

MARLAW M. MARMAY, PETITIONER, VS. BOUNTY AGRO-VENTURES INC./ RONALD MASCARINAS-PRESIDENT, DANTE SAMONTE-MANAGER AND NLRC, RESPONDENTS.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This petition for certiorari[1] seeks to reverse the Decision[2] and Resolution[3] dated July 31, 2013 and November 29, 2013, respectively, of the National Labor Relations Commission, 7[th] Division, Cebu City in NLRC Case No. VAC-04-000228-2013 [RAB Case No. VII-10-1649-12] which reversed the Decision[4] dated February 5, 2013 of the Regional Arbitration Branch No. VII, Cebu City, for Illegal Dismissal, Service Incentive Leave with prayer for Damages and Attorney's Fees.

The Antecedents

This case stemmed from an amended Complaint[5] for Unfair Labor Practice, Illegal Dismissal, Holiday Pay, Unpaid 13[th] Month Pay, Service Incentive Leave Pay, Backwages, Separation Pay and Damages filed by petitioner Marlaw M. Marmay against the respondents Bounty Agro-Ventures, Inc. and its President Ronald R. Mascarinas and Manager Dante C. Samonte.

As the respondents were not amenable to enter into settlement with herein petitioner, both parties were directed to submit their respective position papers.

Version of the Petitioner[6]

The petitioner was hired by the respondents as their supervisor back in May 2, 2002.

The respondent-company, Bounty Agro-Ventures, Inc. is a member of the Bounty Fresh Group of Companies. The said company is involved in the production of commercial feeds. The petitioner's job entails him to oversee the transport and safekeeping of the said products.

Individual respondents impleaded in this complaint are Ronald Mascarinas and Dante Salmonte in their respective corporate capacities as president and manager of the respondent-company.

At the onset of the petitioner's employment up to the year 2009, the respondent-company had Grand Bulwark as its "tooling partner."

Under the said partnership, the petitioner undertook his supervisory duties solely.

When the respondents switched to another tooling partner, namely Producer Feeds, in 2010, the petitioner was unofficially demoted; Cery Velez of Producer Feeds took over most of the petitioner's supervisory duties and for all practical purposes, he was under Velez' supervision.

After some seven years of employment with the respondents, the petitioner kept working for them in spite of the respondents' unappreciative treatment towards the petitioner.

He continued to display diligence in his work. In fact, wary of the safety of the products that he was in charge of, the petitioner had strongly suggested to the respondents the need for additional work force that would help in the security of the cargo.

During his employment, no security guard was particularly assigned to keep an eye on the respondents' massive warehouse. Likewise, the petitioner would always remind the respondents of the need to have a checker that would accompany the delivery truck to the destination.

All these reasonable suggestions were not acted upon by the respondents.

Earlier in 2012, the respondents used another weighing scale for their products. Having formerly subscribed to the CENAPRO calibration, the same respondents decided to use the OPASCOR (Oriental Port and Allied Services Corporation) scale.

It was shortly thereafter that the petitioner noticed a variance in the weight.

Dutifully, the petitioner brought the weight variance issue to the attention of the private respondents. This is evidenced by his letter[7] to Dave Alu, Marketing Officer for OPASCOR.

When an investigation, in reaction to the above issue was launched, the petitioner was suspected by the respondents as the personnel behind an alleged pilferage.

By late July 2012, the petitioner was not allowed to work by the respondents, on account of mere suspicion for the above allegation.

The petitioner answered the Memo Charge of the respondents in a Letter Explanation[8] addressed to respondent Dante Samonte dated July 28, 2012.

Regardless of which, the respondents decided to dismiss the petitioner by August 24, 2012.[9]

The petitioner filed a complaint[10] for illegal dismissal on October 29, 2012. On December 6, 2012, the petitioner filed his position paper.[11]

Version of the Respondents[12]

Respondents on the other hand declared, that Bounty Agro Ventures Inc. is engaged in the production, distribution and sale of poultry products all over the country with Ronald R. Mascarinas as its President and Jerome G. Cinco as the Assistant Vice President-Operations for Central and Eastern Visayas.

Petitioner Marlaw Marmay was employed by respondents as Feed Mill Supervisor assigned at the latter's warehouse in Barangay Opao, Mandaue City and tasked to perform the following duties:

1. Secure the company's product such as Australian wheat, US Soya and other raw materials stored at respondents' warehouse;
2. Implement measures to prevent the pilferage of stocks;
3. Monitor the stocks from the time of its arrival at the pier until the same are delivered to the warehouse or at the intended feed mills.

In July 2012, respondents' Bacolod Feeds warehouse received a request from Cebu Feed Mills for the supply of Australian wheat. However, respondents' record shows that Cebu Feed Mills has sufficient supply thereof since a total of 1, 037, 480 kilos of Australian wheat on board M/V Comfort have been delivered to the Opao warehouse from 26 June 2012 to 5 July 2012. Triggered by the said incident, respondents authorized its employees, Dante Samonte and Arnold Ilagan, to conduct an investigation on the matter. After proper accounting and reconciliation of all pertinent stock documents, the investigation reveals that there is a stock variance of 199, 410 kilos of

Australian wheat and 32, 052 kilos of US Soya with an approximate value of Three Million Two Hundred Thousand Pesos (P3,200,000.00).

On 27 July 2012, a Charge Memo was served to herein petitioner, wherein the latter was required to explain in writing the variance. In the same Memo, petitioner was informed of a scheduled administrative hearing on 4 August 2012.

In petitioner's Answer to the Charge Memo dated 28 July 2012, he failed to substantially explain the loss of respondents' stocks amounting to Three Million Two Hundred Thousand Pesos. Instead, petitioner simply made general denials of the charges hurled against him. Further, petitioner failed to attend the scheduled administrative hearing.

Taking into consideration the available documents, the result of the investigation and petitioner's explanation, respondents believe that herein petitioner failed to exercise the necessary diligence expected of him in protecting respondents' interest. As Feed Mill Supervisor, petitioner is expected to observe the company's basic Standard Operating Procedure to prevent massive losses of company properties in his custody. Further, records show that herein petitioner conspired with his co-employee, Felix Cabaron, and the warehouse security guard to make it appear that forty-two trucks containing Australian wheat were delivered to respondents' warehouse in Opao, Mandaue, when in truth, only forty trucks were delivered. In order to conceal petitioner's malicious act, the security guard's logbook was falsified by inserting Way Bill 57071 and 57072. Also, respondents asseverate that genuine Way Bills 57067, 57068 and 57070 were duly signed and dated by Felix Cabaron while Way Bills 57071 and 57072 were unsigned and undated.

After complying with the requisites of due process, respondents decided to terminate the services of herein petitioner due to serious misconduct and betrayal of the trust and confidence reposed on him. [13]

Ruling of the Labor Arbiter

On 5 February 2013, the Office of the Regional Arbitration Branch VII of Cebu City thru Labor Arbiter Bertino A. Ruaya, Jr. rendered the Decision[14] which reads

“WHEREFORE, judgment is hereby rendered declaring the complainant to have been illegally dismissed.

Consequently, respondents Bounty Agro-Ventures Inc./Ronald Mascarinas and Dante Salmonte are hereby directed to jointly and solidarily pay the complainants the amount of TWO HUNDRED FIFTEEN THOUSAND FIVE HUNDRED PESOS (215,500.00).

All other claims are dismissed for lack of merit.

SO ORDERED.”[15]

The respondents, not satisfied with the decision of the Labor Arbiter, appealed[16] to the National Labor Relations Commission Seventh Division on April 15, 2013.

On July 31, 2013, the NLRC promulgated a Decision[17] granting the respondents' appeal. Consequently, the Decision of the Labor Arbiter was reversed and a new one entered finding complainant to have been validly dismissed, viz

“WHEREFORE, premises considered, the Decision of Labor Arbiter Bertino Ruaya, Jr. dated 5 February 2013, is hereby REVERSED and new one entered finding complainant to have been validly dismissed. Thus, the award of backwages and separation pay is DELETED while the award of service incentive leave pay STAYS.

SO ORDERED.”[18]

On the same occasion, Commissioner Violeta Ortiz-Bantug rendered her Dissenting Opinion[19] from the majority.

Not in accord with the NLRC Decision dated July 31, 2013, petitioner filed a motion for reconsideration[20] on October 29, 2013.

On December 23, 2011, the NLRC rendered a Resolution,[21] thus:

WHEREFORE, premises considered, complainant's motion for reconsideration is hereby DENIED. The questioned Decision, promulgated on 31 July 2013, STANDS.

SO ORDERED.[22]

With the denial of his Motion for Reconsideration, petitioner sought recourse to this Court via the present Petition for Certiorari,[23] raising the following issues:

I

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION OR LACK OR IN EXCESS OF JURISDICTION WHEN IT REVERSED THE LABOR ARBITER'S DECISION AS TO THE PETITIONER'S ILLEGAL DISMISSAL WHEN THE PRIVATE RESPONDENTS DID NOT ASSIGN THE SAID ISSUE AS AN ERROR.

II

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION OR LACK OR IN EXCESS OF JURISDICTION WHEN IT REVERSED THE LABOR ARBITER'S DECISION AND INSTEAD FOUND THAT THE PETITIONER WAS VALIDLY DISMISSED BY THE PRIVATE RESPONDENTS AND AS A RESULT, HE SHOULD NOT BE GRANTED THE SEPARATION PAY AND BACKWAGES HE PRAYED FOR.

III

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION OR LACK OR IN EXCESS OF JURISDICTION WHEN IT UPHELD ITS FORMER DECISION THAT THE PETITIONER IS NOT ENTITLED TO THE PAYMENT OF THE MONEY CLAIMS AND DAMAGES THAT HE PRAYED FOR.[24]

This Court's Ruling

The petition has merit.

In a number of cases,[25] this Court put emphasis on the right of an employer to exercise its management prerogative in dealing with its company's affairs including its right to dismiss its erring employees. We recognized the right of the employer to regulate all aspects of employment, such as the freedom to prescribe work assignments, working methods, processes to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers.[26] It is a general principle of labor law to discourage interference with an employer's judgment in the conduct of his business. As already noted, even as the law is solicitous of the welfare of the employees, it also recognizes employer's exercise of management prerogatives. As long as the company's exercise of judgment is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.[27]

However, a company's exercise of its management prerogatives is not absolute.[28] It cannot exercise its prerogative in a cruel, repressive, or despotic manner.[29] In *F.F. Marine Corp. v. NLRC*, it was held:

This Court is not oblivious of the significant role played by the corporate sector in the country's economic and

social progress. Implicit in turn in the success of the corporate form in doing business is the ethos of business autonomy which allows freedom of business determination with minimal governmental intrusion to ensure economic independence and development in terms defined by businessmen. Yet, this vast expanse of management choices cannot be an unbridled prerogative that can rise above the constitutional protection to labor. Employment is not merely a lifestyle choice to stave off boredom. Employment to the common man is his very life and blood, which must be protected against concocted causes to legitimize an otherwise irregular termination of employment.[30]

Hence, its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of the said prerogative, what is at stake is not only the employee's position, but his very livelihood. The Constitution does not condone wrongdoing by the employee; nevertheless, it urges moderation of the sanction that may be applied to him.[31]

For a dismissal to be valid, the rule is that the employer must comply with both substantive and procedural due process requirements.[32] Substantive due process requires that the dismissal must be pursuant to either a just or an authorized cause under Articles 282, 283 or 284 of the Labor Code.[33] Procedural due process, on the other hand, mandates that the employer must observe the twin requirements of notice and hearing before a dismissal can be effected.[34]

Thus, to determine the validity of Marmay's dismissal, We will first discuss whether his employment was terminated for a just cause.

The grounds for termination under just causes can be found in Article 282 of the Labor Code, which states:

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 representatives; and
- (e) Other causes analogous to the foregoing.

Article 282(A) of the Labor Code provides that an employee may be dismissed on the ground of serious misconduct or willful disobedience of the lawful orders of his employer or representative in connection with his work. Misconduct is improper or wrongful conduct; it is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment. The misconduct, to be serious within the meaning of the Labor Code, must be of such grave and aggravated character and not merely trivial or unimportant. It is also important that the misconduct be in connection with the employee's work to constitute just cause for his separation.[35]

No less than the NLRC declared that petitioner's failure to observe the necessary diligence in protecting the stocks of herein respondents does not fall within the definition of serious misconduct.[36] It reasons that the case record is bereft of any evidence showing that herein petitioner has direct participation in the loss of said stocks and that he appropriated the same for his own personal gain or benefit.[37] It further states that it was not proven that petitioner instructed the insertion of Way Bill Nos. 57071 and 57072 in the security guard's logbook to conceal

the alleged loss of Australian wheat.[38]

However, in this case, despite such statements above-mentioned and the lack of substantial evidence that would justify dismissal of the respondent, the NLRC still ruled that petitioner's dismissal is justified by respondents' lack of trust and confidence on the latter.[39]

We do not agree. We cannot see the wisdom and propriety in the the NLRC's findings of loss of trust and confidence when, in the first place, it already ruled out the element of deceit.

According to Article 282 (c) of the Labor Code, An employer may terminate an employment for any fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

In the case of Cruz v. Court of Appeals,[40] the Court had the occasion to enumerate the essential elements for "willful breach by the employee of the trust reposed in him by his employer":

Xxx the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by his employer. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Moreover, it must be based on substantial evidence and not on the employer's whims or caprices or suspicions otherwise, the employee would eternally remain at the mercy of the employer. Loss of confidence must not be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue working for the employer. In addition, loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence or that the employee concerned is entrusted with confidence with respect to delicate matters, such as handling of case and protection of the property and assets of the employer. The betrayal of this trust is the essence of the offense for which an employee is penalized.[41] [Underscore supplied]

As a safeguard against employers who indiscriminately use "loss of trust and confidence" to justify arbitrary dismissal of employees, the Court, in addition to the above elements, came up with the following guidelines for the application of the doctrine: (1) loss of confidence should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal or unjustified; (3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought, to justify an earlier action taken in bad faith.[42]

Moreover, since the petitioner is a rank-and file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient.[43]

In this case, the above requisites have not been met. Bounty Agro-Ventures Inc.'s loss of trust and confidence arising out of Marmay's failure to dispense the responsibility of securing respondents products has not been proven by substantial evidence, thus, unjustified. It is noteworthy that in the position paper[44] of the respondent, it stated that:

From the investigation conducted by the respondent-appellants, it has been established that complainant-appellee Marlaw Marmay was found guilty of gross misconduct in failing to protect the respondent's interest, and has grossly betrayed the trust and confidence reposed upon him by the latter. He also falsified documents to cover his trails. As a Feed Mill Supervisor and in charge of the Opao warehouse, Opao, Mandaue City, he should have exercised due diligence and high degree of proficiency in seeing to it that the basic Standard Operating Procedures of the company shall have been strictly observed to prevent such heavy losses on the company's properties.[45]

We agree with Presiding Commissioner Violeta Ortiz-Bantug when she stressed in her dissenting opinion that it seems that, on the one hand, it is accusing complainant of serious misconduct, and yet, on the other hand, it is accusing him of negligence-both for the commission of one and the same infraction.[46]

It must be emphasized that both grounds cannot simultaneously be invoked in reference to the same infraction, for how can you maliciously and negligently commit a single act, all at the same time? It's either complainant did it negligently, or he did it maliciously. Respondent cannot fuse both together and expect it to make sense.

After thoroughly ascertaining the respondents' pleadings, We have noticed that the general recurring theme apparent is one of negligence. Nowhere have they been able to show petitioner's malicious and dishonest involvement in the shortage, which would warrant his dismissal from service due to loss of trust and confidence.

Again, to emphasize, at the risk of being repetitive, loss of trust and confidence stems from a breach of trust founded on a dishonest, deceitful or fraudulent act.[47]

In the case at bench, herein petitioner did not commit any act which was dishonest or deceitful. The most that can be attributed to him is that he was remiss in the performance of his duties. This, though, does not constitute dishonest or deceitful conduct which would justify the conclusion of loss of trust and confidence.

We further agree with Presiding Commission Violeta Ortiz-Bantug in her dissenting opinion when she pointed out that there was no demonstration of moral perverseness that would justify the claimed loss of trust and confidence attendant to petitioner's job. As such, he does not deserve the penalty of dismissal from employment, especially in the absence of any showing that he has committed prior infractions in his ten (10) years of service to respondent company that would warrant the charge of gross negligence and failure to exercise extraordinary diligence as basis for the company's loss of trust and confidence in him.

Thus, we rule that respondents have not complied with substantive requirements of due process when it did not present substantial evidence to prove such claim. It failed to prove that the termination of Marmay's employment was based on the ground of just cause due to lack of trust and confidence by herein respondents.

Rule 133, Section 5 defines substantial evidence as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

With our ruling that the substantive aspect of due process has been violated, making the dismissal illegal, there is no longer any need for us to discuss the other matters involved.

As a consequence of petitioner's illegal dismissal, the award of full backwages and separation pay equivalent to one-month pay for every year of service as well as the claim of damages shall prosper.

Article 279 of the Labor Code mandates that an employee who was 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, as well as to the other benefits or their monetary equivalent, computed from the time their compensation was withheld up to the time of their actual reinstatement. We agree with Labor Arbiter Bertino A. Ruaya, Jr. in his Decision when he stressed that since the circumstances obtaining in this case do not warrant reinstatement of complainants, separation pay, in lieu of reinstatement, in addition to backwages is in order.

Therefore, an illegally dismissed employee shall be entitled to backwages, all benefits due him and separation pay at one month for every year of service, if reinstatement is no longer feasible.

Also, the award of service incentive leave pay is proper. Respondent is mistaken in its argument that the award thereof is improper since petitioner failed to allege the same in his amended complaint. It is the duty of the herein respondents to rebut the claim of the petitioner that he was not paid service incentive leave. They should have

presented substantial evidence to prove the payment of service incentive leave pay rather than anchor its defense solely on mere technicalities. To reiterate, Labor courts are not bound by technicalities of rules and procedure.

WHEREFORE, premises considered, the Decision dated July 31, 2013 and Resolution dated November 29, 2013 of the National Labor Relations Commission, 7th Division, Cebu City in NLRC Case No. VAC-04-000228-2013 [RAB Case No. VII-10-1649-12] are hereby REVERSED and SET ASIDE. The Decision dated February 5, 2013 of the Labor Arbiter Bertino A. Ruaya, Jr. in NLRC RAB VII Case No. 10-1649-12 is hereby REINSTATED.

SO ORDERED.

Delos Santos, Chairperson and Azcarraga-Jacob, JJ., concur.

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- [1] See Petition for Certiorari, rollo, pp. 10-25.
- [2] Rollo, pp. 37-45, penned by Commissioner Jose G. Gutierrez.
- [3] Rollo, pp. 31-32, penned by Commissioner Jose G. Gutierrez.
- [4] Rollo, pp. 116-125, penned by Labor Arbiter Bertino A. Ruaya, Jr.
- [5] See Petitioner's Complaint at the NLRC RAB VII, rollo, p. 57 and Complainant's Position Paper, rollo pp. 58-73.
- [6] See Petitioner's Concise Statement of Facts and of the Case, rollo, pp. 11-14.
- [7] Rollo, p. 75.
- [8] Rollo, p. 80.
- [9] Rollo, p. 81.
- [10] See note 5.
- [11] Id.
- [12] Rollo, pp. 39-41.
- [13] rollo, p. 40-41.
- [14] See RAB VII Decision, rollo, pp. 115-125.
- [15] Id., pp. 125.
- [16] See Respondents-Appellants Memorandum of Appeal, rollo, pp. 126-141.
- [17] See NLRC Decision, rollo, pp. 37-46.
- [18] Rollo, p. 45.
- [19] Rollo, pp. 144-159.
- [20] Rollo, pp. 47-56.
- [21] Rollo, pp. 31-32.
- [22] See Resolution, rollo p. 31.

[23] Rollo, pp. 10-25.

[24] Rollo, pp. 14-15.

[25] Radio Philippines Network, Inc. v. Yap, G.R. No. 187713, 1 August 2012, 678 SCRA 148, 164 citing Association of Integrated Security Force of Bislig (AISFB)-ALU v. Court of Appeals, 505Phil. 10, 25 (2005); San Miguel Corporation v. Layoc, Jr., G. R. 149640, October 19, 2007, 537 SCRA 77, 95, citing San Miguel Brewery Sales Force Union (PTGWO) v. Hon. Ople , 252 Phil. 27, 31 (1989).

[26] Goya, Inc. v. Goya, Inc. Employees Union-FFW, G.R. No. 170054, 21 January 2013, 689 SCRA1, 9.

[27] Id.

[28] Ruben L. Andrada, et al. v. NLRC, et al., G. R. No. 173231, December 28, 2007.

[29] Id.

[30] G.R. No. 152039, April 8, 2005, 455 SCRA 154, 164.

[31] Fujitsu Computer Products Corp. of the Phils. vs. Court of Appeals, 494 Phil. 697, 728 (2005), citing Maglutaos vs. NLRC, G.R. No. 78345, September 21, 1990, 189 SCRA 767, 778, Austria vs. NLRC, 371 Phil. 340, 361 (1999), Asuncion vs. NLRC, 414 Phil. 329, 341-342 (2001).

[32] Loadstar Shipping Co., Inc. v. Mesano, 455 Phil. 936, 942 (2003).

[33] Pascua v. National Labor Relations Commission, 351 Phil. 48, 62 (1998).

[34] Pono v. National Labor Relations Commission, 341 Phil. 615, 620-621 (1997).

[35] Philippine Long Distance Company v. The Late Romeo F. Bolso, G.R. No. 159701, August 17, 2007, 530 SCRA 550, 560.

[36] Rollo, p. 44.

[37] Id.

[38] Id.

[39] Id.

[40] 527 Phil. 230, 242-245 (2006).

[41] Id.

[42] Nokom v. NLRC, 390 Phil. 1228, 1244 (2000).

[43] Philippine Plaza Holdings, Inc. vs. Episcopo, G.R. No. 192826, February 27, 2013.

[44] Rollo, p. 135.

[45] Id.

[46] Rollo, p. 151.

[47] M+W Zander Philippines, Inc. vs. Enriquez, G.R. No. 169173, June 5, 2009, 588 SCRA 590, 606.

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