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# FIRST DIVISION

# [ G.R. No. 121035, April 12, 2000 ]

## RUFINO NORBERTO F. SAMSON, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, SCHERING-PLOUGH CORPORATION, LEO RICONALLA AND JOSE L. ESTINGOR, RESPONDENTS.

## D E C I S I O N

**KAPUNAN, J.:**

Through this petition for *certiorari*, Rufino Norberto F. Samson ("petitioner") assails the Decision, dated 17 March 1995, of the National Labor Relations Commission in the consolidated cases of NLRC NCR-00-01-00652-94 and NLRC NCR-00-02-00887-94. Petitioner likewise assails the Resolution, dated 10 May 1995, of the NLRC denying his motion for reconsideration.

The assailed decision of the NLRC reversed and set aside the Decision, dated 25 August 1994, of Labor Arbiter Ricardo C. Nora finding respondent Schering-Plough Corporation ("respondent company") guilty of illegal dismissal and ordering it to reinstate petitioner to his former position as District Sales Manager and to pay him backwages.

As culled from the decisions of the labor arbiter and the NLRC, the facts of the case are as follows:

> This pertains to the case (NCR-00-01-00652-94) filed by the complainant Rufino Norberto F. Samson against the respondents Schering – Plough Corp. ('SPC' for brevity) and Mr. Leo C. Riconalla, National Sales Manager, for money equivalent of rice subsidy for the period April 1990 to December 1992 and holiday pay, now deemed submitted for resolution based on records available.
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> On February 1, 1994, said complainant filed another case (NCR-00-02-00887-94) for illegal preventive suspension raffled to the Honorable Labor Arbiter Donato G. Quinto, Jr. and consolidated to the above case number.
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> Likewise, on February 4, 1994, complainant filed a Motion to Amend Complaint and averred pertinently that 'x x x complainant was placed under an indefinite preventive suspension on 25 January 1994'; and 'x x x was arbitrarily and summarily terminated from employment on 03 February 1994 on ground of loss of confidence.'
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> As culled from the records of the instant case, what really precipitated complainant's preventive suspension culminating to his dismissal is (sic) the incident that took place on December 17, 1993 as gleaned from the

exchange of letters/memoranda from both parties.

In a letter dated 25 January 1994 (Annex 'A') addressed to the complainant Mr. Samson signed by one J.L. Estingor, the latter called the attention of (sic) the complainant's conduct 'x x x in a manner inimical to the interests of SPC' and enumerated the following acts committed by the complainant; to wit:

x x x x x x x x x

> 1. On or about 17 December 1993, during the Sales and Marketing Christmas gathering, you made utterances of obscene, insulting, and offensive words, referring to or directed against SPC's Management Committee, in the presence of several co-employees.
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> 2. On that same occasion, and again in the presence of several co-employees, you uttered obscene, insulting and offensive words, and made malicious and lewd gestures, all of which referred to or were directed against Mr. Epitacio D. Titong, Jr. President and General Manager of SPC.
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> 3. Also on that same occasion, you repeated your malicious utterances and threatened to disrupt or otherwise create violence during SPC's forthcoming National Sales Conference, and enjoined your co-employees not to prepare for the said conference.
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> 4. Subsequently, on or about 3 January 1994, you repeated your threats to some co-employees, advising them to watch out for some disruptive actions to happen during the National Sales Conference.' (Underscoring ours)

Complainant was given two (2) days from receipt of the foregoing letter and to explain 'x x x why no disciplinary action, including termination', should be taken against the complainant and in the meantime was placed on preventive suspension effective immediately, until further notice.

Complainant on the very same date 25 January 1994 and in reply to the above-mentioned letter/memo (Annex 'B') wrote an explanation stating:

'x x x x x x x x x

> Relative to the said memo I would like to categorically state the following facts:
>
> 1. That the act(s) alluded in the memo, specifically paragraph[s] 1 and 2, which alleged that I uttered obscene, insulting and offensive words is not true. If ever I happened to utter such words it was made in reference to the decision taken by the management committee on the Cua Lim case and not to any particular or specific person(s) as stated in the memo.

2. I beg to disagree with the statement made in Paragraphs 3 and 4 of the same memo as I deny to have uttered much less threaten to create violence and disrupt the holding of the National Sales Conference.

Finally, I am lodging a formal protest for being placed under preventive suspension it being contrary to the memo which gave me two (2) days within which to explain my position before any disciplinary action could be initiated. I believe that the pre-empted imposition of the preventive suspension is not only arbitrary but is violative of my constitutional 'right to due process'.

Submitted for your information.'(Underscoring ours)

Again, on January 27, 1994, complainant wrote a letter (Annex 'C') addressed to Mr. J.L. Estingor, HRD Manager, which in part reads:

'x x x x x x x x x

Being a staff (DSM) assigned in the field I seldom stay in the office except on extreme necessity or when my presence is required. Under such situation my continued employment will not in any way poses [sic] serious or imminent threat to the life and property of the company as well as my co-employees. The preventive suspension meted out against me is not only abusive, arbitrary but indiscriminately applied under the guise of managerial prerogative but violative of my right under the law.

I trust that my immediate reinstatement will be acted upon without any further delay.'

In a letter dated February 3, 1994, respondent SPC thru Mr. J.L. Estingor, wrote a letter (Annex 'D') to the complainant Mr. Samson, the dispositive part of which reads as follows:

'x x x x x x x x x

In view of the foregoing, notice is hereby given that your employment from Schering Plough Corporation is terminated effective at the close of business hours of 3 February 1994.

We reiterate our previous directive for you to turn over the service vehicle, all money, documents, records and other property in your possession or custody to the National Sales Manager. Please comply with this directive immediately.'"[1]

On the basis of the pleadings filed by the parties and evidence on record, the labor arbiter rendered his Decision, dated 25 August 1994, declaring the dismissal of petitioner illegal. The labor arbiter ruled that petitioner's conduct is not so serious as to warrant his dismissal because: 1) the alleged offensive words were uttered during

an informal and unofficial get-together of employees where there was social drinking and petitioner was already tipsy; 2) the words were uttered to show disapproval over management's decision on the "Cua Lim" case; 3) the penalty for the offense is only "verbal reminder" under respondent company's rules and regulations; and 4) petitioner was already admonished during a meeting on 4 January 1994. Accordingly, respondent company was ordered to reinstate petitioner as District Sales Manager and to pay him backwages.[2]

Both parties appealed said decision to the NLRC. Petitioner filed a partial appeal of the denial of his claim for holiday pay and the cash equivalent of the rice subsidy. For its part, respondent company sought the reversal of the decision of the labor arbiter alleging that the latter erred in ruling that petitioner's employment was terminated without valid cause and in ordering his reinstatement.

In reversing the labor arbiter's decision, the NLRC found that there was just cause, i.e., gross misconduct, for petitioner's dismissal. The NLRC made the following disquisition, thus:

> It is well established in the records that complainant made insulting and obscene utterances directed at the respondent company's management committee in the presence of several employees. Again, he directed his verbal abuse against General Manager and President Epitacio D. Titong, Jr. by uttering "Si EDT, bullshit yan", "sabihin mo kay EDT yan"; and "sabihin mo kay EDT, bullshit yan" while gesturing and making the "dirty finger" sign. (page 7, Decision) These utterances were made by the complainant in [a] loud manner. (Affidavit of Leo C. Riconalla, Annex "1", of respondents' position paper) He was further accused of threatening to disrupt respondents' national sales conference by telling Ms. Anita Valdezco that the conference will be a "very bloody one." (Respondents' position paper)
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> We consider the foregoing actuations of the complainant as constituting gross misconduct, sufficient to justify respondents in terminating his services. The actuation of the complainant is destructive of the morals of his co-employees and, therefore, his continuance in the position of District Sales Manager would be patently inimical to the respondent company's interest.
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> Complainant is a managerial employee as he is a District Sales Manager. As such, his position carries the highest degree of responsibility in improving and upholding the interests of the employer and in exemplifying the utmost standard of discipline and good conduct among his-co-employees. (*Top Form Mfg. Inc., vs. NLRC, 218 SCRA 313*) In terminating the employment of managerial employees, the employer is allowed a wider latitude of discretion than in the case of ordinary rank-and-file employee. (*Aurelio vs. NLRC, et al., G.R. 99034, April 12, 1993*) [3]

Preliminarily, we find it necessary to resolve the procedural issues raised by respondent company in its Comment (with Motion for Clarification), dated 6 September 1995. Respondent company harped on the fact that the caption of the petition did not include the docket numbers of the cases before the NLRC in violation

of Supreme Court Circular 28-91. We do not find this omission fatal as the pertinent docket numbers had been set out in the first and second pages of the petition. The same constitutes substantial compliance with the requirement of the law.

Respondent company further opined that the petition should be summarily dismissed as the decision had become final and executory citing Section 114, Rule VII and Section 2 (b), Rule VIII of the Rules of Procedure of the NLRC. This contention is likewise untenable. As an original action for certiorari, the petition was merely required to be filed within a reasonable time from receipt of a copy of the questioned decision or resolution.[4] Under the rules then in effect at the time of the filing of the instant petition, a period of three (3) months was considered to be "reasonable time".[5] In this case, petitioner received a copy of the assailed NLRC decision on 25 April 1995. He filed a motion for reconsideration on 27 April 1995 but it was denied by the NLRC in its assailed resolution, a copy of which was received by petitioner on 1 July 1995. The instant petition was filed twenty-seven (27) days after said receipt or on 28 July 1995. Clearly, the instant petition was filed well within the reglementary period provided by law.

Having settled that, we now address the substantive issue involved in this case, i.e., whether the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in reversing the decision of the labor arbiter and ruling that petitioner was validly dismissed.

We rule in favor of petitioner.

The issue of whether petitioner was validly dismissed is a factual one and generally, factual findings of the NLRC are accorded respect. In this case, however, there is compelling reason to deviate from this salutary principle because the findings of facts of the NLRC are in conflict with that of the labor arbiter. Accordingly, this Court must of necessity review the records to determine which findings should be preferred as more conformable to the evidentiary facts.[6]

To constitute valid dismissal, two (2) requisites must be met: (1) the dismissal must be for any of the causes expressed in Article 282 of the Labor Code; and (2) the employee must be given an opportunity to be heard and defend himself.[7] Article 282 of the Labor Code provides:

> **Art. 282. Termination by employer.** – An employer may terminate an employment for any of the following causes:
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> a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
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> b. Gross and habitual neglect by the employee of his duties;
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> c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly