

## FIRST DIVISION

[ G.R. No. 113271, October 16, 1997 ]

**WATEROUS DRUG CORPORATION AND MS. EMMA CO,  
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION  
AND ANTONIA MELODIA CATOLICO, RESPONDENTS.  
D E C I S I O N**

**DAVIDE, JR. J.:**

This petition for *certiorari* under Rule 65 of the Rules of Court seeks to declare private respondent Antonia Melodia Catolico (hereafter Catolico) not a "true Servant," thereby assailing the 30 September 1993 decision<sup>[2]</sup> and 2 December 1993 Resolution<sup>[3]</sup> of the National Labor Relations Commission (NLRC) in NLRC-NCR CA No. 005160-93, which sustained the reinstatement and monetary awards in favor of private respondent<sup>[4]</sup> and denied the petitioners' motion for reconsideration.<sup>[5]</sup>

**The facts are as follows:**

Catolico was hired as a pharmacist by petitioner Waterous Drug Corporation (hereafter WATEROUS) on 15 August 1988.

On 31 July 1989, Catolico received a memorandum<sup>[6]</sup> from WATEROUS Vice President-General Manager Emma R. Co warning her not to dispense medicine to employees chargeable to the latter's accounts because the same was a prohibited practice. On the same date, Co issued another memorandum<sup>[7]</sup> to Catolico warning her not to negotiate with suppliers of medicine without consulting the Purchasing Department, as this would impair the company's control of purchases and, besides she was not authorized to deal directly with the suppliers.

As regards the first memorandum, Catolico did not deny her responsibility but explained that her act was "due to negligence," since fellow employee Irene Soliven "obtained the medicines in bad faith and through misrepresentation when she claimed that she was given a charge slip by the Admitting Dept." Catolico then asked the company to look into the fraudulent activities of Soliven.<sup>[8]</sup>

In a memorandum<sup>[9]</sup> dated 21 November 1989, WATEROUS Supervisor Luzviminda E. Bautro warned Catolico against the "rush delivery of medicines without the proper documents."

On 29 January 1990, WATEROUS Control Clerk Eugenio Valdez informed

Co that he noticed an irregularity involving Catolico and Yung Shin Pharmaceuticals, Inc. (hereafter YSP), which he described as follows:

... A case in point is medicine purchased under our Purchase Order (P.O.) No. 19045 with YSP Sales Invoice No. 266 representing purchase of ten (10) bottles of Voren tablets at P384.00 per unit. Previous P.O.s issued to YSP, Inc. showed that the price per bottle is P320.00 while P.O. No. 19045 is priced at P384.00 or an over price of P64.00 per bottle (or total of P640.00). WDRC paid the amount of P3,840.00 thru MBTC Check No. 222832 dated December 15, 1988. Verification was made to YSP, Inc. to determine the discrepancy and it was found that the cost per bottle was indeed overpriced. YSP, Inc. Accounting Department (Ms. Estelita Reyes) confirmed that the difference represents refund of jack-up price of ten bottles of Voren tablets per sales invoice no. 266 as per their check voucher no. 629552 (shown to the undersigned), which was paid to Ms. Catolico through China Bank check no. 892068 dated November 9, 1989....

The undersigned talked to Ms. Catolico regarding the check but she denied having received it and that she is unaware of the overprice. However, upon conversation with Ms. Saldana, EDRC Espana Pharmacy Clerk, she confirmed that the check amounting to P640.00 was actually received by Ms. Catolico. As a matter of fact, Ms. Catolico even asked Ms. Saldana if she opened the envelope containing the check but Ms. Saldana answered her "talagang ganyan, bukas." It appears that the amount in question (P640.00) had been pocketed by Ms. Catolico.<sup>[10]</sup>

Forthwith, in her memorandum<sup>[11]</sup> dated 31 January 1990, Co asked Catolico to explain, within twenty-four hours, her side of the reported irregularity. Catolico asked for additional time to give her explanation,<sup>[12]</sup> and she was granted a 48-hour extension from 1 to 3 February 1990. However, on 2 February 1990, she was informed that effective 6 February 1990 to 7 March 1990, she would be placed on preventive suspension to protect the interests of the company.<sup>[13]</sup>

In a letter dated 2 February 1990, Catolico requested access to the file containing Sales Invoice No. 266 for her to be able to make a satisfactory explanation. In said letter she protested Saldaña's invasion of her privacy when Saldaña opened an envelope addressed to Catolico.<sup>[14]</sup>

In a letter<sup>[15]</sup> to Co dated 10 February 1990, Catolico, through her counsel, explained that the check she received from YSP was a Christmas gift and not a "refund of overprice." She also averred that the preventive suspension was ill-motivated, as it sprang from an earlier incident between her and Co's secretary, Irene Soliven.

On 5 March 1990, WATEROUS Supervisor Luzviminda Bautro, issued a memorandum<sup>[16]</sup> notifying Catolico of her termination; thus:

We received your letter of explanation and your lawyer's letter dated Feb. 2, 1990 and Feb. 10, 1990 respectively regarding our imposition of preventive suspension on you for acts of dishonesty. However, said

letters failed to rebut the evidences [sic] in our possession which clearly shows that as a Pharmacist stationed at Espana Branch, you actually made Purchase Orders at YSP Phils., Inc. for 10 bottles of Voren tablets at P384.00/bottle with previous price of P320.00/bottle only. A check which you received in the amount of P640.00 actually represents the refund of over price of said medicines and this was confirmed by Ms. Estelita Reyes, YSP Phils., Inc. Accounting Department.

Your actuation constitutes an act of dishonesty detrimental to the interest of the company. Accordingly, you are hereby terminated effective March 8, 1990.

On 5 May 1990, Catolico filed before the Office of the Labor Arbiter a complaint for unfair labor practice, illegal dismissal, and illegal suspension.<sup>[17]</sup>

In his decision<sup>[18]</sup> of 10 May 1993, Labor Arbiter Alex Arcadio Lopez found no proof of unfair labor practice against petitioners. Nevertheless, he decided in favor of Catolico because petitioners failed to "prove what [they] alleged as complainant's dishonesty," and to show that any investigation was conducted. Hence, the dismissal was without just cause and due process. He thus declared the dismissal and suspension illegal but disallowed reinstatement, as it would not be to the best interest of the parties. Accordingly, he awarded separation pay to Catolico computed at one-half month's pay for every year of service; back wages for one year; and the additional sum of P2,000.00 for illegal suspension "representing 30 days work." Arbiter Lopez computed the award in favor of Catolico as follows:

30 days Preventive Suspension P 2,000.00

Backwages 26,858.50

1/12 of P26,858.50 2,238.21

Separation pay (3 years) 4,305.15

TOTAL AWARD: P35,401.86

Petitioners seasonably appealed from the decision and urged the NLRC to set it aside because the Labor Arbiter erred in finding that Catolico was denied due process and that there was no just cause to terminate her services.

In its decision<sup>[19]</sup> of 30 September 1993, the NLRC affirmed the findings of the Labor Arbiter on the ground that petitioners were not able to prove a just cause for Catolico's dismissal from her employment. It found that petitioner's evidence consisted only of the check of P640.00 drawn by YSP in favor of complainant, which her co-employee saw when the latter opened the envelope. But, it declared that the check was inadmissible in evidence pursuant to Sections 2 and 3(1 and 2) of Article III of the Constitution.<sup>[20]</sup> It concluded:

With the smoking gun evidence of respondents being rendered inadmissible, by virtue of the constitutional right invoked by complainants, respondents' case falls apart as it is bereft of evidence which cannot be used as a legal basis for complainant's dismissal.

The NLRC then dismissed the appeal for lack of merit, but modified the dispositive portion of the appealed decision by deleting the award for illegal suspension as the same was already included in the computation of the aggregate of the awards in the amount of P35,401.86.

Their motion for reconsideration having been denied, petitioners filed this special civil action for certiorari, which is anchored on the following grounds:

I. Public respondent committed grave abuse of discretion in its findings of facts.

II. Due process was duly accorded to private respondent.

III. Public respondent gravely erred in applying Section 3, Article III of the 1987 Constitution.

As to the first and second grounds, petitioners insist that Catolico had been receiving "commissions" from YSP, or probably from other suppliers, and that the check issued to her on 9 November 1989 was not the first or the last. They also maintained that Catolico occupied a confidential position and that Catolico's receipt of YSP's check, aggravated by her "propensity to violate company rules," constituted breach of confidence. And contrary to the findings of NLRC, Catolico was given ample opportunity to explain her side of the controversy.

Anent the third ground, petitioners submit that, in light of the decision in the People v. Marti,<sup>[21]</sup> the constitutional protection against unreasonable searches and seizures refers to the immunity of one's person from interference by government and cannot be extended to acts committed by private individuals so as to bring it within the ambit of alleged unlawful intrusion by the government.

In its Manifestation in Lieu of Comment, the Office of the Solicitor General (OSG) disagreed with the NLRC's decision, as it was of the persuasion that (a) the conclusions reached by public respondent are inconsistent with its findings of fact; and (b) the incident involving the opening of envelope addressed to private respondent does not warrant the application of the constitutional provisions. It observed that Catolico was given "several opportunities" to explain her side of the check controversy, and concluded that the opportunities granted her and her subsequent explanation "satisfy the requirements of just cause and due process." The OSG was also convinced that Catolico's dismissal was based on just cause and that Catolico's admission of the existence of the check, as well as her "lame excuse" that it was a Christmas gift from YSP, constituted substantial evidence of dishonesty. Finally, the OSG echoed petitioners' argument that there was no violation of the right of privacy of communication in this case,<sup>[22]</sup> adding that petitioner WATEROUS was justified in opening an envelope from one of its regular suppliers as it could assume that the letter was a business communication in which it had an interest.