

DONALD ESMERIA, PETITIONER, VS. BONHEUR MARKETING CORPORATION, ERNESTO ONG, JOSE VICENTE PERALTA AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

Ponente: GONZALES-SISON, M., J.

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GONZALES-SISON, M., J.:

Before Us is a Petition for Review on Certiorari^[1] under Rule 65 of the Rules of Court, seeking to nullify and reverse the Decision^[2] and Resolution^[3] dated July 31, 2013 and November 22, 2013, respectively, both issued by the public respondent National Labor Relations Commission (NLRC) in NLRC NCR 07-11258-12. The dispositive portion of the assailed Decision reads:

“WHEREFORE, premises considered, the appealed Decision is hereby, AFFIRMED with MODIFICATION. The respondents-appellees are hereby directed to pay complainant-appellant Donald P. Esmeria nominal damages equivalent to his one (1) month salary.”^[4]

The facts as culled from the Records are as follows:

Private respondent Bonheur Marketing Corporation (Bonheur) is a corporation duly organized and existing under the laws of the Philippines,^[5] and is engaged in the business of distributing Winston Tobacco products.^[6]

On September 5, 2010, petitioner Donald P. Esmeria (Esmeria) was hired by Bonheur as a van salesman,^[7] to sell its products within a designated area. He received a monthly salary of P11,000.00,^[8] and a commission of twenty-five centavos per ream of cigarettes.^[9] In selling Bonheur's products, Esmeria would procure the merchandise from Bonheur's office and warehouse at Km 14, West Service Road, La Suerte Compound, Merville, Parañaque City.^[10] Esmeria was likewise tasked to ensure that the stores within his area kept a reasonable inventory level of Bonheur's products. On instances where the stores would return Bonheur merchandise for reasons of correcting overstocking, replacing stale products, or simply settling its outstanding account, Esmeria was required to issue a Stock Withdrawal Slip to record the withdrawn merchandise. After which, he was tasked to turn over the merchandise at the Bonheur warehouse, where the merchandise formed part of his accountability.^[11]

Sometime in the first week of June 2011, Zaldy Barleta (Barleta), Bonheur's Field Supervisor called Esmeria's attention regarding the overdue account receivable amounting to P196,275.00 of TY Store, one of Bonheur's customers.^[12] Investigating the matter further, Barleta personally visited TY Store and discovered that the latter had settled its account by returning 850 reams or 17 cases of assorted Winston cigarette variants to Esmeria. However, the returned cigarette reams were not covered by any Return Merchandise Slip nor deposited at Bonheur's warehouse. Consequently, Bonheur issued a show-cause letter dated June 16, 2011 to Esmeria, charging him of failure to return and account for the merchandise he withdrew from TY Store and cover the transaction with proper documentation as required under Bonheur's company policies and procedures.^[13]

On June 21, 2011, Esmeria reported to Bonheur's office and turned over 539 reams of assorted Winston cigarette variants worth P122,949.50. He failed to return the remaining 321 reams amounting to P73,325.50.^[14] On June

24, 2011, Bonheur terminated the services of Esmeria for dishonesty and serious violation of company policy.[15]

On July 12, 2012, Esmeria filed a Complaint for Illegal Dismissal and Monetary Claims.[16] In his defense, Esmeria claimed that on June 21, 2011 he returned 871 reams of Winston cigarettes, consisting of the 850 reams of Winston cigarettes from TY Store and 21 reams from Blerynhan customer, all worth P202,691.00. The reams were received by Barleta and Vicente Glindro (Glindro), his supervisor and co-salesman, respectively, and were covered by Return Merchandise Slips.[17]

On February 28, 2013, the Labor Arbiter rendered a Decision[18] dismissing the Complaint for Illegal Dismissal and Monetary Claims. The Labor Arbiter noted that Esmeria indeed incurred shortages, which were proven by substantial evidence, thereby rendering his dismissal valid. Moreover, the Labor Arbiter ruled that the benefits due to Esmeria should be offset with the latter's accountabilities.[19]

On April 22, 2013, Esmeria filed a Memorandum of Appeal,[20] alleging that the Labor Arbiter erred in giving credence to Bonheur's evidence and not finding that Bonheur failed to comply with the requirements of procedural due process in effecting his dismissal.[21]

On July 31, 2013, the NLRC rendered its assailed Decision,[22] finding that Esmeria held a position of trust and confidence, which he breached when he incurred shortages in the merchandise he was entrusted with. Thus, his dismissal was for a just cause under the law. However, the NLRC observed that Bonheur failed to comply with the requirements of procedural due process. Hence, the NLRC awarded nominal damages equivalent to Esmeria's one month salary.[23]

Aggrieved, Esmeria filed the instant Petition for Certiorari[24] seeking for the nullification and reversal of the assailed NLRC Decision[25] and Resolution,[26] on the following grounds, to wit:

I. "THE NLRC GRAVELY ABUSED ITS DISCRETION AND ACTED WITH SERIOUS ERROR IN DISMISSING PETITIONER'S CLAIM FOR 13TH MONTH PAY AND REFUND OF HIS BOND;

II. THE NLRC GRAVELY ABUSED ITS DISCRETION AND SERIOUSLY ERRED IN RULING THAT THERE WAS SUBSTANTIAL EVIDENCE TO JUSTIFY PETITIONER'S DISMISSAL;

III. [THE] NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AND SERIOUSLY ERRED IN FAILING TO RULE THAT PETITIONER IS ENTITLED TO DAMAGES OF P30,000 FROM RESPONDENTS DUE TO VIOLATION OF HIS RIGHT TO DUE PROCESS IN HIS DISMISSAL."

Upon a careful consideration of the arguments raised by both parties and a meticulous scrutiny of the laws and jurisprudence involved, We find the instant petition partly impressed with merit.

Pitted against each other in the case at bar is Esmeria's claim of illegal dismissal and failure to comply with the notice requirements of termination, on the one hand, versus Bonheur's firm stand that the former's dismissal was effected pursuant to the substantive and procedural requirements of due process under the Labor Code, on the other hand.

Although the law is solicitous of the welfare of the employees, it likewise recognizes the employer's exercise of management prerogatives in dealing with the latter's affairs. In fact, the Supreme Court in a number of cases has recognized the right of the employer to regulate all aspects of employment, including the discipline, lay-off, dismissal and recall of its workers.[28]

Pertinently, Article 296(c) of the Labor Code recognizes the right of an employer to terminate an employment on the ground of "fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative." [29] However, in order to justify a termination based on loss of trust and confidence of

the employer to the employee, it must be shown that the employee concerned holds a position of responsibility, trust and confidence or that the employee 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.[30] Furthermore, the act that would justify the loss of trust and confidence must be work-related, thereby showing that the employee concerned is unfit to continue working for the employer,[31] and based on a willful breach of trust, founded on clearly established facts.[32] Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[33]

Parenthetically, the Supreme Court had stated in numerous cases that salesmen are considered to occupy positions of trust and confidence, and therefore acknowledged the employer's right to take the proper disciplinary action against them, upon a breach of their employer's confidence.[34] "Salesmen are highly individualistic personnel who have to be trusted and left essentially on their own," and their work "exposes them to voluminous financial transactions involving their employer's goods." [35] A high degree of confidence is thus reposed on them because they are entrusted with funds or properties of their employer.[36]

Records reveal that on June 10, 2011, Esmeria pulled out stocks from TY Store,[37] as evidenced by a gate pass[38] containing his name and signature, indicating that he pulled out a total of 850 Winston reams, which fact he admitted. However, Esmeria did not issue the corresponding Stock Withdrawal Slip to TY Store. Neither did he return the merchandise to the Bonheur warehouse on the same day of the withdrawal, as required under the company policies. Instead, Esmeria returned 529 out of the 850 reams belatedly on June 21, 2011, only after a show-cause letter had already been issued against him. The returned reams were covered by RMS No. 100740 and acknowledged by Bonheur under Credit Memo No. 124581.[39] Bonheur did not receive the remaining 321 reams pulled out from TY Store.

Considering that Esmeria handled voluminous delicate company properties, it was imperative for him to strictly comply with the company rules and regulations regarding the proper procedures in their disposal. Worse, Esmeria even admitted that he had plans of selling the pulled-out cigarettes to other customers.[40] With this admission, it is not hard to conclude that Esmeria's nefarious acts were done intentionally, knowingly, and purposely, without justifiable excuse, thereby constituting willful breach of the trust reposed on him by Bonheur. His deeds undoubtedly created a reasonable ground for Bonheur to believe that he could no longer be trusted. Records indicate that Bonheur subsequently filed a case of Estafa against him.[41]

It cannot be gainsaid that as a salesman, Esmeria held a position of responsibility and was entrusted with goods equivalent to hefty sums of money in the normal and routine exercise of his functions. He was trusted by Bonheur so much so that he was virtually left on his own to deal with the merchandise of the latter.

Even assuming arguendo that Esmeria indeed returned the 321 reams to his co-salesman Glindro, the same act is nonetheless violative of Bonheur's company policy which mandates that the pulled-out stocks should be immediately delivered to its warehouse for proper recording and accounting. Clearly, Esmeria's dismissal was pursuant to a just cause under the Labor Code, and thus in accordance with substantive due process of law.

Noteworthily, dismissals have two facets- substantive due process or the legality of the act of dismissal and procedural due process or the legality of the manner of dismissal.[42] Bonheur fulfilled the former, yet violated the latter requirement.

Significantly, Article 277 of the Labor Code requires that, "subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause, xxx the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination xxx"[43] Implementing the afore-quoted provision, the Rules and

Regulations of the Labor Code state that,

“SEC. 2. Standards of due process; requirements of notice.— In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Code:

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(c) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.[44] (Emphasis supplied)

Accordingly, it is imperative that “the first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period.” The phrase “reasonable opportunity” refers to every kind of assistance that the employer accords to the employees to enable them to prepare adequately for their defense, and is construed as “a period of at least five (5) calendar days from the receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint.” The notice should also contain a detailed narration of the facts and circumstances that will serve as the basis of the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Article 282 are being charged against the employees.[45]

In the instant case, two (2) notices were sent to Esmeria pertaining to the withdrawals in TY Store's account, namely, a show-cause letter[46] dated June 16, 2011, which was mailed on June 18, 2011,[47] and a Notice of Termination[48] dated June 23, 2011.

The show-cause letter stated that the trade audit conducted by Bonheur on TY Store revealed that the latter had an outstanding account receivable of P196,275.00, due to Esmeria's act of pulling-out 850 cigarette reams on June 10, 2011, which were not returned nor covered by proper documentation. As such, Esmeria was given 24 hours to explain his actuations in writing and was likewise instructed to return to the office to reconcile his account receivables.[49]

In issuing the show-cause letter, Bonheur failed to comply with the requirements of the Labor Code and its Implementing Rules and Regulations. Particularly, Bonheur gave Esmeria a very short period of 24 hours to explain his side. Likewise, Bonheur failed to enumerate the company rules that Esmeria violated, and specify the ground under Article 282 that may serve as a just cause for his dismissal. Overall, the words used in the show cause letter were vague and in no way informative of the charges against Esmeria that may result in his dismissal from employment, thereby constituting a violation of his right to procedural due process.

Notably, an employer who dismisses an employee for a valid cause, yet fails to observe due process in dismissing the employee is liable for nominal damages in the amount of P30,000.00.[50] The NLRC erred in awarding nominal damages equivalent to Esmeria's one (1) month salary.

In addition to nominal damages of P30,000.00, Esmeria is likewise entitled to P63,825.61, which represents his pro-rated thirteenth month pay, sales incentive, ER reimbursement and refund of his cash bond, as per Bonheur's

own admission.[51] Considering that all the requisites of legal compensation[52] are present, We rule that the amount of P73,325.50 owed by Esmeria to Bonheur and the sum of P63,825.61 due to Esmeria plus P30,000.00 in nominal damages be set-off against each other.

In fine, Esmeria was a salesman who was charged with handling Bonheur's merchandise. His failure to remit stocks amounting to P73,325.50, of which he was accountable for, proved that he was unfit to continue working for Bonheur. Bonheur cannot be compelled to continue the employment of Esmeria against whom it had lost its trust and confidence. Although our laws endeavor to breathe life to the constitutional policy on social justice and on the protection of labor, this does not mean that every labor dispute will be decided in favor of the workers.[53] "The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged." [54] Time and again, both law and jurisprudence have affirmed the employer's right to dismiss its employee due to the loss of trust and confidence of the former to the latter.[55]

WHEREFORE, premises considered, the instant Petition is PARTLY GRANTED. The Decision of the NLRC in NLRC NCR 07-11258-12 is hereby AFFIRMED WITH THE MODIFICATION that the award of nominal damages in favor of Donald P. Esmeria be increased to P30,000.00.

SO ORDERED.

Salazar-Fernando, R. A., Chairperson, and Cruz, R. A., JJ., concur

[1] Rollo, pp. 3-11.

[2] Id., pp. 16-24.

[3] Id., pp. 26-28.

[4] Id., p. 23.

[5] Id., p. 16.

[6] Id., p. 31.

[7] Id., p. 17.

[8] Id., p. 31.

[9] Id., p. 32.

[10] Id., p. 46.

[11] Id.

[12] TY Store is also known as Scimtar Marketing Corporation.

[13] Supra note 1, p. 46.

[14] Id., p. 47.

[15] Id.

[16] Id., p. 34. Esmeria submitted an Amended Complaint on August 22, 2012, asking for reinstatement with full backwages and impleading Jose Vicente Peralta as additional respondent.

[17] Id., pp. 113-114; 119-121.

[18] Id., pp. 138-144.

[19] Id., p. 144.

[20] Id., pp. 145-148.

[21] Id., pp. 146-147.

[22] Id., pp. 16-24.

[23] Id., pp. 22-23.

[24] Id., pp. 3-11.

[25] Id., pp. 16-24.

[26] Id., pp. 26-28.

[27] Id., pp. 6-7.

[28] Moya vs. First Solid Rubber Industries, Inc., G.R. No. 184011, September 18, 2013, citing Goya, Inc. v. Goya, Inc. Employees Union-FFW, G.R. No. 170054, January 21, 2013.

[29] Labor Code of the Philippines, Article 282. Termination by employer. – An employee 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 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.

[30] Lopez vs. Alturas Group of Companies, G.R. No. 191008, April 11, 2011, citing Cruz vs. Court of Appeals, G.R. No. 148544, July 12, 2006.

[31] Sulpicio Lines, Inc. vs. Gulde, 377 SCRA 525 (2002).

[32] Bristol Myers Squibb (Phils.), Inc. vs. Baban, G.R. No. 167449, December 17, 2008.

[33] Supra note 30.

[34] Hormillosa vs. Coca-Cola Bottlers Phils., Inc., G.R. No. 198699, October 9, 2013, citing Coca-Cola Bottlers, Phils. vs. Kapisanan ng Malayang Manggagawa sa Coca-Cola-FFW and Ramirez, G.R. No. 148205, February 28, 2005.

[35] Id.; Sanchez vs. National Labor Relations Commission and Pepsi Cola Products Philippines, Inc., G.R. No. 124348, August 19, 1999; Coca-Cola Bottlers Philippines, Inc. vs. National Labor Relations Commission, G.R. No. 82580, April 25, 1989.

[36] Id.

[37] Supra note 1, p. 55.

[38] Id.

[39] *Id.*, p. 130.

[40] *Id.*, p. 113.

[41] *Id.*, pp. 154-155.

[42] *Supra* note 30, citing *Tirazona vs. Court of Appeals*, G.R. No. 169712, March 14, 2008.

[43] Labor Code of the Philippines, Art. 277. Miscellaneous Provisions—xxx

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(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.

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[44] Section 2, Rule XXIII, Book V of the Rules Implementing the Labor Code.

[45] *Unilever Philippines, Inc. vs. Rivera*, G.R. No. 201701, June 3, 2013, citing *King of Kings Transport, Inc., et al. vs. Mamac*, G.R. No. 166208, June 29, 2007, citing *Agabon v. National Labor Relations Commission*, GR No. 158693, November 17, 2004.

[46] *Supra* note 1, p. 56.

[47] *Id.*, p. 46.

[48] *Id.*, p. 58.

[49] *Id.*, p. 56.

[50] *Libcap Marketing Corporation, et al. vs. Baquial*, G.R. No. 192011, June 30, 2014; *Agabon v. National Labor Relations Commission*, GR No. 158693, November 17, 2004.

[51] *Supra* note 1, pp. 47; 110. According to Bonheur, based on personnel and accounting records, Esmeria is entitled to P4,383.33 representing his thirteenth month pay, P9,750.00 (net of tax) representing March and April incentives, P450.00 representing his ER reimbursement; P50,742.28 representing his cash bond. For deduction is P1,500.00 representing the unreturned Revolving Fund. Thus Esmeria has P63,825.61 receivable from Bonheur.

[52] Civil Code of the Philippines, Article 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other.

Article 1279. In order that compensation may be proper, it is necessary:

- (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
- (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
- (3) That the two debts be due;
- (4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

[53] *Portuguez vs. GSIS Family Bank and Court of Appeals*, G.R. No. 169570, March 2, 2007, citing *Duncan Association of Detailman-PTGWO v. Glaxo Wellcome Philippines, Inc.*, G.R. No. 162994, September 17, 2004.

[54] *Supra* note 45.

[55] *Jerusalem vs. Hock, et al.*, G.R. No. 169564, April 6, 2011, citing *Etcuban, Jr. v. Sulpicio Lines, Inc.*, 489 Phil. 483, 496 (2005).

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