

PAULINO DE SILVA ALVAREZ, PETITIONER, VS. LAGUNA AUTO-PARTS MANUFACTURING CORPORATION, KATSUYA NAKAMOTO, VAL AGNO AND THE NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

Ponente: BALTAZAR-PADILLA, J.

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BALTAZAR-PADILLA, J.:

Challenged before US via a petition for certiorari is the Decision[1] dated November 21, 2012 of the National Labor Relations Commission (NLRC) and its Resolution[2] dated February 28, 2013 which affirmed the Decision[3] of the Labor Arbiter dated June 27, 2012 dismissing petitioner's complaint for illegal dismissal on the ground that he was legally dismissed from his employment on the ground of serious misconduct.

Petitioner was an employee of Laguna Auto-Parts Manufacturing Corporation (respondent corporation, for brevity) since 1997 until he was terminated from work on January 12, 2012. Respondent corporation, on the other hand, is a domestic corporation engaged in the business of manufacturing car parts and accessories represented by its President, Katsuya Nakamoto. Public respondent NLRC is impleaded as a nominal party for issuing the herein impugned Decision and Resolution.

The antecedent facts as can be gleaned from the pertinent portions of the respondent Commission's assailed Decision are as follows, viz:

“On January 24, 2012, the complainant (petitioner herein) filed a verified complaint against the respondents for illegal dismissal and illegal suspension with prayer for reinstatement, money claims and damages.

In his position paper, the complainant alleged that on December 8, 2011, he was placed under preventive suspension for theft. Based on the admission of his co-employees namely, Regulto, Leysa and Maliquid they have pilfered copper wires from the respondent company and that the complainant was the mastermind. On January 12, 2012, the complainant was terminated from his employment. He claimed that his termination was illegal dismissal since there was no evidence to show his participation in the offense except the confession of his three (3) co-employees.

Complainant further claimed that he was prohibited from entering the warehouse. Thus, contrary to their (co-employees) statement, he could not have entered the warehouse as he was from the production department. Complainant also argued that assuming that he was guilty, his 15 years of services should have been considered in his favor.

He prayed for reinstatement with backwages and attorney's fees.

Respondents, on the other hand, asserted the validity of complainant's dismissal for: (a) stealing company property in violation of company rules and regulations; and (b) commission of a crime against the employer under Article 282 of the Labor Code.

They also countered that sometime in August 2011, in the course of its operations, the respondents discovered

that the supply of copper wires were (sic) tampered that caused them to initiate an inventory. As a result, warehouse employees namely Alcones, Regulto, Tamayo, Policarpio, Maliquid, Leysa and Agravio were scheduled to take polygraph test. Regulto broke down and confessed. He then implicated co-employees Maliquid, Leysa and the complainant as those involved in stealing copper wire. They submitted Regulto's sworn statement in which he narrated that the complainant separates (sic) the "coil bobbings/copper coils" and puts it (sic) in a box. The said box is (sic) taken by Leysa to Building 1 and then sends (sic) text messages to Regulto and Maliquid that the box is (sic) already ready for pick (sic). With the use of delivery truck, Regulto and Maliquid brought out the stolen coopers (sic) from company premises and sold the same to a junk shop. Thereafter, they met to get their share of the proceeds of the loot.

They also stated that on December 8, 2011, respondent company issued him a notice directing him to explain his being implicated in the theft of copper wire and placing him under preventive suspension from December 8, 2011 until January 5, 2012. x x x

x x x

Respondents also stated that the administrative hearings were conducted in which complainant was represented by a counsel. On January 6, 2012, respondent company terminated the complainant effective January 7, 2012.

In his reply, the complainant denied the charges made against him by his co-employee Regulto. He insisted that it was impossible for him to go inside the warehouse since it was off-limit to employees from the production area. Complainant likewise stated that his co-employees at the production areas confirmed that he did not leave his workplace. He also averred that Regulto and his companions were all from the warehouse and they do (sic) not need his help in stealing the subject copper wires. Complainant contended that there was no independent evidence proving such conspiracy. Hence, he concluded that the admission of Regulto is not admissible against him. He reiterated that considering his length of service, the penalty of dismissal should not have been imposed on him, assuming that he was guilty as charged.

Respondents, in their Reply, pointed out that Leysa, when asked by complainant's counsel during the administrative hearing, replied that he had been allowing the complainant to the warehouse, when assigned on night shift and that he saw the complainant twice while in the act of stealing cooper (sic) coils in August 2011.

In his Rejoinder, the complainant emphasized that while the respondents insisted that his three (3) co-conspirators attested to his guilt, however, only Leysa claimed to have seen him steal copper wires from the respondent company. He then concluded that Regulto's statement was fabricated. He likewise maintained that the admission (sic) made by his co-employees were inadmissible for lack of independent proof of the supposed conspiracy. Finally, he claimed that based on the statement of his co-employees, it was impossible for him to commit theft as described by Mark Leysa.

Respondents, in their Rejoinder, x x x stresses (sic) that Regulto's statement was corroborated by the Magkasamang Sinumpaang Salaysay of Mark Leysa and Rogelio Maliquid. For the reason they did not work on the same shift in the month of August, 2011, the respondents tagged as inaccurate and misleading the sworn statement[s] of Panza, Bon, Batalla and Decena attesting to the impossibility of complainant of leaving his work station. They also stated that the acts of pilferages have been happening for a long time as shown by the fact that around U.S.\$ 101,687.53 worth of copper coil have been lost based on the Inventory Report and Lacking Quantity attached to the Affidavit of Victoria B. Songhen, Accounting Assistant Manager of the respondent corporation. And finally, respondents submitted the complaint-affidavit for qualified theft filed by Aragon Security and Investigation Agency Corp."

After due proceedings, the Labor Arbiter ruled that petitioner's dismissal was based on a just and valid cause. As per the testimonies of petitioner's co-employees Regulto, Leysa and Maliquid, petitioner was the one responsible for the theft of the coils. These three witnesses broke down and immediately confessed as to the participation of petitioner in the massive pilferage in the company when told by the latter's security agency, Aragon Security, that

they would be subjected to lie-detector tests. This was therefore a sufficient basis for respondent corporation to lose its trust and confidence in petitioner who was at that time occupying the position of Production Line Leader. Likewise, petitioner was accorded of his right to due process. He was issued notices and was given an opportunity to rebut the charges against him. On June 12, 2012, the Labor Arbiter issued a Decision, the dispositive portion of which reads, viz:

“WHEREFORE, premises considered, decision is hereby rendered dismissing the labor case against respondents for lack of merit, the complainant having been dismissed legally with just cause and after compliance with due process.

All other claims are dismiss (sic) for want of basis.

SO ORDERED.”

The findings and conclusion of the Labor Arbiter were affirmed by the NLRC. The respondent Commission held that petitioner did not make any credible explanation why he was implicated by his three (3) co-employees in the commission of several thefts against respondent company. Petitioner merely came-up with denials and harped on the supposed impossibility of his being physically present at the warehouse when the alleged offenses occurred. His claims were, however, successfully refuted by respondent company through Leysa who categorically stated that he allowed petitioner to the warehouse and even witness him steal copper wires twice in August, 2011. As between the positive statement of Leysa and petitioner's alibi and denial, the former prevails.

The NLRC correctly sustained the employee's dismissal for dishonesty in stealing company property even if the employee has not been convicted yet of qualified theft in the criminal cases filed against him based on the same incidents. Glaringly, petitioner's dishonest acts constituted serious misconduct reflective of his distorted moral character which justify his termination. The fallo of the NLRC's Decision is as follows:

“WHEREFORE, premises considered, the Decision dated June 27, 2012 is AFFIRMED.

SO ORDERED.”

Petitioner moved for the reconsideration of the aforesaid Decision but it was denied in a Resolution dated February 28, 2013. Hence, this petition anchored on these twin grounds:

I

PUBLIC RESPONDENT SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN SUSTAINING PETITIONER'S DISMISSAL FROM HIS JOB DESPITE INADEQUATE EVIDENCE SHOWING HIS GUILT.

II

PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN FAILING TO RULE THAT THE PENALTY IMPOSED IS GROSSLY EXCESSIVE AND NOT PROPORTIONATE TO THE PROPOSED OFFENSE.

The core issue in this case is whether or not respondent corporation has substantially proven that petitioner's dismissal is for a just cause.

Petitioner essentially argues that as a regular employee of respondent company, he is entitled to security of tenure which is a right of paramount value guaranteed by the Constitution and should not be denied on mere speculation. Respondent corporation failed to prove by substantial evidence that he was involved in the commission of the

alleged illegal acts against the company. The burden of proving that he was validly dismissed rests on respondent company and the latter's failure to do so rendered his dismissal unjustified.[4]

Petitioner also maintains that it was not possible for him to be present at the warehouse where the stolen materials were being kept during the time the supposed thefts happened. It is the company's policy that those employees who are not assigned in the warehouse are not allowed to enter its premises. If he really attempted to enter the same without any permission, he would have been barred by the security guards manning the area. His co-employees who were working with him in the production department even testified that they did not see him leave his work place for a significant time during the month of August 2011, the month the alleged pilferages were purportedly committed.[5]

In addition, it was Roelito Regulto (Regulto) who was responsible for stealing the coils since he was the one working in the warehouse. He can freely enter the site and dispose of the materials stolen conveniently even without petitioner's assistance. Regulto's statement was inconsistent. He declared in his written statement that he, petitioner and the other accused would usually meet and divide the coils among themselves while during the administrative investigation, he avowed that petitioner only communicated with them through text messaging. This just confirms that the accusations against him were merely fabricated. Also, Regulto's admission of the imputed acts is not admissible against him. It is a rule of evidence that an admission of a conspirator maybe given in evidence against his co-conspirator only after the conspiracy is shown by evidence other than such admission. There being no independent evidence proving such conspiracy, such admission of Regulto is not admissible against him.[6]

Petitioner argues that even assuming that the allegations against him were indeed true, the penalty of dismissal was too harsh and not commensurate to the questioned illegal acts that he supposedly committed. The law regards the worker with compassion. A penalty less punitive than dismissal should have been imposed. This is not only because of the law's concern for the workingman. There is in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent upon the wage earner. Accordingly, petitioner asks this Court for compassion to annul the penalty of dismissal imposed on him and that his 15 years of service to respondent corporation be considered in his favor.[7]

In its Comment, respondent corporation insists that the impugned Decision of the Commission a quo is in accord with the applicable laws and prevailing jurisprudence. The conviction of petitioner of the alleged crime of theft is not required to warrant his dismissal. Likewise, the testimonial and documentary evidence it presented show that petitioner conspired with his co-employees, Mark Leysa (Leysa), Roger Maliquid (Maliquid) and Regulto in stealing the coils owned by the company. The conspiracy between these employees and petitioner was implied when they executed specific acts indicating unity of purpose in accomplishing the alleged pilferages. No ill-motive and malicious or wrong intent can likewise be imputed against these employees which would put in doubt the veracity of their statements. Thus, their testimonies must be given sufficient weight and credence.[8]

Respondent corporation further discourses that petitioner's defense of alibi that he was not at the warehouse at the time the purported thefts happened, should be taken with a grain of salt. The fact that there was no possibility for him to be present in that place was not clearly established. The categorical statements of Leysa, Maluquid and Regulto identifying petitioner as one of the perpetrators of the purported illegal acts and the fact that a considerable amount of coils was missing and unaccounted for, when taken together, substantially prove that petitioner's dismissal was valid and justified. That such thefts took place on a substantial, if not massive scale, is attested by the fact that respondent company's security provider, ASIAC, was constrained to file a case of qualified theft against petitioner for fear of being held accountable for the losses caused by lack of due diligence on their part. As a matter of company rules, respondent corporation cannot keep in its employ one who has been

implicated in several pilferages committed against it which resulted to the loss of a substantial amount of money to its prejudice. Therefore, petitioner's acts amounted to grave misconduct which is a just cause for dismissal.[9]

The petition lacks merit.

Fundamental is the rule that whether or not there is a just dismissal of an employee is a question of fact, the determination of which is the statutory function of the Labor Arbiters and the NLRC. And it is almost trite to state that factual findings of the Labor Arbiters, when affirmed by NLRC, are accorded not only respect but even finality, when these findings are supported by substantial evidence, and devoid of any unfairness or arbitrariness.[10] Here, the Labor Arbiter found that there was substantial proof to support the existence of a just and valid cause to dismiss petitioner from employment. The aforementioned conclusion was reached after a thorough assessment and evaluation of the pieces of evidence adduced by the contending parties. The NLRC, in turn, found that the ruling of the Labor Arbiter was sufficiently substantiated by evidence and pertinent jurisprudence. WE uphold the findings of these labor tribunals that petitioner's dismissal was for a just cause.

Under Article 282 of the Labor Code, the just causes for dismissal are the following:

“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 his 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.” (emphasis supplied)

Jurisprudence provides that 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 by the High Court in PNOC-Energy Development Corporation et al. vs. Estrella,[11] thus:

“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.” (emphasis supplied)

The first element is present in the extant case. Settled is the rule that to justify the dismissal of an employee on the ground of serious misconduct, the employer must first establish that the employee is guilty of improper conduct, that the employee violated an existing and valid company rule or regulation, or that the employee is guilty of a wrongdoing.[12] Petitioner's participation in the pilferages of coils which caused respondent company a significant amount clearly constitutes a misconduct or wrongdoing of serious nature. It is also a violation of the latter's Code of Discipline which penalizes any act of stealing or attempting to steal with the supreme penalty of dismissal.

The second requisite is that the misconduct, however serious, must nevertheless be in connection with the

employee's work to constitute just cause for his separation. Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.[13] In the present case, petitioner was working as Production Line Leader. He was assigned in the production department of respondent company. In line with his work, petitioner necessarily had access to the respondent corporation's warehouse where most, if not all, of the raw materials being used in the production of auto-parts and accessories are being kept. The stolen coils are stored in the company's warehouse. Hence, petitioner cannot claim that it was not possible for him to go to and fro the premises of the warehouse where the stolen coils were also stored. The second element that petitioner's misconduct has reasonable connection to his work is likewise extant in the present case.

Furthermore, respondent corporation presented the following pieces of evidence to prove petitioner's participation in the offense charged, thus, rendering his dismissal just, viz: (1) an incident report from its production department outlining the events from August 21, 2011 until August 31, 2011 which led to the loss of an estimated 491 kilograms of coil;[14] (2) a report from the company's warehouse showing several pictures indicating the normal condition of a regular coil attached to a bobbin and the altered condition wherein the coil was already detached from the bobbin;[15] (3) the Sinumpaang Salaysay of Roelito Regulto stating that in the month of August, 2011, he together with petitioner, Leysa and Maliquid on two (2) separate occasions stole coils from respondent company and specifically describing the participation of each of them in the alleged thefts, to wit: "Aking isinasalaysay na kami ay apat na taong may alam at gumawa ng paglabas ng mga bobbins, Si Paul Alvarez na syang taga production na naghihiwalay ng mga "Coil Bobbins" mula sa coil at nilalagay nya sa box; si Mark Leysa na taga Warehouse na syang nag dadala ng mga boxes na may laman na mga "Coil Bobbins" patungo sa Bldg. 1; Ako bilang delivery truck driver na syang naglabas ng mga gamit at si Roger Maliquid bilang pahinante ko na syang nagbenta ng mga gamit at ang halagang napagbentahan ay aming pinaghati-hatiang apat.";[16] (4) a memorandum addressed to petitioner indicating that he was on preventive suspension from December 8, 2011 to January 5, 2012 while his case was being investigated and asking him to explain in writing within five (5) days from receipt thereof why no disciplinary action should be imposed on him;[17] (5) a handwritten letter of petitioner denying his participation in the supposed pilferages;[18] (6) a letter from respondent corporation requesting petitioner to personally appear during the formal investigation scheduled on December 15, 2011;[19] (7) the minutes of the December 15, 2011 meeting which pointed-out the following details, namely: (a) Regulto's admission and participation in the alleged illegal acts; (b) petitioner's denial that he committed the same, and; (c) Maliquid and Leysa's filing of their respective resignation after admitting their involvement in the offense charged;[20] (8) the minutes of the January 3, 2012 meeting showing the clarificatory questions propounded by petitioner's counsel against Regulto, Leysa and Maliquid;[21] and (9) respondent corporation's letter dated January 6, 2012 terminating petitioner from his employment effective January 7, 2012[22].

For his part, petitioner denied any participation in the offense charged. He also presented the testimonies of his co-employees in the production department, Cristina Bon, Angelica Batella, Karen Decena and Riza Q. Panza, who avowed that they have not seen petitioner left the production area during the two separate occasions that the alleged pilferages took place. As correctly expostulated by the Labor Arbiter, the uniform testimonies of these witnesses are not credible because their shifting schedules were not the same as that of petitioner. Said employees therefore cannot vouch for petitioner's presence in his work place at the time the subject thefts occurred and that it would be impossible for him to go to the warehouse to take away the coils.

It is well to stress that the employer bears the burden of proving, through substantial evidence, that the aforesaid just cause forms the basis of the employee's dismissal from work.[23] Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other minds,

equally reasonable, might conceivably opine otherwise.[24] This evidentiary threshold is met in this case, the dismissal of the employee should therefore be upheld.

Consequently, the imposition of the penalty of dismissal is reasonable, appropriate and a valid exercise of management prerogative. It is a hornbook doctrine that infractions committed by an employee should merit only the corresponding penalty demanded by the circumstance. The penalty must be commensurate with the act, conduct or omission imputed to the employee and must be imposed in connection with the disciplinary authority of the employer.[25] As WE have discoursed earlier, Regulto testified that he together with petitioner, Leysa and Maliquid have stolen more or less 400 kilos of coils twice during the month of August, 2011 which are valued at around P220.00 pesos per kilo. He also admitted that they would usually divide the profits among themselves for P20,000.00 pesos each.[26] The incident report submitted by respondent corporation, on the other hand, states that the estimated amount of missing coil after its inventory on the same month was 491 kilograms. Whichever amount is correct, WE find that the range of 400-491 kilograms of coils is a big amount which resulted in a huge loss for respondent company. As a measure of self-preservation against acts inimical to its interests, an employer has the right to dismiss an employee found committing acts of dishonesty and disloyalty. The employer may not be compelled to continue to employ such a person whose continuance in the service would patently be inimical to his employer's interest.[27]

In a case[28], the Supreme Court ruled that the length of service does not necessarily entitle the erring employee to a reduction of the penalty imposed on him. It is not a magical invocation that will automatically mitigate the liability of the party claiming it. It is an alternative circumstance which can mitigate or possibly even aggravate the penalty, depending on the circumstances of the case. Here, petitioner used his length of service, position and influence to obtain entry and access to the warehouse to carry out his illegal acts. It therefore aggravated, rather than tempered, the seriousness of his misdeed. Instead of exhibiting loyalty to respondent corporation which he has served for 15 years, he betrayed the trust reposed on him and took advantage of his position to benefit himself. The gravity of the offense he committed evidently militates against his plea to treat length of service as mitigating circumstance.

WE also dismiss petitioner's assertion that he was not afforded his right to due process.

As per jurisprudence, to guarantee observance of due process, the employer is required to furnish the employee with two written notices before termination of employment can be effected: a first written notice that informs the employee of the particular acts or omissions for which the dismissal is sought, and a second written notice which informs the employee of the employer's decision to dismiss. 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.[29]

Petitioner was furnished with written notices that duly informed him of the acts he allegedly committed which justified his dismissal from employment. First, a memorandum dated December 8, 2011 was sent to him apprising him that he violated the Code of Discipline No. 44 of respondent company which states that stealing or attempting to steal from the company is punishable by dismissal and in violation of Article 282 of the Labor Code; Second, a letter dated December 12, 2011 was subsequently sent to him advising him that a formal investigation of his case would be conducted; that he must be present thereat to defend himself and to confront the witnesses against him; and that he may bring a counsel of his choice, if he so desires; Third, a final letter of termination was sent to him on January 6, 2012 after the conclusion of the investigation of his case. Clearly, contrary to petitioner's claim, he was given an ample opportunity to be heard.

All told, WE find no grave abuse of discretion on the part of the NLRC in issuing the assailed Decision and

Resolution.

WHEREFORE, in the light of the foregoing, the extant petition is DENIED for lack of merit. The challenged Decision dated November 21, 2012 and Resolution dated February 28, 2013 of the Commission a quo are hereby AFFIRMED.

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.

Tijam, N.G., Chairperson, and Reyes-Carpio, A., JJ., concur.

- [1] Rollo at 21-31.
- [2] Rollo at 32-33.
- [3] Rollo at 98-103.
- [4] Rollo at 8-10. Petition.
- [5] Rollo at 10-12. Petition.
- [6] Rollo at 12-15. Petition.
- [7] Rollo at 15-17. Petition.
- [8] Rollo at 124-125. Comment.
- [9] Rollo at 126-130. Comment.
- [10] Pepsi-Cola Products Philippines Incorporated vs. NLRC et al., G.R. No. 121324, September 30, 1999.
- [11] G.R. No. 197789, July 08, 2013.
- [12] Naranjo et al. vs. Biomedica Health Care, Inc. et al., G.R. No. 193789, September 19, 2012.
- [13] Lopez vs. NLRC et al., G.R. NO. 167385, December 13, 2005.
- [14] Rollo at 64.
- [15] Rollo at 65.
- [16] Rollo at 66-67.
- [17] Rollo at 68.
- [18] Rollo at 69.
- [19] Rollo at 70.
- [20] Rollo at 71-72.
- [21] Rollo at 73-76.

[22] Rollo at 77.

[23] See *Caltex (Philippines), Inc. vs. Agad*, G.R. No. 162017, April 23, 2010, 619 SCRA 196, 207.

[24] See *AMA Computer College-East Rizal vs. Ignacio*, G.R. No. 178520, June 23, 2009, 590 SCRA 633, 652.

[25] *Negros Slashers, Inc. et al. vs. Teng*, G.R. No. 187122, February 22, 2012.

[26] Rollo at 67. *Sinumpaang Salaysay*.

[27] *GT Printers v. National Labor Relations Commission*, G.R. No. 100749, April 24, 1992, 208 SCRA 321, 324-325 (1992).

[28] *Gonzales vs. Civil Service Commission et al.*, G.R. NO. 156253, June 15, 2006.

[29] See *Sang-an vs. Equator Knights Detective and Security Agency, Inc.*, G.R. No. 173189, February 13, 2013.

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