

REY C. BUCAT, PETITIONER, VS. THE N.L.R.C., FAITH ACADEMY, INC., & MR. JERRY TUCKER, RESPONDENTS.

Ponente: PERALTA, JR., E. B., J.

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PERALTA, JR., E. B., J.:

Following the dismissal of petitioner Rey C. Bucat's Complaint for illegal dismissal, illegal suspension, inclusive of money claims, and subsequent denial of his partial appeal[1] and reconsideration,[2] petitioner resorted to the current Petition[3] which ascribed grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent.

Petitioner was hired as a regular school driver for respondent Faith Academy Inc. since October, 1997. In May, 2008, private respondent Faith Academy effected renovations within its auditorium room and petitioner was designated to drive Elf trucks to remove cement debris, scrap metals and other junk from the renovation site.

Based on the reported pilferage of metal scraps and other pieces of property of Faith Academy, private respondent Faith Academy Inc. initiated an investigation in August, 2008. In the course of the interrogation, petitioner's co-workers namely: Jayfe Suarez, Junie, Edwin Nangca, and Ricky Fernandez presented written statements[4] to the effect that petitioner was the principal culprit in the theft of private respondent's pieces of property.

On August 11, 2008, petitioner was called by private respondent Jerry Tucker, the Business Office Administrator of Faith Academy Inc., to his office and amidst the four (4) affidavits executed by his co-workers, petitioner was requested to explain his side and he disclaimed any responsibility.

On August 13, 2008, petitioner returned to private respondent Tucker's office. This time, two (2) other officials of Faith Academy Inc. were inside the office and petitioner requested a piece of paper and a pen to present his own side of the story.[5]

Based on the evidence collated by private respondent, petitioner's employment was terminated on August 13, 2008.[6] He thereafter lodged the Complaint for illegal dismissal which was subsequently dismissed by the Labor Arbiter but private respondent was instructed to pay ₱10,000.00 as nominal damages.[7]

On November 02, 2010, public respondent NLRC denied petitioner's partial appeal for lack of merit and affirmed the Decision of the Labor Arbiter on April 6, 2010 in toto.[8]

In his Petition before Us, petitioner presented these issues for resolution:[9]

I.

THE HONORABLE RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT PETITIONER COMMITTED SERIOUS MISCONDUCT AS THIS FINDING IS TOTALLY DEVOID OF FACTUAL AND EVIDENTIARY BASIS.

II.

THE HONORABLE COURT ERRED IN AWARDING ONLY P10,000 AS NOMINAL DAMAGES AS IT SHOULD HAVE GRANTED PETITIONER'S PRAYER FOR REINSTATEMENT, PAYMENT OF

BACKWAGES AND MORAL DAMAGES.

We find no grave abuse of discretion on the part of public respondent NLRC.

It is an acknowledged precept in labor law that serious misconduct is a just cause for dismissal of an employee per Article 282 of the Labor Code.[10]

“Misconduct is improper or wrong conduct. A transgression of some established and definite rule of action, a forbidden act, a dereliction of duty willful in character, and implies a wrongful intent and not mere error in judgment.”[11]

For serious misconduct to be a just cause for dismissal: (1) it must be serious; (2) it must relate to the performance of the employee's duties; and (3) it must show that the employee has become unfit to continue working for the employer.[12]

An employer may also terminate an employment for “fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.”[13]

Undoubtedly, petitioner was tasked to remove cement debris, scrap metals and other junk from the school's renovation site. As driver of private respondent Faith Academy, he was responsible for the safe transport of the pieces of property belonging to private respondent Faith Academy Inc. Along this line, it is fitting to echo pertinent passage in Lopez:

“Petitioner a driver assigned with a specific vehicle, was entrusted with the transportation of respondent company's goods and property and consequently with its handling and protection, hence, even if he did not occupy a managerial position, he can be said to be holding a position of responsibility. As to his act – principal ground for his dismissal – his attempt to smuggle out scrap iron belonging to respondent company, the same is undoubtedly work related.”[14]

Thus, petitioner can be terminated for loss of trust and confidence even if he did not occupy a managerial position.[15]

Clearly, upon investigation, which need not follow the strict pattern of the adversarial system normally adopted by magistrates,[16] private respondent ascertained that petitioner violated Faith Academy's rules regarding pilferage,[17] which is a serious misconduct related to the performance of petitioner's duty that can trigger the disciplinary action of dismissal.[18]

As such, private respondent's act of terminating petitioner was justified since “an employer cannot be compelled to continue employing an employee guilty of acts inimical to the employer's interest.”[19]

It must be emphasized anew that: “It is a hornbook rule that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence...”[20]

In labor cases, like in other administrative proceedings, only substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required.[21]

Indeed, amidst petitioner's cold denial on his Sinumpaang Salaysay,[22] the formal statements[23] from petitioner's co-workers pointed towards the direction of petitioner as the alleged mastermind of the pilferage[24] and these prejudicial declarations can serve as substantial evidence to fortify the NLRC's conclusion.[25]

We likewise agree with the conclusion reached by public respondent NLRC insofar as nominal damages for violation of petitioner's right to statutory due process but the award must be increased to P30,000.00 consistent

with recent jurisprudence.[26]

Prescinding from a legitimate dismissal of petitioner for a just cause in Article 282 of the Labor Code,[27] it ineluctably follows that the prayer for reinstatement and payment of backwages will be incongruous inasmuch as these reliefs can only materialize from an illegal dismissal.[28]

Neither can We authorize any award for moral damages, as suggested by petitioner, in default of bad faith on the part of private respondent Faith Academy Inc. in the dismissal of petitioner.[29]

WHEREFORE, the assailed Decision dated November 02, 2010 and Resolution dated April 06, 2011 in NLRC-LAC-NO. 07-001576-10 (NLRC-RAB IV-09-27334-08 RI) are hereby AFFIRMED WITH MODIFICATION as to the award of nominal damages which is hereby increased to P30,000.00 in accord with current legal dogma.[30]

SO ORDERED.

Reyes, Jr. J. C., Chairperson, and Acosta, F. P., JJ., concur.

[*] Per Office Order No. 15-15-ABR dated January 20, 2015, effective February 2, 2015.

[1] Decision dated November 2, 2010, Rollo, pp. 33-43.

[2] Resolution promulgated on April 06, 2011, Rollo, pp. 44-47.

[3] Petition, Rollo, pp. 03-32.

[4] Rollo, pp. 48-50.

[5] Id., page 51.

[6] Id., page 52.

[7] Id., pp. 128-139.

[8] Id., pp. 33-43.

[9] Petition, Rollo, page 09.

[10] 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 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.

[11] Nissan Motors, v. Angelo, G.R. No. 164181, September 14, 2011 as cited in Labor Law Reviewer, Justice

Vicente S.E. Veloso, 2012 Edition, page 158.

[12] Philippine Aeolus Automotive United Corp. v. NLRC, G.R. No. 124617, April 28, 2000; Premiere Devt. Corp. Workers Asso. v. Solid Devt. Corp., G.R. No. 165995, Aug. 14, 2007, 530 SCRA 132 as cited in Labor Law Reviewer, Justice Vicente S.E. Veloso, 2012 Edition, page 159.

[13] See Art. 282, (c), Labor Code.

[14] Lopez vs. Alturas Group of Companies, G.R. No. 191008, April 11, 2011.

[15] See Veloso, Labor Law Reviewer, 2012, page 168, citing Lopez vs. Alturas Group of Companies, G.R. No. 191008, April 11, 2011.

[16] Concepcion v. Minex Import Corp., G.R. No. 153569, January 24, 2012 as cited in Labor Law Reviewer, Justice Vicente S.E. Veloso, 2012 Edition, page 166.

[17] See Notice of Termination, Rollo, page 52.

[18] See Affidavit of Jerry Tucker par. 5 and Attachment to the Affidavit of Jerry Tucker, C (1), Rollo, pp. 92-93.

[19] Yabut v. Meralco, G.R. No. 190436, January 16, 2012 as cited in Labor Law Reviewer, Justice Vicente S.E. Veloso, 2012 Edition, page 159.

[20] Labor Law Reviewer, Justice Vicente S.E. Veloso, 2012 Edition, page 468.

[21] Cootauco v. MMS Phil. Maritime Services, Inc., G.R. No. 184722, March 15, 2010, 615 SCRA 529, 544 as cited in the case of Inc. Shipmgt. Inc., etc. v. Moradas, G.R. No. 178564, January 15, 2014.

[22] Rollo, pp. 74-78.

[23] Id., pp. 48-50.

[24] Id., pp. 92, 124-127.

[25] See Rayel v. Phil. Luen Thai Holdings, etc., G.R. No. 174893, July 11, 2012:

“...Unfortunately for petitioner, these sworn statements which notably remain uncontroverted and unrefuted, militate against her innocence and strengthen the adverse averments against her.”

[26] Agabon v. NLRC, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 616-17:

“Where the dismissal is for a just cause, as in the instant case the lack of procedural due process should not nullify the dismissal, or render it illegal or ineffectual. However, the employer should, indemnify the employee for the violation of his statutory rights, as ruled in Reta v. National Labor Relations Commission. The indemnity to be imposed should be stiffer to discourage the abhorrent practice of “dismiss now, pay later,” which we sought to deter in Serrano ruling, the sanction should be in the nature of indemnification or penalty and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer.

xxx xxx xxx

The violation of the petitioner's right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at P30,000.00. We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least it provides a vindication

or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules.”

[27] See Art. 282 (a) and (c), Labor Code.

[28] See Ind'l. Timber Corp. v. NLRC, G.R. No. 112069, February 14, 1996 as cited in Labor Code, C.A. Azucena, 7[th] Edition, page 859:

“Moreover, the decisions are one in declaring that backwages may be granted only when there is a finding of illegal dismissal.”

Santos v. NLRC, G.R. No. 76721, September 21, 1987 as cited in Labor Code, C.A. Azucena, 7th Edition, page 883:

“The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and, secondly the payment of backwages corresponding to the period from his legal dismissal up to actual reinstatement. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his status quo ante dismissal; while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal.”

[29] Rutaquio v. NLRC, G.R. No. 97652-53, October 19, 1999, 317 SCRA 1 as cited in Labor Law Reviewer, Justice Vicente S.E. Veloso, 2012 Edition, page 398:

“Moral Damages are recoverable only where the dismissal was attended by bad faith or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.”

[30] Agabon v. NLRC, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 616-17.

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