

## FIFTH DIVISION

[ CA-G.R. SP NO. 73599, February 18, 2006 ]

**EDILBERTO CARILLO ABRAHAM CALUZA AND NEMESIO CALUZA,  
PETITIONERS, VS. COCA-COLA BOTTLERS PHILIPPINES, INC.,  
RESPONDENT.**

### D E C I S I O N

**BARRIOS, J.:**

This petition for certiorari was filed by Edilberto Carillo, Abraham Caluza and Nemesio Caluza (hereafter the petitioners for brevity unless individualized as Carillo, A. Caluza and N. Caluza) assailing the Resolutions dated March 26, 2002 and July 31, 2002 issued by the respondent National Labor Relations Commission (or NLRC).

The petitioners were employed with the respondent Coca-Cola Bottlers Philippines (or Coca-Cola). Carillo started working on August 1, 1988 as a route helper and later on as a sales representative. On the other hand N. Caluza was employed on December 1, 1984 and his brother A. Caluza on December 1, 1992, both as route helpers.

For having been caught in the act committing pilferage on September 8, 1999, the petitioners were suspended and later on terminated from employment effective October 7, 1999. Prior to that date, Coca-Cola had been receiving reports that some sales personnel assigned to the Bagumbayan Sales Office were cheating from a regular customer of Coca-Cola, the Shangri-la Plaza outlet of the Rustan's Supermarket. This thievery called *mina* or *minahan* was conducted by members of a sales crew who short delivered company goods to customers and selling what they skimmed to other outlets at a lower price and thereafter dividing the loot among them. The *mina* or *minahan* is operated as follows:

... the salesmen/helpers will unload softdrink cases in order, i.e. coke first, sprite second, royal third, etc.;

the softdrink cases unloaded from the truck will be piled up outside the Supermarket, say 15 x 6 cases, such that it will be counted by merely multiplying the number of cases piled up and the number of cases placed along with the others;

reports were such that the salesmen/helpers will place a certain number of cases in the middle as "constant" (not to be removed until final counting), say, 12 cases of Royal will be placed as constant in the middle portion of the pile and it will be piled up with other products such as Coke in cans, to which orders for the same are higher; in reality, the "constant" placed in the middle will be counted as Coke in cans, and thereafter, when the Coke in cans are being brought inside the

Supermarket, the salesmen/helpers will resume unloading the other cases and pile them again on top of the other as abovementioned, but note that, the "constant", which has already been counted, will be counted again during the second (2nd) or third (3rd) unloading, and so forth. When the number of cases of Coke in can has theoretically been counted (but which in reality is lacking because of the "constant" in the middle portion) they will then count the Royal or Sprite as the case may be, as additional delivery.

Therefore, there occurred a "short delivery". (pp. 271-272, rollo)

Coca-Cola launched an operation called *Oplan-Shangrila* to investigate and stop this illegal activity. It assigned investigating teams to tailgate the delivery truck of the petitioners after its scheduled deliveries at Rustan's Supermarket. On that particular day, September 8, 1999, the sales crew of the delivery truck which included the petitioners made a delivery of company products to Rustan's Supermarket and proceeded to the 10/Q Supermarket in Shaw Boulevard. Apparently they sensed the presence of the owner-type jeep of one of the investigators, and the petitioners immediately left and sped off towards Meralco Avenue, Pasig, then entered Green Meadows, went straight to White Plains, turned right to EDSA then entered Camp Aguinaldo and stopped somewhere in Crame Avenue where they were cornered. Recovered from the delivery truck were the under delivered merchandise of 158 cases of Coke in can, 1 case of diet Coke in can, 14 cases of diet Sprite in can, 2 cases empty bottles of Coke 8 Oz., and 12 plastic pallets.

The petitioners were then escorted to the Bagumbayan Sales Office for investigation. Based on the records of the case, the petitioners admitted in their testimonies that the 168 cases of can products were supposed to have been delivered to the Rustan's Supermarket but they under delivered these on their agreement to sell the remaining cans and share the proceeds among themselves. Thus, on September 9, 1999, Coca-Cola through its Sales Division Supervisor issued a memorandum to the petitioners placing them on preventive suspension. The petitioners were then given the chance to explain in writing why the penalty of dismissal should not be imposed upon them but they failed to submit any written explanation. On October 7, 1999, the petitioners were terminated from their employment for violation of the CCBPI Employees' Code of Disciplinary Rules and Regulations, and Article 282 (c) of the Labor Code.

On December 16, 1999, the petitioners filed a complaint for *illegal dismissal and unfair labor practice* against Coca-Cola, and which the Labor Arbiter decided on October 17, 2000 disposing that:

WHEREFORE, premises all considered, judgment is hereby rendered dismissing the complaint for illegal dismissal filed by complainants Edilberto Carillo, Abraham Caluza and Nemesio Caluza, against herein respondent for lack of merit.

SO ORDERED. (p. 81, rollo)

The petitioners appealed this to the NLRC which on March 26, 2002 issued the assailed Resolution disposing that: