

MARIO MAXIMO J. SOLIS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC) FIFTH DIVISION – CAGAYAN DE ORO CITY, RADIO MINDANAO NETWORK (RMN), ERIC S. CANOY (PRESIDENT/C...

Ponente: CAMELLO, J.

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CAMELLO, J.:

This petition for certiorari impugns the Resolutions dated 29 July 2011[2] and 21 December 2010[3] of the National Labor Relations Commission, Fifth Division, Cagayan de Oro City in NLRC Case No. MAC 06-012074-11, which reversed and set aside the Labor Arbiter's Decision dated 18 April 2011 RAB XI-09-00963-10 for illegal dismissal and money claims.

The records yield these facts:

Petitioner Mario Maximo Solis began working as a regular anchorman of RMN DXDC, Davao City on 01 June 1998.[4] A year and a month after, he was appointed as Station Manager.[5]

On 15 August 2006, petitioner Solis was appointed as Area Manager for Mindanao Cluster 2 in addition to his position as Station Manager. So, aside from being in-charge of the administrative, sales, and marketing operations of the DXDC, Davao City, he also oversees the operations of the different AM Radio Stations of RMN in Koronadal, Cotabato City, and General Santos City.

On 02 August 2010, petitioner Solis received a faxed notice from respondent Carlos Canoy, RMN VP for Operations, requiring him to report to their main office in Makati City on 04 August 2010.

The two-hour meeting held on 04 August 2010 was about a conflict-of-interest situation arising from a radio advertising contract that petitioner Solis supposedly got himself into. The meeting was attended by respondent Carlos Canoy, RMN VP for Operations, respondent Ruben de Gracia, RMN VP for Finance, Atty. Jorge Sacdalan, and two (2) auditors Joseph de Gracia and Jeff Marano. Petitioner was served with a Memorandum[6] directing him to submit his written explanation/position paper on two (2) issues: (a) his alleged conflict of interest, and (b) his alleged failure to follow the daily radio operation directives.

The Memorandum further placed petitioner Solis under preventive suspension effective 05 August 2010. While petitioner Solis was under preventive suspension, respondent Carlos Canoy replaced him as Station Manager of DXDC, Davao City and as Area Manager for Mindanao Cluster 2.

On 10 August 2010, petitioner Solis submitted his Position Paper,[7] explaining that: (1) there is no company guideline which prohibits an employee from engaging in any business endeavor, which does not compete with the station's business, in order to augment one's income;[8] (2) there are no special favors or privileges extended to Nature's Med Corporation since its media placements were processed under the usual procedures accorded to all station clients;[9] (3) the advertising rates given to Nature's Med Corporation do not fall below the so-called "company standard";[10] and (4) there is no truth to the comments and observations that the programs in his

station are poorly-conceived aside from the minor observations such as inaccurate radio clocking or hourly schedule which are minor infringes to broadcast traditions and practices.[11]

On 06 September 2010, respondent Carlos Canoy issued a Memorandum[12] finding that petitioner Solis committed acts prejudicial to the company, such as:

- 1.) The monthly contract of Nature's Med Corporation for three (3) spots daily at non-prime time slots in the amount of P5,000.00 was grossly underrated;
- 2.) Aside from the fact that contract price was grossly underrated, Nature's Med Corporation has been incurring delay in its monthly payments which have already amounted to Thirty Five Thousand Pesos (P35,000.00);
- 3.) Actual recording showed a total of 31 spots on April 10 and 5 spots in [sic] May 8, more than the agreed 3 spots a day;
- 4.) Actual airtime per spot totaled 90 seconds, much longer than the agreed 30 seconds per spot;
- 5.) Radio Technicians were given separate commercial list aside from the official program log;
- 6.) You are one of the officials of Nature's Med Corporation as shown by Nature Med's check voucher dated July 9, 2010 where you signed as approving officer, which you denied to auditors;
- 7.) Joel Virador was a local political candidate with an account but without broadcast contract and program log, and was given 23 spots for April 10 and 13 spots on May 8;
- 8.) No political sales were reported to the Head Office for the May 2010 Election but political sales in the amount of P1,188,700.00 were recorded as regular sales to make it appear that the station was meeting its monthly sales quota;
- 9.) Out of the total gross political sales of P2,040,300.00, P851,000.00 was unbilled although already collected as of April 2010 and the same would be billed and included as regular sales for the months of June, July, and August 2010; and,
- 10.) The total collected sales for the Banca Festival last March 2010 amounting P448,400.00 has remained unbilled and would be billed to form part of the July monthly regular sales.[13]

Thus, petitioner Solis was terminated from his employment at RMN on grounds of loss of trust and confidence and willful disobedience to lawful orders.[14]

On 23 September 2010, petitioner Solis filed a Complaint for illegal dismissal and money claims.

The parties failed to reach an amicable settlement, thus, the Labor Arbiter required the parties to submit their respective position papers, and eventually submitted the case for resolution.

On 18 April 2011, the Labor Arbiter rendered the Decision,[15] which decreed:

WHEREFORE, FOREGOING PREMISES CONSIDERED, judgment is hereby rendered declaring complainant Solis' dismissal as unreasonable and unwarranted and thus ILLEGAL.

ACCORDINGLY, respondents are hereby ordered and directed to IMMEDIATELY REINSTATE complainant Mario Maximo J. Solis to his former position without loss of seniority rights and to his other benefits, and to pay him his BACKWAGES computed from the time he was illegally dismissed on 06 September 2010 up to his actual reinstatement tentatively computed in the amount of One Hundred Ninety Two Thousand Two Hundred Forty Pesos (P192,240.00) as follows:

From September 06, 2010 to April 18, 2010
= 7.12 months
P27,000 x 7.12 mons. = P192,240.00

In addition, complainant is herein awarded attorney's fees equivalent to ten (10%) percent of the total monetary award in the amount of Nineteen Thousand Two Hundred Twenty Four Pesos (P19,224.00).

All other claims not hereto awarded are considered denied for lack of merit.

SO ORDERED.[16]

Respondents appealed the case to the NLRC,[17] which rendered the assailed Resolution on 29 July 2011[18] which reversed and set aside the Decision of the Labor Arbiter.

Petitioner Solis filed a Motion for Reconsideration,[19] which the NLRC denied in a Resolution dated 21 December 2011.[20]

Unfazed, petitioner Solis took this recourse before this Court, arguing that:

I. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT GAVE DUE COURSE TO THE APPEAL DESPITE THE ABSENCE OF VERIFICATION FROM THE PRIVATE RESPONDENTS

II. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REVERSES THE DECISION OF THE LABOR ARBITER FINDING THE ILLEGAL DISMISSAL OF PETITIONER SOLIS.[21]

Private respondents substantially complied with verification requirement

Petitioner insisted that NLRC should have dismissed the appeal of private respondents “due to the failure of respondents RMN and the individual private respondents to perfect their appeal as required by Section 4, paragraphs a and b, of the 2011 NLRC Rules of Procedure. Petitioner pointed out that neither the respondent RMN nor the individual private respondents personally verify their Notice of Appeal and Appeal Memorandum, yet the NLRC ignored such blatant disregard of the rules which is a grave abuse of discretion and amounted to lack of jurisdiction on the part of the NLRC.

We are not swayed.

The requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of pleading, the non-compliance of which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.

In Bacolod-Talisay Realty and Development Corporation et al., v. Dela Cruz,[22] respondent filed a complaint for illegal suspension and dismissal, but the Labor Arbiter dismissed it for lack of merit. Respondent went to the NLRC, but his appeal was again dismissed for “not being verified.” Respondent then filed a petition for certiorari in the Court of Appeals, which granted his petition. The Court of Appeals brushed aside the lack of verification of respondent's appeal before the NLRC and found that petitioners “did not comply with the x x x guidelines for the

dismissal of [the] employee". The case was elevated to the Supreme Court which ruled that "petitioners were able to establish with substantial evidence that just cause existed for the termination of respondent's employment. Nonetheless, the Supreme Court upheld the ruling of the Court of Appeals on the matter of the lack of verification, and said:

That the Court of Appeals went on to give due course to respondent's petition despite the lack of verification in respondent's appeal before the NLRC is not erroneous. Lack of verification is not a fatal defect. Verification is only a formal, not a jurisdictional requirement. It could easily be corrected by directing compliance therewith, its purpose being simply to secure an assurance that the allegations of the petition (or complaint) have been made in good faith, or are true and correct, not merely speculative.[23]

In *Millennium Erectors Corporation v. Magallanes*,[24] respondent filed an illegal dismissal case, which the Labor Arbiter ruled in his favor. On appeal, the NLRC dismissed respondent's case. Respondent went to the Court of Appeals, arguing among others that "respondent's motion for reconsideration which the NLRC treated as an appeal was not perfected, it having been belatedly filed; x x x and that it lacked verification x x x." The decision of the NLRC was sustained by the Court of Appeals, and later by the Supreme Court, which ruled:

The NLRC did not err in treating respondent's motion for reconsideration as an appeal, the presence of some procedural flaws including the lack of verification x x x notwithstanding.

In labor cases, rules of procedure should not be applied in a very rigid and technical sense. They are merely tools designed to facilitate the attainment of justice, and where their strict application would result in the frustration rather than promotion of substantial justice, technicalities must be avoided. Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. Where the ends of substantial justice shall be better served, the application of technical rules of procedure may be relaxed. (Emphasis supplied.)[25]

Respecting the lack of verification, *Pacquing v. Coca-Cola Philippines, Inc.* [G.R. No. 157966, 31 January 2008] instructs:

As to the defective verification in the appeal memorandum before the NLRC, the same liberality applies. After all, the requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of pleading, the non-compliance of which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court or tribunal may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served. (Emphasis supplied.)

In the recent case of *Pasos v. Philippine National Construction Corporation*,[26] Supreme Court significantly ruled:

Even assuming that the verification in the appeal filed by PNCC is defective, it is well settled that rules of procedure in labor cases maybe relaxed. As provided in Article 221 of the Labor Code, as amended, "rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process." Moreover, the requirement of verification is merely formal and not jurisdictional. As held in *Pacquing v. Coca-Cola Philippines, Inc.* [G.R. No. 157966, 31 January 2008]:

As to the defective verification in the appeal memorandum before the NLRC, the same liberality applies. After

all, the requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of pleading, the noncompliance of which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court or tribunal may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.

In this case, the NLRC found the apparent substantive results of the case to be compelling reason enough to relax the requirements of the NLRC Rules of Procedure.

Indeed, in previous decisions, the Supreme Court has excused formal transgressions of the NLRC Rules of Procedure. In cases where, as here, an overly literal and technical application of these rules would unduly stand on the way to upholding justice and fairness under exceptional circumstances.

Private respondents justly dismissed petitioner
due to loss of trust and confidence

Petitioner claimed that there was nothing wrong in the Labor Arbiter's decision which was based on substantial evidence, and its conclusions were well supported by the factual findings culled from the records. Petitioner alleged that only the account of Nature's Med was highlighted in the so-called special audit report, making it appear that there was gross underrating of the advertisement rates, when in truth several other local clients of respondent RMN also received similar, if not even lower rates, and there were several other clients with similarly delayed payments. Petitioner insisted that the so-called loss of trust and confidence was just a subterfuge used by private respondents to hide their vengeful designs, yet the NLRC unfortunately closed its eyes on the uncontroverted fact that petitioner was a victim of the discriminatory acts of private respondents.

We are still unconvinced.

Under Article 296(c) [formerly Article 282(c)] of the Labor Code,[27] an employer may terminate an employee's employment on the ground of the latter's fraud or willful breach of the trust and confidence reposed in him. For loss of trust and confidence to constitute a sufficient ground for termination, the employer must have a reasonable ground to believe, if not to entertain the moral conviction, that the employee was responsible for the misconduct, and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position.[28]

To validly dismiss an employee on the ground of loss of trust and confidence under Article 296(c) of the Labor Code, the following elements must concur: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.

As regards the first requisite, it is noteworthy to mention that there are two classes of positions of trust, namely: (1) managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff; and (2) fiduciary rank-and-file employees such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.

Here, there is no question that petitioner held a position of trust and confidence being the Station Manager of DXDC, Davao City and as Area Manager for Mindanao Cluster 2 covering different AM Radio Stations of respondent RMN in Koronadal, Cotabato City, and General Santos City.

As regards the second requisite, the Supreme Court in a number of cases set the following guidelines to be observed: “(1) loss of confidence should not be simulated; (2) it should not be used as subterfuge for causes which are improper, illegal or unjustified; (3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith.”[29] More important, it “must be based on a willful breach of trust and founded on clearly established facts.”[30]

Here, private respondents presented in evidence the Special Audit Report dated 19 July 2010 which contains the factual details and audit findings establishing petitioner's acts of disloyalty or conflict of interest in giving undue favors to his own company, Nature's Med Corporation. Some of these favors include: (1) low monthly rate for ad placement in the amount of P5,000.00 for three spots daily at non-primetime slots accorded to Nature's Med Corporation's monthly broadcast contract; (2) actual placement of 31 spots on 10 April 2010 and five spots on 08 May 2010, which are more than the agreed three spots a day as stipulated in the broadcast contract; (3) actual airtime per spot totaled to 90 seconds, which is much longer than the agreed 30 seconds per spot as stipulated in the broadcast contract; and (4) delay in the monthly payments of Nature's Med Corporation which has already accumulated to P35,000.00.

The auditors even noted that petitioner denied the fact that he is one of the officials of Nature's Med Corporation, but his denial was belied by the Nature's Med Corporation's check voucher dated 08 July 2010 where petitioner signed as the approving officer.[31]

Contrary to the Labor Arbiter's findings, petitioner neither refuted nor satisfactorily justified the audit findings against him.

On the findings of grossly underrated monthly contract, petitioner reasoned out that “since 2004, the RMN Head Office through its Accounting Department, have [sic] not served RMN Davao any due notice that the rates for its clients were way below the company standard.”[32]

On the findings of delayed payments, petitioner pointed out that “[a]ccording to RMN's 2007-2010 Audit Report, RMN has uncollected income of P330,142.40 from various clients.”[33] He then argued that “[s]uch figure, as compared to the supposed delay incurred by Nature's Med in paying its obligations – amounting to P35,000.00 only – is already stretching too much the charge that Nature's Med was favored compared to other clients.”[34]

On the findings of excess spots and length of ad placement, petitioner explained that: “The records of RMN Davao will show that in June 4-7, 2009, Nature's Med sponsored the RACE FOR PEACE, THE 1st TOUR OF MINDANAO via a contract worth P300,000.00. However, due to the non-availability of a new material version, the P300,000.00 worth exposures was not used for the event. Instead, Nature's Med officially requested DXDC to instead air the same during the election season, to which the latter conceded.”[35]

It may be asked: Who requested and who approved these arrangements? If petitioner was the key officer of Nature's Med Corporation on one hand, and, on the other hand, the Station Manager of DXDC, would the approval of the request be made with pure intentions? If respondent RMN has huge collectibles even from various clients other than Nature's Med Corporation, would that excuse petitioner's tolerance for Nature's Med Corporation's delayed payments? If respondent RMN has not sent due notice to petitioner that the rates for his clients were way below the company standard, would that justify petitioner's privileges to his clients which prejudiced the company's interest?

All these questions we answer in the negative.

Indeed, the NLRC aptly said:

These facts conclusively established that complainant was a self-dealing Station Manager of RMN DXDC – Davao who transacted with his own company, Nature's Med, for the latter's advantageous monthly broadcast contracts, which contracts he conceded from the top management of RMN. Verily, there is no proof existing in record that complainant indeed disclosed to the top management of RMN his relationship with Nature's Med and its ad placement transactions with RMN DXDC – Davao since its incorporation in 2005.

Indeed, complainant belatedly admitted only in his written explanation (in the form of position paper) that he is a shareholder but nonetheless deliberately conceded the fact that he is an incorporator, a major stockholder (with 6,500 shares of stock) and a director of Nature's Med. Complainant never disclosed to the top management of RMN the fact that he is a key incorporator, major stockholder, director of Nature's Med from the time of its incorporation in 2005. The fact that he is an incorporator, a major stockholder, and director of Nature's Med can be culled only from the documents attached in support of his Position Paper submitted before the Labor Arbiter.

The unilateral concealment of his relationship with Nature's Med assumes greater significance when placed vis-à-vis with his actual transactions with Nature's Med in its monthly broadcast contracts with RMN DXDC – Davao whereby Nature's Med was accorded low monthly rate in its ad placements, more spots and airtime than that agreed upon in the monthly broadcast contract, and delayed monthly payments in its due accounts which already accumulated at that time in the amount of P35,000.00.

By his self-dealing and inter-locking acts as Station Manager of RMN DXDC – Davao and as a major stockholder and key officer of Nature's Med at the same time in connection with the monthly broadcast contract, and by further concealing these acts from the top management of RMN, all resulting to the prejudice and damage of RMN, no conclusion can be derived therefrom except that complainant committed acts of disloyalty, dishonesty, and fraud against RMN, which warrant his dismissal on the ground of loss of trust and confidence.[36]

Under the circumstances, respondent RMN has reasons to lose its trust and confidence in the petitioner, and has just and valid cause to discontinue petitioner's services as Station Manager and Area Manager because petitioner's self-dealing acts are found and perceived to be inimical to its interest. Sad but true is the statement of the Supreme Court in *e Pacific Global Contact Center, Inc. v. Canasay*[37] that: "Unlike other just causes for dismissal, trust in an employee, once lost, is difficult, if not impossible to regain." And, jurisprudence consistently holds that for managerial employees "the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal." [38]

In fine, we agree with the NLRC that the termination of petitioner Solis on the ground of loss of trust and confidence was justified. We find neither error nor abuse of discretion on the part of the NLRC in setting aside the Labor Arbiter's decision and in dismissing petitioner's complaint.

FOR THESE REASONS, the petition for certiorari is denied. The assailed Resolutions dated 29 July 2011 and 21 December 2010 of the National Labor Relations Commission are affirmed in all respects.

SO ORDERED.

CERTIFICATION

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.

Inting and Perez, JJ., concur.

- [1] Now Eight Division.
- [2] Rollo, pp. 39-49.
- [3] Rollo, pp. 52-53.
- [4] See Rollo, pp. 77-79.
- [5] See Rollo, p. 81.
- [6] Rollo, p. 85.
- [7] Rollo, pp. 87-90.
- [8] Rollo, p. 87.
- [9] Rollo, p. 88.
- [10] Rollo, pp. 88-89.
- [11] Rollo, p. 89.
- [12] Rollo, pp. 91-93.
- [13] Rollo, pp. 91-92.
- [14] Rollo, pp. 91-92.
- [15] Rollo, pp. 118-139.
- [16] Rollo, pp. 138-139.
- [17] Rollo, pp. 140-141.
- [18] Rollo, pp. 39-49.
- [19] Rollo, 143-163.
- [20] Rollo, pp. 51-53.
- [21] Petition for Certiorari, Rollo, p. 15.
- [22] G.R. No. 179563. 30 April 2009.
- [23] Citing *Iglesia ni Cristo v. Ponferrada*, G.R. No. 168943, 27 October 2006; *Gaerlan, Sr. v. National Labor relations Commission*, G.R. No. L-66526, 28 September 1984.
- [24] G.R. No. 184362, 15 November 2010.
- [25] Citing *Tres Reyes v. Maxim's Tea House*, G.R. No. 140853, 27 february 2003.
- [26] G.R. No. 192394, 03 July 2013.
- [27] As amended and renumbered by Republic Act No. 10151.
- [28] *Jerusalem v. Keppel Monte Bank*, G.R. No. 169564, 06 April 2011.
- [29] *Apo Cement Corporation v. Baptisma*, G.R. No. 176671, 20 June 2012, citing *Rubia v. National Labor Relations Commission, Fourth Division*, G.R. No. 178621, 26 July 2010.

[30] Id., citing *Sunrise Holiday Concepts, Inc. v. Arugay*, G.R. No. 189457, 13 April 2011.

[31] Memorandum 06 September 2010; Rollo, p. 92.

[32] Position Paper; Rollo, p. 62.

[33] Position Paper; Rollo, p. 65.

[34] Ibid.

[35] Position Paper; Rollo, p. 65.

[36] Rollo, pp. 44-45.

[37] G.R. No. 167345, 23 November 2007 citing *Etcuban, Jr. v. Sulpicio Lines, Inc.*, G.R. No. 148410, 17 January 2005.

[38] *Apo Cement Corporation v. Baptisma*, supra, citing *House of Sara Lee v. Rey*, G.R. No. 149013, 31 August 2006. See also *Picar v. Shangri-La Hotel*, G.R. No. 146367, 14 December 2005 citing *Maquiling vs. Philippine Tuberculosis Society, Inc.*, G.R. No. 143384, 04 February 2005.

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