

## **SAN FERNANDO COCA-COLA RANK &#038; FILE UNION (SACURO) AND BERNALIN SONGCO, PETITIONERS, VS. COCA-COLA BOTTLERS PHILS., INC. (CCBPI), MATILDE B. ORTIZ, CRISTINA REYES, AND NATIONAL L...**

Ponente: CARANDANG, J.

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### **CARANDANG, J.:**

Before this Court is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the Resolution[1] dated 29 September 2011 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 09-002425-11 which reversed and set the Decision[2] of Labor Arbiter Leandro M. Jose in NLRC RAB III Case No. 09-16799-10, granting the complaint for illegal dismissal filed by herein petitioners against herein private respondents.

The factual background of the case, as summarized by the NLRC, is as follows:

Respondent Coca-Cola Bottlers Phils., Inc. (CCBPI) is a domestic corporation engaged in the business of manufacturing, distributing and marketing of softdrinks and beverage products. Matilde B. Ortiz is CCBPI's Human Resources Manager for San Fernando, Pampanga while Cristina D. Reyes is its Local Ethics Officer and Legal Director. Petitioner Bernalin B. Songco (Petitioner) is a former Assistant Syrupman at CCBPI's San Fernando Plant in Pampanga.

Petitioner states that on 13 June 2010, CCBPI's security guard, Jesus Cagampang (SO Cagampang), while inspecting the out-going vehicles, found at the back seat of his car a blue bag containing one (1) plastic bag of white sugar weighing 5.25 kilos. Upon investigation, petitioner readily admitted the offense, and SO Cagampang brought back the bag of sugar to CCBPI's office for documentation like weighing and taking pictures. In connection with the incident, petitioner received a Notice to Explain, and in his answer, he admitted to the taking out of the bag of sugar due to his dire need of money. On 2 August 2010, CCBPI terminated his services. The president of petitioner SACURO appealed the decision to the CCBPI, but the same was denied. On 23 September 2010, petitioner filed this case claiming that he was illegally dismissed.

CCBPI, on the other hand, admits the employment of the petitioner as Assistant Syrupman at its San Fernando Plant. As such, he had access to the bodega of sugar and raw materials. On 13 June 2010, on his way out of the premises, SO Cagampang found a blue bag at the back of petitioner's car. Upon inquiry, the petitioner replied "wala yan" in an attempt to dissuade SO Cagampang from further checking the contents thereof. Upon inspection, the blue bag contained white sugar used in the production of softdrinks. SO Cagampang then asked for the gate pass, but the petitioner was not able to present one. SO Cagampang then confiscated the bag and reported the incident to Allan, T. Barcelon, his Detachment Commander. At the Security Office, the petitioner admitted the offense, and SO Cagampang submitted an Incident Report. On 15 June 2010, CCBPI issued a Notice to Explain why the petitioner should not be subjected to disciplinary action including dismissal from employment. On 26 June 2010, the petitioner complied and despite the admission, CCBPI conducted an investigation attended to by

company officers and Alfredo Maranon, Florinio Pineda and Danilo Pineda, union officers. The petitioner reiterated his admission of the charges.

On 2 August 2010, a Notice of Termination was served upon the petitioner for theft or unauthorized taking of property of CCBPI.

On 23 September 2010, petitioner filed a complaint for illegal dismissal against private respondents.

On 13 June 2011, Labor Arbiter Leandro Jose found petitioner to be illegally dismissed by the private respondents. In so ruling, the Labor Arbiter held that the private respondents failed to discharge its burden of proof of showing that the petitioner was dismissed for just cause. In particular, the Labor Arbiter ruled that the private respondents failed to present as evidence the company's 2010 Employee Code of Disciplinary Rules and Regulations (Red Book) which served as the basis for the petitioner's dismissal. He added that even if the petitioner was found guilty of violating the company rules, his dismissal from employment was too severe a penalty.

Consequently, the private respondents appealed the 13 June 2011 Decision of the Labor Arbiter to the NLRC. In a Resolution dated 29 September 2011, the NLRC reversed the 13 June 2011 Decision of the Labor Arbiter. It ruled that the petitioner was validly dismissed on the ground of loss of trust and confidence. It ratiocinated that it is of no moment that CCBPI failed to present as evidence its 2010 Red Book because petitioner's dismissal was anchored on Article 282, paragraph (c) of the Labor Code. It added that by petitioner's admission alone, there is nothing more to prove that the latter committed qualified theft which is a crime involving moral turpitude.

On 14 November 2011, the petitioner filed his Motion for Reconsideration but the same was denied by the NLRC for lack of merit.

Hence, this petition.

Petitioner assigned the following error to the NLRC:

**A.**

THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT DID NOT CONSIDER AS MITIGATING CIRCUMSTANCES THE FOLLOWING:

A. FACT THAT PETITIONER READILY ADMITTED TO HIS FAULT AND NO LONGER CONTESTED THE CHARGE AND EVEN BEGGED FOR FORGIVENESS;

B. THAT THE REASON WHY COMPLAINANT COMMITTED THE THEFT IS BECAUSE AT THE TIME PETITIONER'S BELONGINGS WERE ALREADY MORTGAGED (HOUSE AND FUTURE SALARY REPRESENTED BY HIS ATM CARD), PETITIONER WAS EMOTIONALLY, FINANCIALLY AND MENTALLY STRESSED OUT DUE TO THE DEATH OF HIS MOTHER-IN-LAW AND PETITIONER IS THE ONLY ONE WHO SUPPORTS HIS ENTIRE FAMILY;

C. THE PRIVATE RESPONDENT COMPANY DID NOT SUFFER ANY DAMAGE AS THE SUGAR WAS IN FACT RETURNED TO THE RESPONDENT;

D. THE LONG YEARS OF SERVICE OF PETITIONER VIS-A-VIS THE MEAGER AMOUNT OF THE SUGAR INVOLVED IN THE THEFT INCIDENT;

E. THE PETITIONER IS JUST A REGULAR RANK-AND-FILE EMPLOYEE NOT A CONFIDENTIAL EMPLOYEE;

**B.**

THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN PROMULGATING THE ASSAILED RESOLUTIONS WHEN IT EVEN CONSIDERED THE ALREADY PAST INFRACTIONS COMMITTED BY PETITIONER WAY BACK IN YEAR 1994 FOR WHICH HE HAS ALREADY BEEN METED OUT WITH THE CORRESPONDING PENALTY.[3]

The decisive issue for resolution is whether or not the petitioner was terminated for a just and valid cause.

The petitioner was validly dismissed by CCBPI.

It is undisputed that the petitioner had attempted to bring out from CCBPI's premises five point twenty five (5.25) kilos of white sugar belonging to the latter without its consent or authority. He could have been successful had he not been caught red handed by CCBPI's security guard. It must be stressed that the petitioner's position as an Assistant Syrupman is one of trust and confidence because he was charged with the handling, care and protection of his employer's property.[4] Such unauthorized taking of the company property constitutes willful breach of the trust and confidence reposed upon the petitioner which is a just cause under Article 282 (c) of the Labor Code.[5] Petitioner's duty was to assist in syrup preparation by hauling and dumping of sugar and withdrawing the concentrates from the Cold Room, rinsing of concentrate drums, among others. In the course of the performance of his duty, the petitioner had an access to the bodega where sugar and other raw materials are stored for syrup preparation in connection with the manufacture and production of CCBPI's soft drinks and beverage products.[6]

The Labor Code provides that an employer may terminate an employment based on fraud or willful breach of the trust reposed on the employee.[7] Such breach is considered willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[8]

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 the handling or care and protection of the property and assets of the employer.[9]

In stealing the very same material which he uses in syrup preparation as an Assistant Syrupman, petitioner breached his employer's trust upon him and demonstrated his unworthiness to continue to be employed by CCBPI. As held by the Supreme Court in *Firestone vs. Lariosa*[10], stealing, being reprehensible by itself, becomes more nefarious when committed by someone trusted like an employee.[11] The employer cannot be compelled to retain employees whose honesty and loyalty it sincerely doubts. It cannot adopt special measures continually watching and tailing them.[12]

Petitioner's immediate admission of his violation is not an automatic assurance that he will not be dismissed by his employer. Employers, in the exercise of their management prerogative have the right to discipline their employees.[13] To our mind, the decision of the CCBPI to terminate the employment of the petitioner after the latter was afforded his right to due process was within the sphere of its management prerogative. As long as such decision was not violative of petitioner's right to substantive and procedural due process, We cannot interfere with CCBPI's exercise of its management prerogative.

Also, the fact that the petitioner was facing serious financial trouble during the time material of this case did not give him the impunity or license to commit deplorable acts like stealing his employer's property. One's lowly

economic status can never justify wrongdoings. As the Supreme Court exhorts: “[t]here is no legal or equitable justification for awarding financial assistance to an employee who was dismissed for stealing company property. Social justice and equity are not magical formulas to erase the unjust acts committed by the employee against his employer. While compassion for the poor is desirable, it is not meant to coddle those who are unworthy of such consideration.”[4]

Equally without merit is petitioner's contention that the NLRC erred in not considering as mitigating circumstances the worth of the sugar involved and the fact that CCBPI did not suffer any damage from petitioner's act. The minimal value of the stolen object is immaterial as the betrayal by the petitioner of the trust reposed in him by his employer is the essence of the offense for which he was dismissed from employment. The case of *Quirico Lopez vs. Alturas Group of Companies*[15] which is similar to the instant case is very instructive. In that case, the employee was caught by his employer's security guard in the act of attempting to smuggle out of the company premises 60 kilos of scrap iron worth P840. Despite the relatively small value of the subject materials, the Supreme Court still upheld the validity of the employee's dismissal on the ground of breach of trust and confidence.

Likewise, petitioner's contention that the NLRC should have considered his twenty six (26) years of service with CCBPI as a mitigating circumstance deserves short shrift. In *Reno Foods, Inc., et al. v. Nagkakaisang Lakas ng Manggagawa, et al.*[16], the Supreme Court ruled:

“Indeed, length of service and a previously clean employment record cannot simply erase the gravity of the betrayal exhibited by a malfeasant employee. Length of service is not a bargaining chip that can simply be stacked against the employer. After all, an employer-employee relationship is symbiotic where both parties benefit from mutual loyalty and dedicated service. If an employer had treated his employee well, has accorded him fairness and adequate compensation as determined by law, it is only fair to expect a long-time employee to return such fairness with at least some respect and honesty. Thus, it may be said that betrayal by a long-time employee is more insulting and odious for a fair employer.” (Underscoring Ours.)

Lastly, petitioner argues that the NLRC erred when the latter considered his past infractions[17] (for which he was already meted out with corresponding penalties) in upholding his dismissal. The petitioner is gravely mistaken. A reading of the Inter-Office Memorandum[18] dated 2 August 2010 notifying him of the termination of his employment shows that he was dismissed from his employment solely on the ground of theft or unauthorized taking of company property. Regardless of petitioner's previous infractions, CCBPI had sufficient legal ground to terminate his employment. As discussed above, the petitioner's act of attempting to steal his employer's property is a breach of the trust and confidence reposed in him by his employer. This is a just cause under Article 282, paragraph (c) of the Labor Code.

WHEREFORE, in view of the foregoing, We DENY the instant Petition for lack of merit.

**SO ORDERED.**

### **C E R T I F I C A T I O N**

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Gonzales-Sison and Sorongon, JJ., concur.

- [1] Rollo, at 42-47.
- [2] Ibid., at 48-56.
- [3] Rollo, at 16-17.
- [4] Blue Sky Trading Company, Inc., et al., vs. Arlene P. Blas, et al., G.R. No. 190559, March 07, 2012
- [5] Firestone Tire and Rubber Company of the Philippines vs. Lariosa, G.R. No. 70479, 27 February 1987.
- [6] Annex “A” of Annex “J”, Petition for Certiorari. Rollo, at 231.
- [7] Article 282 (c), Labor Code.
- [8] Lopez v. Alturas Group of Companies, G.R. No. 191008, 11 April 2011.
- [9] Ibid.
- [10] G.R. No. 70479, 27 February 1987.
- [11] Ibid.
- [12] Philippine Associated Smelting and Refining Corp. vs. NLRC, G.R. No. 82866-67, 29 June 1989.
- [13] Family Planning Organization of the Philippines, Inc. vs. NLRC, G.R. No. 75907, 23 March 1992.
- [14] Reno Foods, Inc., et al. v. Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan on behalf of its member, Nenita Capor., G.R. No. 164016, 15 March 2010.
- [15] G.R. No. 191008, 11 April 2011.
- [16] Supra, Footnote No. 14.
- [17] Records of this case show that the petitioner has committed the following violations:
- He was suspended on March 1 to 30, 1994, for violation of Section 12 (b) Rule 005-85 due to the contamination of the CCBPI's syrup preparation which caused damage to CCBPI in the amount of P496,600.00;
  - He was suspended on June 16-18, 1997 for incurring his fourth unauthorized absence on 8 May 1997;
  - He was suspended on October 1 to 5, 1997 because of his fifth unauthorized absence on 28 August 1997;
  - He was suspended on April 7 to May 6, 2009 and was ordered to restitute the damages suffered by CCBPI amounting to P139,825.00 due to his gross negligence. (Annexes “A-7”, “A-8”, “A-9”, and “A-10” of Annex “J”, Petition for Certiorari.
- [18] Rollo, at 253.

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