

## THIRD DIVISION

[ G.R. NO. 160509, March 10, 2006 ]

**MERCURY DRUG CORPORATION, PETITIONER, VS. ZENAIDA G. SERRANO, RESPONDENT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

Before the Court is a petition for review <sup>[1]</sup> assailing the 31 January 2003 Decision <sup>[2]</sup> and 21 October 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 59152. The Court of Appeals annulled the decision of the National Labor Relations Commission ("NLRC") and ordered petitioner Mercury Drug Corporation to pay respondent Zenaida G. Serrano separation pay, backwages and damages.

#### The Facts

On 5 June 1981, petitioner Mercury Drug Corporation ("Mercury") employed respondent Zenaida G. Serrano ("Serrano") as one of Mercury Recto-Soler Branch's pharmacy assistants. Serrano's primary duty was to attend to customers at the retail counter. Serrano's work involved taking customers' orders, receiving payment for the orders, pulling out the ordered medicines or merchandise from the shelves, computing the amount payable by customers, informing customers of prices of the items ordered, and handing the amount to the cashier who would then issue an official receipt. Serrano would also check that each payment was reflected in the cash registry machine and then personally hand the corresponding receipt with the purchased item to the customer. <sup>[3]</sup>

Mercury alleged that on 5 November 1991, Serrano, while in the retail area, pocketed the P120 payment of one of the customers. Mercury Recto-Soler Branch's General Manager Rolando Mateo ("Mateo") and Supervisor Antonio Concepcion ("Concepcion") confronted Serrano about the incident. As a result, Serrano wrote a resignation letter, <sup>[4]</sup> to wit:

Nov. 5, 1991

Dear Sir Mateo,

I'm sorry to informed [sic] you that one of my customer[s] buy me [sic] 10 caps Squalene S at around 5:00 PM. I did not g[i]ve him the OR tape knowingly that the money he gave was exact on the item he buy [sic].

I was temp [sic] to do this, because he gave me exact amount on the item [sic]. But unknowingly, the customer came [back] after 30 minutes

and asked for the invoiced [sic]. **I get the money inside my pocket and issued him an official receipt.** [sic]

Then Mr. Mateo talked to me about this. So, I voluntarily tender my resignation effective Nov. 6, 1991.

(signed)

Zenaida Serrano

Mercury did not accept Serrano's resignation. Instead, Mercury issued a notice on 11 January 2002 requesting Serrano to appear before the Investigation Committee [5] composed of three management and three rank-and-file employees. [6]

The Investigation Committee unanimously found Serrano guilty of dishonesty based on the following:

On November 2, 1991, at about 2:45 P.M. Nympha de los Santos chanced upon Zenaida Serrano at the back of the RX section of the Mercury Drug-Recto Soler Branch while the latter was transferring money which were folded into small squares ("maliliit at tupi-tupi") from her pocket into her wallet. x x x

x x x x

Also two (2) pharmacy assistants told Mr. Rolando A. Mateo, Branch Manager, that they saw Mrs. Serrano placing folded money in her wallet. x x x On November 5, 1991, [Mateo] went out of the branch store and enlisted the assistance of a mason and two (2) students x x x [and] gave them instructions to buy at Mercury Drug-Recto Soler Branch. The student to whom he gave P100.00 went to buy at 4:30 P.M. and he returned with his purchases duly receipted. After about 30 minutes the mason with P120.00 went to buy Squalene x x x and he returned with the goods without a receipt. He reported to Mr. Mateo that he was not given a receipt. Mr. Mateo returned to the branch after he instructed Mr. Alfonso Teresa, the mason, to follow after a while, look for the pharmacy assistant who attended to him and ask for a receipt. Upon his arrival at the branch Mr. Mateo advised Mr. Antonio Concepcion, Retail Supervisor, that a customer was not issued a cash register tape and will return to ask for an official receipt. x x x [Mateo] told Mr. Concep[c]ion that it was Ms. Serrano who served the customer and he should observe Ms. Serrano. x x x [Teresa] arrived at the branch [and] talked with another pharmacy assistant who in turn informed Ms. Serrano that a customer was looking for her. Mr. Concepcion observed that Ms. Serrano grew pale x x x and nervous. x x x [Serrano] went to the customers counter with her hand on her pocket and told the customer "Sandali lang ho". She then tried to distract Mr. Concepcion's attention by requesting the latter to sign a refund slip but Mr. Concepcion told her to attend first to the customer who was asking for an OR. From the customers counter she bowed down near the area from the plastic bags while holding on to her pocket, then went around the shelves to the rear of the store. She returned with the P120.00 folded like cigarette and inserted the money in the edge of the

sales sheet, prepared the cash slip, then dictated the amount to be punched by the cashier in the cash register.

At this point, Mr. Concepcion asked Ms. Rosalinda Nicolas if the amount was punched only after the customer came back to claim for a receipt and when the cashier replied "yes", Mr. Concepcion advised Ms. Serrano to follow him to the manager's office.

Ms. Serrano on the other hand claimed that at about 5:00 P.M. she had 5 customers among them the one who bought ten (10) capsules of Squalene worth P120.00. To lessen the number of customers she handed the stock to the customer and placed the money on her "sulatan" (sales sheet). After delivering the 10 Squalene she again took customers' orders and had her sales punched. She, however, forgot about the P120.00. And while she was preparing an order worth P16,000.00 the customer came back asking for a receipt and it was only then that she recalled that she had not yet had her sales of 10 Squalene punched by the cashier.

x x x the cashier, Rosalinda Nicolas testified that the sales sheet was on the cashier's counter and that Ms. Serrano never brought it anywhere. The cashier likewise testified that the P120.00 came from her pocket, folded like a cigarette and was inserted by Ms. Serrano in her sales sheet after she went around before she prepared the cash slips. x x x

x x x x

**From the acts of Ms. Serrano the intention to pocket the P120.00 is evident. Firstly, she blatantly disregard[ed] the house rule against salesclerks bringing their personal money with them while in the area. Secondly, the manner in which the money was folded ("like a cigarette") shows that Ms. Serrano took time and effort to make the money easy to hide and to transfer to her wallet as she was observed to have done in several occasions. And having spent time and effort to fold the money it is unlikely that she could have forgotten it. Again the manner the money was folded is incongruous with her claim that at the time she served 4 to 7 customers. Thirdly, Ms. Serrano did not search her sales sheet when the customer came back asking for a receipt. On the other hand she was seen to have taken the money from her pocket, go around the shelves to the rear of the store and insert the money in her sales sheet only after she went back to the cashiers counter. Fourthly, if indeed the money was inserted in the sales sheet she would have seen it while dictating her other sales to the cashier. Fifth, her behavior at the time was that of a cornered guilty offender. She grew pale, "nataranta [at] paikot-ikot". She likewise tried to distract the supervisors' attention, which only shows clearly that she had something to hide. [7]**  
(Emphasis supplied)

Mercury sent Serrano a letter dated 18 March 1992 terminating her employment effective 19 March 1992.

On 25 March 1992, Serrano filed with the NLRC Arbitration Branch, National Capital Region a complaint for illegal dismissal, unfair labor practice and non-payment of benefits against Mercury.

In her position paper, Serrano reiterated her allegation during the in-house investigation that she was serving five customers simultaneously at the time of the incident. Then, a male customer bought 10 capsules of Squalene-S paying exactly P120, consisting of one P100 bill and one P20 bill. The male customer asked Serrano to hurry up while she was at the cashier's counter. As there were four other customers to be served who were also in a hurry, she left the P120 with the cashier and gave the capsules to the customer. After Serrano finished serving the other four customers, the male customer, who did not ask for or perhaps forgot to get the receipt, could no longer be found. Since she was busy at the time, Serrano claimed she forgot about the payment. [8]

On 31 August 1998, Labor Arbiter Felipe P. Pati ("Labor Arbiter") rendered a Decision finding illegal the dismissal of Serrano. The Labor Arbiter found Mercury's allegations against Serrano fabricated. The Labor Arbiter held that Serrano was framed-up and that Mercury suffered no loss because Serrano did not take any property belonging to Mercury.

The Labor Arbiter stressed that there was no basis to presume that Serrano had no more intention of remitting the P120 paid by the customer, for in fact Serrano did remit the amount to the cashier. The Labor Arbiter also held that Mercury did not observe due process in dismissing Serrano. Mercury did not give Serrano ample opportunity to be heard and defend herself before she was dismissed.

The dispositive portion of the decision of the Labor Arbiter reads:

WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered finding respondent, MERCURY DRUG CORPORATION, guilty of illegally dismissing complainant, ZENAIDA G. SERRANO, without lawful cause and due process and thus ordered to reinstate her to her previous position without loss of seniority rights and other privileges with payment of full backwages.

It appearing that respondent, through its representative, adopted malicious schemes and acted in a wanton, oppressive and malevolent manner in effecting the dismissal of complainant, who was found by this Office to have been framed-up and was forced to resign, respondent therefore is liable for moral damages in the amount of Five Hundred Thousand Pesos (P500,000.00).

Likewise, for causing complainant to secure the services of a lawyer to safeguard her rights and interests, respondent should be assessed attorney's fees in the amount equivalent to ten percent (10%) of the monetary award in favor of complainant. x x x

The charge of unfair labor practice is dismissed for lack of merit.

SO ORDERED. [9]

On appeal, the NLRC reversed the Labor Arbiter and dismissed the complaint of Serrano for lack of merit.

The NLRC found Serrano dishonest in the performance of her duties as pharmacy assistant, which involved the custody, handling or care and protection of Mercury's goods. The NLRC based this finding on Serrano's alleged deliberate failure to issue a receipt for the sale of 10 Squalene-S capsules worth P120 and which payment she tried to pocket. The NLRC further held that the fact that Mercury did not lose anything was of no moment. When there is dishonesty, actual damage is immaterial.

The NLRC gave credence to the testimonies of Mercury's witnesses and noted the fact that Serrano had already been charged in court for qualified theft. The NLRC added that in cases of dismissal for breach of trust and confidence, proof beyond reasonable doubt of an employee's misconduct is not required. It is sufficient that the employer had reasonable ground to believe that the employee was responsible for the misconduct rendering him unworthy of the trust demanded by his position.

The NLRC further held that Serrano was not denied of due process before her dismissal. The NLRC noted that there was an in-house investigation prior to Serrano's termination where all the witnesses against her were presented. The NLRC ruled that it is "not the denial of the right to be heard but the denial of the opportunity to be heard" that constitutes violation of due process.

Serrano went to the Court of Appeals for relief.

### **The Ruling of the Court of Appeals**

The Court of Appeals reversed the decision of the NLRC and upheld the findings of the Labor Arbiter. The Court of Appeals found that the evidence against Serrano were insubstantial and unreliable to find her guilty of pocketing the P120 payment.

The Court of Appeals also ruled that Mercury denied Serrano of due process before terminating her. While Mercury gave Serrano a notice of termination, it did not give any written notice informing Serrano of the specific charge against her.

The Court of Appeals further held that since the relationship between Mercury and Serrano was severely strained, reinstatement was no longer possible. The dispositive portion of the Court of Appeals's Decision of 31 January 2003 reads:

WHEREFORE, the petition is GRANTED. The assailed Decision and Resolution of the NLRC are ANNULLED. Private respondent Mercury Drug Corporation is hereby ordered to pay petitioner Zenaida G. Serrano the following amounts:

- (a) Separation Pay in the amount of P73,700.00;
- (b) Full backwages from date of dismissal until the finality of this Decision, including P43,215.00 as 13th month pay; and
- (c) Reduced Moral Damages in the amount of P50,000.00 and Attorney's Fees in the fixed amount of P50,000.00.