

## **FIRST DIVISION**

**[ G.R. No. 143136-37, July 11, 2002 ]**

**SAN MIGUEL CORPORATION, PETITIONER, VS. ALFREDO B. LAO,  
RESPONDENT.**

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

**VITUG, J.:**

Petitioner assails in the instant petition, the decision and the resolution, dated 31 January 2000 and the 14 April 2000, respectively, of the Court of Appeals, affirming the judgment of the National Labor Relations Commission ("NLRC") which has awarded retirements benefits to respondent under "the company's retirement plan if any or, if none, separation pay at the rate of one half (1/2) month salary for every year of service."

The factual antecedents were synthesized by the Court of Appeals in its decision.

"As borne out by the records, the following facts given credence by the labor arbiter reveal that Alfredo B. Lao had worked as Materials Planner for San Miguel Corporation, Inc. (SMC for brevity) whose responsibility includes procurement of cullets ("bubog"), raw materials used by the company for its glass plant. On December 10, 1995, Rogerio Ibanes, Security Detachment Commander of the Sentinel Watchman and Protective Agency, received information that some deliveries of cullets were being misdeclared. Acting on this tip, Mr. Ibanes conducted surveillance work on deliveries of cullets made by Four Sisters, the Company's biggest supplier of cullets. Mr. Ibanes and Larry Ventura, a store staff of the company, personally witnessed the attempt by the employees of Four Sisters to divert three (3) truck loads of unwashed cullets earlier delivered to the company but were backloaded and brought to Marilao, Bulacan for washing purposes.

"On January 19, 1996, Mr. Ibanes recounted that at about 9:30 o'clock in the evening, three (3) trucks owned by Four Sisters and loaded with cullets, arrived at the SMC's Manila Glass Plant in Binondo, Manila. Covered by corresponding delivery receipts, these cullets after being weighed were sent off to Marilao, Bulacan for washing purposes. However, these cullets were brought to Cabuyao, Laguna which prodded Mr. Ibanes to report the matter to the Cabuyao Police who immediately apprehended the delivery truck drivers as they neared the plant of Asia Brewery located in that area. While the drivers were undergoing investigation at the Cabuyao Police Station, Alfredo B. Lao and Henry Ordinanza, owner of Four Sisters Bottle dealer arrived. Upon their arrival, Alfredo Lao confronted Ibanes and asked him what made him apprehend the cullets belonging to Mr. Ordinanza. Ibanes immediately answered that the cullet delivery is slated at Marilao, Bulacan for washing purposes but to his surprise, it went to Cabuyao, Laguna.

"Upon intercession of Alfredo Lao, the three trucks and its drivers and crew were released from the police custody the next day.

"In the administrative investigation that ensued, SMC required Alfredo B. Lao to submit a written explanation why he interceded for the release of the drivers, helpers and the three (3) truck loads of unwashed cullets from police custody.

"Finding unsatisfactory the explanation given by Lao, he was terminated (sic) by SMC on May 15, 1996, for violation of the rule prohibiting 'removal of any company property without proper authorization.'"[1]

Aggrieved, respondent Alfredo B. Lao filed a complaint for illegal dismissal. In the proceedings below, Lao admitted that he did intercede for the release of the cullets to Mr. Henry Ordinanza but, he said, only after having been assured by the latter that he (Ordinanza) would personally take the matter up with petitioner San Miguel Corporation (SMC) the next business day. Lao claimed that the company did not incur any loss because of his action considering that the cullets did not as yet belong to SMC and the supplier of the cullets still retained control and possession of the items. SMC belittled the contention and argued that when Lao made strong representations, under cloak of authority, to the Cabuyao Police that the cullets belonged to Ordinanza and were intended for delivery to a rival firm, he committed an act of disloyalty and willful breach of trust.

The labor arbiter dismissed the complaint for illegal dismissal and ruled that Lao deviated from his responsibility to ensure adequate inventory and supply of cullets to the glass plant of SMC. The labor arbiter concluded that the act of Lao in causing the delivery of the cullets into the hands of a competitor was an act of disloyalty that justified the termination of his employment. On appeal to it, the NLRC, in its resolution of 05 June 1998, affirmed the decision of the labor arbiter but, taking into account his track record of twenty-seven (27) years of employment and the fact that it was the first time that he had committed an act adverse to SMC, the commission ordered the latter to pay Lao his retirement benefits under its retirement plan if any, or, if none, to pay him separation pay at the rate of one-half (1/2) month salary for every year of service. Dissatisfied, SMC appealed the decision to the Court of Appeals. The appellate court, in its now assailed decision and resolution, dismissed the petition and affirmed the ruling of the NLRC.

The Court of Appeals debunked SMC's argument that the directive to pay respondent retirement benefits could not be legally carried out because of the provision in the retirement plan prohibiting the award of retirement benefits to any member dismissed for cause attributable to his own fault, negligence, misconduct or fraud. Relying on the case of *Razon, Jr. vs. NLRC*,<sup>[2]</sup> the appellate court held that management discretion with regard to the implementation of the retirement plan could not be exercised arbitrarily or capriciously on the premise that, upon acceptance of employment, a contractual relationship was established that gave employees an enforceable vested interest in the retirement fund.

In its petition, SMC argues that the offense committed by Lao constitutes serious misconduct and an act of betrayal against his employer, and he does not deserve to be rewarded with an immense and sizable financial benefit after his culpability has been established in two decisions of competent labor tribunals. If it were to be held otherwise, even in the name of compassion, it would be, SMC submits, to send a wrong signal that one can unjustly derive benefit at the expense of another in the name of social justice. In his comment, Lao has stressed that the Court of Appeals did not commit serious error by ordering payment of retirement benefits in his favor on the basis of social and compassionate justice as so ruled in a number of cases.

The central issue before the Court thus focuses on the propriety of the award of either retirement benefits or separation pay to Alfredo B. Lao.

To begin with, the award of separation pay is authorized in the situations dealt with in Article 283<sup>[3]</sup> and Article 284<sup>[4]</sup> of the Labor Code and in cases where there is illegal dismissal but reinstatement would no longer be feasible under Section 4(b), Rule I, Book VI, of the Implementing Rules and Regulations of the Labor Code.<sup>[5]</sup> When an employee is dismissed for any of the **just causes** enumerated in Article 282 of the Labor Code, the rule is that he would not be entitled to the payment of separation pay. Article 282 of the Labor Code reads:

"Art. 282. Termination by employer - An employer may terminate an employment for any of the following causes:

- "a. **Serious misconduct or willful disobedience** by the employee of the lawful orders of his employer or representative in connection with his work;
- "b. **Gross and habitual neglect** by the employee of his duties;
- "c. **Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;**
- "d. **Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative;** and
- "e. **Other causes analogous to the foregoing.**"

Section 7, Rule I, Book VI, of the Omnibus Rules Implementing the Labor Code, similarly provides:

"Sec. 7- Termination of employment by employer. - The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective bargaining agreement with the employer or voluntary employer policy or practice."

Exceptionally, however, separation pay is granted to stand as a "measure of social justice" even when the employee is validly dismissed for cause so long as it is not for serious misconduct or those other causes that reflect on his moral character.

In *Soco vs. Mercantile Corporation of Davao*,<sup>[6]</sup> separation pay was granted to an employee who had been dismissed for using the company vehicle for a private purpose. In *Tanala vs. National Labor Relations Commission*<sup>[7]</sup> the payment of separation pay to an employee who had been dismissed for quarreling with a fellow worker outside the company premises was sustained. Likewise, in *Filipro, Inc. vs. NLRC*,<sup>[8]</sup> an award of separation pay was decreed in favor of an employee who had been validly dismissed for preferring certain dealers in violation of company policy. The Court, however, disallowed the grant of separation pay to employees dismissed for serious misconduct or for some other causes reflecting on his moral character.<sup>[9]</sup> In the case of *Philippine Long Distance Telephone Co. (PLDT) vs. NLRC and Abucay*,<sup>[10]</sup> the