

**ROGER ISRAEL, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ACE LOGISTICS, INC./ALFREDO AMORADO, RESPONDENTS.**

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**GONZALES-SISON, M., J.:[\*]**

Before us is a Petition for Certiorari filed by petitioner under Rule 65 of the Revised Rules of Civil Procedure. It prays for the reversal and setting aside of the public respondent NLRC's Decision[1] dated July 18, 2013, and Resolution[2] dated August 23, 2013 NLRC in NLRC-LAC No. 06-00176613 that denied the appeal and motion for reconsideration of petitioner from the Decision[3] of the Labor Arbiter dated May 2, 2013 in NLRC NCR CASE No. 10-16006-12.

The records show that an amended complaint[4] for illegal dismissal and money claims for non-payment of salary, non-payment of 13th month pay, non payment of separation and claims for damages and attorney's fees was filed by petitioner against private respondent, ACE LOGISTICS, INC. (ACE), a corporation engaged in the business of transportation and storage services, and its President, Alfredo Amorado.

Service of summons was issued to private respondents. When the parties failed to reach an amicable settlement, they were directed to submit their respective position papers, the contents of which, as well as the subsequent pleadings filed thereafter, were summarized by public respondent NLRC in its assailed decision, to wit:

“Complainant alleged that he was hired as a courier by the respondents on October 1, 2005. Sometime in September or October 2012, certain Canon products were stolen from the truck assigned to him while it was parked at respondents' warehouse. Complainant was surprised that he was singled out for investigation. He was required to report for work from October 1-23 but was detailed in a floating status and doing nothing. On October 24, 2012, he was surprised to learn that he had been terminated from his work and was forced to receive a termination letter. He was not paid his salary for the period of October 1-23, 2012. Complainant thus claims that he was illegally dismissed by the respondents.

Respondents on the other hand argued that on September 29, 2012, complainant, along with two (2) other delivery staff (Artemio Migrino and Amadeo CorIno) and the close van driver (Mario S. Limbo) delivered two (2) Canon high-end cameras to Abenson Makati. These items however were not included in the purchase order of Abenson, hence were not left or turned over to Abenson. Complainant and respondents' staff returned to SHENCKER's Warehouse to unload the undelivered items as per company policy. While at the said warehouse, Migrino, as he was about to unload the plastic bag containing the two (2) Canon cameras from the van was told by complainant not to bring out the same. Migrino insisted to bring out the said items from the van (as per Joint Affidavit of Migrino and Lorino xxx). Complainant being a senior employee, Migrino followed his order. Migrino and Lorino left the warehouse at around four or five in the afternoon. According to the driver of the van, Limbo (as per his Affidavit xxx), complainant made a complete inventory of all the items inside the van and the latter informed Limbo that everything was complete. Thus, they closed the van and locked the two (2) padlocks. However, one of the padlocks was defective, hence, complainant put a packing tape to the defective padlock and requested Limbo that he will just be the one to hold the key to the other (functioning) padlock, to which Limbo acceded. Limbo drove the van to respondent's warehouse, which is just

thirty minutes away from Shencker's Warehouse. Limbo parked the van with the rear door almost close to the wall but still with a little space and surrendered the car key to the guard on duty for the night, Joeman Fundal xxx.

On October 1, 2012, complainant surprisingly was the first to arrive between 5:30-5:45am. Complainant was not supposed to report at the respondent's office but directly at Shencker's Warehouse. Limbo arrived at around 7:30 a.m. And, as he was about to transfer the items from his van to another van which is not covered by the number coding, he noticed that the other lock was missing and the door was slightly open. Limbo immediately went to complainant to ask if he already removed the padlock and the latter answered in the negative. Limbo xxx reported the matter to the guard. The guard called the attention of the Chief in house Security, Elmer Soquino, and this prompted the latter to check on the matter. Upon checking of the van by the complainant and as witnessed by other staff, the arrangement of the other canon items inside the van were still neatly arranged with no showing that the items were disarranged from the plastic bag, where the two (2) undelivered canon cameras were placed, only had (sic) one canon camera instead of two (2). Soquino noticed that the rear door of the van showed no signs that it was opened by force and that the other lock and steel bar doors were also intact. Thus, it can easily be concluded that the opening of the van was made by a person familiar with the van. At the time of the incident, the only person who had the key to the van was the complainant.

As a result, respondents required the crew of the van to make their handwritten explanation xxx pertaining to the lost/stolen canon camera and were advised that suspension or termination of employment shall be meted out by the respondent depending upon the gravity of one's participation. Complainant submitted his written explanation xxx. A notice of conference xxx was sent to the complainant and to the other staff to appear at the administrative conference. They were summoned to appear at the said conference. On October 24, 2012, respondents informed the complainant that he is being terminated from his employment and he was given a copy of his Notice of Termination xxx. Respondents thus argue that complainant was validly dismissed.

Complainant refuted the arguments raised by the respondents and argued that the narration of circumstances of the respondents did not prove with certainty that he was the real culprit in the loss of the Canon products. Hence, respondents had no valid reasons to dismiss him.

Respondents replied that complainant is not entitled to receive his prorated 13[th] month pay and unpaid salary. Considering that respondents proved that complainant was the one responsible for the loss of the camera, it is but just and fair that his proportionate 13th month pay and unpaid salary be withheld by the respondents as partial payment for the amount of the lost canon.”[5]

By decision[6] dated May 2, 2013, the Labor Arbiter, Corazon Borbolla, dismissed the case. She ratiocinated that private respondents were able to prove the legality of the petitioner's termination by observing the substantive and procedural due process requirements of the law for a valid dismissal, the fallo thereof reads, to wit:

“WHEREFORE, in the light of the foregoing, this case is ordered DIMISSED for lack of merit.

SO ORDERED.”

Against the decision, petitioner filed a notice of appeal[7] and in due time submitted his memorandum of appeal.[8] He claimed that the Labor Arbiter has committed grave and serious errors in the appreciation of facts if not corrected would cause irreparable damage and injuries to him.

In a Decision[9] promulgated on July 18, 2013, public respondent NLRC dismissed the appeal of petitioner and affirmed, albeit with modification with respect to the monetary award, the decision of the Labor Arbiter, thus:

“WHEREFORE, premises considered, the Appeal is hereby DENIED. The Decision dated May 2, 2013 is AFFIRMED with MODIFICATION. Respondent ACE LOGISTIC, INC. is directed to pay the complaint his pro-rated 13[th] month pay from January 1, 2012 up to October 23, 2012 and unpaid salary for the period 1-23,

2012.

ALL other claims are DISMISSED for lack of merit.

SO ORDERED.”[10]

With his motion for reconsideration having been denied by public respondent NLRC in a Resolution[11] promulgated on August 23, 2013, petitioner comes before Us via this instant recourse assigning the following as grounds for the allowance of her petition, to wit:

### **I.**

WHETHER THE DECISION OF THE HONORABLE PUBLIC RESPONDENT, WHICH FAILED TO RECOGNIZE THAT THE PETITIONER WAS ILLEGALLY DISMISSED, IS IN ACCORD WITH BOTH LAW AND JURISPRUDENCE.

### **II.**

WHETHER THE DENIAL BY THE PUBIC RESPONDENT OF THE AWARD FOR SEPARATION PAY, BACKWAGES, ATTORNEY'S FEES AND DAMAGES TO THE PETITIONER IS IN ACCORD WITH BOTH LAW AND JURISPRUDENCE.[12]

Petitioner asserts that private respondents failed to discharge the burden of proving that there was valid and just ground for his dismissal. He went on saying that the investigation conducted by the private respondents did not help their cause, instead, it shows a desperate attempt to justify their arbitrary and illegal action in dismissing him. With these, he claim that the requirements of a valid dismissal were not complied with by the private respondents.

Despite notice, private respondents did not file their Comment to the petition. Upon Our directive, the parties submitted their respective Memorandum.[13]

### **WE FIND NO MERIT IN THE PETITION.**

The core issue to be resolved is whether the termination of petitioner, was valid or not.

The Labor Code mandates that before an employer may validly dismiss an employee from the service, the requirement of substantial and procedural due process must be complied with. Under the requirement of substantial due process, the grounds for termination of employment must be based on just or authorized causes. Serious misconduct is one of the just causes for termination under Article 282 of the Labor Code, which reads in part:

“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;

x x x.”

Evidently, not every form of misconduct can be considered as a just cause for termination. The law explicitly qualifies that the misconduct must be both serious and made in connection with the employee’s work. As clarified in *Cosmos Bottling Corp. v. Fermin*,[14] to wit:

“Misconduct involves the transgression of some established and definite rule of action, forbidden act, a

dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. For misconduct to be serious and therefore a valid ground for dismissal, it must be (1) of grave and aggravated character and not merely trivial or unimportant and (2) connected with the work of the employee.”

In this relation, it is well to stress that the employer bears the burden of proving, through substantial evidence, that the aforesaid just cause – or any other valid cause for that matter – forms the basis of the employee’s dismissal from work. Substantial evidence is the amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. As long as this evidentiary threshold is met, the dismissal of the employee should, as a general rule, be upheld.[15] Corollarily, conviction in a criminal case is not necessary to find just cause for termination of employment.[16]

In here, the private respondents have presented substantial evidence that warranted petitioner's dismissal from employment on the ground of serious misconduct which was mainly hinged on stealing of company items and/or gross negligence. This is clearly shown in the affidavits of their witnesses, Artemio C. Migrino and Amadeo C. Lorino,[17] and Marlo S. Limbo,[18] as well as the investigation conducted by their security personnel, Joeman A. Fundal,[19] which all pointed to petitioner as the culprit of the stolen high end Canon camera. Petitioner failed to contradict these pieces of evidences. He did not present any evidence, positive or overt act, to refute them. It was only his unsubstantiated conclusion that he was illegally dismissed. Bare and uncorroborated conclusions are self-serving allegations.[20] Thus, We hereby quote with imprimatur the factual findings of the public respondent NLRC, to wit:

“It is fundamental that an employer is liable for illegal dismissal when it terminates the services of the employee without just cause and without due process of law. In termination cases, the burden of proving just and valid cause for dismissing an employee from his employment rests upon the employer, and the latter's failure to discharge that burden would result in a finding that the dismissal is unjustified.

Complainant argued that he was wrongfully accused and respondents failed to prove that he was indeed the person responsible for the loss of the canon camera. Complainant is clearly confused with the distinction of the burden of proof in criminal and administrative cases.

“The burden of proof in a criminal case is guilt beyond reasonable doubt while in an administrative case, only preponderance is required.”

The quantum of evidence in administrative proceeding is that:

“As an administrative proceeding, the evidentiary bar against which the evidence at hand is measured is not the highest quantum of proof beyond reasonable doubt, requiring moral certainty to support affirmative findings. Instead, the lowest standard of substantial evidence, that is, such relevant evidence as a reasonable mind will accept as adequate to support a conclusion, applies. Because administrative liability attaches so long as there is some evidence adequate to support the conclusion that acts constitutive of the administrative offense have been performed (or have not been performed), reasonable doubt does not ipso facto result in exoneration unlike in criminal proceedings where guilt must be proven beyond reasonable doubt. This hornbook doctrinal distinction undergirds our parallel findings of administrative liability and criminal acquittal on reasonable doubt for charges arising from the same facts.”

Respondents need not prove beyond reasonable doubt that complainant indeed stole the camera. For purposes of administrative hearing, substantial evidence is adequate, that is, such relevant evidence as a reasonable mind will accept as adequate to support a conclusion. Based on the available evidence presented by the respondents, we conclude that the affidavits of witnesses and the investigation conducted by the security personnel were enough basis to support the conclusion made by the respondents that complainant had a hand in the loss of the canon camera.

Respondents therefore had valid reason to terminate the complainant under Article 282 (a) of the Labor Code. Complainant's employment terminated based on a serious misconduct, i.e. stealing company items, and/or gross negligence.[21]

On the procedural aspect of the case, Section 2 (d), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, provides, to wit:

“Section 2. Standards of due process; requirements of due notice.

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

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

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

(c) 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.

In case of termination, the foregoing notices shall be served on the employee's last known address.”

Aforequoted rule is specific that the employer must furnish the worker sought to be dismissed with two (2) written notices before employment can be legally effected: (1) notice which appraises the employee of the particular acts or omissions for which his dismissal is sought: and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him. In considering whether the charge in the first notice is sufficient to warrant dismissal under the second notice, the employer must afford the employee ample opportunity to be heard.[22] Failure to comply with the requirements taint the dismissal with illegality.[23]

Here, private respondents complied with the “two-notice rule” stated above. The first notice requirement was shown in the undated notice[24] that was sent to petitioner wherein he was appraised of the particular act or omission constituting his alleged infraction and directed to explain within twenty four (24) hours from receipt thereof, thus:

“TO

:

ALL CONCERN

Roger Israel

xxx

FROM

:

ADMIN/HRD

RE

:

LOST/STOLENCANON  
CAMERA.

Please explain in writing within twenty four (24) about the undelivered and subsequent lost of one Canon camera and why no disciplinary action shall be imposed against any and all of you. Your failure to submit your answer within the period given shall be construed as a waiver on your part. Accordingly, the company will take the necessary disciplining action against you either suspension or suspension of your employment depending upon the gravity of your participations.”

In fact, a Memorandum[25] for administrative conference was sent to petitioner. In both notice and memorandum, the petitioner complied.

The second notice requirement was likewise complied with by private respondents when they sent petitioner a Notice of Termination[26] dated October 24, 2012 informing him of their decision to terminate his employment. A copy thereof was received by petitioner on even date.

With all the foregoing disquisitions, We hold and rule that findings and conclusions of public respondent NLRC are in accord with law and jurisprudence on the matter. Thus, it does not commit no reversible error when it sustained the Labor Arbiter's Decision dated May 2, 2013, much more grave abuse of discretion when it denied the motion for reconsideration of petitioner.

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." 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." Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." [27] These are all wanting in this case. Hence, this recourse cannot be granted.

It is true that the Constitution affords full protection to labor, and that in light of this Constitutional mandate, we must be vigilant in striking down any attempt of the management to exploit or oppress the working class. However, it does not mean that We are bound to uphold the working class in every labor dispute brought before this Court for our resolution. [28]

Moreover, 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 scales of justice in favor of labor, it is in recognition of the inherent economic inequality between labor and management. The intent is to balance the scales 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. [29]

WHEREFORE, premises considered, the instant petition is hereby DENIED. The Decision dated July 18, 2013, and Resolution dated August 23, 2013 of public respondent NLRC in NLRC-LAC No. 06-00176613 are AFFIRMED.

**SO ORDERED.**

Ybañez, E.A.,[\*] and Sorongon, E.D., JJ., concur.

[\*] Vice Justice Rosmari D. Carandang as per Office Order No. 485-14-RSF dated November 24, 2014.

[\*] Acting Senior Member as per Office Order No. 485-14-RSF dated November 24, 2014.

[1] Rollo, Annex “J”, p. 100-109.

[2] Id., Annex “L”, pp. 114-116.

[3] Id., Annex “H”, pp. 84-87.

[4] Id., Annexes “A”- “A-1”, pp. 21-26.

[5] See note 1, at pp. 101-105.

[6] See note 3.

[7] Rollo, Annex “I”, p. 88.

[8] Id., pp. 89-98.

[9] See note 1.

[10] Id., penned by Commissioner Erlinda T. Agus with Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora, concurring.

[11] See note 2.

[12] Rollo, pp. 3-19 at pp. 8-9.

[13] Id., Memorandum (Petitioner) pp. 127-139; Memorandum (Private Respondents) pp. 152-158.

[14] G.R. Nos. 193676 & 194303, June 20, 2012 cited in PNOG Energy Development Corporation, et al., vs. Estrella, G.R. No. 197789, July 8, 2013.

[15] PNOG Energy Development Corporation, et al., vs. Estrella, G.R. No. 197789, July 8, 2013.

[16] Reno foods, Inc et al., vs. NLM, G.R. No. 164016, March 15, 2010.

[17] Rollo, pp. 56-57.

[18] Id., pp. 58-59.

[19] Id., pp. 60-61.

[20] See Ledesma, Jr. vs. NLRC, et al., G.R. No. 174585, October 19, 2007.

[21] See note 5 at pp. 106-108, citations and references omitted.

[22] Sang-an vs. Equator Knights Detective & Security Agency, Inc., G.R. No. 173189, February 13, 2013.

[23] Hilton Heavy Equipment Corporation, et. al. vs. Dy, G.R. No. 164860, February 2, 2010.

[24] Rollo, p. 62.

[25] Id., p. 64.

[26] Id., pp. 65-67.

[27] Malayang Manggagawa ng Stayfast Philippines, Inc. Vs NLRC, GR No. 155306. August 28, 2013.

[28] Ledesma, Jr. vs. NLRC, et al., id.

[29] Ledesma, Jr. vs. NLRC, et al., id.

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