

## SEVENTH DIVISION

[ CA-G.R. SP NO. 85212, September 06, 2006 ]

**ROSITA DE GUZMAN, PETITIONER, VS. THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), SARA LEE PHILS., INC., METROLAB INDUSTRIES, INC., DANILO M. PEREZ IN HIS CAPACITY AS PRESIDENT AND GENERAL MANAGER AND PERSIE C. TORREGOZA, IN HER CAPACITY AS CHIEF FINANCIAL OFFICER, RESPONDENTS.**

### DECISION

**BERSAMIN, L.P., J.:**

The petitioner-employee comes to us on *certiorari* seeking to annul and set aside the resolution dated February 11, 2004 issued in NLRC NCR CA No. 030855-02 entitled Rosita de Guzman v. Sara Lee Phils., Inc., et al,<sup>[1]</sup> affirming the dismissal of her complaint against her employer by the Labor Arbiter,<sup>[2]</sup> and the resolution dated May 20, 2004, denying her motion for reconsideration,<sup>[3]</sup> both issued by the National Labor Relations Commission (NLRC), claiming that the NLRC thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction.

The antecedent facts are as follows.

The petitioner was the treasury manager of her employer Sara Lee Philippines, Inc. (Sara Lee) for 12 years. Her duties included the handling of collections and of the bank transactions of Sara Lee, which was engaged in the business of marketing and distribution of personal care products. Respondent Metrolab Industries, Inc., (Metrolab) was the subsidiary of Sara Lee,<sup>[4]</sup> while respondents Danilo M. Perez and Persie Torregoza were, respectively, its president/general manager and chief financial officer.

On March 9, 2001, Sara Lee served a letter memorandum, informing her that she was being placed on preventive suspension for 30 days effective immediately and requiring her to explain within 72 hours the irregularities found during the course of the financial audit. The letter memorandum reads:<sup>[5]</sup>

Dollar collection on January 17, 2001 of \$2,090 for export transaction with Pinili Commodity Corp. You (petitioner) issued an initial official receipt (OR) under Metrolab #8351 for \$2,090 which was given to Pinili Commodity Corp. This was canceled and replaced with SLPI OR#3858 amounting to P99,275. This means that the dollar remittance was converted to peso equivalent to P47.50 to a dollar. The following are the discrepancies: customer copy of Metrolab OR (first OR) showed date January 17, 2001. However, in the duplicate, no date was indicated. Customer copy of SLPI OR (second OR) showed date January 31, 2001, duplicate in your original handwriting showed February 2, 2001. These

were remitted to the bank on February 6, which as per our policy should have been remitted within 24 hours.

All cash collections in February 2 to February 5, 2001 was deposited on February 6 to Citibank via check amounting to P972,245.00 referring to the following transaction dates and OR nos.

Tampered dates	OR #	Payee	Amount
February 2	13853	Accord	P 7,135
	13854	Missing	
	13855	Missing	
	13856	Accord	22,335
	13857	J. Villarica	3,000
	13859	T. Tiglao	210,000
	13860	A. Bermudez	230,000
February 5		Pepito Sacalang c/o Tina	<u>400,000</u>
		TOTAL	P 972,245

Please explain why all Accounting duplicate copies of these OR are tampered.

In the same letter-memorandum, Sara Lee informed her that she would not be allowed to enter company premises except upon prior notification and instructed her to turn over within the day all company assets issued to her to Mr. Nem Blanco.<sup>[6]</sup>

On March 12, 2001, she was granted her request of an additional 72 hours within which to submit her written explanation. However, despite the extension given, she failed to give her written explanation.<sup>[7]</sup>

Also on March 12, 2001, Sara Lee notified all banks where it maintained its accounts that the petitioner was no longer authorized to transact business in its behalf and named its new authorized representatives in lieu of the petitioner.<sup>[8]</sup>

On March 22, 2001, the petitioner filed a complaint in the Arbitration Branch of the NLRC, alleging unlawful preventive suspension and claiming damages.

On March 27, 2001, Sara Lee terminated the petitioner's services on the ground of dishonesty; falsification of records on official document or making false statement in the documents of Sara Lee, and loss of trust and confidence, as follows:

This is to inform you that after due consideration and deliberation. Management has decided to terminate your services as Treasury Manager effective close of business hours March 28, 2001 on the ground of dishonesty; falsification of records on official document or making false statement in any documents of Sara Lee Phils, Inc. and lost of Trust and

confidence.

Company records at our possessions show that on January 17, 2001 your received payment of \$ 2,090.00 from Pinili Commodity Corp. and the dollars were deposited in peso last February 6, 2001 using P47.50 to a \$ as conversion rate. Official receipts relative to this payment were also tampered.

Secondly, cash collections from February 2 to February 5, 2001, amounting to P972,245.00 were deposited on February 6, 2001 to Citibank with tampered dates on official receipts while other official receipts are missing.

Furthermore, you were given ample opportunities to explain and defend yourself on the allegation stated in the Preventive Suspension memo dated March 9, 2001. Your failure to comply to explain is considered a voluntary waiver of your rights to be heard and explain, thus, the company decided to terminate your services without having to hear your side.

Please be guided accordingly.<sup>[9]</sup>

The termination letter was received by the petitioner on March 28, 2001.

On April 5, 2001, the petitioner supplemented/amended her complaint to include unlawful termination and damages.<sup>[10]</sup>

After the parties exchanged their respective position papers, Labor Arbiter Francisco A. Robles rendered his decision on December 18, 2003, dismissing the petitioner's complaint for lack of merit.<sup>[11]</sup>

On appeal, the NLRC upheld the Labor Arbiter through its resolution of February 11, 2004, disposing thus:<sup>[12]</sup>

WHEREFORE, the decision appealed from is hereby AFFIRMED.

SO ORDERED.

The motion for reconsideration was later denied.<sup>[13]</sup>

Hence, this special civil action for *certiorari*, wherein the petitioner insists that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction:

I

THE PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION IN RESOLVING THAT PETITIONER ROSITA DE GUZMAN WAS NOT ILLEGALLY SUSPENDED

II

THE NLRC GRAVELY ABUSED ITS DISCRETION IN RESOLVING THAT PETITIONER ROSITA DE GUZMAN WAS NOT ILLEGALLY DISMISSED CONSIDERING THE ABSENCE OF LEGAL GROUND TO EFFECT THE SAME AND FOR FAILURE OF PRIVATE RESPONDENTS TO AFFORD PETITIONER WITH DUE PROCESS

### III

THE NLRC GRAVELY ABUSED ITS DISCRETION IN RESOLVING THAT COMPLAINANT/APPELLANT ROSITA DE GUZMAN WAS NOT ENTITLED TO HER MONETARY CLAIMS.

We find no merit in the petition for *certiorari*.

In disposing of the petitioner's contention that she was illegally suspended by her employer, the NLRC held:

First issue: Whether or not the complainant was illegally suspended.

There is no law, rule or ruling requiring an employer to first give an employee the benefits of notice and hearing before he may preventively suspend the latter. Sections 8 and 9 of Rule XIII, Book V of the Implementing Rules of the Labor Code only provide that "the employer may place the worker under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers." And that "no preventive suspension shall last longer than thirty days x x x." Considering that the complainant was found to have misappropriated company funds and to have tampered official receipts, it was indeed necessary for the respondents to immediately preventively suspend her, so as to prevent her from destroying incriminating evidence, and therefore derailing the investigation of the charges against her. The right of the employer to preventively suspend an employee pending the investigation of the charges against him has been repeatedly recognized by the Supreme Court (*Samillano vs NLRC*, 265 SCRA 788; *PAL 292 SCRA 40*).

Moreover, the word "suspension" used in the company rule providing that "a major (grave) offense will mean suspension or termination after the employee has been proven guilty x x x" (records, p. 114) refers to "suspension" as a penalty and not as a preventive measure. This is implied from the fact that "suspension" is used as an alternative to "termination," which is penalty. Thus, the company rule in question has no bearing on the respondents' right to preventively suspend the complainant.<sup>[14]</sup>

The foregoing disposition of the NLRC is correct because it is consistent with the law and jurisprudence. As we have earlier said, the petitioner, as the treasury manager of Sara Lee, received cash and check collections for her employer and also acted as the authorized representative in her employer's bank transactions. She thus occupied a position of the highest trust and confidence. For that reason, her preventive suspension was deemed necessary by her employer to prevent any serious and imminent threat to its assets and property. The suspension accorded

with Sec. 8 and Sec. 9, Rule XXIII, Book V of the Implementing Rules of the Labor Code, as amended, to wit:

Sec. 8. *Preventive Suspension.* – The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

Sec. 9. *Period of Suspension.* – No preventive suspension shall last longer than thirty (30) days xxx

The preventive suspension, being imposed to protect the interests of the employer, was not a penalty in itself but an acceptable precautionary measure consistent with the policy of preventively suspending an employee under investigation for charges involving dishonesty.<sup>[15]</sup> As to this, there is to be no question, for, as the Supreme Court said:

Imposed during the pendency of an administrative investigation, preventive suspension is not a penalty in itself. It is merely a measure of precaution so that the employee may be separated, for obvious reasons, from the scene of his alleged misfeasance while the same is being investigated.<sup>[16]</sup>

A preventive suspension imposed under Sec. 8 of Rule XXIII, *supra*, is truly separate and distinct from a suspension imposed as a penalty after an investigation. The former does not require prior notice and hearing but the latter requires them. In the petitioner's case, the preventive suspension was proper considering that it was enough that the management felt a threat to their property requiring preventive measures.

Yet, the petitioner would interpret the preventive suspension as a malicious prelude to oust her from her employment and, as such, the suspension should be considered as a constructive dismissal.<sup>[17]</sup>

We regard her interpretation as unfounded. Aside from its being evidently preventive, the suspension was not attended by circumstances that support her interpretation. What we can find are indications that the suspension and other acts of the employer were solely intended to ensure the continuity of bank and other transactions during her administrative investigation. Such transactions and other acts used to be delegated to the petitioner. Hence, malice was not attributable to the employer.

Anent her termination, the NLRC did not find any illegality attendant to it, observing:

Second issue: Whether or not the complainant was illegally dismissed from employment.

The complainant was asked to explain in writing why, in four official receipts she issued in connection with the same transaction (sales to Pinili Commodity Corp. amounting to US\$2,090.00, which she admittedly received), she used three different dates and left the fourth official receipt undated, and why she did not remit the money in question to the