation pay. The dispositive portion of NLRC Decision dated September 30, 1999, reads:

WHEREFORE, the foregoing premises considered, the Decision of the Labor Arbiter is hereby AFFIRMED with the modification that the respondents are hereby ordered to pay complainant her separation pay equivalent to one (1) month salary per year of service, based on her last salary of P196.00/day and counted from 10 December 1984 until the finality of this Decision.

SO ORDERED.<sup>[2]</sup>

This prompted petitioner to file a special civil action for *certiorari* with the Court of Appeals (CA), and in its Decision dated March 30, 2001, it affirmed the NLRC's decision and dismissed the petition for lack of merit.

Hence, herein petition for review on *certiorari* under Rule 45 of the Rules of Court on the following grounds:

THE PUBLIC RESPONDENT COURT OF APPEALS DEPARTED FROM  
ESTABLISHED JURISPRUDENCE AND ERRED AND GRAVELY ABUSED ITS  
DISCRETION IN AFFIRMING THE NLRC AWARD TO PRIVATE RESPONDENT

JOVY SORIA SEPARATION PAY EVEN AS HER DISMISSAL ON GROUNDS OF SERIOUS MISCONDUCT WAS SUSTAINED

CORROLARY (sic) TO THIS GROUND THE LEGAL ISSUE RAISED IS WHETHER AN AWARD OF SEPARATION PAY IS PROPER TO AN EMPLOYEE WHO IS FOUND TO HAVE BEEN VALIDLY DISMISSED ON THE GROUND OF SERIOUS MISCONDUCT [3]

The sole issue in this case --- whether a validly dismissed employee like respondent is entitled to an award of separation pay --- has already been squarely settled as early as 1988 in the leading case of *Philippine Long Distance Telephone Co. vs. NLRC*, [4] wherein it was stated, viz.:

We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances **where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character**. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice. (Emphasis supplied)

Separation pay therefore, depends on the cause of dismissal, and may be accordingly awarded provided that the dismissal does not fall under either of two circumstances: (1) there was serious misconduct, or (2) the dismissal reflected on the employee's moral character. [5]

The question that now arises in this case is whether the cause of respondent's dismissal falls under the two circumstances, *i.e.*, serious misconduct or the dismissal reflected on the employee's moral character.

The Court holds that respondent's cause of dismissal in this case amounts as a serious misconduct and as such, separation pay should not have been awarded to her. Thus, the petition should be granted.

Misconduct is improper or wrongful conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment. To be a valid cause for termination, the misconduct must be serious. [6]

While it is true, as respondent contends, that the Labor Arbiter did not tag her cause of dismissal as serious misconduct, nevertheless, it is its nature, not its label that characterizes the cause as serious misconduct. There is no question as regards the incident that caused respondent's dismissal. While respondent's co-worker Sumalague was eating at the back of the store, respondent rushed toward Sumalague and hit the latter on the face causing injuries. A scuffle ensued and despite their supervisor Recide's pleas, the two continued to fight, prompting Recide to call the mall security. When the two were brought to the administration office, they continued bickering and did not heed the request of the manager to stop, and thus they were brought to the Customer Relations Office. Because of the incident, the two were banned from working within the premises. The fact that Sumalague