



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

UNILEVER PHILIPPINES,  
INC.,

G.R. No. 201701

Petitioner,

Present:

- versus -

VELASCO, JR., J., *Chairperson*,  
PERALTA,  
ABAD,  
MENDOZA, and  
LEONEN, JJ.

MARIA RUBY M. RIVERA,  
Respondent.

Promulgated:

JUN 27 2012

X

*Alcopiano*  
X

DECISION

MENDOZA, J.:

Subject of this disposition is the petition for review on *certiorari*<sup>1</sup> under Rule 45 of the Rules of Court filed by petitioner Unilever Philippines, Inc. (*Unilever*) questioning the June 22, 2011 Decision<sup>2</sup> and the April 25, 2012 Resolution<sup>3</sup> of the Court of Appeals (CA)-Cagayan de Oro City, in CA-G.R. SP No. 02963-MIN, an Illegal Dismissal case filed by respondent Maria Ruby M. Rivera (*Rivera*). The CA affirmed with modification the March 31, 2009 Resolution of the National Labor Relations Commission (NLRC) finding Rivera's dismissal from work to be valid as it was for a just cause and declaring that she was not entitled to any retirement benefit. The CA, however, awarded separation pay in her favor as a measure of social justice.

<sup>1</sup> *Rollo*, pp. 15-52.

<sup>2</sup> *Id.* at 54-71. Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justice Pamela Ann Abella Maxino and Associate Justice Zenaida T. Galapate-Laguilles, concurring.

<sup>3</sup> *Id.* at 73-74.

**The Facts**

Unilever is a company engaged in the production, manufacture, sale, and distribution of various food, home and personal care products, while Rivera was employed as its Area Activation Executive for Area 9 South in the cities of Cotabato and Davao. She was primarily tasked with managing the sales, distribution and promotional activities in her area and supervising Ventureslink International, Inc. (*Ventureslink*), a third party service provider for the company's activation projects. Unilever enforces a strict policy that every trade activity must be accompanied by a Trade Development Program (*TDP*) and that the allocated budget for a specific activity must be used for such activity only.<sup>4</sup>

Sometime in 2007, Unilever's internal auditor conducted a random audit and found out that there were fictitious billings and fabricated receipts supposedly from Ventureslink amounting to ₱11,200,000.00. It was also discovered that some funds were diverted from the original intended projects. Upon further verification, Ventureslink reported that the fund deviations were upon the instruction of Rivera.

On July 16, 2007, Unilever issued a show-cause notice to Rivera asking her to explain the following charges, to wit: a) Conversion and Misappropriation of Resources; b) Breach of Fiduciary Trust; c) Policy Breaches; and d) Integrity Issues.

Responding through an email, dated July 16, 2007, Rivera admitted the fund diversions, but explained that such actions were mere resourceful utilization of budget because of the difficulty of procuring funds from the head office.<sup>5</sup> She insisted that the diverted funds were all utilized in the company's promotional ventures in her area of coverage.

Through a letter, dated August 23, 2007, Unilever found Rivera guilty of serious breach of the company's Code of Business Principles compelling it to sever their professional relations. In a letter, dated September 20, 2007, Rivera asked for reconsideration and requested Unilever to allow her to receive retirement benefits having served the company for fourteen (14) years already. Unilever denied her request, reasoning that the forfeiture of retirement benefits was a legal consequence of her dismissal from work.

On October 19, 2007, Rivera filed a complaint for Illegal Dismissal and other monetary claims against Unilever.

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<sup>4</sup> Id. at 20.

<sup>5</sup> Id. at 58.

On April 28, 2008, the Labor Arbiter (LA) dismissed her complaint for lack of merit and denied her claim for retirement benefits, but ordered Unilever to pay a proportionate 13<sup>th</sup> month pay and the corresponding cash equivalent of her unused leave credits. The decretal portion of the LA decision reads:

WHEREFORE, premises considered, judgment is hereby rendered dismissing for lack of merit the illegal dismissal complaint. However, UNILEVER PHILIPPINES, INC. is hereby ordered to pay complainant the total amount of PESOS: FIFTY SEVEN THOUSAND EIGHTY TWO & 90/100 ONLY (₱57,082.90) representing proportionate 13<sup>th</sup> month pay and unused leave credits.

The complaint against individual respondents Recto Sampang and Alejandro Concha are likewise dismissed for it was not shown that they acted in bad faith in the dismissal of complainant. Moreover, their legal personality is separate and distinct from that of the corporation.

All other money claims are dismissed for lack of basis.<sup>6</sup>

On appeal, the NLRC partially granted Rivera's prayer. In its Resolution, dated November 28, 2008, the NLRC held that although she was legally dismissed from the service for a just cause, Unilever was guilty of violating the twin notice requirement in labor cases. Thus, Unilever was ordered to pay her ₱30,000.00 as nominal damages, retirement benefits and separation pay. The dispositive portion reads:

WHEREFORE, foregoing premises considered, the appeal is PARTIALLY GRANTED. The assailed Decision dated 28 April 2008 is hereby MODIFIED in the sense that respondent UNILEVER PHILIPPINES, INC. is hereby ordered *to pay* the following *sums*:

1. The amount of ₱30,000.00 representing nominal damages for violation of complainant's right to procedural due process;

2. Retirement benefits under the company's applicable retirement policy or written agreement, and in the absence of which, *to pay* complainant her retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year;

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<sup>6</sup> Id. at 24.

3. Separation pay under the company's applicable policy or written agreement, and in the absence of which, *to pay* separation pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

The *rest* of the Decision is hereby AFFIRMED.

SO ORDERED.<sup>7</sup>

Unilever asked for a reconsideration of the NLRC decision. In its Resolution, dated March 31, 2009, the NLRC modified its earlier ruling by deleting the award of separation pay and reducing the nominal damages from ₱30,000.00 to ₱20,000.00, but affirmed the award of retirement benefits to Rivera. The *fallo* reads:

WHEREFORE, foregoing premises considered, the instant Motion for Partial Reconsideration is PARTLY GRANTED. The Resolution dated 28 November 2008 of the Commission is hereby RECONSIDERED as follows:

(1)The award of separation pay is hereby *deleted* for lack of factual and legal basis; and

(2)The award of nominal damages is hereby *tempered and reduced* to the amount of ₱20,000.00.

The rest of the award for retirement benefits is *affirmed in toto*.

SO ORDERED.<sup>8</sup>

Unsatisfied with the ruling, Unilever elevated the case to CA-Cagayan de Oro City *via* a petition for *certiorari* under Rule 65 of the Rules of Court.

On June 22, 2011, the CA affirmed with modification the NLRC resolution. Justifying the deletion of the award of retirement benefits, the CA explained that, indeed, under Unilever's Retirement Plan, a validly dismissed employee cannot claim any retirement benefit regardless of the length of service. Thus, Rivera is not entitled to any retirement benefit. It stated, however, that there was no proof that she personally gained any pecuniary benefit from her infractions, as her instructions were aimed at increasing the sales efficiency of the company and competing in the local

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<sup>7</sup> Id. at 25.

<sup>8</sup> Id. at 26.

market. For said reason, the CA awarded separation pay in her favor as a measure of social justice.<sup>9</sup> The decretal portion of the CA decision reads:

WHEREFORE, the assailed *Resolution* dated March 31, 2009 of the NLRC (Branch 5), Cagayan De Oro City is hereby **AFFIRMED with MODIFICATION**. Consequently, UNILEVER is directed to pay MARIA RUBY M. RIVERA the following:

a) Separation pay, to be computed based on the company's applicable policy or written agreement, or in the absence thereof, the equivalent of at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year;

b) ₱20,000.00 as nominal damages; and

c) Proportionate 13<sup>th</sup> month pay and unused leave credits, to be computed based on her salary during the period relevant to the case.

The award of retirement benefits is hereby **DELETED**.

SO ORDERED.<sup>10</sup>

Unilever filed a motion for partial reconsideration,<sup>11</sup> but it was denied in a Resolution, dated April 25, 2012.

Hence, this petition.<sup>12</sup>

In support of its position, Unilever submits for consideration the following

## GROUND

### I.

**THE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN GRANTING AFFIRMATIVE RELIEFS IN FAVOR OF RIVERA EVEN IF SHE DID NOT FILE ANY PETITION FOR *CERTIORARI* TO CHALLENGE THE NLRC RESOLUTIONS.**

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<sup>9</sup> Id. at 64-67.

<sup>10</sup> Id. at 69-70.

<sup>11</sup> Id. at 75-94.

<sup>12</sup> Id. at 15-52.

**II.**

**THE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN AWARDING SEPARATION PAY IN FAVOR OF RIVERA CONSIDERING THAT THE LATTER WAS VALIDLY DISMISSED FROM EMPLOYMENT BASED ON JUST CAUSES UNDER THE LAW.**

**III.**

**THE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN RULING THAT THE COMPANY VIOLATED RIVERA'S RIGHT TO PROCEDURAL DUE PROCESS BEFORE TERMINATING HER EMPLOYMENT, AND CONSEQUENTLY, IN AWARDING NOMINAL DAMAGES.<sup>13</sup>**

Unilever argues that Rivera did not file any separate petition for *certiorari* before the CA. Neither did she file any comment on its petition. Hence, it was erroneous for the CA to grant an affirmative relief because it was inconsistent with the doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision. The petitioner stresses that Rivera misappropriated company funds amounting to millions of pesos and that granting her separation pay undermines the serious misdeeds she committed against the company. Moreover, the length of her service with Unilever does not mitigate her offense, but even aggravates the depravity of her acts.<sup>14</sup>

The petition is partly meritorious.

The pivotal issue in the case at bench is whether or not a validly dismissed employee, like Rivera, is entitled to an award of separation pay.

As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282<sup>15</sup> of the Labor Code is not entitled

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<sup>13</sup> Id. at 28.

<sup>14</sup> Id. at 35.

<sup>15</sup> 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 work;
- 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;
- d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- e. Other causes analogous to the foregoing.

to a separation pay.<sup>16</sup> 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.<sup>17</sup> The leading case of *Philippine Long Distance Telephone Co. vs. NLRC*<sup>18</sup> is instructive on this point:

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 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 protection and concern of the Constitution.

The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best, it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be

<sup>16</sup> *Tirazona v. Philippine Eds Techno-Service Inc. (PWT, Inc.)*, G.R. No. 169712, January 20, 2009, 576 SCRA 625, 628-629.

<sup>17</sup> *Yrasuegui v. Philippine Airlines, Inc.*, G.R. No. 168081, October 17, 2008, 569 SCRA 467, 502.

<sup>18</sup> 247 Phil. 641 (1988).

refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.<sup>19</sup>

In the subsequent case of *Toyota Motor Philippines Corporation Workers Association (TMPCWA) v. National Labor Relations Commission*,<sup>20</sup> it was further elucidated that “in addition to serious misconduct, in dismissals based on other grounds under Art. 282 like willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, and commission of a crime against the employer or his family, separation pay should not be conceded to the dismissed employee.”<sup>21</sup> In *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan*,<sup>22</sup> the Court wrote that “separation pay is only warranted when the cause for termination is not attributable to the employee’s fault, such as those provided in Articles 283 and 284 of the Labor Code, as well as in cases of illegal dismissal in which reinstatement is no longer feasible. It is not allowed when an employee is dismissed for just cause.”<sup>23</sup>

In this case, Rivera was dismissed from work because she intentionally circumvented a strict company policy, manipulated another entity to carry out her instructions without the company’s knowledge and approval, and directed the diversion of funds, which she even admitted doing under the guise of shortening the laborious process of securing funds for promotional activities from the head office. These transgressions were serious offenses that warranted her dismissal from employment and proved that her termination from work was for a just cause. Hence, she is not entitled to a separation pay.

More importantly, Rivera did not appeal the March 31, 2009 ruling of the NLRC disallowing the award of separation pay to her. It was Unilever who elevated the case to the CA. It is axiomatic that a party who does not appeal, or file a petition for *certiorari*, is not entitled to any affirmative relief.<sup>24</sup> Due process prevents the grant of additional awards to parties who did not appeal.<sup>25</sup> An appellee who is not an appellant may assign

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<sup>19</sup> *Philippine Long Distance Telephone Co. vs. NLRC*, 247 Phil. 641, 649-650 (1988).

<sup>20</sup> G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171.

<sup>21</sup> *Toyota Motor Philippines Corporation Workers Association (TMPCWA) v. National Labor Relations Commission*, G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171, 223.

<sup>22</sup> G.R. No. 164016, March 15, 2010, 615 SCRA 240.

<sup>23</sup> *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan*, G.R. No. 164016, March 15, 2010, 615 SCRA 240, 249.

<sup>24</sup> *Corinthian Gardens Association Inc. v. Tanjanco*, G.R. No. 160795, June 27, 2008, 556 SCRA 154, 166, citing *Alauya, Jr v. Commission on Elections*, 443 Phil. 893, 907 (2003).

<sup>25</sup> *Aklan College, Inc. v. Enero*, G.R. No. 178309, January 27, 2009, 577 SCRA 64, 79-80.

errors in his brief where his purpose is to maintain the judgment, but he cannot seek modification or reversal of the judgment or claim affirmative relief unless he has also appealed.<sup>26</sup> It was, therefore, erroneous for the CA to grant an affirmative relief to Rivera who did not ask for it.

Lastly, Unilever questions the grant of nominal damages in favor of Rivera for its alleged non-observance of the requirements of procedural due process. It insists that she was given ample opportunity “to explain her side, interpose an intelligent defense and adduce evidence on her behalf.”<sup>27</sup>

The Court is not persuaded. Section 2, Rule XXIII, Book V of the Rules Implementing the Labor Code expressly states:

*Section 2. Standard of due process: requirements of notice.*

— In all cases of termination of employment, the following standards of due process shall be substantially observed.

I. For termination of employment based on just causes as defined in Article 282 of the Code:

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

(c) A written notice [of] termination served on the employee indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination.

In case of termination, the foregoing notices shall be served on the employee’s last known address.

*King of Kings Transport, Inc. v. Mamac*<sup>28</sup> detailed the steps on how procedural due process can be satisfactorily complied with. Thus:

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<sup>26</sup> *Corinthian Gardens Association Inc. v. Tanjangco*, supra note 25, citing *Acebedo Optical Company, Inc. v. Court of Appeals*, 385 Phil. 956, 976 (2000).

<sup>27</sup> *Rollo*, pp. 44

<sup>28</sup> 553 Phil. 108 (2007).

To clarify, the following should be considered in terminating the services of employees:

(1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.<sup>29</sup>

In this case, Unilever was not direct and specific in its first notice to Rivera. The words it used were couched in general terms and were in no way informative of the charges against her that may result in her dismissal from employment. Evidently, there was a violation of her right to statutory due process warranting the payment of indemnity in the form of nominal damages. Hence, the Court finds no compelling reason to reverse the award

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<sup>29</sup> *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108, 115-116 (2007).

of nominal damages in her favor. The Court, however, deems it proper to increase the award of nominal damages from ₱20,000.00 to ₱30,000.00, as initially awarded by the NLRC, in accordance with existing jurisprudence.<sup>30</sup>

**WHEREFORE**, the petition is hereby **PARTIALLY GRANTED**. The June 22, 2011 Decision and the April 25, 2012 Resolution of the Court of Appeals (CA)-Cagayan de Oro City in CA-G.R. SP No. 02963-MIN are **AFFIRMED with MODIFICATION**. The dispositive portion should read as follows:

**WHEREFORE**, the March 31, 2009 Resolution of the NLRC (Branch 5), Cagayan de Oro City, is hereby **AFFIRMED with MODIFICATION**. UNILEVER PHILIPPINES, INC., is hereby directed to pay MARIA RUBY M. RIVERA the following:

- a) ₱30,000.00 as nominal damages; and
- b) Proportionate 13<sup>th</sup> month pay and unused leave credits, to be computed based on her salary during the period relevant to the case.

The award of retirement benefit is **DELETED**.

**SO ORDERED.**

  
**JOSE CATRAL MENDOZA**  
Associate Justice

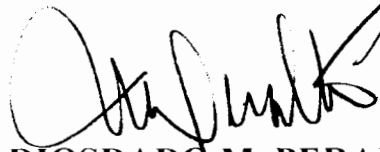
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<sup>30</sup> *Agabon v. NLRC*, 485 Phil. 248, 287-288 (2004).


**WE CONCUR:**

**PRESBITERO J. VELASCO, JR.**

Associate Justice  
Chairperson



**DIOSDADO M. PERALTA**  
Associate Justice



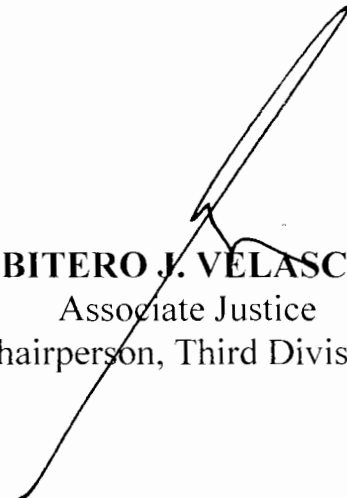
**ROBERTO A. ABAD**  
Associate Justice



**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

**A T T E S T A T I O N**

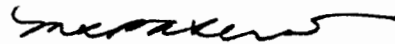
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice