

SECOND DIVISION

[G.R. No. 141900, April 20, 2001]

SHANGRI-LA HOTEL, PETITIONER, VS. CATHERINE B. DIALOGO, RESPONDENT.

DECISION

BELLOSILLO, J.:

This *Petition for Review on Certiorari* seeks to reverse and set aside the Decision of the Court of Appeals of 9 August 1999 affirming the assailed Resolution of the National Labor Relations Commission (NLRC) and its Resolution of 28 January 2000 denying reconsideration thereof.

Respondent Catherine Dialogo, a receptionist at the *Zu Disco* of petitioner Shangri-la Hotel, went on sick leave from 8 to 11 June 1995. However, when she received her salary for 31 July 1995 it included an amount for overtime pay for work supposedly rendered beyond eight (8) hours on 11 June 1995. In short, respondent received overtime pay for 11 June 1995 without rendering overtime work. For this, respondent was dismissed from the service for alleged dishonesty.

In her complaint for illegal dismissal and non-payment of 13th month pay filed on 23 October 1995, respondent maintained that she signed the list that was subsequently attached to the overtime authorization form before she went on sick leave on 8 June 1995. She claimed that she did not know then that her salary for 31 July 1995 would include the amount of P254.90^[1] as overtime pay for work supposedly rendered on 11 June 1995 on which date she was on sick leave.

But the Labor Arbiter was not persuaded and consequently found respondent guilty of dishonesty and, as a consequence, dismissed her complaint for lack of merit^[2]-

Complainant tried to feign oblivious of the time of signing of the list attached to overtime authorization form and pretended unaware of overtime pay as part of her salary received yet evidence belied her pretensions.

The Sworn Affidavit of Mylene M. Vitalli clearly spells out that she prepared the overtime list after 11 June 1995 because she based the list on Zu Attendance Logbook x x x x That Ms. Vitalli based the list on the Zu Attendance Logbook has remained uncontroverted x x x x That she prepared the names except complainant's is shown by the dissimilarity of the printed name "CATHERINE DIALOGO" compared to the rest of the printed names. Finally, that she prepared the list after 11 June 1995 is logical because it was based on the Zu Attendance Logbook dated 11 June 1995 x x x x Ergo, complainant could not have signed the same document before 11 June 1995.^[3] We cannot buy complainant's pretensions that she was unaware of the overtime pay, for "it is presumed that a person takes ordinary care of his concerns (Sec. 5 (c),^[4] Rule 131 of the Rules of Court). Hence, often than not, employees

counter-check and/or verify their earnings from the pay slip x x x x^[5]

Nevertheless, petitioner was ordered to pay an indemnity of P5,000.00 to respondent for its failure to comply with the requirements of due process, and another P5,000.00 as financial assistance to respondent who had no known derogatory record and to satisfy the ends of social and compassionate justice.

The NLRC reversed the Labor Arbiter, ruling that respondent could not be held guilty of dishonesty precisely because she did not know that the blank form where she signed her name was an overtime authorization form for 11 June 1995. She also had no knowledge that her salary for 31 July 1995 included the overtime pay for 11 June 1995 which she did not render. The NLRC explained that -

Dishonesty is an expression of a broad and expansive meaning. Presumably, on this reason, the contending parties and the Labor Arbiter, presented criteria, standards and hallmarks of dishonesty in more specific connotations, acts or process x x x x These hallmarks of dishonesty possess a common element which is knowledge. More specifically, the alleged offense of complainant is "knowingly claiming and receiving overtime pay for unrendered overtime service on June 11, 1995." The amount of overtime pay was barely P300.00^[6] nonetheless the Hotel's Code of Discipline punishes any form of dishonesty with dismissal.

An examination of the pieces of evidence to support knowledge, as an element of dishonesty, requires a detailed analysis of the Hotel's operational activities which include the procedure in claiming overtime pay; the supervision of the Hotel's responsible officers on their laxity, the process of computerization of the employee's work schedule, their payrolls or vouchers.

The Labor Arbiter a quo failed to observe this method rendering his impugned Decision useless.^[7]

Accordingly, the NLRC directed petitioner to reinstate respondent without loss of seniority and with full back wages from the time of her dismissal until her actual reinstatement.

The Court of Appeals^[8] sustained the NLRC thus -

x x x x (G)rave abuse of discretion is committed when the judgment is rendered in a capricious, whimsical, arbitrary or despotic manner. An abuse of discretion does not necessarily follow just because there is a reversal by the NLRC of the decision of the Labor Arbiter. Neither does the mere variance in the evidentiary assessment of the NLRC and that of the Labor Arbiter would, as a matter of course, so warrant another full review of facts. The NLRC's decision, as long as it is not bereft of support from the records, deserves respect from the Court.^[9]