

LABOR LAW PRACTICE GROUP UPDATE

JUNE 2013

In *Unilever Philippines, Inc. v. Maria Ruby M. Rivera* (G.R. No. 20170, June 13, 2013), the Philippine Supreme Court emphasized that the first notice required by the twin-notice rule in dismissals must not be a mere general description of the charges against the employee but must specify the facts that will serve as the grounds for termination of the engagement of the worker.

This case arose when Rivera, Unilever's Area Activation Executive for Area 9 South in the cities of Cotabato and Davao, was found to be diverting company funds from the projects they were intended for.

This prompted Unilever to issue a show-cause notice to Rivera, asking her to explain the following charges: (a) Conversion and Misappropriation of Resources, (b) Breach of Fiduciary Trust, (c) Policy Breaches and (d) Integrity Issues. Rivera, through email, admitted the fund diversions, but explained the diverted funds were all utilized in the company's promotional ventures in her area

DUE PROCESS REQUIRES SPECIFIC FACTS VS. EMPLOYEE IN FIRST NOTICE

of coverage.

Nonetheless, Unilever found Rivera guilty of serious breach of its Code of Business Principles and accordingly terminated her employment.

Rivera filed a complaint for Illegal Dismissal and other monetary claims against Unilever. The Labor Arbiter dismissed her complaint. On appeal, the National Labor Relations Commission (NLRC) affirmed Rivera's just dismissal but also found Unilever guilty of violating the twin-notice requirement in labor cases. NLRC ordered Unilever to pay Rivera nominal damages, retirement benefits and separation pay. On Unilever's motion for reconsideration, the NLRC modified its earlier ruling by deleting the award of separation pay and reducing nominal damages.

Unilever elevated the case to the Court of Appeals, which affirmed the

NLRC resolution but reinstated the award for separation pay as a measure of social justice.

In resolving the issue whether Unilever complied with the twin-notice requirement, the Supreme Court relied on the case of *King of Kings Transport, Inc. v. Mamac* (553 Phil. 108 [2007]). This case held that the first notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employee. A general description of the charge will not suffice. Further, the first notice should specifically mention which company rules, if any, were violated and/or which among the grounds under Art. 282 are being charged against the employees.

In this case, Unilever was not direct and specific in its first notice to Rivera.

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The words Unilever 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. The Court concluded that there was a violation of her right to statutory due process warranting the payment of indemnity in the form of nominal damages.

Another issue dealt with by the High Court in this case was whether or not a validly dismissed employ-

ee is entitled to an award of separation pay.

The Supreme Court reiterated that 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.

In exceptional cases, however, separation pay may be granted to a legally dismissed employee as an act of “social justice” or on “equitable

grounds,” provided the employee is validly dismissed for causes other than: (a) serious misconduct, (b) any of the other grounds under Article 282 of the Labor Code or (c) those reflecting on his moral character.

In this case, Rivera was dismissed from work because she intentionally circumvented a strict company policy. Hence, she is not entitled to a separation pay. *LF*©July 2, 2013

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