

SECOND DIVISION

[G.R. No. 146741, February 27, 2002]

**NATIONAL BOOKSTORE, INC., AND ALFREDO C. RAMOS,
PETITIONERS, VS. COURT OF APPEALS SPECIAL EIGHT
DIVISION, NATIONAL LABOR RELATIONS COMMISSION,
MARIETTA M. YMASA AND EDNA L. GABRIEL, RESPONDENTS.**

BELLOSILLO, J.:

This petition for review under Rule 45 seeks to set aside the 30 June 2000 Decision^[1] and 10 January 2001 Resolution^[2] of the Court of Appeals, which affirmed the Resolutions of the National Labor Relations Commission (NLRC) dated 8 October 1997^[3] and 9 February 1999.^[4]

Petitioner National Bookstore, Inc., employed private respondent Marietta M. Ymasa on 14 February 1980 and private respondent Edna L. Gabriel on 2 September 1979. On 28 August 1992 when both claimed to have been illegally dismissed from employment, private respondents Ymasa and Gabriel were Cash Custodian and Head Cashier of petitioner National Bookstore, respectively.

On 28 June 1992, a Sunday, private respondents reported for work at their place of assignment, i.e., the SM North Edsa Branch of petitioner National Bookstore to count the previous day's sales proceeds as a matter of routine. Private respondent Ymasa counted the money intended to be deposited with INTERBANK while private respondent Gabriel attended to the money for deposit with PCIB. The counting was done in the presence of a watcher, one Maricen Cupcupin. After preparing the corresponding deposit slips which Cupcupin accordingly signed, the counted money was placed inside two (2) separate plastic bags which were sealed with scotch tapes. The plastic bags were then tied together with rubber band, with the bag containing the money intended for deposit with INTERBANK placed on top. Thereafter, private respondent Ymasa put the plastic bags inside her cabinet which she accordingly locked.

Since both Branch Manager Charito M. Gonzales and Assistant Branch Manager Roberto Tagalog were not in their offices, it was only at around closing time at 8:30 in the evening of 28 June 1992 that the two (2) plastic bags earlier stored in private respondent Ymasa's cabinet were taken out. These plastic bags and the day's sales placed in another bag euphemistically called "sandwich" were handed over to the Assistant Manager for safekeeping in the Branch vault.

On 29 June 1992, Monday, private respondents retrieved from the Assistant Manager the money already counted and placed inside the sealed plastic bags to be picked up by the roving tellers of INTERBANK and PCIB. But before being deposited, the money was again counted. The amount for deposit to PCIB was found short of P42,758.70. All efforts made to locate the missing amount failed. Thus, on 30 July 1992 the Management-through Personnel Manager Atty. Cornelio A. Padilla, Jr. asked

private respondents to "explain in writing not later than end of store hours on August 1, 1992, why [they] should not be dismissed" for the loss of company funds. The Management also placed private respondents under preventive suspension effective immediately.

On 31 July 1992 private respondents explained in writing what transpired on 28 and 29 June 1992, basically denying responsibility over the lost company funds. They emphasized that they had no access to petitioner National Bookstore's vault and that before leaving the office on both occasions and after doing their tasks, petitioner National Bookstore's lady guard, Ms. Roda Sungkip, subjected them to a thorough body search. They asserted that "[they] have been in the service of the company for the past 13 years and it has been [their] practice to turn over [their] collection to [their] supervisor without any proof of receipt every end of the business day." Moreover, they appealed that they "have been honest and sincere to [their] work and religiously rendered [their] services to the company to the best of [their] ability."

Petitioner National Bookstore, after finding the explanations of private respondents unsatisfactory, notified them on 29 August 1992 of the termination of their services for gross neglect of duty and loss of confidence to take effect immediately and "without prejudice to appropriate legal action that the Management may take for the restitution of the missing Company funds."

On 4 February 1993 private respondents filed a complaint for illegal dismissal against petitioner National Bookstore and/or its President Alfredo C. Ramos before the Labor Arbiter who ruled in favor of private respondents on 20 June 1994.^[5] According to the Labor Arbiter, the documentary and testimonial evidence presented by the parties showed that although private respondents were afforded due process before being dismissed, their dismissal was not founded on valid and justifiable grounds as provided under Art. 282 of the Labor Code, as amended. Thus, the Labor Arbiter declared private respondents to be entitled to reinstatement with payment of full back wages under Art. 279 of the Labor Code, as amended. But after considering the strained relations among the parties brought about by the litigation, the Labor Arbiter instead ordered petitioners to pay private respondents separation pay, back wages, moral and/or actual damages and attorney's fees.

On 8 October 1997 petitioners' appeal before the NLRC was denied.^[6] The NLRC affirmed with modification the decision of the Labor Arbiter by deleting the award of damages and attorney's fees for lack of sufficient basis. On 9 February 1999 petitioners sought reconsideration but the NLRC denied their motion.^[7] Thus, on 8 March 1999 petitioners filed before the Court of Appeals a petition for certiorari imputing grave abuse of discretion on the part of the NLRC for affirming the decision of the Labor Arbiter albeit with modification. On 30 June 2000 the Court of Appeals dismissed the petition for lack of merit and affirmed the resolutions of the NLRC dated 8 October 1997 and 9 February 1999.^[8] Public respondent found no reason to deviate from the accepted doctrine that findings of fact of the NLRC affirming those of the Labor Arbiter are generally accorded respect and even finality when supported by substantial evidence, or that amount of evidence which a reasonable mind might accept as adequate to justify a conclusion.^[9] Hence, this petition raising the basic issue of whether private respondents were illegally dismissed.

We find for private respondents. The petition is without merit. The onus of proving that the dismissal of the employee was for a valid and authorized cause rests on the employer^[10] and failure to discharge the same would mean that the dismissal was not justified and therefore illegal.^[11]

The requisites for a valid dismissal are: (a) the employee must be afforded due process, i.e., he must be given an opportunity to be heard and to defend himself; and, (b) the dismissal must be for a valid cause as provided in Art. 282^[12] of the Labor Code^[13] or for any of the authorized causes under Arts. 283^[14] and 284^[15] of the same Code.

Anent the first requisite, the employer must furnish the employee with two (2) written notices: (a) a written notice containing a statement of the cause for the termination to afford the employee ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires; and, (b) if the employer decides to terminate the services of the employee, the employer must notify him in writing of the decision to dismiss him, stating clearly the reasons therefor.^[16]

Petitioner National Bookstore, as correctly pointed out by the Labor Arbiter in his decision, more than substantially observed this requirement. On 30 July 1992 it gave private respondents an opportunity to explain why they should not be dismissed for the loss of company funds, which private respondents immediately complied with by submitting their joint answer on 31 July 1992. Moreover, on 29 August 1992 petitioner National Bookstore sent another written notice to private respondents informing them of its decision to terminate their services setting forth the reasons therefor. But the burden imposed on petitioner National Bookstore does not stop here. It must also show with convincing evidence that the dismissal was based on any of the just or authorized causes provided by law for termination of employment by an employer.

To quote petitioner National Bookstore's Personnel Manager Padilla, Jr., "we are constrained to terminate your employment or services with the Company effective immediately *for gross neglect of duty and loss of confidence.*"^[17] Gross neglect of duty and loss of confidence are just causes for termination of employment by an employer.^[18]

Gross negligence has been defined as the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.^[19] A perusal of the records of the case does not in any way show that private respondents were even remotely negligent of their duties so as to cause the loss of petitioner National Bookstore's funds. Private respondents were able to illustrate with candor and sincerity the procedure they took prior to the loss which was witnessed by an employee of petitioner National Bookstore. They were in fact subjected to a thorough body search by petitioner National Bookstore's lady guard before leaving their place of work on the date in issue, a claim not controverted by petitioners. Moreover, it was not even shown that they had access to the vault where the money was kept.