

FIRST DIVISION

[G.R. No. 125212, June 28, 1999]

**SURIGAO DEL NORTE ELECTRIC COOPERATIVE AND/OR
EUGENIO BALUGO/CIRIACO MESALUCHA, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION (5TH DIVISION)
AND ELSIE ESCULANO, RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This special civil action for *Certiorari* seeks to annul the Resolution,^[1] dated January 31, 1996, of the Fifth Division of the National Labor Relations Commission in NLRC Case No. M-001940-94, ordering petitioner cooperative to reinstate private respondent Elsie Esculano (hereinafter referred to as private respondent), without loss of seniority rights and to pay backwages and allowances, plus attorney's fees; as well as the Resolution,^[2] dated April 30, 1996, denying petitioners' Motion for Reconsideration. The challenged ruling reversed the Decision^[3] of the Labor Arbiter, dated March 7, 1994, which declared private respondent's dismissal as valid and legal.

The facts of the case are as follows:

On December 3, 1991, a former employee of petitioner cooperative, Cosette O. Quinto, sent a letter^[4] of even date addressed to its General Manager, petitioner Eugenio A. Balugo, with copies furnished to petitioner cooperative's Board of Directors and National Electrification Administration Project Supervisor, Engr. Decoroso B. Padilla. The contents of her letter are hereby reproduced, as follows -

December 3, 1991

MR. EUGENIO A. BALUGO

General Manager

SURNECO

Surigao City

Dear General Manager:

This is in reference to my nine (9) years continuous service with SURNECO.

Last 1988, I decided to be separated with (sic) SURNECO due to my pressing personal problems. Considering my faithful and loyal services

with SURNECO, I am supposed to be entitled with (sic) separation benefits and incentives.

Hence, I am humbly requesting for consideration that I may be granted with separation benefits and all other incentives due for (sic) me.

Hoping for your very fine consideration.

Thank you very much.

Very truly yours,

(signed)

COSETTE O. QUINTO

cc:

1. The Board of Directors

SURNECO

2. Engr. Decoroso B. Padilla

NEA Project Supervisor

No action was taken on this matter by either petitioner Balugo, petitioner cooperative's Board of Directors or NEA Project Supervisor.

Nearly four months later, or on March 30, 1992, private respondent Elsie Esculano, being then the Personnel Officer of petitioner cooperative sent a letter^[5] to petitioner Balugo regarding Quinto's letter-request, after the latter asked her to review her case. Attached to her letter was a report containing her findings and recommendations. Copies of the letter were furnished the following: "file, PS and 201."

In her attached report, private respondent concluded that petitioner cooperative had not properly accorded Quinto due process before terminating her services, enumerating the circumstances evidencing such lack of due process. Thus, private respondent recommended that petitioner cooperative grant Quinto separation pay, otherwise, the latter would be entitled to reinstatement without loss of seniority rights and other privileges and benefits.

Meanwhile, on July 2, 1992, with no action taken by petitioner cooperative on her letter-request, Quinto filed a Complaint^[6] for Illegal Dismissal with prayer for Reinstatement and Payment of Full Backwages, Damages and Attorney's Fees against petitioner cooperative before the Surigao Provincial Extension Unit of the Department of Labor and Employment. Without a doubt, the Complaint was based largely on the report submitted to petitioner Balugo by private respondent. Indeed, attached to Quinto's Position Paper^[7] was a copy of said report. The Position Paper, itself, extensively quoted portions of private respondent's report, particularly her

finding of lack of due process in the termination of Quinto and her recommendation for the grant of separation pay. While not quoted, the narration of antecedent facts showing illegal dismissal as well as the grounds supporting the finding thereof, appearing in private respondent's report, were also adopted by Quinto.

Quinto's case was, however, dismissed on October 22, 1992, for being barred by prescription.

On account of the filing of the illegal dismissal case against petitioner cooperative, based largely on private respondent's report, petitioner Balugo issued a Memorandum^[8] to private respondent on November 27, 1992, the contents of which are hereby reproduced, as follows -

27 November 1992

MEMORANDUM NO. 063

Series of 1992

To : MS. ELSIE B. ESCULANO

Personnel Officer

SUBJECT : Submission of Written Explanation

Appended to the complaint of Ms. Cosette O. Quinto against the company was your internal memorandum addressed to the undersigned.

You were never commissioned by management to make a review of Ms. Quinto's case as the company felt that the latter had already admitted her dismissal from the service as evidenced by her letter of December 3, 1991.

For no apparent reason, and with no one authorizing you to review the case of said Miss Quinto, you proceeded to do so. What made the matter worse is that you apparently furnished Miss Quinto with a copy thereof. Necessarily, Miss Quinto utilized your alleged recommendation against the company. Fortunately, however, the NLRC dismissed the complaint. It is, however, on appeal but the appeal is still grounded on your unauthorized recommendation.

Your unauthorized action has dragged the company into a protracted litigation not to mention the unnecessary expense that the company had to spend to defend itself.

In this connection, therefore, you are directed to explain in writing within 72 hours from receipt hereof why no disciplinary action shall be taken against you for acts unbecoming of a ranking employee and for acts prejudicial to the best interest of the company.

For compliance.

(signed)

EUGENIO A. BALUGO

General Manager

Noted by:

CIRIACO B. MESALUCHA

NEA Project Supervisor

Cc: The SURNECO Board

Atty. Catre

DOLE

file

201 file

Private respondent submitted her Written Explanation^[9] to petitioner Balugo on December 2, 1992. She reasoned out that it was inherent in her job as Personnel Officer "to assist Management in formulating and evaluating plans, policies and procedures on personnel related matters, and recommend to Management and (the) Board of Directors wage, salary and other benefits." She referred to her case review as a "feedback" on a problem with the corresponding recommendation to Management to take "corrective measures." Private respondent also drew attention to the fact that management took eight (8) months to react to her review of Quinto's case and opined that perhaps she was being used as a "scapegoat." She also said that the "protracted litigation" could have been avoided if management had "exercised its prerogatives in strategic planning and decision-making." To be sure, the tone of private respondent's Written Explanation was far from apologetic.

On December 15, 1992, petitioner Balugo wrote another letter^[10] to private respondent requesting her to inform the office whether or not she had additional evidence to present apart from her written explanation. She was there informed that if management does not hear from her within three (3) days, they would consider her case submitted for resolution.

Private respondent sent in her reply^[11] on December 18, 1992, stating that she had no idea that she had a "case" and requesting for information thereon.

Petitioner cooperative, however, through its Board of Directors, proceeded to act on the case of private respondent and on February 6, 1993, issued a Resolution^[12] terminating the services of the latter. The Board found that private respondent furnished Quinto with a copy of her internal memorandum addressed to petitioner Balugo, noting that private respondent never denied having done the same; that as a result of such internal memorandum, Quinto was emboldened to file a case for illegal dismissal against the cooperative, using the memorandum of private

respondent as basis; that this dragged the cooperative into an unnecessary labor case and exposed it to tremendous expenses for its defense. According to the Board, it was lamentable that private respondent, whose duty was to protect the interest of the cooperative, was the one who provided Quinto with "weapons and ammunition" to wage a war against the cooperative.

The Board also found that private respondent prepared the said memorandum without having been commissioned by management; that she undertook a review of Quinto's case simply because the latter personally talked to her to review the same. According to management, the review, apart from being unauthorized, was unnecessary since as early as December 3, 1991, Quinto herself admitted that she "decided to be separated from Surneco due to (my) pressing personal problems."

The Board, thus, found private respondent's act of releasing and/or divulging the contents of her internal memorandum to Quinto as contrary to norms of decency as far as protection of the interest of the cooperative is concerned as well as violative of Section 9 of their Code of Ethics and Discipline, which provides as follows -

"9-2.2 Without proper authority, revealing, releasing or divulging confidential information to individuals other than authorized persons."^[13]

On the other hand, it found private respondent's unauthorized review of the case of Quinto, merely on the basis of the latter's request, as violative of Section 10 of their Code of Ethics and Discipline, which provides as follows -

"10-2.1 Having any engagement, participation or involvement, direct or indirect, in any transaction involving any person, firms, corporation or any business, or other coops, where such act is in conflict with or is improper/undesirable to interest of the REC."^[14]

The Board concluded that -

"Certainly, advancing the interest of Miss Quinto instead of the Cooperative is an undesirable or improper conduct which merits the imposition of sanction. The respondent is a confidential officer of the Cooperative being the Personnel Officer. Her actuations as aforecited does not merit the continuation of the confidence reposed on her as such.

"In fine, we find the respondent guilty of the offense charged, and considering the prejudice she has caused to the Cooperative, this Board hereby imposes the penalty of dismissal from the service effective 17 February 1993."^[15]

The Board Resolution was followed by a letter^[16] from petitioner Balugo, dated February 15, 1993, notifying private respondent that she had been terminated from the service for cause, effective at the close of office hours on February 19, 1993.

On March 2, 1993, private respondent filed a Complaint for illegal dismissal, reinstatement with backwages, service incentive leave and moral damages before the Surigao Provincial Extension Unit, Regional Office No. 10, Department of Labor and Employment. A similar Complaint^[17] was filed on April 30, 1993 by private