

FIRST DIVISION

[G.R. No. 130617, August 11, 1999]

**MA. LIZA DE GUZMAN, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION AND REX BOOKSTORE, INC.,
RESPONDENTS.**

D E C I S I O N

DAVIDE, JR., C.J.:

Assailed in this special civil action for *certiorari* under Rule 65 of the Rules of Court is the decision^[1] of public respondent National Labor Relations Commissions (NLRC) of 20 May 1997, which affirmed with modification the decision of the Labor Arbiter of 17 December 1996. The subsequent resolution^[2] of the NLRC of 10 July 1997, denying petitioner's partial motion for reconsideration is likewise impugned.

Petitioner Ma. Liza de Guzman (hereafter DE GUZMAN) was employed by private respondent Rex Bookstore, Inc. (hereafter REX) on 17 April 1989 as cashier. On 18 September 1995 DE GUZMAN was dismissed for alleged dereliction of duty in violation of REX's rules and regulations. At the time of her dismissal, she was receiving a daily wage of P164.25.

De GUZMAN's dismissal stemmed from an incident on 5 August 1995 when she made a double payment to a book agent. Instead of paying the agent the amount of two thousand seven hundred sixty pesos (P2,760.00) for a single transaction, she paid the amount of five thousand five hundred twenty pesos (P5,520.00). Thus, in its memorandum of 12 August 1995, REX ordered DE GUZMAN to explain within 48 hours why she should not be penalized for dereliction of duty pursuant to Section 1A, Article III of REX's rules and regulations and suspended her for thirty (30) days beginning 14 August 1995 pending the investigation of the case against her.^[3]

In compliance with the aforesaid memorandum, DE GUZMAN submitted to REX her explanation dated 14 August 1995.^[4] She alleged therein that since she was hired in 1989 it has been the company's procedure in paying its freelance agents that the sales clerk will make two copies of the unofficial receipt of payments, one given to REX and the other to the agent. However, on 5 August 1995 the sales clerk, Emmie Idio, issued to a sales agent two unofficial receipts for the same transaction. Both receipts bore the identical amount of two thousand seven hundred sixty pesos (P2,760.00). The agent then presented both receipts to DE GUZMAN. Noting the two receipts, DE GUZMAN asked the agent whether he made two deliveries on that day. When the agent answered in the affirmative, DE GUZMAN paid the agent five thousand five hundred twenty pesos (P5,520.00) corresponding to the total amount of the receipts. She claimed that she failed and did not have the opportunity to verify from Emmie Idio about the issuance of the two receipts because on that day there were many customers.

DE GUZMAN contended that she cannot be held responsible for the overpayment as she merely followed the usual procedure in the company. It should be the sales clerk, Emmie Idion, who should be held responsible for the issuance to the agent of two receipts.

Not satisfied with her explanation, REX, through Roque C. Solomon of its Personnel Department, served on DE GUZMAN on 18 September 1995 a confidential memorandum informing her of the termination of her services. The memorandum reads:

The decision on your case has been released under RBS-PRES 95-001 dated September 14, 1995 the dispositive portion of which reads as follows:

"... Management is left with no alternative but to affirm the recommendation of the Fact Finding Committee not only to dismiss her (referring to Miss Liza de Guzman) from the Company but to seek recovery of the amount of P2,760.00 if not intentionally misappropriated."

By copy of this memo, the concerned supervisors shall ensure that the liquidation of accountability and the proper turnover of responsibilities are carried out to protect the interest of the company.

Please be guided accordingly.^[5]

Earlier, on 5 August 1995, a day after she was placed under preventive suspension, DE GUZMAN filed a complaint for illegal suspension with the National Capital Region-Arbitration Branch of the NLRC. The case was docketed as NLRC NCR Case No. 00-08-05777-95.^[6]

Immediately after her dismissal from the service, DE GUZMAN amended her complaint to include illegal dismissal and claims for thirteenth-month pay and attorney's fees.^[7] The complaint was further amended on 18 September 1995 and 10 October 1995 to include claims for payment of actual, moral and exemplary damages.^[8]

In its Answer to the complaint, REX alleged that the purported defect in the disbursement procedure as claimed by DE GUZMAN cannot be used by her as an excuse for her negligence and that the payment made to the agent without proper authorization from the supervisor violated REX's standard operating policy that "no disbursement of fund may be made by a cashier without the approval of his/her immediate supervisor."

On 17 December 1996, Labor Arbiter Salimathar B. Nambi rendered a decision^[9] in favor of DE GUZMAN, the dispositive portion of which reads:

Accordingly, respondent is hereby adjudged to reinstate complainant without loss of seniority rights and other privileges and to pay complainant her full back wages inclusive of allowances, computed from the time of her termination (September 14, 1995) up to the time of her actual reinstatement.

Respondent is likewise ordered to pay complainant her 13th month pay for the year 1995 and 1996. Further, respondent is ordered to pay complainant P10,000.00 by way of attorney's fees. The claim for actual, moral and exemplary damages are hereby dismissed for lack of merit since there were [sic] no evidence presented and submitted in support thereto.

SO ORDERED.

REX appealed the decision to the NLRC.

On 20 May 1997, the NLRC rendered a decision^[10] affirming with modification the decision of the Labor Arbiter by ordering the payment of separation pay in lieu of reinstatement and deleting the award of back wages and attorney's fee. The decretal portion of the decision reads:

PREMISES CONSIDERED, the Decision dated December 17, 1996 is hereby MODIFIED by ordering respondent to pay complainant the amount of thirty four thousand one hundred sixty four pesos (P34,164.00) as separation pay. Respondent's motion for Issuance of Temporary Restraining Order and Writ of preliminary Injunction is hereby DISMISSED for having been rendered moot and academic.

SO ORDERED.

In deleting the award of back wages, the NLRC rationalized as follows:

We disagree with the Labor Arbiter's finding that respondent failed to substantiate complainant's negligence. As correctly argued by respondent, complainant herself admitted that she failed to inquire the veracity of the two unofficial receipts (Annexes "B" and "B-1") of respondent's position paper. (Records, p.37) which were presented to her for payment by the agent. Prudence dictates that she should have verified the veracity of said receipts considering the fact that they reflected identical transactions. In fact, she admitted disbelief thereof. (Annex "O" of Complainant's Position Paper, Records, p.23). That, there were many customers on that day is not a valid excuse for her not to verify said receipts from the sales clerk who issued the same or from her immediate supervisor.

However, while we find that complainant was negligent it cannot be considered gross as to warrant her termination from the service. As the facts of the case show, the error committed was not the fault of the complainant alone. The sales clerk who issued two (2) unofficial receipts to the agent, contrary to the usual procedure of the company, is also partly to be blamed in the incident. Further, the agent also made misrepresentation to the complainant.

Taking into consideration the factual circumstances of the case, the period within which complainant was out of work shall be considered as her penalty. Stated differently, she is not entitled to backwages. x x x.

^[11]

In a *Partial Motion for Reconsideration*, DE GUZMAN asked for a modification of the decision to include payment of back wages. The NLRC denied the motion in its resolution of 10 July 1997.^[12]

DE GUZMAN then filed the instant special civil action. She asserts that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it modified the Labor Arbiter's decision by deleting the grant of back wages as penalty for her negligent act despite the affirmance of the Labor Arbiter's finding that her dismissal was illegal. Such finding entitled her not only to separation pay but also to back wages and that the deletion of the latter as penalty is too harsh and grossly disproportionate to the infraction she committed.

We find merit in this petition.

The general rule is that where there is a finding of illegal dismissal, an employee is entitled to reinstatement and to receive back wages from the date of his dismissal up to the time of his reinstatement.^[13]

The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and, secondly, the payment of back wages corresponding to the period from his illegal dismissal up to actual reinstatement. The rationale therefor is clearly obvious. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, i.e., to his *status quo ante* dismissal, while the grant of back wages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies of reinstatement and payment of back wages make whole the dismissed employee, who can then look forward to continued employment. These two remedies give meaning and substance to the constitutional right of labor to security of tenure.^[14]

However, the two remedies are distinct and separate. Though the grant of reinstatement commonly carries with it an award of back wages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non-availability of the other.^[15] Reinstatement is a restoration to a state from which one has been removed or separated. On the other hand, the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal.^[16] The award of one is not a condition precedent to an award of another. Back wages may be ordered without ordering reinstatement; conversely, reinstatement may be ordered without payment of back wages.^[17]

Thus, in a number of cases,^[18] the Court, despite its order of reinstatement or award of separation pay in lieu of reinstatement deemed it appropriate not to award back wages as penalty for the misconduct or infractions committed by the employee.

In the case at bar, we hold that the factual circumstances obtaining in the case at bar do not warrant exception to the general principle that an employee is entitled to reinstatement and to receive back wages where there is a finding of illegal dismissal.