

THIRD DIVISION

[CA-G.R. SP NO. 131405, March 25, 2015]

**8R FLANDERS CFS, INC./ PRAXEDES YU TAN, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION (SIXTH DIVISION)
AND RIGOR DELA CRUZ, RESPONDENTS.**

DECISION

BARZA, J.:

Before the Court is a petition for certiorari seeking to annul the NLRC decision^[1] dated April 23, 2013 as well as its subsequent resolution^[2] dated June 11, 2013, in **NLRC LAC No. 11-003219-12 (NLRC NCR Case No. 06-09222-12)**.

Petitioners initially hired private respondent Rigor Dela Cruz as a messenger in June 2000 with a salary of Php6,000.00 a month. He was later promoted to warehouse checker and paid Php11,000.00 a month. As warehouse checker, private respondent's duty was to ensure that all cargo received and released in the company's warehouse are grouped together, delivered to the right consignees and properly accounted for.

During his stint as warehouse checker, private respondent committed various infractions on several occasions, prompting petitioners to issue several memoranda on him. It appears that private respondent had been responsible for a number of incidents where the cargoes for some of the company's clients got mixed up. Private respondent submitted his explanation to each show cause memo that was issued on him. On February 29, 2012, the company informed private respondent of the management's decision to terminate his employment.

On June 19, 2012, private respondent filed a case for illegal dismissal against petitioners. In a decision^[3] dated October 15, 2012, the Labor Arbiter found private respondent to have been validly dismissed from his work for his inefficiency and incompetence, a form of neglect of duty. Thus, the Labor Arbiter ruled that private respondent was guilty of habitual neglect of duty. But despite the finding of just cause for termination, the Labor Arbiter decided to award private respondent separation pay as financial assistance in an amount equivalent to ½ month pay for every year of service or a total of Php72,000.00. Petitioners appealed the judgment to the NLRC. In the assailed NLRC decision dated April 23, 2013, the NLRC denied petitioners' appeal. But contrary to the ruling of the Labor Arbiter, the NLRC found that private respondent's dismissal was not based on just cause, but because he did not appeal the Labor Arbiter's judgment, he was entitled to no other relief than the financial assistance subject of the instant case. Thus, the NLRC said that private respondent was all the more entitled to separation pay. But the NLRC agreed with the Labor Arbiter that private respondent's actions did not amount to serious misconduct or reflect moral depravity on his part, thus, separation pay as a measure of social and compassionate justice is allowed. The NLRC took into consideration

private respondent's untarnished (except for the subject infractions) 12-year employment record.

The denial of petitioners' appeal with the NLRC, however, was not unanimous. NLRC Commissioner Nieves E. Vivar-De Castro dissented, stating that private respondent's dismissal was for just cause (gross and habitual neglect of duty), hence, there was no basis to award financial assistance.^[4] Petitioners moved for the reconsideration of the NLRC decision but the same was denied in the assailed resolution dated June 11, 2013. Thus, the petition for certiorari.

The sole issue in the petition is the propriety of the award of separation pay to private respondent. Citing ***Apacible vs. Multimed Industries Incorporated, et al.***,^[5] petitioners argue that the grant of separation pay is proscribed when the dismissal is based on any of the grounds mentioned in **Article 282** of the **Labor Code**. They also posit that the computation of separation pay at ½ month salary for every year of service pertains only to termination of employment under **Arts. 283** and **284** of the **Labor Code**.

Before tackling the merits of the petition, the Court notes the notice of withdrawal of appearance^[6] of petitioners' counsel, the R & S Law Offices, received on January 15, 2013.

We grant the petition.

Both the Labor Arbiter and the NLRC in their respective decisions agreed to the award of separation pay as a form of social justice, but they differed in their opinions as to the validity of private respondent's dismissal. While the Labor Arbiter found just cause for termination (gross and habitual neglect of duties), the NLRC negated such finding and said that private respondent's dismissal was not based on just and valid cause.

The Court agrees with the Labor Arbiter that private respondent's dismissal is justified. The frequent errors committed by private respondent in the receipt and delivery of cargoes to the company's clients resulting in a mix-up of the items is a manifestation of gross and habitual neglect of duties. Gross negligence entails want of care in the performance of one's duties, while habitual neglect imparts repeated failure to perform such duties for a period of time, depending on the circumstances.^[7] It is also noteworthy that private respondent did not appeal the Labor Arbiter's finding of just cause for dismissal.

Art. 279 of the **Labor Code** mandates that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Prescinding from the said provision of law, the reliefs available to an unjustly terminated employee are backwages and reinstatement, not separation pay as a measure of compassionate justice as in the case at bar. However, since private respondent's termination from employment was clearly for valid cause, the award of separation pay to private respondent is all the more unwarranted.

In the case of ***Manila Water Company vs. Carlito Del Rosario***,^[8] the Supreme Court held -

"As a general rule, an employee who has been dismissed for any of the just causes enumerated under **Article 282** of the **Labor Code** is not entitled to a separation pay. **Section 7, Rule I, Book VI** of the **Omnibus Rules** implementing the **Labor Code** provides:

Sec. 7. Termination of employment by employer. — The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

In exceptional cases, however, the Court has granted separation pay to a legally dismissed employee as an act of "social justice" or on "equitable grounds." In both instances, it is required that the dismissal (1) was not for serious misconduct; and (2) did not reflect on the moral character of the employee.

In the leading case of ***Philippine Long Distance Telephone Company v. NLRC***, we laid down the rule that separation pay shall be allowed as a measure of social justice only in the instances where the employee is validly dismissed for causes other than serious misconduct reflecting his moral character. We clarified that:

'We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a like leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the