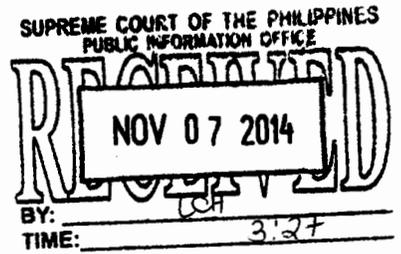




REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **15 October 2014** which reads as follows:

**G.R. No. 208042 – Sorilyn D. Estender v. UNI-G Pharmacy-Zamboanga Branch and Gherlie B. Falame.**

This is a petition for review on *certiorari* under Rule 45 questioning the February 28, 2013 Decision<sup>1</sup> and the June 18, 2013 Resolution<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 04277, in a case for illegal dismissal.

On July 1, 2007, petitioner Sorilyn D. Estender (*petitioner*) was hired as a saleslady by respondent UNI-G Pharmacy (*UNI-G*), which was owned by respondent Gherlie B. Falame (*Falame*).<sup>3</sup> After gaining Falame's trust, petitioner was given the additional task of depositing UNI-G's daily sales at its depository bank. Later in her employment, however, petitioner began to develop "a sour disposition at work, and had become difficult to deal with."<sup>4</sup> She allegedly became "unreasonable and unpleasant"<sup>5</sup> in dealing with customers. Eventually, petitioner altogether refused to deposit UNI-G's daily sales.

On August 7, 2009, when Falame requested petitioner to deposit UNI-G's daily sale, the latter again refused. Falame then asked her to explain in writing why she should not be disciplined for wilful disobedience and serious insubordination. Petitioner did so. Not satisfied with her letter explanation/apology,<sup>6</sup> Falame issued a memorandum placing petitioner under preventive suspension for five days, from August 8 to 12, 2009. Petitioner, however, refused to receive the said memorandum. For said reason, the contents thereof were made known to her in the presence of her two co-workers.<sup>7</sup>

Falame added that the suspension was to prevent petitioner from interfering with an investigation regarding the allegations of a UNILAB

<sup>1</sup> *Rollo*, pp. 139-146. Pinned by Associate Justice Edgardo T. Lloren, with Associate Justice Jhosep Y. Lopez and Henri Jean Paul B. Inting, concurring.

<sup>2</sup> *Id.* at 157-158.

<sup>3</sup> *Id.* at 12.

<sup>4</sup> *Id.* at 140.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 55.

<sup>7</sup> *Id.* at 140.

- more -

*mlg*

manager that they had previously paid rental to UNI-G on June 24, 2009 through four of its employees including petitioner,<sup>8</sup> but the same was never remitted to UNI-G. For this infraction, another memorandum was issued to petitioner asking her to explain again. Again, petitioner refused to receive the same. Hence, the contents were read to her again in the presence of two co-workers.<sup>9</sup>

When petitioner reported for work on August 13, 2009, Falame asked her to answer in writing the charges made against her in the second memorandum, but she refused.<sup>10</sup> As a consequence, petitioner was terminated from employment on even date.

The next day, petitioner filed her complaint for illegal dismissal.<sup>11</sup>

The Labor Arbiter (*LA*) ruled in favor of UNI-G and dismissed the complaint of petitioner. The LA found that petitioner indeed refused to perform her assigned tasks and disregarded/defied UNI-G/Falame's order to answer the August 8, 2009 charges levelled against her in the second memorandum. The LA also gave weight to the findings of the Zamboanga City Police Station No. 5 in its investigation on September 13, 2009, that the office had indeed received the rental payment.<sup>12</sup>

Moreover, the LA found that petitioner was accorded due process with the two memoranda which she refused to receive. Although her complaint was dismissed, petitioner was awarded the 13<sup>th</sup> month pay differential.<sup>13</sup>

On appeal, the NLRC declared petitioner's dismissal to be illegal. The NLRC pointed out that although petitioner's termination was due to poor performance and insubordination of a lawful order, there was no showing that UNI-G or Falame conducted an investigation regarding petitioner's performance as a saleslady. What stood out was petitioner's refusal to obey Falame's request/order for petitioner to deposit the daily sales and to receive the memoranda issued to her. For the NLRC, Falame's request/order for petitioner to deposit the daily sales was beyond her duty.

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<sup>8</sup> Id. at 92.

<sup>9</sup> Id. at 140.

<sup>10</sup> Id. at 99, 140-141.

<sup>11</sup> Id. at 52.

<sup>12</sup> Id. 89-90.

<sup>13</sup> Id. at 100-104.

*mlg*

Although the request or order was simple enough, petitioner's refusal to deposit the cash sales was neither wilful nor perverse.<sup>14</sup>

On *certiorari*, the CA granted the petition filed by UNI-G and Falame by reversing and setting aside the NLRC decision and reinstating that of the LA.<sup>15</sup> According to the CA, the dismissal was valid because it was proven that petitioner wilfully disobeyed Falame's reasonable orders which were in connection with her employment. The CA also found that UNI-G/Falame afforded petitioner ample opportunity to explain her side, but she refused to receive their notices.<sup>16</sup>

Petitioner sought reconsideration, but her motion was denied.

Hence, this petition.

The petition has no merit.

The CA and the LA correctly found petitioner's dismissal from her employment with respondent UNI-G Pharmacy to be valid and legal. The request/order that petitioner refused to do were both simple and undeniably work-related. Her refusal to receive the notices regarding the charges against her nor to even offer a simple explanation was certainly inexcusable. The fact that she was given two memoranda to explain her side belies her claim that there was denial of due process. Although she refused to receive them, the contents thereof were read to her in the presence of two of her co-workers. These procedures complied with the requirements of due process.

The totality of petitioner's infractions constituted a valid basis for her dismissal.<sup>17</sup> An employer should not be compelled to retain a misbehaving employee or one guilty of acts inimical to its interest.<sup>18</sup>

**WHEREFORE**, petition is **DENIED**. (*Brion, J., on leave; Reyes, J., designated Acting Member, per Special Order No. 1844, dated October 14, 2014*).

**SO ORDERED.**

Very truly yours,

  
MA. LOURDES C. PERFECTO  
Division Clerk of Court *M/27*

<sup>14</sup> Id. at 123-125.

<sup>15</sup> Id. at 145-146.

<sup>16</sup> Id. at 144.

<sup>17</sup> *Realda v. New Age Graphics, Inc.*, G.R. No. 192190, April 25, 2012, 671 SCRA 410, 418.

<sup>18</sup> Id. at 420.

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