

## SECOND DIVISION

[ G.R. No. 105819, March 15, 1996 ]

**MARILYN L. BERNARDO, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION (2ND DIVISION), HON. JOSE G. DE VERA, IN HIS CAPACITY AS LABOR ARBITER, UNIVET AGRICULTURAL PRODUCTS, INC., AND CONRADO S. BAYLON, RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

This is a petition for certiorari to annul the decision of the National Labor Relations Commission (Second Division) in NLRC-NCR CA No. 4-016-89 which, after finding the penalty of dismissal imposed on petitioner by private respondent to be too severe, instead denied her backwages as penalty for violation of the company's rules. Private respondents were ordered to give separation pay, with option to reinstate petitioner in lieu thereof. The NLRC thus modified the decision of the Labor Arbiter which completely dismissed the petitioner's complaint for illegal dismissal.

The facts of this case are as follows:

Petitioner Marilyn Bernardo was employed at the Univet Agricultural Products, Inc., a division of United Laboratories, on February 14, 1977. Starting as general clerk, she rose in 1980 to the position of administrative clerk, which she held until March 18, 1989 when she was dismissed for dishonesty.

It appears that in January 1989, the Manufacturing Department of the Univet Agricultural asked for two filing cabinets. Accordingly, petitioner prepared the Capital Appropriations Request (CAR) for the purchase of two filing cabinets. The request was signed by Dr. Salvador P. Cajilog, department head, and later approved by five other officers of Univet Agricultural. Before the CAR was transmitted to the purchasing department for the procurement of the office equipment, it was discovered that petitioner had included in the order the acquisition of one executive swivel chair.

On February 18, 1989, the following memorandum was issued to petitioner, requiring her to explain within 48 hours why no disciplinary action should be taken against her.<sup>[1]</sup>

**FROM :** Univet Manufacturing Department  
**TO :** Mrs. Marilyn L. Bernardo  
**SUBJECT :** Violation of Company House Rules & Labor Code  
**DATE :** February 18, 1989

Please explain within 48 hours from receipt of this memo why no disciplinary action be imposed against you for unauthorized insertion of one (1) executive swivel chair as indicated per CAR # 89-053 dated January 26, 1989, which constitute violations of the Company House Rules and Labor Code.

#### Company House Rules

1. Any form or act of dishonesty. Article 1, Paragraph 11, page 9;
2. Falsification of records furnishing false data with deliberate intent to defraud the company of cash, stocks or other company properties. Article 1, Paragraph 13, page 9;
3. Any act or omission, conduct of behavior or offense not specifically mentioned in these House Rules which are pre-judicial to the interest of the company shall be also punishable. The penalty to be imposed will depend upon the gravity of the offense as may be determined by the Division Gen. Manager. Article 1, page 10.

#### Labor Code

1. Art. 282. Termination by employer. An employer may terminate an employment for any of the following causes:
  - a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his works.

Kindly give this matter your immediate attention.

(Sgd.) SALVADOR P. CAJILOG

Petitioner admitted making the insertion in the Capital Appropriations Request but explained that she had done so in good faith. In her letter<sup>[2]</sup> to the company, she explained:

SUBJECT: VIOLATIONS OF COMPANY HOUSE RULES AS PER MEMO DATED FEBRUARY 18, 1989

Dear Sir:

In reference to the above-subject below are my explanations:

1. I inserted one (1) swivel chair as per CAR #89-053 dated January 26, 1989 for the simple reason that the budgeted amount of CAR (exec. swivel chair included) will not exceed the budgeted amount of 8,000 pesos:

- 1.a. Budgeted amount** P8,000 pesos
- 1.b. Less: Actual cost** 7,860 pesos

**of CAR as per survey**

**BALANCE**

140 pesos

2. I just acted in good faith. I thought that what I was doing would benefit the department.
3. The CAR went to the usual channel or normal procedure.
4. It was never delivered nor stolen.
5. It was intended for the use of manufacturing personnel and not for my personal use.
6. It didn't occur to me that my actions would be misinterpreted since my intention is purely for the good of the department.
7. I have no intention to defraud the company of cash, etc.

Sir, if you can still recall, the insertion was not really hidden from you, I have mentioned to you that with the budgeted amount there is still around 4,000 pesos balance which would suffice to buy swivel chairs for the department. I was not told to refrain from doing that.

Then after a day or two, you mentioned to me that we will make a supplemental budget for office chairs since our existing chairs are similar to the one being used at Mayflower canteen. You told me that I should remind you about it.

After that day, I changed my mind and instead type executive swivel chair. To be honest with you Sir, I want that chair for you as my simple way of thanking you for being so fair and just with your subordinates. You are one of the few managers in Univet whom I respect because of your tactfulness and being so "malambing" to us.

In fact, when somebody (unfortunately I forgot his name) from the office of one of the approving department (UL) called up and asked me about it. I told him that the chair is intended for you because your existing chair is already going out of style. Gusto ko noon sorpresahin ko kayo, kaya lang ako ang nasorpresa ninyo.

With all my earnestness my motive then was merely to surprise you with that swivel chair.

In view of the above-explanations, I would like to take this opportunity to apologize for whatever shortcoming I have made.

Thank you for your attention and understanding on this matter.

Respectfully yours,

(Sgd.) MARILYN L. BERNARDO  
Univet Marketing

Apparently, petitioner's explanation was considered not satisfactory, because on March 18, 1989, she was given notice of the termination of her employment. The notice read:<sup>[3]</sup>

**TO :** Mrs. Marilyn L. Bernardo  
**FROM :** Univet Personnel Committee  
**SUBJECT :** Violation of Company House Rules and Labor Code  
**DATE :** March 18, 1989

Investigation of the charges against you have been completed. We exhaustively delved on all the facts and evidences of this case. The pertinent documents which includes among others, your written explanation dated February 21, 1989, the explanation and recommendation of your immediate supervisor were thoroughly considered.

After series of lengthy and exhaustive deliberations, you were found to have violated Company House Rules and Labor Code.

**COMPANY HOUSE RULES:**

1. Any form or act of dishonesty. Article I, Paragraph 11, page 9;
2. Falsification of records furnishing false data with deliberate intent to defraud the company of cash, stocks or other company properties. Article I, Paragraph 13, page 9;
3. Any act or omission, conduct or behavior or offense not specifically mentioned in these House Rules which are prejudicial to the interest of the company shall be also punishable. The penalty to be imposed will depend upon the gravity of the offense as may be determined by the Division General Manager. Article I, page 10.

**LABOR CODE:**

Art. 282. Termination by employer. Any employer may terminate an employment for any of the following causes:

- a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his works.
- b. Gross and habitual neglect by the employee of his duties.
- c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

In view of the foregoing, your services with the company is hereby

terminated effective March 18, 1989.

FOR UNIVET PERSONNEL COMMITTEE:

(Sgd.) WINSTON T. YOUNG

Petitioner wrote Dr. Delfin Samson, president of United Laboratories, Inc., asking for a "fair investigation." Getting no favorable response, she filed on April 7, 1989 a complaint for illegal dismissal against Univet Agricultural Products, Inc.

Petitioner alleged that she made the intercalation in the CAR in good faith, without any intention of defrauding the company, because she intended the chair for the manager of her department, Dr. Salvador Cajilog. She claimed that what she did was made with the knowledge of Dr. Cajilog. Petitioner alleged that she was dismissed because she had exposed the involvement of two company officers, Conrado Baylon and Dr. Benedicto Santiago, in the rival company, Biomass Corp. of the Philippines.

Due to delays and postponements of her case in the Labor Arbiter's office, petitioner filed with the NLRC a petition for reinstatement pending resolution of her claim. When her petition was denied, she filed a petition for certiorari in this Court (G.R. No. 93958). In its resolution of December 10, 1990, this Court dismissed the petition but directed the Labor Arbiter to resolved petitioner's case within 30 days.

On February 21, 1991 the Labor Arbiter rendered a decision dismissing petitioner's complaint for lack of merit. The Labor Arbiter found petitioner guilty of dishonesty and serious misconduct, warranting dismissal from the service.

On appeal the NLRC, while finding petitioner liable to disciplinary action, thought that the penalty imposed by the company was too severe. Accordingly, it set aside the decision of the Labor Arbiter and ordered the petitioner reinstated and paid backwages for one year of P84,164.72 (P7,014.56 x 12) and attorney's fees equivalent to 10% of the award or P8,416.47.

Petitioner filed a motion for clarification, while private respondent Univet Agricultural filed a motion for reconsideration. On March 13, 1992, the NLRC modified its decision and deleted the award of backwages and, instead of reinstatement, simply ordered petitioner to be paid separation pay equivalent to 1/2 month's pay for every year of service based on her salary at the time of dismissal, unless the company opted to reinstate her.

Petitioner moved for reconsideration but her motion was denied on May 20, 1992. Hence, this petition alleging that the NLRC gravely abused its discretion. Her petition raises the following issues:

I. WHETHER OR NOT PETITIONER WAS DISMISSED WITHOUT DUE PROCESS OF LAW;

II. WHETHER OR NOT THERE WAS VALID GROUND TO DISMISS PETITIONER; AND