

## SECOND DIVISION

[ G.R. No. 140043, July 18, 2000 ]

**CARMELITA NOKOM, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION, RENTOKIL (PHILS.) PAUL STEARN  
AND RUSSEL HARRIS, RESPONDENTS.**

### D E C I S I O N

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

Before us is a petition for review on *certiorari* of the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> of the Court of Appeals<sup>[3]</sup> dated February 24, 1999, and September 6, 1999, respectively, in its affirmance of the Decision<sup>[4]</sup> of the NLRC<sup>[5]</sup> dated September 30, 1997 finding petitioner Carmelita Nokom as having been legally dismissed for loss of confidence from her employment with private respondent Rentokil (Phils.).

The pertinent facts are as follows:

Petitioner Nokom was employed as a manager by private respondent Rentokil (Phils.) for its Healthcare Division effective August 1, 1994. As manager, she was responsible for managing the Healthcare Division in accordance with the policies of Rentokil and she reported directly to the General Manager, Framie Ong-dela Luna.

Sometime in April 1996, private respondents Paul Stern and Russel Harris, Rentokil's Area Director and Regional Finance Controller, respectively, received information that fictitious invoices were sent to Rentokil clients in the Healthcare Division whose contracts have already been terminated. The fictitious invoices were allegedly made to inflate the gross revenues of the Healthcare Division to make up for the shortfall in its target revenues for the year 1995. Because initial findings showed that petitioner Nokom, as Manager of the Healthcare Division, was involved in the anomaly, private respondents placed her on preventive suspension. Later on, it was found out that petitioner knew of the fraudulent activities which, as discovered by the new Finance Manager, continued in 1996. It was likewise discovered that there were fraudulent activities in the Pest Control Division which was also headed by Framie Ong-dela Luna. As a result of that discovery, the local general manager, Framie Ong-dela Luna, was also placed on preventive suspension and she was required to submit a written explanation on the fraudulent activities.

Thereafter, private respondent Paul Stern informed petitioner of the findings of their auditor. Petitioner admitted the irregularities and, in her written explanation as required under the notice of preventive suspension, petitioner told Stern that she had no explanation and said that she was leaving her fate up to management. Petitioner also complained about acts committed by private respondent Russel Harris who allegedly forcibly opened and ransacked her office drawers sometime on April 20, 1996 thereby causing her to lose some valuables.

During the hearing conducted by Rentokil management on May 13, 1996 to investigate the anomalies, petitioner failed to appear despite notice. After the investigation, it was found out that petitioner was aware, tolerated and in fact participated in the production of fictitious invoices.<sup>[6]</sup> Thus, on May 15, 1996,<sup>[7]</sup> petitioner's employment was terminated in a letter of that date which stated:

"Dear Carmelita,

As you are aware, the Company sent to you on 18th April 1996 a memorandum relative to the fictitious invoices which were raised for Rentokil clients. You were given the opportunity to submit your written answer but you failed to do so. Moreover, you also failed to attend the scheduled hearing.

The following were established:

1. Fictitious invoices were sent to Rentokil clients in August and December of 1995, to the value of P7,114K, with purpose to fraudulently increasing the turnover and therefore the profit of the Healthcare Division.
2. The Healthcare turnover in the first quarter of 1996 was adjusted manually to declare a higher turnover than had actually occurred by some P3,019K.
3. You were aware, tolerated and in fact participated in the production of the fictitious invoices.

The above points are fraudulent and cannot be tolerated. Accordingly, you are hereby terminated from your employment effective immediately.

You are directed to return any company property that may still be in your possession.

Yours faithfully,

(Sgd.) Paul C. Stearn  
Area Director, Asia North"

In a letter dated June 6, 1996,<sup>[8]</sup> Framie Ong-dela Luna was also given a letter of termination of her employment and which reads:

"Dear MRS. DELA LUNA:

You will recall that on 7 May 1996, you were required to submit a written explanation relative to report of Mr. David Stedman about the lack of senior management control on subordinate managers giving opportunity for the commission of fraud. In fact, fictitious invoices were sent to Rentokil clients to fraudulently increase the turnover to show profit for the Healthcare Division. The Healthcare turnover in the first quarter of 1996 was adjusted manually to declare higher turnover. In your written explanation dated 11 May 1996, you claim that your name was not

stated or the person directly responsible with respect to the falsified invoices and others. Likewise, you claim that the resulting fraudulent reports were not under your direct supervision and control.

Hearings were conducted and the final report of Mr. Stedman was shown to you and taking into account your explanation and the matters taken up during the hearings, the following were established:

1. As Executive Vice President and General Manager (EVP & GM), you failed to oversee and ensure that all reports submitted to the Head Office are accurate.
2. As EVP & GM, you failed to effectively supervise your subordinate managers resulting in their commission of fraud.
3. The effect of the fraud was that the company under your control declared to the Rentokil Group some P7,114K is fictitious turnover and profit in the year of 1995. It also overdeclared its turnover in the first quarter of 1996 by P3,332K and its profit by P4,044.
4. The portfolio of Healthcare was also overdeclared in the Management Account by potentially P15,181K.
5. As a result of these actions, the trading result of 1996 will now be less by some P500K sterling.

In view of the foregoing, you are hereby terminated from your employment effective immediately on the ground of gross neglect of duties resulting in the loss of trust and confidence.

You are directed to return company properties that may still be in your possession.

Very truly yours,  
(Sgd.) Paul Stearn  
Area Director, Asia North"

On June 11, 1996, petitioner filed a complaint<sup>[9]</sup> for illegal suspension, illegal dismissal and non-payment of salaries against Rentokil before Labor Arbiter Eduardo J. Carpio and prayed for her reinstatement, payment of backwages, damages and attorney's fees. On the other hand, Framie Ong-Dela Luna filed a separate complaint<sup>[10]</sup> for illegal dismissal against Rentokil. On May 30, 1997, Labor Arbiter Carpio rendered a joint decision<sup>[11]</sup> in favor of petitioner and Framie Ong- Dela Luna and held:

"WHEREFORE, judgment is hereby rendered declaring the employment termination of both complainants as illegal and ordering respondents to immediately reinstate them to their former position (sic) with full backwages from the time of their employment termination up to March 31, 1997 in the amount of:

1. CARMELITA NOKOM ----- Php400,050.00

2. FRAMIE ONG-DELA LUNA-----Php682,366.38

which amounts of backwages are still subject to further adjustment, until complainants' payroll or physical reinstatement.

Respondent (Rentokil) is further ordered to pay each complainant the sum of Php100,000.00 for moral damages and Php50,000.00 for exemplary damages, plus 10% of the total judgment award by way of attorney's fees.

SO ORDERED."

On appeal to the NLRC, a Decision<sup>[12]</sup> was rendered which reversed and set aside the decision of Labor Arbiter Carpio and dismissed the complaints for being without merit. In the case against Nokom, it held that "one does not have to be endowed with an exceptional intelligence to be convinced that the subject managerial employee was directly involved in the uncovered fictitious invoicing in 1995 and in the fraudulent adjustment of `Healthcare turnover in the first quarter of 1996.' When complainant refused to explain her side in writing as well as in the hearing scheduled for said purpose, she not only waived her right to due process as guaranteed by Article 277 (b) of the Labor Code, worse, she raised the presumption that she was guilty of the infractions she was asked to explain about. x x x"<sup>[13]</sup>

Anent the case against Dela Luna, the NLRC ratiocinated that Dela Luna was dismissed not because of any evidence of her complicity or culpability *vis-à-vis* the subject fraudulent transactions, but rather, it was because as Executive Vice President and General Manager, she failed to oversee and ensure that all reports submitted to the Head Office are accurate and effectively supervise (her) subordinate managers resulting in their commission of fraud. These matters not only unquestionably serve as valid bases for an employer's loss of trust on a managerial employee but worse, they were factual charges that complainant Dela Luna failed to seriously refute."<sup>[14]</sup> Further, the NLRC stated that it was not too late to entertain additional grounds justifying the dismissal of complainants, *i.e.*, committing misstatement of trading expenses, abuse of personal expenses, appointment of relatives, related party transaction, authorization of financial documents, payroll and staff loans and misstatement of portfolio, because such grounds were introduced in the proceedings before the Labor Arbiter. The NLRC justified that if such grounds to dismiss can be validly entertained by it on appeal on the ground that Article 221 of the Labor Code provided that it was not bound by technical rules or even in a petition for new trial or a petition for relief from judgment after a decision has obtained finality, there is no reason why the Labor Arbiter should ignore the infractions which were not disputed by complainants.<sup>[15]</sup>

Petitioner Nokom then filed a petition for *certiorari* before the Court of Appeals and, in a decision dated February 24, 1999,<sup>[16]</sup> the petition was dismissed for lack of merit and the assailed decision of the NLRC was affirmed. It held, among others, that "petitioner's failure to detect and report to the respondent company the fraudulent activities in her division as well as her failure to give a satisfactory explanation on the existence of the said irregularities constitute `fraud or willful

breach' of the trust reposed on her by her employer or duly authorized representative" - one of the just causes in terminating employment as provided for by paragraph c, Article 283<sup>[17]</sup> of the Labor Code, as amended."<sup>[18]</sup> Further, it held that petitioner's bare, unsubstantiated and uncorroborated denial of her participation in the anomalies, and her adamant refusal to cooperate with and explain her side to the management of Rentokil is regrettable, thus, she not only waived her right to due process as guaranteed by Article 277 (b) of the Labor Code but worse, she raised the presumption that she was guilty of the infraction she was asked to explain about.<sup>[19]</sup> All in all, it was held that no grave abuse of discretion was committed by the NLRC in the issuance of its assailed decision because substantial evidence existed which supported the findings of the NLRC that, indeed, petitioner Nokom was validly dismissed by private respondents for a legal and just cause.<sup>[20]</sup> Petitioner thereafter filed a Motion for Reconsideration but the same was denied for lack of merit in a Resolution<sup>[21]</sup> dated September 6, 1999.

Hence, this petition.<sup>[22]</sup>

Petitioner Nokom raises two (2) issues, namely, (1) whether the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction correctible by *certiorari* in concluding that petitioner was legally dismissed despite the overwhelming evidence to the contrary, and (2) whether the Court of Appeals gravely abused its discretion in denying the petitioner the reliefs sought by her.<sup>[23]</sup>

Private respondents interposed with this Court a Motion to Dismiss<sup>[24]</sup> the petition on the ground that the petition was filed out of time and raised no question of law. In their Comment,<sup>[25]</sup> private respondents citing *Martires vs. Court of Appeals, et al.*<sup>[26]</sup> reiterated that the issues raised by petitioner did not fall within the purview of "questions of law" but rather, that they were allegations of "grave abuse of discretion" which were not the proper office of appeal by *certiorari* under Rule 45.<sup>[27]</sup> Private respondents averred that the Court of Appeals had already ruled that the NLRC did not commit any grave abuse of discretion in upholding the validity of petitioner's dismissal from employment and that the NLRC correctly found more than enough substantial evidence to justify its decision.<sup>[28]</sup> Further, private respondents alleged that as gleaned from the issue raised by petitioner, it is apparent that petitioner seeks the re-evaluation by this Court of the sufficiency of evidence for petitioner's dismissal from employment which is not the function of appeal by *certiorari* inasmuch as this Court is not a trier of facts.<sup>[29]</sup> They added that contrary to the assertion of petitioner, she was not denied due process because the fact was that she refused to explain the existence of the anomalies in her division.<sup>[30]</sup> Petitioner refused to submit her written explanation and ignored the scheduled administrative hearing on May 13, 1996.<sup>[31]</sup> Lastly, under the principle of command responsibility, private respondents contend that as Manager of the Healthcare Division, she exercised control and supervision on all transactions including the fraudulent production of falsified invoices in her division and that her unexplained failure to detect the anomalies and unjustified refusal to give her explanation constitutes fraud and wilful breach of trust.<sup>[32]</sup>

Public respondent NLRC likewise filed its Comment<sup>[33]</sup> where it stressed that only questions of law may be raised in a petition for review on *certiorari* and not