

NESTOR V. TANUDRA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND INTEGRATED AQUACULTURE SPECIALIST, INC./ ALLAN DESCALZO, RESPONDENTS.

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PAREDES, J.:[*]

THE CASE

THIS IS A PETITION FOR CERTIORARI[1] filed by petitioner Nestor V. Tanudra (petitioner), which seeks to reverse and set aside the Decision[2] dated September 19, 2012 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 06-001734-12 (NLRC NCR Case No. 09-14947-11) which modified the Decision[3] dated March 29, 2012 of the Labor Arbiter; as well as the Resolution[4] dated October 30, 2012 denying petitioner's Partial Motion for Reconsideration.

THE ANTECEDENTS

Private respondent Integrated Aquaculture Specialist, Incorporated (IASI) is a corporation duly organized and existing under Philippine laws while Allan Descalzo is the manager of IASI Manila's operations. Petitioner was hired by IASI as warehouseman and initially assigned at IASI-Cebu; and, in November 2010, petitioner was transferred to IASI-Manila as branch administrator[5].

On April 4, 2011, thirty-five (35) cartons of salmon, weighing 1,157 kilos and valued at P468,585.00 was released from IASI's warehouse to AAA Seafoods Trading (AAA) without accomplishing the required delivery receipt duly signed by the client. The anomaly was discovered during an audit conducted forty five days after the release of the cartons of salmon. To rectify the mistake, petitioner and Jerome Laguna, a warehouseman of IASI, prepared a delivery receipt and asked the driver of AAA, one Alexander Delabajan, to sign[6] the same, which the latter did without protest. However, the higher-ups of AAA denied having received the salmon and refused to pay for the merchandise; thence, on August 2, 2011, a memorandum was issued to the petitioner requiring him to explain in writing why no penalty should be imposed upon him for violation of the company's rules and regulations. Petitioner submitted his written explanation[7]. An investigation was conducted where petitioner acknowledged[8] that it was his responsibility to supervise the release of the products. Thereafter, IASI decided to terminate petitioner's employment effective September 26, 2011. However, petitioner refused to sign the Notice[9] of disciplinary action, so the notice was sent to his last known address by registered mail[10]. IASI withheld petitioner's salary for August and September, as well as his 13th month pay for 2011, advising him that these will answer for his negligence.

On September 30, 2011, petitioner filed a Complaint[11] for illegal dismissal against IASI and Allan Descalzo. After submission of the parties' respective position papers[12] and replies[13], the Labor Arbiter issued a Decision[14] on March 29, 2012, disposing of the case in this wise:

WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of the complainant illegal.

Respondent Integrated Aquaculture Specialist, Inc. is hereby ordered to pay complainant his separation pay in

lieu of reinstatement computed at one month salary for every year of service with backwages computed from September 26, 2011 until the issuance of this Decision as follows, and to release the following amount to the complainant per attached computation which shall form an integral part of this Decision:

1. Separation pay

P63,024.00

2. Backwages

P74,578.40

3. unpaid salary

P19,618.50

unused vacation/sick leave

P 7,261.10

13th month pay 2011

11,476.17

P38,355.77

TOTAL

P175,958.17

All other claims are dismissed for lack of merit.

SO ORDERED[15].

Aggrieved by the decision of the Labor Arbiter, IASI appealed[16] to the NLRC. On September 19, 2012, the NLRC issued the assailed Decision[17], the dispositive portion of which reads:

WHEREFORE, premises considered, the appealed Decision is hereby MODIFIED to the effect that the dismissal of complainant is declared valid and accordingly, the monetary awards for separation pay and backwages are SET ASIDE.

The monetary award to complainant in the amount of P38,355.77 representing unpaid salary, unused vacation/sick leave, and 13[th] month pay for 2011 stays AFFIRMED.

SO ORDERED[18].

Petitioner moved[19] for partial reconsideration, which was denied in the Resolution[20] dated October 30, 2012.

Hence, this Petition, with petitioner raising the following grounds for its allowance:

I

WHETHER THE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT MODIFIED THE LABOR ARBITER'S FINDING AND DECLARED THAT THE DISMISSAL OF THE PETITIONER IS VALID.

II

WHETHER THE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION

COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT SET ASIDE THE MONETARY AWARDS FOR SEPARATION PAY AND BACKWAGES[21].

THE ISSUE

In fine, the issue is whether or not the NLRC committed grave abuse of discretion when it modified the decision of the Labor Arbiter and found the dismissal of petitioner to be valid.

THE COURT'S RULING

The petition is without merit.

Petitioner argues[22] that he was not the one who released the thirty five (35) cartons of frozen salmon and he exercised his best judgment to rectify the mistake of the person who released it without the issuance of the corresponding delivery receipt. We disagree.

Concomitant to the employer's right to freely select and engage an employee is the employer's right to discharge the employee for just and/or authorized causes. To validly effect terminations of employment, the discharge must be for a valid cause in the manner required by law. The purpose of these two-pronged qualification is to protect the working class from the employer's arbitrary and unreasonable exercise of its right to dismiss. Thus, in termination cases, the law places the burden of proof upon the employer to show by substantial evidence that the termination was for a lawful cause and in the manner required by law. In concrete terms, these qualifications embody the due process requirement in labor cases — substantive and procedural due process. Substantive due process means that the termination must be based on just and/or authorized causes of dismissal. On the other hand, procedural due process requires the employer to effect the dismissal in a manner specified in the Labor Code and its IRR[23].

Article 282[24] of the Labor Code provides:

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.

In all cases involving termination of employment, the burden of proving the existence of the above just causes rests upon the employer. The quantum of proof required in these cases is substantial evidence, that is, such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise[25].

In the instant case, petitioner was charged[26] with gross negligence in the performance of his duties and dishonesty and/or fraud for the concealment of the same from the management. While both the Labor Arbiter[27] and the NLRC[28] were in agreement that the charge of dishonesty had not been proven, the Labor Arbiter reckoned[29] that the failure of petitioner's subordinate to issue a delivery receipt does not justify petitioner's

dismissal; while the NLRC found[30] him guilty of gross negligence resulting in substantial damage to IASI thereby rendering his dismissal valid. We agree with the NLRC.

As a valid ground for dismissal under the Labor Code, neglect of duty must be both gross and habitual. Gross negligence entails want of care in the performance of one's duties, while habitual neglect imparts repeated failure to perform such duties for a period of time, depending on the circumstances[31].

Petitioner was, indeed, guilty of gross negligence. Petitioner did not dispute IASI's claim[32] that he was responsible not only for the issuance of the corresponding delivery receipts for all the products which leave the company's warehouse, but the supervision as well of the release of all products to the customers. Thus, when thirty-five (35) cartons of salmon were released without the proper documentation, there was failure on the part of the petitioner to perform his duties. Moreover, petitioner cannot escape liability pointing to his subordinate who released the salmon boxes, being then in a meeting at another place, because it appears[33] that he is also responsible for making a daily report of all products that are released from the warehouse and transmitting the delivery receipts, with signatures, to the accounting department for collection. Had petitioner not been remiss in his duties, he would have discovered the anomaly immediately and rectifications would have been made at the soonest possible time. Instead, petitioner admitted that "he did not notice that stocks were released until an audit was made after forty-five (45) days"[34]. Because of the lack of delivery receipt, the customer to whom the boxes of salmon were released would not pay the price thereof, resulting to a not insubstantial loss on the part of IASI. The NLRC, therefore, correctly ruled, that:

With the foregoing factual backdrop, we find that respondents were justified in terminating the employment of complainant. While there is no clear indication that complainant was guilty of dishonesty, complainant is at least guilty of gross negligence resulting in substantial damage to respondent company. As the designated Branch Administrator, it was his duty to oversee the withdrawal of goods from the warehouse and ensure that withdrawal of goods were properly covered by delivery receipt and sales invoice. Granting that complainant was out of the warehouse for a while on April 4, 2011 to attend a meeting and that another warehouseman was left to attend to the withdrawals of goods from the warehouse for a while, it is rather strange that complainant, with 5 years experience as warehouseman, did not bother to check or review the transactions for the day when he returned to the warehouse. It is likewise strange that complainant did not conduct an inventory of stocks as a warehouseman and branch administrator at (sic) that is expected to do periodically. As complainant admitted, he only learned that 35 boxes of frozen salmon worth P468,588.00 (sic) were withdrawn from the warehouse without being covered by a delivery receipt and sales invoice 45 days later when an audit was conducted. It was only then when he reviewed and checked the records and realized what happened. There is no wonder that when complainant was given a memorandum to explain, he readily admitted that he neglected to check to ensure that withdrawals from the warehouse were covered by delivery receipt or a sales invoice. There is no better evidence of his negligence than his very own admission.

Gross negligence means an absence of that diligence that an ordinary prudent man would use on his own affairs. Suffice it to state that in the present case, complainant's performance of his duties and functions is characterized by want of even a slight care to ensure that all withdrawals of goods from the warehouse are accounted for and duly covered by transitional documents for purposes of collection of sales. xxx[35]

Petitioner also submits[36] that, assuming arguendo that he was guilty of negligence, it could only be regarded as a single or isolated act that cannot be categorized as habitual and, hence, not a just cause for his dismissal. We are not persuaded.

The fact that neglect was not habitual did not dissuade the Supreme Court from the declaring a dismissal valid in the case of *School of the Holy Spirit of Quezon City vs. Taguiam*[37], thus:

Notably, respondent's negligence, although gross, was not habitual. In view of the considerable resultant

damage, however, we are in agreement that the cause is sufficient to dismiss respondent. This is not the first time that we have departed from the requirements laid down by the law that neglect of duties must be both gross and habitual. In *Philippine Airlines, Inc. v. NLRC*, we ruled that Philippine Airlines (PAL) cannot be legally compelled to continue with the employment of a person admittedly guilty of gross negligence in the performance of his duties although it was his first offense. In that case, we noted that a mere delay on PAL's flight schedule due to aircraft damage entails problems like hotel accommodations for its passengers, re-booking, the possibility of law suits, and payment of special landing fees not to mention the soaring costs of replacing aircraft parts. In another case, *Fuentes v. National Labor Relations Commission*, we held that it would be unfair to compel Philippine Banking Corporation to continue employing its bank teller. In that case, we observed that although the teller's infraction was not habitual, a substantial amount of money was lost. The deposit slip had already been validated prior to its loss and the amount reflected thereon is already considered as current liabilities in the bank's balance sheet. Indeed, the sufficiency of the evidence as well as the resultant damage to the employer should be considered in the dismissal of the employee. In this case, the damage went as far as claiming the life of a child. (Citations omitted)

A similar ruling was arrived at by the High Court in the case of *LBC Express-Manila vs. Mateo*[38], where It ruled:

Although Mateo's infraction was not habitual, we must take into account the substantial amount lost. In this case, LBC lost a motorcycle with a book value of P46,000 which by any means could not be considered a trivial amount. Mateo was entrusted with a great responsibility to take care of and protect company property and his gross negligence should not allow him to walk away from that incident as if nothing happened and, worse, to be rewarded with backwages to boot.

An employer cannot legally be compelled to continue with the employment of a person admittedly guilty of gross negligence in the performance of his duties. This holds true specially if the employee's continued tenure is patently inimical to the employer's interest. What happened was not a simple case of oversight and could not be attributed to a simple lapse of judgment. No amount of good intent, or previous conscientious performance of duty, can assuage the damage Mateo caused LBC when he failed to exercise the requisite degree of diligence required of him under the circumstances. (Citations omitted)

Considering that the loss in the *Fuentes* case[39] amounted only to P50,000.00, while in the *Mateo* case[40], the loss was estimated at P46,000.00, more so should the validity of the dismissal be upheld in the instant case where damage to IASI amounted to P468,585.00, not to mention the possibility of a court case for the recovery of the merchandise.

As regards the requirements of procedural due process, Section 2 (d), Rule 1 of The Implementing Rules of Book VI states, that:

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

- (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
- (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.
- (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination[41].

The requirements of procedural due process were observed in the case at bar. Petitioner was served with a memorandum[42] requiring him to explain why no penalty should be imposed on him for non-issuance of

delivery receipt and not disclosing the incident to IASI. Petitioner submitted his letter explanation[43]. An administrative investigation[44] was conducted and attended by petitioner. And finally, petitioner was served[45] with a Notice[46] of Disciplinary Action.

Finally, the deletion of the award of backwages and separation pay was proper. Since petitioner's dismissal was valid, he is not entitled to backwages. Likewise, separation pay cannot be awarded to him because the grant of separation pay is barred in all cases of dismissals for just causes under the Labor Code[47].

While it is true that compassion and human consideration should guide the disposition of cases involving termination of employment since it affects one's source or means of livelihood, it should not be overlooked that the benefits accorded to labor do not include compelling an employer to retain the services of an employee who has been shown to be a gross liability to the employer. The law, in protecting the rights of the employees, authorizes neither oppression nor self-destruction of the employer. It should be made clear that when the law tilts the scale of justice in favor of labor, it is but a recognition of the inherent economic inequality between labor and management. The intent is to balance the scale of justice; to put the two parties on relatively equal positions. There may be cases where the circumstances warrant favoring labor over the interests of management but never should the scale be so tilted if the result is an injustice to the employer. *Justitia nemini neganda est* (Justice is to be denied to none)[48].

In view of the foregoing, we find that the NLRC did not commit grave abuse of discretion in modifying the decision of the Labor Arbiter and decreeing the dismissal of the petitioner valid.

WHEREFORE, premises considered, the Petition for Certiorari is DISMISSED. The Decision dated September 19, 2012 and the Resolution dated October 30, 2012 of the National Labor Relations Commission in NLRC LAC No. 06-001734-12 (NLRC NCR Case No. 09-14947-11), are AFFIRMED.

SO ORDERED.

Dicdican, (Chairperson), and [**]Corales, JJ., concur.

[*] Acting Senior Member per Office Order No. 461-14-ABR dated November 3, 2014.

[**] Acting Junior Member per Office Order No. 461-14-ABR dated November 3, 2014.

[1] Rollo, pp. 2-17.

[2] Rollo, pp. 20-32.

[3] Rollo, pp. 107-15.

[4] Rollo., pp. 34-6.

[5] Rollo, p. 58.

[6] Rollo, p. 69.

[7] Rollo p. 73.

[8] Rollo, p. 79.

[9] Rollo, pp. 70, 80

[10] Rollo, p. 81.

- [11] Rollo, pp. 37-9.
- [12] For petitioner, rollo, pp. 40-57; for private respondent, rollo, pp. 71-7.
- [13] For petitioner, rollo, pp. 87-101; for private respondent, rollo, pp. 102-5.
- [14] Rollo, pp. 107-15.
- [15] Rollo, p. 114.
- [16] Rollo, pp. 116-35.
- [17] Rollo, pp. 20-32.
- [18] Rollo, p. 31.
- [19] Rollo, pp. 136-43.
- [20] Rollo, pp. 34-6.
- [21] Rollo, pp. 7-8.
- [22] Rollo, pp. 9-10.
- [23] Deoferio vs. Intel Technologies Phil., Inc., G.R. No. 202996, June 18, 2014.
- [24] Renumbered as Article 296 pursuant to Republic Act No. 10151 (An Act Allowing the Employment of Night Workers, thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, As Amended, Otherwise known as the Labor Code of the Philippines).
- [25] International School of Manila vs. International School Alliance of Educators, G.R. No. 167286, February 5, 2014.
- [26] Rollo, p. 70.
- [27] Rollo, p. 112.
- [28] Rollo, p. 29.
- [29] Rollo, p. 111.
- [30] Rollo, p. 29.
- [31] FLP Enterprises, Inc. vs. Dela Cruz, G.R. No. 198093, July 28, 2014.
- [32] Rollo, p. 72.
- [33] Rollo, p. 72.
- [34] Rollo, p. 43.
- [35] Rollo, pp. 30-1.
- [36] Rollo, p. 11.
- [37] G.R. No. 165565, July 14, 2008.
- [38] G.R. No. 168215, June 9, 2009.
- [39] Fuentes vs NLRC, G.R. No. L-75955, October 28, 1988.

[40] LBC-Express- Metro Manila vs Mateo, G.R. No. 168215, June 9, 2009.

[41] International School of Manila vs. International School Alliance of Educators, G.R. No. 167286, February 5, 2014.

[42] Rollo, p. 72-3.

[43] Rollo, p. 78.

[44] Rollo, p. 79.

[45] Rollo p, 81.

[46] Rollo, p. 80.

[47] See Immaculate Conception Academy vs. Camilon, G.R. No. 188035, July 2, 2014.

[48] Mansion Printing Center and Clement Cheng vs. Bitara, Jr., G.R. No. 168120, January 25, 2012, citing PLDT Inc vs. Balastro, G.R. No. 157202, 28 March 2007.

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