

## SECOND DIVISION

[ G.R. No. 132837, June 28, 2001 ]

**JO CINEMA CORPORATION AND MICHAEL JO, PETITIONERS, VS.  
LOLITA C. ABELLANA AND NATIONAL LABOR RELATIONS  
COMMISSION, RESPONDENTS.**

### DECISION

**BUENA, J.:**

The Decision<sup>[1]</sup> dated November 26, 1997 of respondent National Labor Relations Commission (NLRC) in NLRC Case No. V-0170-97, is being impugned in this present petition for certiorari. The assailed decision affirmed the findings of the Labor Arbiter that private respondent Lolita Abellana was illegally dismissed from the service and ordered petitioner to pay complainant the amount of P115,420.79 representing separation pay and full backwages.

Petitioner is a duly organized corporation engaged in the movie business. Sometime in September 1997, private respondent was employed as theater porter.

On November 11, 1994, petitioner issued a memorandum<sup>[2]</sup> reminding all ticket sellers not to encash any check from their cash collections and to turn-over all cash collections to the petitioner.

On August 4, 5, 6 and 7, 1995, private respondent encashed, on behalf of her friend Luzviminda Silva, four (4) Banco del Norte Checks<sup>[3]</sup> amounting to P66,000.00, with Emperatriz Ynrig, ticket seller of petitioner, assigned at Ultra Vistarama and Seven Arts Theater. When the said checks were deposited to the account of the petitioner, they were dishonored for insufficiency of funds.

Consequently, on August 15, 1995, private respondent was sent a show-cause memorandum requiring her to explain why no disciplinary action should be taken against her relative to the checks in question,<sup>[4]</sup> which she failed to comply. She was likewise placed under preventive suspension for a period of twenty (20) days or until September 4, 1995.<sup>[5]</sup>

On August 22, 1995, petitioner directed private respondent to appear and present her side at the administrative investigation scheduled on August 26, 1995.<sup>[6]</sup> Private respondent attended the said investigation where she admitted to have encashed the checks without petitioners' permission.<sup>[7]</sup>

While the case was being deliberated upon by the petitioners, private respondent on September 1, 1995, filed a *pro forma* complaint<sup>[8]</sup> for illegal dismissal and non-payment of benefits before the Regional Arbitration Board No. VII of the NLRC, Cebu City, which was docketed as RAB-VII-09-0938-95. Private respondent claims that on

the day she was suspended, Atty. Tito Pintor, Jr., original counsel for petitioners, summoned her to his office and was advised to resign and pay the bounced checks' amount which respondent vehemently protested. On that very same day she was told that she was dismissed from the service.<sup>[9]</sup>

Petitioners denied the allegations and argued that private respondent was not dismissed but merely preventively suspended for twenty (20) days. It added that even assuming that private respondent was dismissed, the dismissal was for a valid cause. Private respondent violated a company policy prohibiting the encashment of checks without her employer's permission.<sup>[10]</sup>

On February 15, 1997, Labor Arbiter Dominador A. Almirante rendered judgment in favor of private respondent, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Jo Cinema Corporation to pay complainant the total amount of One Hundred Fifteen Thousand Four Hundred Twenty Pesos and 79/100 (P115,420.79) representing separation pay and full backwages, as hereinbelow computed by our Labor Arbitration Associate, to wit:

"C O M P U T A T I O N

"I.- Separation Pay: Sept. 1979- Aug. 15, 1995  
(15 yrs. 11 mos. & 15 days)

P119.60/day x 26 days =  
P3,109.60/mo. x 16 yrs.----- P49,753.60  
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"II.- Backwages: Aug. 15, 1995- Feb. 15, 1997  
(1 yr. & 6 mos.)

"a -Aug. 15, 1995 to Dec. 31, 1995 = 4 mos.  
and 15 days  
P3,109.60/mo. x 4mos. ----- P12,438.40  
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P 119.60/day x 15 days ----- 14,232.40  
-

"b -Jan. 1/96- June 30/96  
P131.00/day x 26 days =  
P 3,406.00/mo. x 6 mos. ---- 20,436.00  
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"c -July 1/96 - Sept. 30/96  
P136.00/day x 26 days =  
P3,536.00/mo. x 3 mos. ---- 10,608.00  
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"d -Oct. 1/96 - Feb. 15, 1997

P141.00/day x 26 =  
 P3,666.00/mo. x 4 =  
 P14,664.00  
 P141.00/day x 15/day = 16,779.00  
 2,115.00 --  
 "Total Salary (backwages) --- P62,055.40  
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"SERVICE INCENTIVE PAY: 1 YEAR

P141.00/day x 5 days ----- P705.00

"13<sup>th</sup> MONTH PAY: Aug. 15, 1995- Feb. 15, 1997

"a -Aug. 15/95 - Dec. 31/95  
 (4 mos. & 15 days)  
 P3,109.60/yr. , 12 =  
 P283.87/mo. x 6 mos. --- 1,036.52

"b -Jan. 1/96- June 30/96 (6  
 mos.)  
 P3,406.00/yr. , 12 =  
 P 259.13/mo. x 4 mos. ----- 1,703.04  
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"c -July 1/96 - Sept. 30/96  
 P3,536.00/mo. , 12 =  
 P 294.66/mo. x 3 mos. ----- 883.98  
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"d -Oct. 1/96 - Feb. 15, 1997 =  
 (4 mos. & 15 days)  
 P3,666.00/yr. , 12 =  
 P305.50/mo. x 4 mos. ----- P1,222.00  
 -----  
 P 11.75/day x 15 days----- 176.25  
 -----  
 P1,398.25

"Total 13<sup>th</sup> month pay ----- 5,021.79  
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"Total Backwages: ----- P115,420.79  
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"SO ORDERED."[11]

In ruling for the private respondent, the labor arbiter ratiocinated in this wise:

"No matter if complainant was not actually told that she was dismissed from the service the environmental circumstances of this case would establish that at the very least complainant was already constructively