

EDILBERTO CARILLO ABRAHAM CALUZA AND NEMESIO CALUZA, PETITIONERS, VS. COCA-COLA BOTTLERS PHILIPPINES, INC., RESPONDENT.

Ponente: BARRIOS, J.

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BARRIOS, J.:

This petition for certiorari was filed by Edilberto Carillo, Abraham Caluza and Nemesio Caluza (hereafter the petitioners for brevity unless individualized as Carillo, A. Caluza and N. Caluza) assailing the Resolutions dated March 26, 2002 and July 31, 2002 issued by the respondent National Labor Relations Commission (or NLRC).

The petitioners were employed with the respondent Coca-Cola Bottlers Philippines (or Coca-Cola). Carillo started working on August 1, 1988 as a route helper and later on as a sales representative. On the other hand N. Caluza was employed on December 1, 1984 and his brother A. Caluza on December 1, 1992, both as route helpers.

For having been caught in the act committing pilferage on September 8, 1999, the petitioners were suspended and later on terminated from employment effective October 7, 1999. Prior to that date, Coca-Cola had been receiving reports that some sales personnel assigned to the Bagumbayan Sales Office were cheating from a regular customer of Coca-Cola, the Shangri-la Plaza outlet of the Rustan's Supermarket. This thievery called *mina* or *minahan* was conducted by members of a sales crew who short delivered company goods to customers and selling what they skimmed to other outlets at a lower price and thereafter dividing the loot among them. The *mina* or *minahan* is operated as follows:

... the salesmen/helpers will unload softdrink cases in order, i.e. coke first, sprite second, royal third, etc.;

the softdrink cases unloaded from the truck will be piled up outside the Supermarket, say 15 x 6 cases, such that it will be counted by merely multiplying the number of cases piled up and the number of cases placed along with the others;

reports were such that the salesmen/helpers will place a certain number of cases in the middle as "constant" (not to be removed until final counting), say, 12 cases of Royal will be placed as constant in the middle portion of the pile and it will be piled up with other products such as Coke in cans, to which orders for the same are higher; in reality, the "constant" placed in the middle will be counted as Coke in cans, and thereafter, when the Coke in cans are being brought inside the Supermarket, the salesmen/helpers will resume unloading the other cases and pile them again on top of the other as abovementioned, but note that, the "constant", which has already been counted, will be counted again during the second (2nd) or third (3rd) unloading, and so forth. When the number of cases of Coke in can has theoretically been counted (but which in reality is lacking because of the "constant" in the middle portion) they will then count the Royal or Sprite as the case may be, as additional delivery.

Therefore, there occurred a "short delivery". (pp. 271-272, rollo)

Coca-Cola launched an operation called Oplan-Shangrila to investigate and stop this illegal activity. It assigned investigating teams to tailgate the delivery truck of the petitioners after its scheduled deliveries at Rustan's

Supermarket. On that particular day, September 8, 1999, the sales crew of the delivery truck which included the petitioners made a delivery of company products to Rustan's Supermarket and proceeded to the 10/Q Supermarket in Shaw Boulevard. Apparently they sensed the presence of the owner-type jeep of one of the investigators, and the petitioners immediately left and sped off towards Meralco Avenue, Pasig, then entered Green Meadows, went straight to White Plains, turned right to EDSA then entered Camp Aguinaldo and stopped somewhere in Crame Avenue where they were cornered. Recovered from the delivery truck were the under delivered merchandise of 158 cases of Coke in can, 1 case of diet Coke in can, 14 cases of diet Sprite in can, 2 cases empty bottles of Coke 8 Oz., and 12 plastic pallets.

The petitioners were then escorted to the Bagumbayan Sales Office for investigation. Based on the records of the case, the petitioners admitted in their testimonies that the 168 cases of can products were supposed to have been delivered to the Rustan's Supermarket but they under delivered these on their agreement to sell the remaining cans and share the proceeds among themselves. Thus, on September 9, 1999, Coca-Cola through its Sales Division Supervisor issued a memorandum to the petitioners placing them on preventive suspension. The petitioners were then given the chance to explain in writing why the penalty of dismissal should not be imposed upon them but they failed to submit any written explanation. On October 7, 1999, the petitioners were terminated from their employment for violation of the CCBPI Employees' Code of Disciplinary Rules and Regulations, and Article 282 (c) of the Labor Code.

On December 16, 1999, the petitioners filed a complaint for illegal dismissal and unfair labor practice against Coca-Cola, and which the Labor Arbiter decided on October 17, 2000 disposing that:

WHEREFORE, premises all considered, judgment is hereby rendered dismissing the complaint for illegal dismissal filed by complainants Edilberto Carillo, Abraham Caluza and Nemesio Caluza, against herein respondent for lack of merit.

SO ORDERED. (p. 81, rollo)

The petitioners appealed this to the NLRC which on March 26, 2002 issued the assailed Resolution disposing that:

WHEREFORE, premises considered, the decision under review is, AFFIRMED and complainant's appeal DISMISSED, for lack of merit.

SO ORDERED. (p. 64, rollo)

The motion for its reconsideration was denied in the Resolution dated July 31, 2002.

Hence the filing of this petition for certiorari where the petitioners assign as grounds for its grant that:

- THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK/EXCESS OF JURISDICTION IN DISMISSING PETITIONERS' COMPLAINT FOR ILLEGAL DISMISSAL AND MONETARY CLAIMS.
- THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK/EXCESS OF JURISDICTION IN FINDING PETITIONERS GUILTY OF THE CHARGES IMPUTED AGAINST THEM BY PRIVATE RESPONDENT EVEN WITHOUT SUBSTANTIAL EVIDENCE TO SUPPORT THE SAME. (p. 28, rollo)

We deny the petition.

A prefatory point, the issue as to whether or not there is just and valid dismissal of an employee is a question of fact, the determination of which is a statutory function of the labor arbiters and the NLRC. And it is almost trite to state that factual findings of the labor arbiter, 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 (Pepsi-Cola Products Philippines, Inc., vs. NLRC, 315 SCRA 587).

There was no reversible error in the NLRC's affirmance of the factual findings of the Labor Arbiter, and We find absent any showing that it has been erroneously rendered. In its adjudication of the issues, the labor tribunals have examined the pleadings, pieces of evidence submitted, and the entire records of the case in the determination of whether there exist a valid cause for the dismissal from employment of the petitioners. Verily, the Labor Arbiter and the NLRC found that the petitioners willfully and deliberately violated company rules and regulations and are guilty of serious misconduct in the performance of their duties when they were caught defrauding a customer by making a short delivery for their personal gain and profit. Such commission of short delivery was even confirmed by Carillo who admitted during the administrative investigation that out of the 173 cases intercepted from their delivery truck, 168 cases were short delivery for Rustan's Supermarket and 5 cases were buffers, and that these items were to be sold and the proceeds shared by them (Minutes of Investigation, pp. 82- 87, rollo). N. Caluza for his part admitted during the administrative investigation that he knew about the short delivery to Rustan's Supermarket and that these will be sold to Myrna's Store and they will share in the proceeds (Minutes of Investigation, pp. 88-94, rollo). On the other hand, A. Caluza admitted that some of the sales crew told him that the excess in the can products which were not delivered to Rustan's Supermarket will be sold by them (Minutes of Investigation, pp. 95-101, rollo).

Thus, an employer can terminate an employee for serious misconduct defined as the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment (Roquero vs. Philippine Airlines, Inc., 401 SCRA 424). An employee can also be terminated on the ground of loss of trust and confidence based on the willful breach of the trust reposed in the employee by his employer. Ordinary breach will not suffice. A breach of trust is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. 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. He must be invested with confidence on delicate matters such as custody, handling, care and protection of employer's property and/or funds (Gonzales vs. National Labor Relations Commission, 355 SCRA 195). Here, We find that the serious nature of the petitioners' misconduct causing damage and prejudice to the interest of Coca-Cola constitutes valid and sufficient cause for their termination from employment.

Certiorari under Rule 65 will lie only where a grave abuse of discretion or an act without or in excess of jurisdiction is clearly shown. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility (Punongbayan vs. Punongbayan, 446 SCRA 100). Finding no basis for the issuance of the writ –

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED.
SO ORDERED.

Guariña, III and Romilla-Lontok, JJ., concur.

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