

## **NEGROS INTEGRATED INDUSTRIES CORPORATION (NICC)/RONNIE M. DE LAS APAS, MANAGER/PATRICK T. VALDERRAMA, VP FOR OPERATIONS, PETITIONERS, VS. CARLITO BUELOS, ET.AL., RESPONDENTS.**

Ponente: QUIJANO-PADILLA, J.

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### **QUIJANO-PADILLA, J.:**

This petition for certiorari[1] seeks to assail the Decision[2] of the National Labor Relations Commission, 4<sup>th</sup> Division Cebu City in NLRC Case No. VAC-05-000737-2009 [RAB Case No. VI-06-05-10395-07] dated October 26, 2009 which reversed and set aside the Decision[3] dated December 18, 2008 of the Labor Arbiter for Illegal Dismissal with Money Claims, and the Resolution[4] dated January 15, 2010 denying the Motion for Reconsideration thereof.

#### **The Antecedents**

This case stemmed from a Complaint[5] for Illegal Dismissal with Money Claims filed by complainant Carlito Buelos against respondents Negros Integrated Industries Corporation (NICC)/ Ronnie M. De Las Alas, its Manager and Patrick T. Valderrama, its Vice President for Operations.

Conciliation conferences were held as mandated by the Rules. However, no amicable settlement was reached by the parties. Hence, this case was submitted for Decision.

Complainant averred in his Complaint[6] that he was employed since February 1983 as a driver of the herein respondent. He stated in his position paper that his dismissal was very drastic, unexpected without the benefit of hearing and a gross violation of his right to due process. He alleges that the action of the respondent is primarily designed to defeat the claim of his retirement services as he has served respondents for more than twenty four (24) years.

The antecedent facts alleged that sometime in the middle of March 2007, the truck assigned to the complainant suffered trouble in its hydraulic dump.[7] As such, it underwent repair for about Ten (10) days more or less.[8] When it was already fixed for usual work, the said truck was assigned to another employee, Richie Cornelio[9] while the complainant remained assigned to work at respondents' shop.[10]

On April 20, 2007, complainant received a Notice of Termination effective May 20, 2007, due to loss of trust and confidence. Consequently, after that, he was never given assignment. Hence, he filed this present case.[11]

On the other hand, respondents admitted that complainant was employed as a driver in their company. Respondents maintained that the complainant was given a salary of P222.00 per day and provided with all the benefits required under the law. They alleged that the complainant started working for them in June 1984. Later, in June 1987, he transferred to Negros Integrated Marketing Company. In October 1992, complainant worked again with the respondent company and moved to Mancel Development Corporation in November 2002. He only returned to respondent company in August 2006 but was terminated in May 2007. All in all, complainant rendered

fifteen (15) years of broken service with respondent company.[12]

The factual reason for his dismissal was that he sold his diesel fuel. Prior to the dismissal of complainant, an investigation was conducted relative to fuel pilferage among the drivers of respondents. It was determined that fuel was siphoned from the gas tank of the truck and sold in bottles along the highway, particularly at San Enrique.[13]

Respondents narrated that on 1 March 2007, complainant towed respondent's truck No. 11 driven by Ricky Fuentes from CEGASCO to Pontevedra. It took them three (3) hours to travel when the usual travel time for said route is only one (1) hour. When investigated of the delay, they reasoned out that they made three (3) stops, one (1) in Bago City, another in Villadolid and the last in San Enrique near the Cell Site Tower. It was found out that the fuel in the towed truck was short of ninety (90) liters. The driver of said truck, Ricky Fuentes was unable to explain satisfactorily of the shortage. Respondents later learned that the fuel was sold. Thus, Ricky Fuentes was dismissed from the service.[14]

Respondents averred that complainant was also investigated since the former entertained the idea that the latter's co-employee, Ricky Fuentes could not have sold fuel from his truck without the latter's participation. When complainant remained silent on the matter, respondents dismissed him for loss of trust and confidence.[15]

#### Ruling of the Labor Arbiter

On 18 December 2008, the Office of the Regional Arbitration Branch XI of Davao City thru Labor Arbiter Efren B. Cachuela rendered a Decision.[16] The decretal portion of which reads:

“WHEREFORE, premises considered, respondents are hereby directed to pay complainant the amount of Thirty Thousand Pesos (P30,000.00) as fine.

All other monetary claims are dismissed for lack of merit.

SO ORDERED.”[17]

The Honorable Labor Arbiter ruled that the herein complainant was dismissed with cause but without due process.[18] Under our law and jurisprudence, in order to validly dismiss an employee, he must be accorded both substantive and procedural due process by the employer. The Labor Arbiter stressed that in the present case, however, the herein respondents failed to observe the procedural fairness in dismissing an employee. He manifested that under the Labor Code, the law imposes a fine for an employer who dismisses their employees without giving them the element of due process.[19] He further averred that a sanction may be imposed by the Court to the employer to indemnify the dismissed employee.[20] Consequently, he ordered the respondents to pay thirty thousand Pesos (P30,000.00) for dismissing an employee without observing the twin requirements of due process.[21]

Complainant, however, was not awarded the money claims due to the legality of his dismissal. Moreover, the Labor Arbiter reasoned that said complainant cannot claim separation benefits and 13th month pay as he had already been paid by the respondents. Perforce, he dismissed all other claims for lack of merit.[22]

The complainant, not satisfied with the decision of the Labor Arbiter, appealed to the National Labor Relations Commission, Fourth Division.

On October 26, 2009, the NLRC reversed and set aside the Decision[23] of the Labor Arbiter, viz

“WHEREFORE, premises considered, the appealed Decision is hereby REVERSED and SET ASIDE. Another one is entered declaring that complainant was illegally dismissed. As such, respondent Negros Integrated

Industries Corporation is directed to reinstate complainant to his former position as driver with backwages reckoned from the date of his dismissal on 20 May 2007 until actual reinstatement, using the salary rate of (P222.00) per day.

In addition, respondent Negros Integrated Industries Corporation is directed to pay complainant's service incentive leave pay of Three Thousand Three Hundred Thirty Pesos (P3,330.00).

SO ORDERED.”[24]

On December 4, 2009, a Motion for Reconsideration[25] was filed by the respondents relative to the Decision promulgated by the NLRC.

However, the Presiding Commissioner Violeta Ortiz-Bantug denied the motion as the respondents' arguments are unsubstantiated. The commissioner stressed that a party alleging a critical fact must support his allegation with substantial evidence, for any decision based on unsubstantiated allegation cannot stand, as it offends due process.[26] She further narrated that in the case at hand, all the respondents have are mere allegations that they have accorded due process to the complainant in enforcing the latter's dismissal but there was no evidence of memorandum ever presented in apprising the complainant of the charge leveled against him.[27] In sum, the Commissioner finds that the respondents failed to discharge their burden of proof, as there was no satisfactory evidence presented to prove that complainant committed the act imputed against him.[28]

With the denial of his Motion for Reconsideration, respondents sought recourse to this Court via the present Petition for Certiorari,[29] raising the following as grounds:

THE PRIVATE RESPONDENT WAS LEGALLY DISMISSED FOR CAUSE.[30]

PRIVATE RESPONDENT IS NOT ENTITLED TO HIS MONEY CLAIMS.[31]

This Court's Ruling

The appeal is bereft of merit.

We do not agree with petitioner's claim that private respondent was dismissed for a valid cause.

In resolving the present controversy, the Court is guided by the basic principle in termination cases that the employer bears the burden of proving that the dismissal of the employee is for a just or an authorized cause.[32] Failure to dispose of the burden would imply that the dismissal is not lawful, and that the employee is entitled to reinstatement, back wages and accruing benefits.[33] Moreover, dismissed employees are not required to prove their innocence of the employer's accusations against them.[34]

In the present case, petitioners invoke loss of trust and confidence as the ground for dismissing respondent. Under Article 282 of the Labor Code, as amended, loss of confidence must be based on "fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative." Ordinary breach does not suffice.

A breach of trust is willful if it is done intentionally and knowingly without any justifiable excuse, as distinguished from an act done carelessly, thoughtlessly or inadvertently.[35]

Petitioners allege that respondent fraudulently breached its trust and confidence when there was shortage of 90 liters of fuel in a truck owned by the petitioners that was driven by the co-employee of the herein respondent.

To recall, as succinctly narrated by the petitioners in its petition, on March 1, 2007, private respondent was asked to tow the truck of the herein petitioners driven by his co-employee, Ricky Fuentes. The mentioned truck made

three stops during the towing. It was established that it was on the third stop at San Enrique, Negros Occidental, near the cell site tower of that Municipality that the respondent's co-employee, Ricky Fuentes, sold fuel from his truck to an unknown person. As a result, there was a shortage of 90 liters of fuel. The petitioners insist that this pilferage could not have happened without the cooperation of others especially the herein private respondent, Carlito Buelos. Because of this, petitioners called all the parties concerned. During the meeting, Ricky Fuentes accepted his fault and thereafter, was dismissed from work. On the other hand, private respondent kept quiet on the pilferage of 90 liters of fuel.[36] Petitioners reasoned that because of his silence about the fact of pilferage which he ought to know, private respondent becomes an accomplice in the crime of theft being committed by his co-employee, Ricky Fuentes.[37] Consequently, herein respondent was also dismissed.

We do not concur that petitioner is justified in dismissing the private respondent.

The NLRC Decision as penned by Presiding Commissioner Violeta Ortiz-Bantug narrated that the persons who were investigated never implicated the herein respondent or mentioned him as involved in the sale. As such, there was no reasonable basis for the loss of trust and confidence on the respondent. Petitioners merely suspected him to be involved but the same was not corroborated by any evidence.[38] We agree.

After a careful perusal of the records, We found petitioners' allegations and conclusions to be unsupported by substantial evidence. There was no substantial basis to arrive at the conclusion that the respondent was involved in the unauthorized selling of the gasoline. There has been no evidence that could subjectively point that the herein respondent was an accomplice to the unauthorized selling of the gasoline. The petitioners only reasoned that because of the silence of the respondent during the investigation, he must be involved in the said pilferage. It must be noted that no less than the Philippine Constitution provides that any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent.[39] This provision firmly entrenched that a person has the right to remain silent. Therefore, the silence of the respondent should not be taken against him.

It has often been held that loss of confidence should not be used "as a subterfuge for causes which are illegal, improper and unjustified. It must be genuine, not a mere afterthought to justify an earlier action taken in bad faith." [40] Be it remembered that at stake here are the sole means of livelihood, the name and the reputation of the employee. Thus, petitioner must prove an actual breach of duty founded on clearly established facts sufficient to warrant his loss of employment.[41]

We stress once more that the right of an employer to dismiss an employee on account of loss of trust and confidence must not be exercised whimsically. To countenance an arbitrary exercise of that prerogative is to negate the employee's constitutional right to security of tenure. In other words, the employer must clearly and convincingly prove by substantial evidence the facts and incidents upon which loss of confidence in the employee may be fairly made to rest; otherwise, the latter's dismissal will be rendered illegal.[42]

In a plethora of cases, this Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned.[43] Thus, with respect to 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.[44]

In addition, the requisites for a valid dismissal are: (a) the employee must be afforded due process, i.e., he must be given an opportunity to be heard and defend himself; and (b) the dismissal must be for a valid cause, as provided in Article 282[45] of the Labor Code, or for any of the authorized causes under Articles 283[46] and 284[47] of the same Code.[48]

In the instant case, the Court agrees with the NLRC's Decision when it declared that respondent was not afforded due process prior to his dismissal.

Well-settled is the rule that the essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[49]

Moreover, in dismissing an employee, the employer has the burden of proving that the former worker has been served two notices: (1) one to apprise him of the particular acts or omissions for which his dismissal is sought, and (2) the other to inform him of his employer's decision to dismiss him. The first notice must state that dismissal is sought for the act or omission charged against the employee, otherwise, the notice cannot be considered sufficient compliance with the rules.[50]

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.[51] "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.[52] 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.[53] 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.[54] A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, were violated and/or which among the grounds under Article 282 is being charged against the employees.[55]

In the case before the Court, the records are bereft of any indication that the requirements of procedural due process were complied with by petitioners.

We agree with the NLRC Presiding Commissioner when she ruled that the petitioners failed to afford the respondent of the opportunity to be heard as he was not apprised in writing of the charge leveled against him, although he was furnished of a written notice of termination.[56]

Thus, We are hard pressed to find cause to disturb the findings of the NLRC which are supported by substantial evidence.

With no valid ground for the dismissal and failure on the part of petitioners to comply with the notice requirement, respondent's dismissal was illegal. Accordingly, respondent is entitled to relief of reinstatement.

We resolve the remaining issue regarding the money claims pursued by respondent on appeal as follows:

Affirming the ruling of the NLRC, respondent is entitled to payment of backwages under Article 279 of the Labor Code reckoned from the date of his dismissal on May 20, 2007 until actual reinstatement, using the rate of P222.00 per day, as it was his average daily pay as a driver.

Respondent is also entitled to service incentive leave pay of P3,330.00.[57]

It is well-settled in jurisprudence that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence.[58] 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."

Consistent therewith is the doctrine that this Court is not a trier of facts, and this is strictly adhered to in labor cases.[59]

Guided by the above jurisprudential principles, this Court does not see any reason to depart from the above-mentioned rule.

The writ of certiorari is restricted to truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void.[60] Moreover, it is designed to correct errors of jurisdiction and not errors in judgment.[61]

Finally, petitioners failed to show that the NLRC acted whimsically, capriciously, arbitrarily and grossly abused its discretion in affirming the findings of the Labor Arbiter.

Absent any showing that the Labor Arbiter or the NLRC gravely abused its discretion or otherwise acted without jurisdiction or in excess of the same, this Court is bound by its findings of facts.[62]

The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." [63] The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." [64] From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross. [65] But this is not the case here.

WHEREFORE, premises considered, the Decision [66] and Resolution [67] dated October 26, 2009 and January 15, 2010, respectively, of the National Labor Relations Commission, 4th Division, Cebu City in NLRC Case No. VAC-05-000737-2009 [RAB Case No. VI-06-05-10395-07] are hereby affirmed in toto.

### **SO ORDERED.**

Hernando, Chairperson and Azcarraga-Jacob, JJ., concur.

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[1] See Petition for Certiorari, rollo, pp. 3-12.

[2] Rollo, pp. 13-20, penned by Presiding Commissioner Violeta Ortiz-Bantug.

[3] See Decision of the Labor Arbiter, rollo, pp. 29-33.

[4] Rollo, pp. 21-25, penned by Presiding Commissioner Violeta Ortiz-Bantug.

[5] See Petitioner's Complaint at the NLRC RAB VI Bacolod City, rollo, p. 72.

[6] Rollo, p. 72.

[7] Rollo, p. 14.

[8] Id.

[9] Rollo, p. 30.

[10] Id.

- [11] Rollo, p. 30.
- [12] Rollo, p. 14.
- [13] Rollo, p. 15.
- [14] Rollo, p. 15.
- [15] Rollo, p. 15.
- [16] See RAB XI Decision pp. 29-33.
- [17] Rollo, p. 33.
- [18] Rollo, p. 31.
- [19] Id.
- [20] Rollo, p. 32.
- [21] Rollo, p. 32-33.
- [22] Rollo, p. 33.
- [23] Rollo, pp. 29-33.
- [24] See NLRC Decision, rollo, p. 71.
- [25] Rollo, pp. 26-27.
- [26] See Resolution of the Motion for Reconsideration, rollo pp. 22-25.
- [27] Rollo, p. 24.
- [28] Id.
- [29] See Petition for Certiorari, rollo, pp. 3-12.
- [30] Rollo, p. 5.
- [31] Rollo, p. 7.
- [32] Philippine Long Distance Telephone Company v. National Labor Relations Commission, 276 SCRA 1, July 23, 1997.
- [33] Me-Shurn Corporation v. Me-Shurn Worker's Union, G. R. No. 156292, January 11, 2005.
- [34] Garcia v. National Labor Relations Commission, 289 SCRA 36, April 15, 1998.
- [35] Gonzales v. NLRC, 355 SCRA 195, March 26, 2001.
- [36] Rollo, p. 6.
- [37] Rollo, p. 7.
- [38] Rollo, p. 18.
- [39] Section 12, Article III of the Philippine Constitution.
- [40] General Bank & Trust Co. v. Court of Appeals, 135 SCRA 569, 578, April 9, 1985, per Gutierrez Jr., J.

[41] *Fernandez v. National Labor Relations Commission*, 281 SCRA 423, November 6, 1997.

[42] *Jardine Davies, Inc. v. National Labor Relations Commission*, *supra*.

[43] *Triumph International (Phils.), Inc. v. Apostol*, G.R. No. 164423, June 16, 2009, 589 SCRA 185, 201-202; *Uniwide Sales Warehouse Club v. NLRC*, G.R. No. 154503, February 29, 2008, 547 SCRA 220, 240; *Philippine Long Distance Telephone Company v. Buna*, G.R. No. 143688, August 17, 2007, 530 SCRA 444, 454; *Cruz, Jr. v. CA*, G.R. No. 148544, July 12, 2006, 494 SCRA 643, 654; *Etcuban, Jr. v. Sulpicio Lines, Inc.*, G.R. No. 148410, January 17, 2005, 448 SCRA 516, 529.

[44] *Id.*

[45] 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.

[46] Art. 283. Closure of establishment and reduction of personnel. – The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving-devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[47] Art. 284. Disease as ground for termination. – An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[48] *Estacio v. Pampanga I Electric Cooperative, Inc.*, G.R. No. 183196, August 19, 2009, 596 SCRA 542, 563-564.

[49] *Telecommunications Distributors Specialist, Inc. v. Gabriel*, G.R. No. 174981, May 25, 2009, 588 SCRA 165, 176.

[50] *Id.*

[51] *Inguillo v. First Philippine Scales, Inc.*, G.R. No. 165407, June 5, 2009, 588 SCRA 471, 491.

[52] *King of Kings Transport, Inc. v. Mamac*, G.R. No. 166208, June 29, 2007, 526 SCRA 116, 125.

[53] *Id.*

[54] Id.

[55] R.B. Michael Press v. Galit, G.R. No. 153510, February 13, 2008, 545 SCRA 23, 36.

[56] Rollo, p. 19.

[57] Rollo, p. 19.

[58] Leyte Geothermal Power Progressive Employees Union-ALU-TUCP vs. Philippine National Oil Company-Energy Development Corporation, G.R. No. 170351, March 30, 2011, citing G & M (Phils.) Inc. v. Cruz, 496 Phil. 119, 123-124 (2005)

[59] Leyte Geothermal Power Progressive Employees Union-ALU-TUCP vs. Philippine National Oil Company-Energy Development Corporation, G.R. No. 170351, March 30, 2011, citing PCL Shipping Philippines, Inc. v. NLRC, G.R. No. 153031, December 14, 2006, 511 SCRA 44, 54.

[60] J.L. Bernardo Construction vs. Court of Appeals, 381 Phil. 25 (2000).

[61] Land Bank of the Philippine vs. Court of Appeals, G.R. No. 129368, 25 August 2003, 409 SCRA 455.

[62] NEECO II vs. National Labor Relations Commission (NLRC) and Eduardo Cairlan, G.R. No. 157603. June 23, 2005

[63] Beluso vs. Commission on Elections, G.R. No. 180711, June 22, 2010, 621 SCRA 450, 456-457; citing De Vera v. De Vera, G.R. No. 172832, April 7, 2009, 584 SCRA 506, 514-515; Fajardo vs. Court of Appeals, G.R. No. 157707, October 29, 2008, 570 SCRA 156, 163.

[64] Id.; 2 Jose Y. Feria & Maria Conception S. Noche, Civil Procedure Annotated 463 (2001).

[65] Beluso vs. Commission on Elections, G.R. No. 180711, June 22, 2010, 621 SCRA 450, 456-457; citing De Vera v. De Vera, G.R. No. 172832, April 7, 2009, 584 SCRA 506, 514-515; Fajardo vs. Court of Appeals, G.R. No. 157707, October 29, 2008, 570 SCRA 156, 163.

[66] Rollo, pp. 13-20, penned by Presiding Commissioner Violeta Ortiz-Bantug.

[67] Rollo, pp. 21-25, penned by Presiding Commissioner Violeta Ortiz-Bantug.

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