

## **SECOND DIVISION**

**[ G.R. No. 124617, April 28, 2000 ]**

**PHILIPPINE AEOLUS AUTOMOTIVE UNITED CORPORATION  
AND/OR FRANCIS CHUA, PETITIONERS, VS. NATIONAL LABOR  
RELATIONS COMMISSION AND ROSALINDA C. CORTEZ,  
RESPONDENTS.**

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

**BELLOSILLO, J.:**

This petition seeks to set aside the Decision of 15 February 1996 and the Resolution of 28 March 1996 of public respondent National Labor Relations Commission in NLRC NCR CA No. 009753-95 (NLRC NCR Case No. 00-12-08759-94) which modified the decision of the Labor Arbiter finding petitioners not guilty of illegal dismissal.

Petitioner Philippine Aeolus Automotive United Corporation (PAAUC) is a corporation duly organized and existing under Philippine laws, petitioner Francis Chua is its President while private respondent Rosalinda C. Cortez was a company nurse<sup>[1]</sup> of petitioner corporation until her termination on 7 November 1994.

On 5 October 1994 a memorandum was issued by Ms. Myrna Palomares, Personnel Manager of petitioner corporation, addressed to private respondent Rosalinda C. Cortez requiring her to explain within forty-eight (48) hours why no disciplinary action should be taken against her (a) for throwing a stapler at Plant Manager William Chua, her superior, and uttering invectives against him on 2 August 1994; (b) for losing the amount of P1,488.00 entrusted to her by Plant Manager Chua to be given to Mr. Fang of the CLMC Department on 23 August 1994; and, (c) for asking a co-employee to punch-in her time card thus making it appear that she was in the office in the morning of 6 September 1994 when in fact she was not. The memorandum however was refused by private respondent although it was read to her and discussed with her by a co-employee. She did not also submit the required explanation, so that while her case was pending investigation the company placed her under preventive suspension for thirty (30) days effective 9 October 1994 to 7 November 1994.

On 20 October 1994, while Cortez was still under preventive suspension, another memorandum was issued by petitioner corporation giving her seventy-two (72) hours to explain why no disciplinary action should be taken against her for allegedly failing to process the ATM applications of her nine (9) co-employees with the Allied Banking Corporation. On 21 October 1994 private respondent also refused to receive the second memorandum although it was read to her by a co-employee. A copy of the memorandum was also sent by the Personnel Manager to private respondent at her last known address by registered mail.

Meanwhile, private respondent submitted a written explanation with respect to the

loss of the P1,488.00 and the punching-in of her time card by a co-employee.

On 3 November 1994 a third memorandum was issued to private respondent, this time informing her of her termination from the service effective 7 November 1994 on grounds of gross and habitual neglect of duties, serious misconduct and fraud or willful breach of trust.<sup>[2]</sup>

On 6 December 1994 private respondent filed with the Labor Arbiter a complaint for illegal dismissal, non-payment of annual service incentive leave pay, 13th month pay and damages against PAAUC and its president Francis Chua.<sup>[3]</sup>

On 10 July 1995 the Labor Arbiter rendered a decision holding the termination of Cortez as valid and legal, at the same time dismissing her claim for damages for lack of merit.<sup>[4]</sup>

On appeal to the NLRC, public respondent reversed on 15 February 1996 the decision of the Labor Arbiter and found petitioner corporation guilty of illegal dismissal of private respondent Cortez. The NLRC ordered petitioner PAAUC to reinstate respondent Cortez to her former position with back wages computed from the time of dismissal up to her actual reinstatement.<sup>[5]</sup>

On 11 March 1996 petitioners moved for reconsideration. On 28 March 1996 the motion was denied,<sup>[6]</sup> hence, this petition for certiorari challenging the NLRC Decision and Resolution.

The crux of the controversy may be narrowed down to two (2) main issues: whether the NLRC gravely abused its discretion in holding as illegal the dismissal of private respondent, and whether she is entitled to damages in the event that the illegality of her dismissal is sustained.

The Labor Code as amended provides specific grounds by which an employer may validly terminate the services of an employee,<sup>[7]</sup> which grounds should be strictly construed since a person's employment constitutes "property" under the context of the constitutional protection that "no person shall be deprived of life, liberty or property without due process of law" and, as such, the burden of proving that there exists a valid ground for termination of employment rests upon the employer.<sup>[8]</sup> Likewise, in light of the employee's right to security of tenure, where a penalty less punitive than dismissal will suffice, whatever missteps may have been committed by labor ought not to be visited with a consequence so severe.<sup>[9]</sup>

A perusal of the termination letter indicates that private respondent was discharged from employment for "serious misconduct, gross and habitual neglect of duties and fraud or willful breach of trust." Specifically -justice

1. On August 2, 1994, you committed acts constituting gross disrespect to your superior Mr. William Chua, the Plant Manager.
2. On August 23, 1994, the Plant Manager entrusted you the amount of P1,488.00 to be sent to CLMC for Mr. Fang but the money was allegedly lost in your possession and was not recovered.

3. On September 6, 1994, you caused someone else to punch-in your time card to show that you were at work when in fact you were doing a personal errand for Richard Tan. As per time card you were in at 8:02 A.M. but you only arrived at 12:35 P.M.

4. On July 28, 1994, you received an amount of P900.00 from Miss Lucy Lao to open an ATM card of nine (9) employees. On September 24, 1994, one of the employees complained by the name of Tirso Aquino about the status of his ATM Card and upon query from the bank it was found out that no application and no deposit for said person has been made. Likewise, it was found out that you did not open the ATM Card and deposit the P800.00 for the 8 other employees. It turned out that said deposit was made after a month later.<sup>[10]</sup>

As to the first charge, respondent Cortez claims that as early as her first year of employment her Plant Manager, William Chua, already manifested a special liking for her, so much so that she was receiving special treatment from him who would oftentimes invite her "for a date," which she would as often refuse. On many occasions, he would make sexual advances - touching her hands, putting his arms around her shoulders, running his fingers on her arms and telling her she looked beautiful. The special treatment and sexual advances continued during her employment for four (4) years but she never reciprocated his flirtations, until finally, she noticed that his attitude towards her changed. He made her understand that if she would not give in to his sexual advances he would cause her termination from the service; and he made good his threat when he started harassing her. She just found out one day that her table which was equipped with telephone and intercom units and containing her personal belongings was transferred without her knowledge to a place with neither telephone nor intercom, for which reason, an argument ensued when she confronted William Chua resulting in her being charged with gross disrespect.<sup>[11]</sup>

Respondent Cortez explains, as regards the second charge, that the money entrusted to her for transmittal was not lost; instead, she gave it to the company personnel in-charge for proper transmittal as evidenced by a receipt duly signed by the latter.<sup>[12]</sup>

With respect to the third imputation, private respondent admits that she asked someone to punch-in her time card because at that time she was doing an errand for one of the company's officers, Richard Tan, and that was with the permission of William Chua. She maintains that she did it in good faith believing that she was anyway only accommodating the request of a company executive and done for the benefit of the company with the acquiescence of her boss, William Chua. Besides, the practice was apparently tolerated as the employees were not getting any reprimand for doing so.<sup>[13]</sup>

As to the fourth charge regarding her alleged failure to process the ATM cards of her co-employees, private respondent claims that she has no knowledge thereof and therefore denies it. After all, she was employed as a company nurse and not to process ATM cards for her co-employees.