

THIRD DIVISION

[G.R. No. 160965, July 21, 2008]

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,
PETITIONER, VS. MARIA NYMPHA MANDAGAN, RESPONDENT.**

DECISION

NACHURA, J.:

For resolution is a Petition for Review on *Certiorari*^[1] under Rule 45 of the 1997 Rules of Civil Procedure seeking the review and the reversal of the Decision^[2] dated May 29, 2002 and the Resolution^[3] dated November 10, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 63166.

Petitioner Philippine National Construction Corporation (PNCC) hired respondent Maria Nympha Mandagan on December 16, 1995, as Legal Assistant, with the rank of Assistant Manager, on probationary status while she was waiting for the results of the Bar examinations. Respondent was assigned to the corporate legal division where she performed research work, drafted legal opinions, served as a member of a management collective bargaining agreement (CBA) negotiating panel, and handled litigation, mostly labor cases. On June 16, 1996, after successfully hurdling the Bar examinations, respondent was issued a regular appointment by petitioner.

On June 2, 1998, petitioner issued a memorandum^[4] to respondent requiring her to show cause in writing why no disciplinary action should be taken against her for committing acts violative of the PNCC Code of Employee Discipline, to wit:

1. Engaging in private law practice which is in violation of Section 6(a), Section 6(b)(26) and Section 11 of the PNCC Code of Employee Discipline;
2. Using the company's official address as your address for your private case which is not only in violation of Section 8(A)(1) of the PNCC Code on Employee Discipline but is prejudicial to the best interests of the PNCC; and
3. Representing a client who has a pending case against PNCC which is not only prejudicial to the interests of the company but is in violation of the ethics of your profession.^[5]

This memorandum was served on respondent on the eve of June 3, 1998 at her residence.

On June 4, 1998, in reply, respondent wrote a strongly worded memorandum^[6] stating that she took offense at the manner of service of the office memorandum. According to her, the June 2, 1998 memorandum was merely a scheme intended to

terminate her from employment. She said it was sparked by the incident on March 30, 1998 in which she was seen with then PNCC Corporate Comptroller Renato R. Ramirez, who was able to enter the PNCC compound despite being unauthorized to do so, he having filed a constructive dismissal case against petitioner.

On June 9, 1998, respondent submitted another memorandum^[7] denying the charges against her, claiming that the case she handled was only an accommodation, accepted by her upon the request and authority of then PNCC President Melvin Nazareno and Mr. Ramirez, and that she was on leave at every scheduled hearing of the said case. She explained that she had the distinct impression that the lawyers of the PNCC Legal Division can take on accommodation cases. She cited as an example Atty. Glenna Jean Ogan who, appearing as counsel for PNCC employee Fabian Codera, was even provided with a service vehicle and considered on official time during hearings. She further explained that when a petition for the annulment of judgment was filed with the regional trial court (RTC) assailing the final and executory decision in the ejectment case in favor of Mr. Ramirez, she desisted from representing the latter. She said that she signed, as counsel of record, the petition for *certiorari* filed before the CA only for the purpose of terminating it. She also claimed that there was no conflict of interest between Ramirez's labor and ejectment cases since the former was still pending resolution.

Petitioner, thereafter, conducted a clarificatory hearing.

Later, petitioner, thru then PNCC President and Chief Executive Officer Rogelio L. Luis, sent respondent a letter^[8] dated June 15, 1998 notifying her that her explanation in both memoranda and her statements during the clarificatory conference were inconsistent, unacceptable, and, by themselves, admission of the truth of the charges against her. As a consequence, her employment would be terminated effective at the close of office hours on June 19, 1998 for violations of the PNCC Code of Employee Discipline and for loss of trust and confidence.

On October 28, 1998, respondent initiated a complaint^[9] for illegal dismissal against petitioner and four (4) of its corporate officers.

In a Decision^[10] dated July 15, 1999, Labor Arbiter (LA) Edgardo M. Madriaga dismissed the complaint for being unmeritorious, stating that petitioner was justified in dismissing respondent for loss of trust and confidence for handling the constructive dismissal case of Mr. Ramirez against PNCC, in a conflict of interest with her employer. Petitioner was, however, directed to pay respondent separation pay in accordance with law.

Aggrieved, respondent appealed the said Decision to the National Labor Relations Commission (NLRC). In the Resolution^[11] promulgated July 31, 2000, the NLRC Second Division denied the appeal for lack of merit. While affirming *in toto* the Decision of LA Madriaga, the NLRC, however, declared that the allegation of conflict of interest was baseless as respondent was able to refute the same by documentary evidence that the labor case of Mr. Ramirez against petitioner was represented by another counsel. The dismissal of respondent was upheld on the ground that she failed to adduce documentary evidence to show that her appearance in the ejectment case of Mr. Ramirez was with the authority and approval of then PNCC President Nazareno and Mr. Ramirez. By reason thereof, the NLRC gave more

credence to the theory of petitioner that she violated the PNCC Code of Employee Discipline on moonlighting and using company property for personal purposes. Respondent's motion for reconsideration was, likewise, denied in a Resolution^[12] dated November 8, 2000.

Respondent thus went to the CA via a special civil action for *certiorari* under Rule 65 of the Rules of Court. This time, the tide turned in her favor. In its Decision^[13] dated May 29, 2002, the CA annulled the Decision and Resolutions of the LA and the NLRC, respectively, for lack of sufficient proof that respondent did engage in the private practice of law since there was only a single case involved which had the corresponding authorization from her superiors. Finding the dismissal of respondent illegal, the CA ordered petitioner to pay respondent separation pay, in lieu of reinstatement, in view of their already strained relations, and full backwages from date of dismissal until the finality of its Decision.

Petitioner moved for the reconsideration of the CA Decision insisting *inter alia* that respondent's handling of even only a single non-PNCC case already constituted a violation of the PNCC Code of Employee Discipline, since moonlighting is strictly prohibited under existing company rules and regulations.

The CA, in its assailed Resolution dated November 10, 2003, denied petitioner's motion for lack of merit, citing *Office of the Court Administrator v. Atty. Misael M. Ladaga*^[14] which held that an isolated appearance did not constitute private practice of law, especially when done with the permission of superiors.

Hence, this petition assigning the following errors:

I

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT HEREIN RESPONDENT DID NOT VIOLATE ANY COMPANY POLICY OR REGULATION WHEN SHE HANDLED A PRIVATE CASE AND USED COMPANY TIME AND FACILITIES FOR SUCH UNAUTHORIZED OUTSIDE ENGAGEMENT.

II

THE COURT OF APPEALS GRAVELY ERRED WHEN IT FOUND NO VALID CAUSE TO TERMINATE THE EMPLOYMENT OF HEREIN RESPONDENT, A MANAGERIAL EMPLOYEE, FOR VIOLATION OF COMPANY RULES, BREACH OF TRUST, AND/OR LOSS OF CONFIDENCE.

III

THE COURT OF APPEALS GRAVELY ERRED WHEN IT ANNULLED THE RESOLUTIONS OF THE NLRC AND GRANTED HEREIN RESPONDENT'S PETITION FINDING THE NLRC TO HAVE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.^[15]

In a nutshell, petitioner contends that the CA erred in holding that respondent's dismissal was illegal when it ruled that respondent did not violate the PNCC Code of Employee Discipline on moonlighting and personal use of company time and property despite undisputed and overwhelming evidence to the contrary. It posits

that respondent readily admitted rendering services outside PNCC in her pleadings and her taking advantage of office time and property was shown by using the address of PNCC for her personal cases and utilizing her leave credits to attend hearings. It further claims that the CA gravely erred in reversing the findings of both the LA and the NLRC despite existing jurisprudence to the effect that their findings are entitled to great weight and respect, nay conclusiveness, when buttressed by substantial evidence. This is in addition to the fact that the case cited by the CA is not on all fours with the present case. It also asserts that respondent's fault-finding cannot exculpate her from her misdeeds. In view of these, petitioner insists that, as employer who is given a wide latitude in determining who among its managerial employees are entitled to its trust and confidence, and also taking into consideration its findings of her alleged frequent tardiness and absences, her not being able to "get along well with her co-employees," and her misrepresentations in the resume she submitted to Malacañang to get a favorable endorsement for promotion, it is only justified in dismissing respondent from employment.

The petition is without merit.

In petitions for review before this Court, as a general rule, only questions of law are allowed. An exception to this is when the findings of the administrative agencies below and the appellate court differ, as in the case at bar.^[16] Thus, an independent evaluation of the facts of this case is called for, especially considering that, while the LA and the NLRC both found respondent's dismissal valid and legal, the bases for their findings are also different.^[17] Hence, the claim of petitioner that these findings are conclusive upon us is incorrect.

Petitioner dismissed respondent from employment because she was found guilty of the charges against her. It found respondent to have engaged in private law practice in violation of Sections 6(a)(b)(26) and 11 of the PNCC Code of Employee Discipline.^[18] It also found her to have used the company's official address for her private case in violation of Section 8(A)(1) of the same Code, which is also prejudicial to its best interests. Finally, it found her to have represented a client who had a pending case against PNCC. The pertinent sections of the Code are quoted hereunder:

SECTION 6. Conduct and Behavior

- a. An employee's conduct in the performance of his duties should be beyond reproach and free from the appearance of impropriety.

x x x

- b. x x x

26) Moonlighting or rendering services for another employer without the knowledge or approval of Management.

SECTION 8. Company Property. -

- A. The following acts shall constitute violation of this section:

- 1) Using Company property, equipment or materials for personal use or purpose.