

## SECOND DIVISION

[ G.R. No. 131653, March 26, 2001 ]

**ROBERTO GONZALES, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION, PEPSI COLA PRODUCTS,  
PHILIPPINES, INC., RESPONDENTS.**

### D E C I S I O N

**DE LEON, JR., J.:**

Before us is a petition for certiorari<sup>[1]</sup> seeking nullification of the Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> of the National Labor Relations Commission (NLRC), dated June 26, 1997 and August 12, 1997, respectively, reversing the Decision<sup>[4]</sup> dated October 15, 1996 of the Labor Arbiter who found and declared that petitioner Roberto Gonzales was illegally dismissed by private respondent Pepsi Cola Products, Philippines, Inc., (PCPPI, for brevity) and ordered his reinstatement with payment of full backwages.

The pertinent facts are as follows:

Petitioner Roberto Gonzales was an employee of private respondent PCPPI since July 25, 1989.<sup>[5]</sup> In 1990 he was promoted to the position of Route Manager with a post at PCPPI Northbay Sales Office located in Northbay Boulevard, Manila. As Route Manager, he was tasked with the supervision and coordination of the activities of salesmen servicing the area under his jurisdiction. His service with the respondent company was abruptly interrupted on October 6, 1993 when he was served a notice of termination of his employment. At that time he was earning a monthly salary of P9,970.00.

His dismissal stemmed from alleged irregularities attributed to him as Route Manager and concurrently as dealer of Pepsi Cola products. His dealership contract with PCPPI started in 1990. Under the said contract, petitioner was extended by PCPPI a credit line of P300,000.00<sup>[6]</sup> payable in thirty (30) days. As concessionaire or dealer, petitioner was entitled to a "concession" which is the cash equivalent of the value of empty bottles and its contents given to a dealer who met the monthly quota requirements in the sale of Pepsi Cola products. Petitioner operated under the business name of RR Store.

On November 25, 1992, petitioner as proprietor of RR Store purchased Pepsi Cola products on credit amounting to P116,182.00. The credit transaction was covered by Charge Invoice No. 365508. To cover this transaction, petitioner Gonzales issued a post-dated check in the amount of P116,182.00 payable on December 25, 1992. Petitioner calculated that his receivables from respondent PCPPI by way of "concession" amounted to P109,766.00.

On December 22, 1992 or three (3) days before his said post-dated check for

P116,182.00 became due and payable, petitioner issued in favor of respondent PCPPI another post-dated check, to mature on January 4, 1993, to cover the outstanding total debt of P116,182.00.<sup>[7]</sup> With the issuance of the new post-dated check, petitioner ordered Mr. Gerry Alhambra, PCPPI salesman servicing RR Store, to issue an official receipt<sup>[8]</sup> in the amount of P116,182.00 to cover his account. However, issuance of official receipt for post-dated checks is contrary to respondent PCPPI's company policy which requires that its official receipt shall be issued only for cash sales and/or currently dated checks. Nonetheless, Gerry Alhambra acceded to his superior, herein petitioner, and issued the official receipt.

When salesman Alhambra attempted to settle his account, the settlement clerk noticed that there was a discrepancy between the cash amount declared by Alhambra and the sum actually remitted. Based on the official receipt, Alhambra declared a cash collection of P116,182.00, but the amount he actually remitted was only P3,128.66. Asked to explain the said discrepancy, Alhambra admitted that petitioner Gonzales pressured him to issue the official receipt. Alhambra could not likewise present the post-dated check issued by respondent Gonzales for the reason that under the company rules and regulations, any post-dated check must be covered by a post-dated check receipt (PDCR), duly signed by Mr. Andy Roxas, the Sales Office Manager.<sup>[9]</sup>

In another vain effort to undo the damage he had done, petitioner on December 31, 1992 issued a third post-dated check dated January 15, 1993, now covered with the supposed post-dated check receipt which, however, was signed by the petitioner himself and not by the Sales Office Manager who has the sole authority to issue the same.

In January 1993, petitioner's request for payment of his "concession" was approved, but only up to the extent of P91,000.00. Hence, petitioner paid PCPPI the following:

Particulars	Official Receipt No.	Date	Amount
1. Check	70945	Jan. 14, 1993	P 5,000.00
2. Cash	70945	Jan. 14, 1993	196.00
3. Concession	70945	Jan. 14, 1993	91,000.00
4. Empties	85430	Jan. 06, 1993	10,660.00 <sup>[10]</sup>
5. Empties	85437	Jan. 10, 1993	12,400.00 <sup>[11]</sup>
Total payment -----			P119,256.00
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Upon payment of his liability, having been settled the same with an excess of P3,074.00, petitioner demanded for the return of his post-dated check from the Cashier's Department on January 15, 1993.

In view of the alleged irregularities in the above transaction, petitioner was subjected to an administrative investigation, conducted on April 16, 1993 and June 25, 1993, wherein petitioner was given the opportunity to explain his side and to defend himself.<sup>[12]</sup>

Petitioner claimed that from the time he became a dealer in 1991, he consistently met his monthly sales quota, and that notwithstanding, he was not able to receive his "concession". As of December 1992, petitioner's concession, as per his own computation, already amounted to P109,766.00. Petitioner allegedly proposed to Mr. Efren Marquez, District Manager, that he be allowed to pay his liability of P116,182.00 using his concession in the amount of P109,766.00 plus cash money for the balance. Mr. Marquez allegedly approved petitioner's request, subject to the final approval of his unpaid "concession" by a certain Mr. Dino of PCPPI, and that he must issue a post-dated check as security or collateral, in the event his "concession" is disapproved. Petitioner then complied and accordingly, he issued a post-dated check in the amount of P116,182.00.

Private respondent PCPPI averred that petitioner's allegation that he was entitled to concessions worth P109,766.00 and that there was an agreement that the same would supposedly be credited to his outstanding account is baseless and self-serving. PCPPI declares that trade concessions are given in goods (softdrink full and empties), and not in the form of cash or credit arrangement. Thus, the post-dated check issued by petitioner was in payment of his previous purchases which had become due and demandable and not in any way related to his alleged entitlement of any concession.<sup>[13]</sup>

In a letter dated September 30, 1993,<sup>[14]</sup> petitioner was notified of his termination from employment on the ground of loss of confidence and of having violated the company rules and regulations, to wit:

"Group III - Frauds and Acts of Dishonesty

4. Engaging in fictitious transactions, fake invoicing, deals padding and other sale malpractices

8. Breach of trust and confidence."

Aggrieved, petitioner instituted a case of illegal dismissal, backwages, damages and attorney fees<sup>[15]</sup> before the Department of Labor and Employment (DOLE), National Capital Region (NCR), Regional Arbitration Branch in Quezon City, and the case was assigned to Labor Arbiter Ramon Valentin C. Reyes.

On October 15, 1996, the Labor Arbiter found and declared that petitioner was denied due process when no written notice of the charges against him was received by petitioner prior to his receipt of the notice of termination. Furthermore, there was no justifiable reason for the termination of the employment of petitioner, the Labor Arbiter concluding that the imputation against petitioner was committed by the latter not as an employee but as a concessionaire of private respondent PCPPI, and that there is no showing that private respondent PCPPI suffered damage as a consequence thereof. The dispositive portion of the decision of the Labor Arbiter reads:

WHEREFORE, premises all considered, judgment is hereby rendered finding the dismissal illegal and ordering respondent to:

1. Reinstate complainant to his former position without loss of seniority rights and other benefits;

2. Pay complainant backwages from date of termination up to his actual reinstatement;
3. Dismissing the complaint against Florante Manalo for lack of merit.

All other claims are dismissed for lack of merit.

The Research and Information Unit, this Commission, is hereby directed to effect the necessary computation shall form part of this decision.

SO ORDERED.

Private respondent PCPPI then appealed the decision of the Labor Arbiter to the public respondent NLRC, and it was assigned to the Second Division. The NLRC, in its Decision, reversed the decision of the Labor Arbiter and dismissed the complaint for illegal dismissal for lack of merit. In its Order dated August 12, 1997, it denied petitioner's motion for reconsideration. The petitioner now challenges the correctness of the said Decision and Order of the NLRC in the instant petition.

Petitioner contends that public respondent NLRC gravely abused its discretion in reversing the factual findings and conclusions of the Labor Arbiter.

The factual findings and conclusions of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence. Only when the factual findings and conclusion of the Labor Arbiter and NLRC are clearly in conflict with each other is this Court behooved to give utmost attention to and thoroughly scrutinize the records of the case, more particularly the evidence presented, to arrive at a correct decision.<sup>[16]</sup> Nowhere in the record does it show that public respondent NLRC grossly abused its discretion in arriving at its challenged Decision.

Under the Labor Code, as amended, the requirements for the lawful dismissal of an employee by his employer are two-fold, namely: (1) the procedural, and (2) the substantive. Not only must the employee be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense,<sup>[17]</sup> but that the dismissal must be for a valid or authorized cause as provided by law.<sup>[18]</sup>

Procedural due process requires, for validity of the employee's dismissal, that an employer must furnish the employee sought to be dismissed with two (2) written notices before termination may be validly effected. They are: (a) a notice apprising the employee of the particular acts or omission for which his dismissal is sought and; (b) a subsequent notice informing the employee of the decision to dismiss him.<sup>[19]</sup>

In the instant case, the evidence on record shows that contrary to the finding of the Labor Arbiter, petitioner was given ample opportunity to present his side and to defend himself against the charges. In a letter dated April 14, 1993, petitioner was directed by private respondent PCPPI to report to the Security Office on April 16, 1993 for administrative investigation. The letter reads: