

BENEDICT L. ORIBE, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, FIRSAT DIVISION, HON. LABOR ARBITER JOSELITO CRUZ VILLAROZA, AND HIMEX CORPORATION AND/OR TERUHIRO OHNO (...)

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is a petition for certiorari under Rule 65 seeking to reverse and set aside the National Labor Relations Commission's (NLRC) Decision of 7 May 2003, affirming that of the Labor Arbiter's Decision which dismissed petitioner Benedict L. Oribe's complaint for illegal dismissal, as well as its Resolution of 16 November 2004 denying his motion for reconsideration.

The antecedents of the case are as follows:

Petitioner Oribe was hired by private respondent Himex Corporation (HIMEX) on 11 September 1995. By 1998, he was the chief accountant of HIMEX.[1] As such, he was in charge of all accounting work, books of accounts and other accounting records of HIMEX. He was also responsible for compliance with the legal requirements on tax obligations of HIMEX to the government under the National Internal Revenue Code. He was likewise relied upon to see to it that HIMEX properly compute, withhold and remit correct taxes, file returns, deduct and remit SSS and Philhealth insurance premium, apply established accounting principles for sales under installment method, submit to the Bureau of Internal Revenue (BIR) the required merchandise inventory, implement internal accounting control measures, issue official receipts, prepare checks and vouchers and keep records of the same.[2] On 11 September 2000, the BIR sent a Letter of Authority to HIMEX informing the latter that it will be sending its revenue officer to examine the books of accounts and other accounting records for income/ VAT/ withholding / and documentary stamps of HIMEX for the year 1999.[3] In response, HIMEX instructed Oribe to submit all the requirements of the BIR and to extend all help in expediting the latter's examination. However, Oribe was caught unprepared prompting HIMEX to hire the services of an external auditor, R.P. Calma and Company, to eventually handle the BIR examination. On 4 January 2001, the external auditor submitted its initial findings to HIMEX, thus:

"Dear Mrs. Ohno:

During the course of our reconstruction of HIMEX CORPORATION books for the year ended December 31, 2000, we noted that the accountant failed to do the following:

- Withhold and remit correct taxes on salaries and wages.
- Refund excess withholding tax on salaries and wages.
- File a return, pay tax, withhold and remit tax on fringe benefits availed by managers and supervisors and creditable expenses.
- Failed to withhold the correct SSS premium and failed to remit correct amount of SSS and Philhealth

contribution.

- Apply the correct accounting principle for sales under the installment method.
- Submit to the BIR the required merchandise inventory list in prior years.
- Implement internal accounting control measures resulting to the susceptibility of the company records to errors and irregularities.

Because of the accountant's omission to perform the duties enumerated above, his competence becomes questionable.

Yours very truly,

(sgd) Ruperto P. Calma"[4]

By 22 January 2001, the external auditor sent another letter to HIMEX detailing more problems encountered, to wit:

"January 22, 2001

Mrs. Rema P. Ohno
Vice-President
HIMEX CORPORATION
604 Prestige Tower Condominium
Emerald Avenue, Ortigas Center
Pasig City

Dear Mrs. Ohno:

This is in addition to our findings we cited in our letter we sent to you last January 4, 2001. That during our reconstruction of HIMEX Corporation books for the year ended December 31, 2001, we further state some other failures of the accountant:

- The responsibility to establish and maintain internal accounting control measures in company's accounting records. Such noted internal accounting control weaknesses are as follows:
 - Official receipts were issued even for post-dated checks. They should have waited for the checks to mature before issuing them with OR's Temporarily, they should have issued provisional receipts.
 - Many checks made were payable to cash. Thus, such will result to deprivation on the part of the company of its legal remedy against the bank if such checks are cashed by unauthorized persons.
 - Disbursement vouchers were prepared for multi-payees especially for the cash advances. One voucher should be issued for each payee.
 - Vouchers and its supporting documents were not stamped 'PAID' resulting to possible double payment of this documents.
 - Disorganized file of vouchers. The fault of the accountant to this, is that he failed to instruct its accounting subordinates in proper filing of vouchers which are to file the vouchers intact, taking note of its number sequence and see to it there is an attached original supporting document for every voucher.
- The accountant seemed to be not proficient in taxation as proven under the foregoing omissions:
 - Failure to file prior year's inventory summary list of the company to the BIR with due date not later than January 29, 2001.

- Expenses which are supposed to be subjected to withholding taxes under the code but were not in subjected to such, thus presently penalizing the company for such omission.

- Invoices and OR's detached from the booklets. Under the Tax Code, the accountant or any of the account staff, under his supervision/instruction should have asked for a permit coming from the BIR. It is strictly required by the tax law that a taxpayer should ask first permission to use loose-leaf invoices/ receipts.

- Unable to identify those items that are to be taxed or not. Example of this was the failure of the accountant to tax the unliquidated transportation allowances given to the sales representative of the company. As required under the tax code, transportation allowance given to the representative can only be exempt from tax if it is liquidated.

- The duty to furnish us his 1999 worksheets. Worksheets are accounting data that the accountant should have supplied to the company's auditor during the latter's audit of 1999 books. Although our services cover only the year 2000, we need to verify the forwarded beginning balances of 2000 from the supposed worksheets of the accountant. But we are told that he had not prepared any worksheets. Due to this, we are encountering many problems in our accounting services for the year 2000.

Based on the above, it is our opinion that the existing accountant is no longer effective to hold the position as an accountant of HIMEX Corporation.

Please contact us if you have any further questions.

Yours very truly,

(sgd) Ruperto P. Calma"[5]

On 24 January 2001, or barely two days after the last letter was sent, the external auditor wrote another letter to HIMEX expressing frustration still on Oribe's work and apparent uncooperativeness to them.

"January 24, 2001

Mrs. Rema P. Ohno
Vice President
HIMEX CORPORATION
604 Prestige Tower Condominium Bldg.
Emerald Avenue, Ortigas Center
Pasig City

Dear Mrs. Ohno:

We are presently encountering many problems in our reconstruction services for the HIMEX Corporation covering the year 2000 particularly in our preparation of bank reconciliation statements. This is due to inability of Mr. Benedict Oribe to provide us the breakdown of amount that appeared on the audited financial statements for 1999.

We requested him to provide us his worksheet for 1999. This worksheet is an accounting document used by the auditor as basis for her audit of HIMEX' financial statements. If there was no worksheet prepared, there should be a trial balance in order that the audited financial statements can be prepared. That if the worksheet will not be available, he can just ask their auditor to present her working paper as a basis for her audit of 1999. Unfortunately, the worksheet of the accountant and the working papers of the auditors cannot be supplied to us.

Mr. Oribe is responsible to the management of HIMEX Corporation to make a justification on how the audit came up with the audited financial statements. The audit opinion made by the auditor stated that the

responsibility on the financial statements rests upon the management and the auditor is liable only on the opinion issued for the fairness on the presentation of the statements.

The inability of Mr. Oribe to provide us the 1999 trial balance or a worksheet supporting the 1999 audited statements is definitely an indication of inadequate competence for an accountant.

Yours very truly,

(sgd) Ruperto P. Calma"[6]

Meanwhile, on 12 January 2001, or eight days into the examination of the books of HIMEX by the external auditor, Oribe sent a letter to the Ohnos in this wise:

"January 12, 2001

TO : MR. & MRS TERUHIRO OHNO

FR : BENEDICT L. ORIBE

Dear Sir and Madam,

First of all let me greet you first and your family a Prosperous New Year. I am praying that this year will be a better year for all of us.

Going to may case let me convey my final appeal to both of you. I know that as much as we try to patch up our differences and work as we did before, things may never be the same again. In the direction to appease both parties and we part still in good terms I am humbly suggesting the following solution subject to your kind approval.

On my part:

- I will submit my resignation letter effective January 15, 2001.
- I will sign all clearances and quitclaims as you deem necessary.
- I will make myself available to have this turnover smooth and even after, if you still need my help.
- I will surrender all pertinent documents that I accumulated during my employment. I apologized for this but I learned from my previous employments the necessity of this things considering the nature and tenure of my job.

Equivalent to the length of my dedicated service to the company and will form part of my separation pay and other benefits, taken into consideration the difficulty of finding a new job or start a small business and to support my family for at least six months before I could landed a new job, I am appealing to you the following:

- To transfer ownership of my service car under my name.
- To release the amount of P150,000.00 upon submission of the above.

I am hoping that it is all in order.

Very truly yours,

(sgd) BENEDICT L. ORIBE"[7]

Finally, on 7 February 2001, HIMEX sent Oribe a notice requiring the latter to explain within seventy-two (72) hours why no disciplinary action should be taken against him for gross incompetence and/or gross negligence in the performance of his duties. He was also placed on preventive suspension.[8] According to Oribe's summary of facts submitted to the BIR, he answered the accusations/ allegations of HIMEX on 10 February 2001. And on 7

March 2001, HIMEX sent a memorandum to Oribe informing him that his employment with the former is being terminated for loss of confidence and breach of trust.

The following day, Oribe filed a complaint for illegal dismissal.[9]

For his part, Oribe claims that in the beginning he was held in esteem by HIMEX and that he was in fact promoted in 1998 as chief accountant.[10] According to him, the problem started when he was assigned to take care of the tax matters of HIMEX with the BIR. He further claims that HIMEX was guilty of various tax frauds and tax evasions and when the BIR eventually conducted an investigation, HIMEX turned its ire on him. He was allegedly slapped with unfounded charges, issued unreasonable memos, suspended without pay and eventually terminated.[11]

After evaluating the evidence and arguments raised before him, the Labor Arbiter found that HIMEX' loss of confidence was based on Oribe's failure and refusal to perform his duties and obligations as HIMEX' Chief Accountant.[12] Accordingly, on 20 August 2001, the Labor Arbiter dismissed Oribe's complaint for illegal dismissal.[13] Before the NLRC, his appeal was dismissed upon the report and recommendation of Labor Arbiter Fatima Jumbaro-Franco who was commissioned by the former to review the case.[14]

In this petition before us, Oribe submits the following issue for resolution:

“WHETHER OR NOT THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RENDERED A DECISION AFFIRMING THE DECISION OF THE HONORABLE LABOR ARBITER WHICH IS APPARENTLY CONTRARY TO THE FACTS, EVIDENCE AND THE LAW APPLICABLE IN THIS CASE.”[15]

In support of this, Oribe argues that his dismissal on the ground of loss of trust and confidence was merely an after thought and never substantiated. He also argues that HIMEX failed to observe the two notice rule.

We are not persuaded.

Article 282 (c) of the Labor Code justifies the termination of employment by the employer on fraud or willful breach of trust.[16] This, according to the Supreme Court, is premised on the fact that the employee concerned holds a position of responsibility or trust and confidence. He must be invested with confidence on delicate matters, such as the custody handling or care and protection of the property and assets of the employer. Necessarily, the act complained of must be work related and that the employee concerned is unfit to continue such delicate and sensitive work.[17]

In the present case, Oribe does not deny that the position he held with HIMEX was a managerial position reposed with trust and confidence.[18] Oribe's position as chief accountant involved a high degree of responsibility requiring trust and confidence since it related closely to the financial interests of HIMEX. His failure to apply the correct accounting principles and implement internal accounting measures[19], his failure to furnish worksheets of previous years to the external auditor[20] definitely constituted a breach of that trust and confidence. In fact, according to Oribe, in his Memorandum before us, when the BIR was in the verge of investigating the books of HIMEX, the latter had to seek the services of an external auditor, not only for the investigation, but to make an internal audit of the company as well. This, to Our mind, certainly does not speak well of Oribe's capacity as HIMEX's chief accountant. Similarly, in *Inter-Capitol Marketing Corp. v. NLRC*[21], the Honorable Supreme Court considered the failure of the petitioner's chief accountant to observe normal company procedures regarding funds under her control and custody as constituting breach of trust and confidence.[22]

While Oribe maintains that he merely obeyed the wishes of HIMEX in perpetuating fraudulent schemes to evade

taxes and that it was only the latter who stood to gain from such, his argument fails to justify or excuse his ineptness and incompetence – such as his failure to “apply the correct accounting principle for sales under installment,” or to “implement internal accounting control measures”[23], or his failure to provide or present his 1999 worksheet and/or trial balance[24]. Moreover, some of Oribe’s failings noted by the external auditor were, not only not beneficial, but even detrimental to HIMEX. For one, the practice of issuing check payable to cash which according to the external auditor can result in depriving HIMEX of its legal remedy in case of encashment by unauthorized persons[25]. Oribe, as the chief accountant, likewise permitted or at the least condoned the procedure of issuing or preparing disbursement vouchers for multi-payees and the practice of not stamping “paid” on the same which may easily result in double payments, again detrimental to HIMEX.

As regards the failure of HIMEX to observe the two notice rule under Article 277 (b) of the Labor Code, again the same is without merit. True, our revered Supreme Court has consistently upheld the rule. In fact, in the fairly recent case of *Amadeo v. Fishing Corporation v. Nierra*[26], citing *Pastor Austria v. NLRC*[27], the High Tribunal reiterated the purpose and reason for it.

“The first notice, which may be considered as the proper charge, serves to apprise the employee of the particular acts or omissions for which his dismissal is sought. The second notice on the other hand seeks to inform the employee of the employer’s decision to dismiss him. This decision, however, must come only after the employee is given reasonable period from receipt of the first notice within which to answer the charge and ample opportunity to be heard and defend himself with the assistance of a representative if he so desires. This is in consonance with the express provision of the law on the protection to labor and the broader dictates of procedural due process. Non-compliance therewith is fatal because these requirements are conditions sine qua non before dismissal may be validly effected.”[28]

However, applying this parameter to the present case, we find that HIMEX has substantially complied with the same. HIMEX submits that it sent a notice to Oribe seeking the latter’s side vis-a-vis his failings as found by the external auditor[29]. While Oribe down plays the said notice, he nevertheless admitted in having received the same and in answering the charges/ allegations therein on 10 February 2001[30]. This, to our mind, obtains the purpose of the required first notice. Due process was afforded him. Thus, after due deliberation on the part of HIMEX, it rightly exercised its management prerogative in issuing the second notice/ memorandum dismissing Oribe on 7 March 2001[31].

Whether or not HIMEX is guilty of any tax evasion or anomaly is not relevant here, the BIR will have charge of that. The sloppiness of Oribe’s work as chief accountant is, and HIMEX substantially established this justifying dismissal of the former.

Withal, we find neither reason nor justification to reverse the finding as well as the Decision of the NLRC.

WHEREFORE, the instant petition is DISMISSED. The NLRC Decision of 7 May 2003, affirming that of the Labor Arbiter dismissing petitioner Benedict L. Oribe’s complaint for illegal dismissal, is AFFIRMED.

SO ORDERED.

Dacudao, (Chairman) and Arevalo-Zenarosa, JJ., concur.

[1] Petition, pp. 2-3, ROLLO

[2] LA Decision, p. 46, ROLLO

[3] BIR Letter of Authority, p. 90, ROLLO

- [4] LA Decision, pp. 51-52, ROLLO
- [5] Position Paper of HIMEX, pp. 25-27, ROLLO
- [6] Position Paper of HIMEX, pp. 27-28, ROLLO
- [7] Position Paper of HIMEX, pp. 28-29, ROLLO
- [8] Position Paper of HIMEX, pp. 29-30, ROLLO
- [9] Complaint, p. 14, ROLLO
- [10] Petitioner's Memorandum, p. 222, ROLLO
- [11] Petitioner's Memorandum, p. 222, ROLLO
- [12] LA Decision, p. 51, ROLLO
- [13] LA Decision, p. 56, ROLLO
- [14] NLRC Decision, pp. 76-82, ROLLO
- [15] Petitioner's Memorandum, p. 223, ROLLO
- [16] Amadeo Fishing Corporation v. Nierra, 472 SCRA 13, 32
- [17] Coca-Cola Bottlers, Phils., Inc. v. Kapisanan ng Malayang Manggagawa sa Coca-Cola –FFW, 452 SCRA 480, 501
- [18] Petitioner's Memorandum, p. 226, ROLLO
- [19] Letter of the External Auditor dated 4 January 2001 as reproduced in the LA Decision, p. 51-52, ROLLO
- [20] Letter of the External Auditor dated 22 January 2001 as reproduced in the Position Paper of HIMEX, pp. 25-27, ROLLO
- [21] Inter-Capitol Marketing Corp. v. NLRC, 202 SCRA 584
- [22] Inter-Capitol Marketing Corp. v. NLRC, supra, p. 595
- [23] Letter of the External Auditor dated 4 January 2001 as reproduced in the LA Decision, pp. 51-52, ROLLO
- [24] Letters of the External Auditor, dated 22 and 24 January 2001 as reproduced in the Position Paper of HIMEX, pp. 26 and 27-28, ROLLO
- [25] Letter of the External Auditor dated 22 January 2001 as reproduced in the Position Paper of HIMEX, p. 25, ROLLO
- [26] Amadeo Fishing Corporation v. Nierra, 472 SCRA 13
- [27] Pastor Austria v. NLRC, 312 SCRA 410
- [28] Amadeo Fishing Corporation v. Nierra, supra, p. 33
- [29] LA Decision, p. 49, ROLLO
- [30] Oribe's "Employment History with HIMEX," p. 92, ROLLO
- [31] LA Decision, p. 50; Oribe's "Employment History with HIMEX," p. 93, ROLLO

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