

## SECOND DIVISION

[ G.R. No. 147125, January 14, 2004 ]

**SHOPPES MANILA, INC., PETITIONER, VS. THE HON. NATIONAL  
LABOR RELATIONS COMMISSION, LABOR ARBITER ERMITA  
ABRASALDO-CUYUCA AND LORIE TORNO, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

Before us is a petition for review under Rule 45 of the Rules of Court filed by Shoppes Manila, Inc. for the nullification of the May 31, 2000 Decision<sup>[1]</sup> and February 2, 2001 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 54109.

#### The Antecedents

The petitioner is a domestic corporation engaged in garments manufacturing using the brand name "KAMISETA." On May 6, 1994, the petitioner employed private respondent Lorie Torno as trimmer with a salary of P80/day. In September 1995, the respondent's salary was increased to P110/day. A year later, it was increased to P165/day. In April 1997, her salary was further increased to P185/day. The private respondent and a co-employee, Maricar Buan, were tasked to handle the inventory of finished products.

Sometime thereafter, the petitioner started to receive information from the head of its production department that, according to other employees, Buan and the private respondent had been stealing "KAMISETA" items from the factory. The petitioner had the witnesses interviewed. Susan Paligamba and Loly dela Cruz, co-employees of Buan and the private respondent, executed unverified statements implicating the latter. In her statement, Paligamba declared that the private respondent encouraged her to steal a belt, while Dela Cruz stated that she saw "KAMISETA" items in the private respondent's house. When informed of the foregoing statements, the latter agreed to have her house inspected and searched for the alleged stolen items. On July 30, 1997, the private respondent's supervisor, Ms. Myrasol O. Silva, conducted the inspection and submitted a report to the effect that she found the following items in the private respondent's house:

1. Several yardages of fabrics – the one used for *Kamiseta* T-Shirt (waist cutting).
2. She also showed me 2 pcs. of T-Shirts made out of wrong cut materials for *Kamiseta* T-Shirts. These are cut T-Shirt panels with fabric damage.
3. Used *Kamiseta* wall papers.
4. New wall papers that were intended to be used for Nautical Shop.<sup>[2]</sup>

On the basis of the said report, the petitioner issued a disciplinary action form suspending the private respondent indefinitely without pay.<sup>[3]</sup> On August 25, 1997, a notice of dismissal was addressed to the private respondent specifying the charge against her, the factual basis thereof and the imposable penalties for the said charge if proven. The charge and notice read:

- 1) On July 31, 1997, an investigation was conducted involving you for being under suspicion of theft.
- 2) On the same day, two witnesses gave testimonies. One admitted to visiting your home and finding numerous *KAMISETA* clothing. The other said you encouraged her to steal a *KAMISETA* belt from the stocks.
- 3) On the same day, you were made aware of the allegations made against you and you were given a chance to explain yourself. You were also asked by representatives of the Company if you were willing to have your home inspected. You agreed and accompanied the said representatives to your residence.
- 4) During the said inspection, the representatives found the following it
  - a. *KAMISETA* fabrics (approx. 1¼ yds)
  - b. 2 pcs. shirts made out of *KAMISETA* excess cuttings
  - c. NAUTICAL SHOP wall paper
- 5) On July 31, 1997, you were given a disciplinary action by the company and placed under indefinite suspension without pay for stealing. You signed the said form thereby accepting the charges as true.
- 6) You have violated Article 12 under Category 4 of our Company rules and regulations. You have received a copy of this handbook on March 17, 1997 (Booklet No. 63) and on the same day you signed your acceptance and compliance to the rules therein.

ARTICLE 12 UNDER CATEGORY 4 states: *Ang pagnanakaw sa kompanya o pagnanakaw sa iba. Kasama nito ang: pagkuha ng anumang pag-aari mula sa kapwa empleyado ng walang pahintulot. Ang paglabas/paggamit ng pera ng kompanya ng walang pahintulot.*

The above violation is punishable by termination.

- 7) You are hereby called to the Head Office on August 26, 1997 to give you an opportunity to explain yourself further.
- 8) Non-attendance would mean you have no cause to explain yourself further and the Company shall proceed with the evaluation of your case.<sup>[4]</sup>

The private respondent failed to appear during the scheduled hearing. Consequently, the petitioner decided to dismiss the private respondent from her employment. When notified of the petitioner's decision, the private respondent filed a complaint for illegal dismissal with prayer for reinstatement and payment of backwages, non-payment of service incentive leave pay and 13th-month pay against the petitioner before the National Capital Regional Arbitration Branch of the National Labor Relations Commission (NLRC), docketed as NLRC-NCR Case No. 00-09-06160-97. The case was initially raffled to Labor Arbiter Emerson C. Tumanong (LA Tumanong for brevity). Despite mandatory conferences, the parties did not reach an amicable settlement. In due course, they submitted their respective position papers and replies. The petitioner filed a motion for the labor arbiter to conduct a formal investigation on its claim that a full blown hearing during which the witnesses can be cross-examined by the opposing counsel was necessary to ascertain the truth.<sup>[5]</sup> Acting on the motion, LA Tumanong granted the same and set the case for hearing. However, the hearing failed to materialize because of the absences of either the private respondent or her counsel. In the meantime, LA Tumanong was replaced by Labor Arbiter Ermita Abrasaldo-Cuyuca (LA Cuyuca for brevity) who issued an order declaring that the case was submitted for decision. The petitioner filed a manifestation and motion informing LA Cuyuca that a formal hearing had been set by LA Tumanong and requested that the case be set for hearing anew. However, no action was taken by LA Cuyuca on the said motion.

On August 31, 1998, LA Cuyuca rendered a decision holding that the respondent was illegally dismissed and directed the petitioner to pay P62,530 as backwages and P19,240 as separation pay to the private respondent. The decretal portion of the decision reads:

WHEREFORE, in view of the foregoing, Shoppes Manila, Inc., is declared to have illegally dismissed Lorie Torno and the former is ordered to pay the latter the amount of P62,530.00 representing backwages and P19,240.00 as separation pay.<sup>[6]</sup>

LA Cuyuca declared that the private respondent was denied of her right to due process before she was dismissed from her employment and that the petitioner failed to show that it notified the private respondent of the charges against her. The petitioner also failed to show that the private respondent received the notice of dismissal. Hence, the dismissal of the private respondent was illegal. However, according to the labor arbiter, reinstatement could no longer be effected, as the relationship between the private respondent and the petitioner had been strained and ruptured. The private respondent's claims for non-payment of service incentive leave and 13th-month pay were denied for her failure to specify the period covered therein. Her claim of underpayment of wages (wage differential) was, likewise, denied, as it was not included in the original complaint.

Aggrieved, the petitioner appealed the decision to the NLRC, alleging that it was deprived of its right to a formal hearing before the labor arbiter rendered her decision. It argued that while the conduct of hearing is not mandatory in labor cases, the Labor Arbiter was mandated to do so in this case because LA Tumanong had already declared that a formal hearing was necessary. Hence, the petitioner had acquired a vested right thereto. LA Cuyuca's failure to conduct a hearing deprived the petitioner of its vested right; consequently, her decision was null and void.