

## **SECOND DIVISION**

**[ G.R. No. 153947, December 05, 2002 ]**

**ANTONIO I. RODRIGUEZ, JR. AND THE BOARD OF DIRECTORS OF THE FIRST COMMUNITY COOPERATIVE (FICCO), PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), 5TH DIVISION AND ESTELA G. GADIAN, RESPONDENTS.**

### **D E C I S I O N**

**MENDOZA, J.:**

Private respondent Estela G. Gadian was hired on September 6, 1993 as an internal auditor by petitioner First Community Cooperative (FICCO). It appears that during the period from August to November 1997, private respondent took grocery items and other merchandise worth P13,842.25 from the consumer store of FICCO. Three personnel of the consumer store, Norma Carton, Allan Pagara and Hamilcar Gabaca, executed a joint affidavit stating that private respondent took the goods in question without paying for them, and that she did not sign any grocery loan application nor instruct the cashier to deduct the cost of the goods from her salary. On the basis of the affidavit, FICCO filed two cases against private respondent, one, an administrative case for grave misconduct, and another, a criminal case for qualified theft.

In the administrative case, an investigation was conducted by a special investigating committee of FICCO on January 31, 1998. Private respondent was found guilty of grave misconduct and, on February 6, 1998, was dismissed from the company. Hence, on February 13, 1998, private respondent filed before the Labor Arbiter's Office a complaint for illegal dismissal with money claims and damages against herein petitioners, Antonio I. Rodriguez, Jr. and the Board of Directors of FICCO.

Meanwhile, the City Prosecutor of Cagayan de Oro City dismissed the case for qualified theft against private respondent on the ground that even after conducting an inventory of the goods in its consumer store from the period of August to November 1997, FICCO failed to report any loss due to theft or pilferage. On the other hand, the monthly payrolls of the company showed that the value of the goods taken by private respondent had been deducted from her monthly salary from August to November 1997. The resolution of the City Prosecutor was affirmed by the Regional State Prosecutor and later by the Secretary of Justice.

On November 27, 1998, the labor arbiter declared petitioners guilty of illegal dismissal and ordered the immediate reinstatement of private respondent to her former position without loss of seniority rights and the payment to her of backwages in the amount of P440,804.10. The pertinent portions of his decision state:

Considering complainant's dismissal was done with bad faith and considering further the anti-social manner complainant was terminated from her job, and the humiliation she suffered by reason of the

unwarranted dismissal, which complainant elaborated during clarificatory hearing, the BRANCH deemed it necessary to award complainant moral damages in the amount of Two Hundred Thousand [Pesos] (P200,000.00). To deter respondents from terminating their employees in the manner they have terminated complainant, an award of One Hundred Thousand [Pesos] (P100,000.00), as exemplary damages, shall likewise be granted to complainant. As prayed for, complainant shall be reimbursed of the litigation fee she incurred due to the filing of this case in the amount of Five Thousand Pesos (P5,000.00). Inasmuch as complainant was forced to hire the services of a lawyer to protect her rights and interests, attorney's fees of not more than ten percent (10%) of the total amount awarded shall be accorded to complainant.

Accordingly, complainant's awarded monetary benefits are computed, hereunder:

Backwages	P86,831.00
13th Month Pay	8,900.00
Moral damages	200,000.00
Exemplary damages	100,000.00
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Subtotal	P400,731.00
Add: 10% Attorney's fees	40,073.10
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Total	P440,804.10
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WHEREFORE, judgment is hereby rendered:

1. declaring complainant Estela G. Gadian illegally dismissed from [her] job;
2. directing respondents Antonio I. Rodriguez, Jr., the Board of Directors and the First Community Credit Cooperative, Inc. (FICCO) to **immediately REINSTATE** complainant Gadian to her former position without loss of seniority rights; and
3. ordering respondents Antonio I. Rodriguez, Jr., the Board of Directors, and the First Community Credit Cooperative, Inc. (FICCO) to immediately pay complainant the total amount of **FOUR HUNDRED FORTY THOUSAND EIGHT HUNDRED FOUR PESOS and 10/100 (P440,804.10)**, as computed above.

SO ORDERED.<sup>[1]</sup>

On appeal, the NLRC, on October 19, 1999, affirmed the decision of the labor arbiter with modification. The dispositive portion of its resolution reads:

WHEREFORE, the judgment appealed from is affirmed, with the modification that moral and exemplary damages be deleted for lack of legal and factual justification. Being illegally dismissed, complainant is thus entitled to the remedy of full backwages to include allowances and other benefits, from the date she was illegally dismissed up to [the] date she is actually reinstated. Furthermore, she is entitled to reinstatement to her original and former position without loss of seniority rights and privileges, nor to diminution in rank, pay or responsibility. The award of 13th month pay is likewise affirmed. The award of attorney's fees in favor of complainant is likewise affirmed but correspondingly reduced equivalent to 10% of the reduced monetary award.

SO ORDERED.<sup>[2]</sup>

Petitioners moved for partial reconsideration, but their motion was denied by the NLRC in its resolution of May 18, 2000. On review, the Court of Appeals affirmed the resolutions of the NLRC. As their motion for reconsideration was also denied, petitioners filed this petition for review on certiorari.

It appears that private respondent's complaint for illegal dismissal was assigned to Labor Arbiter Rexel Pacuribot, against whom an action for collection of a sum of money had earlier been filed by FICCO in the Municipal Trial Court, Branch 5, Cagayan de Oro City.<sup>[3]</sup> For this reason, petitioners sought his inhibition from this case. In the present appeal, petitioners contend that Labor Arbiter Pacuribot never resolved the motion for his inhibition and that they doubt his impartiality in rendering a decision in favor of private respondent. They maintain that private respondent was validly dismissed for willful breach of the trust reposed in her by the company; that private respondent's dismissal was made only after due investigation during which she was assisted by a counsel of her choice, one Atty. Manuel A. Akut; and that she was furnished a copy of the decision informing her that her employment would be terminated.

On the other hand, private respondent avers that the petition for review of petitioners violates Rule 45, § 4 of the 1997 Rules of Civil Procedure because it impleads the NLRC as a public respondent; that it is not accompanied by proof of the veracity of the statement of the material dates; and that it fails to set forth concisely the matters involved and the reasons or arguments relied upon. Further, private respondent claims that the petition also violates Rule 45, § 1 of the Rules because it alleges facts not considered during the trial of the case, such as the decision of MTC, Branch 5 in Civil Case No. 15410 and the answer with counterclaim of Atty. Rexel Pacuribot in that case.

1. *Technical Defects in the Petition.* - The averments of private respondent as to the alleged procedural defects in the petition in this case are not proper grounds for its dismissal. The fact that the petition included the NLRC as public respondent is of no consequence as the same can be considered a mere surplusage. Rule 45, §4 requires, among others, that the petition indicate the material dates showing when the notice of the assailed judgment or final order or resolution was received, when a motion for reconsideration, if any, was filed and when notice of denial thereof was received. The petition complied with these matters. Proof of the veracity of the statement is unnecessary because the statement is in fact verified.