

THIRD DIVISION

[G.R. No. 167449, December 17, 2008]

**BRISTOL MYERS SQUIBB (PHILS.), INC., PETITIONER, VS.
RICHARD NIXON A. BABAN, RESPONDENT.**

DECISION

REYES, R.T., J.:

A MEDICAL representative should distribute his employer's products per company directions or risk termination. The willful breach of the trust reposed in him by his employer is a cause for the termination of his employment.

In this petition for review on *certiorari* under Rule 45, petitioner seeks to set aside the following dispositions of the Court of Appeals (CA) in CA-G.R. CV No. 66590: (a) Decision^[1] dated September 24, 2004 which annulled and set aside the Decision^[2] of the National Labor Relations Commission (NLRC), and (b) Resolution^[3] dated March 9, 2005 which denied petitioners' motion for reconsideration.

In 1992, petitioner Bristol Myers Squibb Philippines, Inc. hired respondent Richard Nixon A. Baban as district manager of the company. He was assigned to handle the company's clients in Cagayan de Oro-Northern Mindanao area and its immediate vicinities. His duties included the promotion of nutritional products of petitioner to medical practitioners, sale to drug outlets and the supervision of territory managers detailed in his district.

On June 22, 1998, while conducting a field audit in Mindanao, petitioner's auditor, Sheela Torreja, found twenty (20) packs of "Mamacare" samples in the baggage compartment of a company car with an accompanying note with political overtones. A note stapled on the package reads:

"Maskin perdido, muchos gracias por el suporta. Con ustedes ta despidi 36 anos de servicio public. Ay continua ayuda para bien del pueblo Zambo.

Atty. Ricardo S. Baban, Jr."

The English translation of the above notation is as follows:

"Even if I've lost (*sic*) thank you so much for the support. Bidding you farewell for 36 years of public service. Will continue to help for the good of the city of Zamboanga.

Atty. Ricardo S. Baban, Jr."

Atty. Ricardo S. Baban, Jr., referred to in the note, is respondent's father who had served as councilor in Zamboanga City for thirty-six (36) years but lost in his bid for

the vice-mayoralty post in the May 11, 1998 elections. Apparently, respondent's father was thanking supporters through distribution of company sample products.

On July 2, 1998, the auditor reported the incident, prompting the company's Medical Sales Director, Ferdinand Sarfati, to issue a Memorandum requiring respondent to explain in writing within seventy-two (72) hours from notice why he should not be terminated for the infraction.

On July 10, 1998, respondent admitted that he had caused the attachment of the notes to the product samples. He argued that there was no unauthorized distribution of the samples since he intended to give them only to doctors who requested them. To support his claim, he asserted that the samples found by Ms. Torreja were actually to be given to Dr. Kibtiya Gustahan and to Rosita Jacoba, a registered midwife of Sta. Catalina Health Center, Zamboanga City, for distribution to the center.

Furthermore, respondent admitted that he committed an honest mistake, an irresponsible act to have succumbed to the suggestion of Dr. Gustahan. He pleaded for consideration for the lapse, insisting that he has not caused any damage nor injury to the image of the company as the samples were not, in fact, distributed and that no gain was derived by him or his family.

In a private conference held on July 27, 1998 with Mr. Sarfati, respondent was asked to explain the incident. On July 29, 1998, he was required by Atty. Hilario Marbella, manager, to appear for a conference to be held on August 6, 1998. He was given the chance to submit evidence and to be assisted by counsel during the conference. On August 25, 1998, he received under protest the company's memorandum dismissing him from employment.

Questioning the validity of his dismissal, respondent filed a complaint for illegal dismissal with a claim for moral and exemplary damages plus attorney's fees with the Regional Arbitration Branch No. 10 of the National Labor Relations Commission (NLRC) against petitioner. Likewise impleaded were the company's General Manager, Medical Sales Director, HR Director, Personnel Manager, Auditor and Finance Director.

[4]

Labor Arbiter Disposition

On August 30, 1999, the Labor Arbiter dismissed respondent's complaint. The dispositive portion of the Decision reads:

WHEREFORE, IN VIEW OF THE FOREGOING, judgment is hereby rendered ordering the dismissal of the above-captioned case for lack of merit.

However, Respondent Bristol Myers Squibb Phils., Inc., through a responsible officer, is hereby ordered to pay Complainant the total amount of P297,009.84 representing admitted monetary liabilities.

SO ORDERED. [5]

In sustaining the validity of respondent's dismissal, the Labor Arbiter ruled that respondent had violated company rules and regulations by his unauthorized use of its property. Petitioner is therefore justified to declare respondent unworthy of the trust and confidence formerly imposed in him. Not satisfied with the Decision, petitioner appealed to the NLRC.

NLRC Disposition

In a Resolution dated March 15, 2000, the NLRC modified the Labor Arbiter's decision as follows:

WHEREFORE, premises considered, the decision appealed from is hereby modified:

1. Declaring illegal the dismissal from the service of the complainant;
2. Suspending complainant for a period of one (1) month effective 20 August 1998 without pay;
3. Ordering respondent Bristol Myers Squibb Phils., Inc., to reinstate Complainant Richard Nixon A. Baban, without loss of seniority rights, to pay him backwages without qualification or deduction from the time his suspension had lapsed until his reinstatement to include 13th month pay and other benefits, allowances and incentives due him attached to his position as District Manager;
4. The award of P297,009.84 as admitted monetary liabilities is hereby affirmed *in toto*;
5. Ordering respondent to pay complainant the amount of P50,000.00 as moral damages and P30,000.00 as exemplary damages and ten (10%) percent attorney's fee.

SO ORDERED.^[6]

Petitioner filed a motion for reconsideration. In a Resolution dated October 23, 2000, the NLRC disposed in the following tenor:

WHEREFORE, the foregoing considered, we hereby MODIFY and SET ASIDE our pertinent findings in the Decision dated March 15, 2000, and hereby enter a new one thus:

1. The Decision of the Labor Arbiter dated 30 August 1999, upholding the termination of complainant, is hereby reinstated;
2. The award of P297,009.84 as admitted liability of respondent is affirmed;
3. An award of financial assistance in favor of complainant by way of separation pay equivalent to one (1) month pay for every year of service covering the period from the date of his regular employment up to 25 August 1998, a fraction of six (6) months being considered

one (1) year;

4. All other claims of the complainant are hereby dismissed.

SO ORDERED.^[7]

Respondent moved for reconsideration but the NLRC denied the same in a Resolution dated August 3, 2001.

Unconvinced, respondent then filed a petition for *certiorari* under Rule 65 with the CA.

CA Disposition

In a Decision dated September 24, 2004, the CA reinstated the original NLRC Decision dated March 15, 2000.

In ruling in favor of respondent, the CA reasoned that the right of a worker to security of tenure is constitutionally guaranteed. It further declared that, "when a person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary deprivation of his job." In sum, the CA found the penalty of dismissal unjustified, much too harsh and not commensurate with the alleged infraction.

The motion for reconsideration having been denied in a Resolution dated March 9, 2005, petitioner filed the instant petition.

Issue

Petitioner raises a solitary question for Our consideration: **May the CA order the reinstatement, with full backwages and damages, of a confidential employee whom it had found to be guilty of breach of trust?**^[8]

Our Ruling

Petitioner argues that respondent, an employee occupying a position of trust and confidence, admitted attaching his father's political thank you note on the product samples. Respondent likewise confirmed his intention to distribute them to his father's political supporters to thank them for their help in the last election. The act constituted an infraction of company rules. Respondent had breached his employer's trust, meriting a penalty of dismissal.

Articles 282, 283, and 284 of the Labor Code enumerate the just and authorized causes for the dismissal of an employee. Article 282 provides:

ART. 282. *Termination by employer.* - An employer may terminate an employment for any of the following causes:

x x x x

c) Fraud or willful breach by the employee of the trust reposed in him by his employer or his duly authorized representative.

It is clear that Article 282(c) of the Labor Code allows an employer to terminate the services of an employee for loss of trust and confidence. The right of employers to dismiss employees by reason of loss of trust and confidence is well established in jurisprudence.^[9]

The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence. Verily, We must first determine if respondent holds such a position.

There are two (2) classes of positions of trust.^[10] The first class consists of managerial employees.^[11] They are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions.^[12] The second class consists of cashiers, auditors, property custodians, etc.^[13] They are defined as those who in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.^[14]

In this case, respondent was employed as district manager for Cagayan de Oro-North Mindanao and its immediate vicinities.^[15] It is not the job title but the actual work that the employee performs.^[16] He was employed to handle pharmaceutical products for distribution to medical practitioners and sale to drug outlets.^[17] As a result of his handling of large amounts of petitioner's samples, respondent is, by law, an employee with a position of trust, falling under the second class.^[18]

The second requisite is that there must be an act that would justify the loss of trust and confidence.^[19] Loss of trust and confidence to be a valid cause for dismissal must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary.^[20]

Respondent's act of stapling a thank you note from his father warrants the loss of petitioner's trust and confidence. As the supervisor of fellow medical representatives, he had the duty to set a good example to his colleagues. A higher standard of confidence was reposed in him.

There is no doubt that respondent willfully breached the trust and confidence reposed in him by not asking for permission before using company property for his own or another's benefit, as required in the Company Standards of Business Conduct.^[21] Moreover, when respondent failed to turn over the samples left in his care and stapled the political "thank you" note with the intention of distributing them to his father's supporters, he had, in effect appropriated company property for personal gain and benefit.

Respondent anchors his plea of mercy on filial loyalty to his father and the fact that the samples were still going to the proper parties. His father's loss is of no moment since petitioner has a right not to associate their product with winning or losing politicians. It has every right to ensure that the distribution of medical samples is done in the manner exactly prescribed. Moreover, his claim that the samples would