

SECOND DIVISION

[G.R. No. 121324, September 30, 1999]

**PEPSI-COLA PRODUCTS PHILIPPINES INCORPORATED,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION
AND MARCIAL R. DE LIRA, RESPONDENTS.**

DECISION

QUISUMBING, J.:

This special civil action for certiorari seeks to annul the decision of public respondent promulgated on January 19, 1995 in NLRC Case No. V-0217-93 and its resolution dated July 18, 1995 which denied petitioner's motion for reconsideration.

Petitioner is a domestic corporation engaged in the business of manufacturing, bottling and distribution of softdrink products. Private respondent was employed by petitioner as route manager at its sales office/warehouse in Borongan, Eastern Samar.

On April 26 and 27, 1991, an audit at the Borongan warehouse was conducted by petitioner's plant finance manager, Gaudencio Omaña, and the district manager, Wilfredo Portula. Their audit report cited irregularities committed by private respondent in the giving of complimentary products and retrieval of empty bottles, as follows:

"1. In our confirmation of deals given, the owner of Bonita Store at Maydulong, Eastern Samar informed us that they received only 16 cases of the 59 cases deals reported under CI # 358377 dated August 30, 1990. According to Mrs. Delia Baldono and the wife of Mr. Daniel Baldono, owner, they were told that the reported 59 cases involved in their store were to be shared by two other customers.

2. Messrs. M. de Lira (RM) and J. Alcido (Salesman) pulled out 176 cases of loaned empties from customer Marcela Cabanatan (Oras, Eastern Samar) on July 12, 1990 without issuing acknowledgment document. This was confirmed by both Mr. and Mrs. Cabanatan during our visit on April 27, 1991. Mr. J. Alcido reported this matter only recently while following up for his clearance. This is an indication that both RM M. de Lira and J. Alcido had connived in an undertaking inimical to the interest of the company.

3. M. de Lira had negotiated for the extension of one-shot product deal to a certain Elisa R. Añosa, reported owner of Añosa Store. The deal amounting to P1,200 (20 cases P-8) under Complimentary Slip (CS) # 022 dated March 9, 1990 was confirmed as received by Mrs. E. Añosa. Our verification, however, disclosed that this outlet has no store at all."^[1]

Subsequently, private respondent was asked to explain why no disciplinary action should be taken against him. He was placed on preventive suspension without pay for 11 days from May 7 to 18, 1991.

In his written explanation, private respondent clarified that:

"Finding No. 1 It is true that 16 cases of the 59 cases deal were given to Mr. Daniel Baldono (Bovitan's Store) at his store in Maydolong, Eastern Samar. The remaining 43 cases were converted to cash amounting to P3,000 plus and handed by the undersigned to Mrs. Naring Picardal, Administrative Officer of the Borongan Emergency Hospital, the biggest hospital in Eastern Samar. As her incentive of helping us to penetrate hospital cooperative canteen with 200 cases potential monthly volume.

x x x x x

Finding No. 2. It is also admitted that we pulled out 176 cases of loaned empties from Marcela Cabanatan. This we did since Mrs. Cabanatan had been delinquent in her account which amounted then to P17,000.00, more or less, for not less than 3 months. Hence, no delivery to her could as yet be made, thereby resulting in these loaned empties becoming merely idle.

x x x x x

Finding No. 3. I admit I negotiated for extension of a one shot deal with Mrs. Elisa Añosa involving worth of stocks P1,200.00. Mrs. Añosa is an employee in the Borongan Treasurer office assigned as Market Collector. Through her, the mentioned office become Pepsi exclusive with 2 cases daily consumption, although they are buying Pepsi products in Batinga's Store which is also Pepsi exclusive x x x."[2]

During the administrative investigation, private respondent allegedly uttered veiled threats and used foul language against his superiors. He was correspondingly charged for this behavior.

Subsequently, pending resolution of the charges, private respondent's preventive suspension without pay was extended for an additional eighteen (18) days from May 18 to June 5, 1991 and for the third time for an additional twenty-five (25) days from June 6 to June 30, 1991 but this time with pay.

Eventually, on July 1, 1991, a notice of termination was sent to private respondent finding him guilty of the three irregularities and an additional offense of uttering threats committed during the investigation, as follows:

"RE: NOTICE OF TERMINATION

A perusal of the evidence presented during the administrative investigation on May 7, 1991 clearly shows that you have committed several infractions of the Company's rules and regulations particularly described as follows:

1. Under Charge Invoice No. 358377 dated August 30, 1990, you made it appear that deals in the quantity of Fifty nine (59) cases were given to Bonita Store. However, upon confirmation, Ms. Delia Baldono, proprietor of the said sari-sari store, confirmed that only 16 cases of deals were actually given to them.

x x x

2. On July 12, 1990, you retrieved 176 cases of loaned empties from customer Ms. Marcela Cabanatan without issuing any acknowledgment receipt. You allegedly lent the same to Gloria Omega and Laling Ong but the records of both customers do not reflect the claimed loan on empties. Further, you alleged that the said 176 cases of empties had been returned to Ms. Cabanatan, a claim Ms. Cabanatan has denied.
3. You extended a one-shot deal amounting to P1,200.00 as per Complimentary slip No. 022 dated March 9, 1990 to Mrs. Elisa Añosa. Upon verification it was revealed that contrary to the Deal Proposal you negotiated, no Añosa Store existed and that it was only in September, 1990 that Añosa started buying PCPPI products as per our records which were marginal purchases.
4. During the Administrative Investigation Hearing scheduled last May 7, 1991 the proceedings as recorded on tape revealed that you used foul language when you uttered 'Di puta ka!' and even came up with veiled threats against a Company Officer by uttering 'puede kitang ipapatay' and 'Magpamisa ka na lang Boy'.

The undisputed foregoing acts are violations of the following company rules and regulations:

G-8 - Falsification of Company documents.

H-4 - Stealing and other forms of dishonesty

H- 20 - Commission of a crime as defined in the Revised Penal Code and other laws within company premises.

In view of the above, we have no other recourse but to terminate your services for cause effective July 1, 1991 without prejudice to the filing of the appropriate criminal action should you fail to return to the company the amount you have allegedly appropriated for your personal gain."^[3]

Aggrieved, private respondent filed on July 16, 1991, a complaint for illegal dismissal before the NLRC Regional Arbitration Branch VIII in Tacloban City.

In a decision dated March 31, 1993, the labor arbiter ruled that there was no valid and just cause for private respondent's dismissal.^[4] The labor official noted that the ground for dismissal was not sufficiently proven. In ruling in favor of private respondent, the labor arbiter decreed as follows:

"WHEREFORE, judgment is hereby rendered ORDERING respondent PEPSI-COLA PRODUCTS PHILIPPINES, INC., with its plant Office at Barangay Sto. Niño, Tanauan, Leyte, and its main office at Makati, Metro Manila, to immediately reinstate complainant, MARCIAL DE LIRA, to his former position as Route Manager at Borongan, Eastern Samar, without loss of seniority rights and to pay his backwages and other benefits from the date of his dismissal on July 1, 1991 until March 31, 1993.

Respondent is hereby likewise ORDERED to pay complainant his backwages for twenty-four (24) days covering the period he was preventively suspended without pay in excess of thirty (30) days.

Finally, attorney's fees equivalent to ten (10%) percent of the total award are hereby assessed against respondent.

In sum, respondent, PEPSI-COLA PRODUCTS PHILIPPINES, INC., is hereby ORDERED to pay complainant MARCIAL DE LIRA the following:

1. Backwages from July 1, 1991 to March 31, 1993 - - - - - -P
170,100.00
 2. Backwages for 24 days suspension - - - - - - - - - - 6,480.00
 3. Attorney's fees - - - - - - - - - - - - - - - - 17,658.00
- TOTAL P194,238.00

SO ORDERED."[5]

Dissatisfied with the abovequoted decision, petitioner appealed to the National Labor Relations Commission which, however, affirmed the labor arbiter's decision. Its motion for reconsideration having been denied, petitioner filed this instant petition anchored on the following grounds:

I.

"PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN SUBSTITUTING ITS JUDGMENT FOR THAT OF THE EMPLOYER AS TO WHAT ACT OR ACTS ARE INIMICAL TO THE BUSINESS AND INTERESTS OF THE EMPLOYER.

II

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN JUSTIFYING THE ADMITTED VIOLATIONS OF COMPANY RULES AND REGULATIONS COMMITTED BY PRIVATE RESPONDENT.

III

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN IGNORING THE RULINGS OF THIS