

EDGAR PERPETUO FERMIN E. HIPOL, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION- FIFTH DIVISION, UNION CEMENT CORPORATION AND/OR EDNEL V. PASCUAL RESPONDENTS.

Ponente: INTING, J.

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INTING, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul and set aside the September 4, 2006 and February 2, 2007 Resolutions[1] of the National Labor Relations Commission 5[th] Division, Cagayan de Oro City, respectively decreed as follows:

September 4, 2006 Resolution

"WHEREFORE, the foregoing premises considered, the appealed decision is AFFIRMED, subject to the modification that the award of moral and exemplary damages is reduced to the total amount of P150,000.00.

SO ORDERED. "

February 2, 2007 Resolution

"WHEREFORE, premises considered, Our Resolution dated September 04, 2006 is RECONSIDERED and SET ASIDE. Accordingly, a new judgment is rendered DISMISSING the above-entitled case for lack of merit.

SO ORDERED. "

The facts of the case are as follows:

Petitioner Edgar Hipol was employed with herein respondent Union Cement Corporation since 1996 and started as a Planner at its Motorpool Section. In 2003, he was promoted as a Supervisor primarily tasked to do planning, preparation and acquisition of spare parts for the company's light and heavy equipment, including the care and custody of the equipment. He also exercised discretion on matters such as the necessity of repairs to be made, the spare parts needed and where to buy them; the negotiations with the suppliers; and determining whether or not the repairs should be made by the company's own mechanic or by a contractor.

In March 2004, the Motorpool Department Manager, Engr. Cilor Guevarra, allegedly noticed a deformity at the rear door and back seat of the company-owned Suzuki Samurai, which was assigned to his department. He asked as to its possible cause. Engr. Dominador Andres, another quarry engineer, told him that the damage may have been caused by the two (2) steel plates, which Hipol purportedly loaded in the vehicle even if it was ill-suited to carry such items. This prompted Engr. Guevarra to conduct an investigation which led them to an incident on February 21, 2004.[2]

As per initial inquiries, the company gathered that on the afore-mentioned date, Hipol reported for work at about 7:58 in the morning. He entered the company premises without any personal belongings with him as it is company practice to leave personal items before entering the company site.

Before lunch break, Engr. Andres chanced upon Hipol at the Motorpool where the company dump truck was

being repaired. Repair materials allegedly scattered around the area including steel plates.[3] Hipol was about to leave the Motorpool and go to the Plant which was about 5 kilometers away, aboard the company's Suzuki Samurai. Andres decided to hitch a ride as he was also going there. Upon boarding the vehicle, Andres noticed two (2) sheet metal plates of irregular shapes but of sizes big enough to fit into the back compartment of the vehicle, leaning in upright position on the back seat. Andres thought then that the plates will be taken to the plant.[4]

At about 12:07 noon of the same day, the on duty guard Rodolfo Oreña recalled seeing Engr. Hipol drive the Samurai with Engr. Andres in the passenger seat. When the vehicle approached the gate, Oreña went out of the guard house to check the outgoing vehicle but to his surprise, Hipol did not stop for inspection. Consequently, Oreña was not able to see what was inside the vehicle; but he logged the time, the vehicle type, and the driver's and the passenger's names for his record.[5] The incident was confirmed by Andres attesting that in spite of the guard's motion to conduct the usual inspection, Hipol did not make the customary full stop as the latter was quite in a hurry.

Before they could reach the plant, Hipol stopped at the J. Suarez Welding Shop where he unloaded the sheet metal plates which were received by Jerry Suarez, who sometimes did repairs on some of the company trucks. From his seat, Andres saw Hipol's jiffy among the vehicles undergoing repairs at Suarez's shop.

At about 12:26 noon, Hipol and Andres arrived at the company plant and upon inspection, the guard on duty found no equipment or materials inside the vehicle. Thereafter, Hipol parked the vehicle and went to the warehouse allegedly to check or withdraw spare parts for the Motorpool while Andres proceeded to the administration building.[6]

Consequently, on March 25, 2004, the company sent a notice to Hipol to explain the alleged illegal transfer of company assets.[7] The next day, Hipol sent his letter denying the allegations. On March 30, 2004, another memo was sent to Hipol asking him to explain why he failed to undergo the inspection before the gate guard and why he loaded the company metal sheets out of the Motorpool but failed to deliver it to the Plant and instead dropped it along the way.[8] Hipol filed his reply per April 2, 2002 letter and again denied the allegations. He averred that if there was indeed such an incident, it should have been immediately reported by the guard and Andres.[9] Resultantly, an independent panel investigation was conducted which convened three (3) times on May 17, 19 and 20. Per investigation report,[10] Hipol was found liable for violation of company policies, particularly for refusing to submit for security inspection and theft or pilferage of company property. It was recommended that he be meted the penalty of dismissal based on loss of trust and confidence brought about by his dishonesty.

Hipol filed an action for illegal dismissal against the company contending that the allegations against him were baseless. Hipol maintains that on February 21, 2004, at around 11:30 am, he needed to go to the clinic at the Plant before 12 noon to consult the company physician about his coughing and thereafter to check if any materials for the quarry department were already available at the warehouse. He informed Andres, who was then using the company Suzuki Samurai, that he needed the vehicle to go to the Plant. Andres was able to drive the vehicle to him at 12 noon. Hipol realized that he would no longer be able to catch the doctor hence, he would just go directly to the warehouse and check on the materials without any rush. He drove the vehicle with Andres on the passenger's seat. Before leaving the Motorpool Section of the Quarry Department, Hipol stopped by the guardhouse for inspection and to inform the guard that he and Andres were heading for the Plant, which was about 5 kilometers from the Quarry Department.

On their way, Hipol saw repairman Jerry Suarez standing outside the latter's auto repair shop which was located about a kilometer away from the Quarry Department. Hipol chose to have his jeep repaired there for convenience

considering its proximity to where he was working. Hipol's jeep needed metal plates of not more than 3/16 inch thick and Suarez offered to take care of them. Hipol allegedly paid Suarez P2,000.00 to buy the metal plates from Samuel Cabatuan. Since he was no longer in a hurry, Hipol decided to stop at the shop for about 10 minutes to check on his jeep. Thereafter, he and Andres proceeded to go to the Plant.

Sometime in March 2004, rumors were circulating that the company was reducing its workforce and trying to get rid of those who did not avail themselves of its early retirement program in 2003, one of whom was Hipol. On March 25, 2004, Hipol received the first memorandum asking him to explain the allegations against him. Hipol requested for the necessary documents in order for him to make a comprehensive defense, but to no avail. Nevertheless, he wrote the company and denied the allegations. After several memos issued to him, the company caused an investigation. During that time, the company purportedly advised Hipol to resign to avoid a formal investigation. Hipol refused. He explained to the panel of investigators that nothing in the guard's logbook indicates that he failed to stop for inspection at the gate; that the metal plates owned by the company were more than 3/16 inch thick and could not be used on his jeep; that the plates were even too big to fit in the company vehicle nor was there enough time to load them since he got hold of the vehicle only when Andres brought it to him; and that not only were the plates on his jeep were bought in December 2003, Suarez also deposed that he did not receive any plates from him (Hipol).

The Labor Arbiter found in Hipol's favor and held that the company failed to establish that there was a theft and that it was committed by Hipol; that there was neither a police report or an inventory report showing the loss of the plates; that even if there were indeed metal plates inside the vehicle, there was no proof that they were owned by the company; and that the logbook shows no irregularity in its entry. Taking those into consideration, the Labor Arbiter found that the complainant's dismissal based on loss of confidence is devoid of any factual and legal basis. In addition, the company was ordered to pay Hipol backwages of P78,032.50, attorney's fees of ten percent (10%) of the total award, and moral and exemplary damages of P500,000.00 each.[11]

Both the company and Hipol appealed the above decision. The former assailing the entire finding of the Labor Arbiter while the latter only with respect to the backwages which he claims was erroneously computed as he was illegally dismissed on September 30, 2004 and the Labor Arbiter Decision was promulgated on November 30, 2005 or 14 months at a monthly salary of P27,720.00. Hence, the backwages should be about P388,080.00.

On September 4, 2006, the NLRC affirmed the Labor Arbiter decision with modification reducing the award for moral and exemplary damages to P100,000.00 and P50,000.00, respectively. Both parties moved for the reconsideration of the NLRC Resolution. Per February 2, 2007 Resolution, the NLRC reversed its previous findings on the ground that the testimonies of Andres and Oreña carry more probative weight than the bare denials of the complainant; that there was no reason for the complainant not to stop at the gate for inspection if he was not aware of the steel plates loaded in the vehicle; and that the company had reasonable grounds to believe that the complainant took away the steel plates from the Motorpool and used it for the repairs of his jeep. Consequently, the September 4, 2006 NLRC Resolution was reconsidered and set aside. Hipol's complaint was dismissed for lack of merit.

Hence, this petition for certiorari by Hipol asseverating that the NLRC committed grave abuse of discretion when it found him liable for theft; when it dismissed his evidence as a mere denial that cannot prevail over the positive assertions of the company's witnesses; and when it awarded him his backwages for at least 3 months' pay even though he was illegally dismissed for 14 months prior to the promulgation of the LA decision.

Our Ruling

The petition is with merit.

A petition for certiorari under Rule 65 of the Rules of Court is confined to the correction of errors of jurisdiction and will not issue absent a showing of a capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction. Not every error in a proceeding, or every erroneous conclusion of law or of fact, is an act in excess of jurisdiction or an abuse of discretion. The prerogative of writ of certiorari does not lie except to correct, not every misstep, but a grave abuse of discretion.[12] To justify the issuance of the writ of certiorari, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[13]

We see such exercise of capricious, whimsical, and arbitrary judgment at hand.

Loss of trust and confidence will validate an employee's dismissal only upon compliance with certain requirements, namely: (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.[14] In the case of supervisors or personnel occupying positions of responsibility, loss of trust justifies termination.[15]

In the present case, it was not disputed that the petitioner exercises supervisory powers and is thus imbued with trust and confidence by his employer. However, We find that the private respondents failed to persuade that there was justifiable basis for it to lose its trust and confidence on the petitioner.

While the law and this Court recognize the right of an employer to dismiss an employee based on loss of trust and confidence, the evidence of the employer must clearly and convincingly establish the facts upon which the loss of trust and confidence in the employee is based. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would remain eternally at the mercy of the employer.[16]

The private respondent's factual basis was not supported by ample evidence to support the findings against the petitioner. There was no proof that when the petitioner and Andres went out of the Motorpool, the petitioner did not stop for inspection. After a scrutiny of the logbook, it bore no indication that there was an untoward incident on that fateful day contrary to the private respondent's assertions. There was no written record showing the petitioner's refusal to undergo the inspection except the testimonies of the guard on duty and Andres which were taken already days after the aforementioned event. Hence the question - Why did it take awhile for the guard and Andres to inform their heads of the incident? We also take note that the security report mentioned that the petitioner was then going to the Plant. We, just like the petitioner, are baffled as to how the security guard came to know of the petitioner's destination if the latter did not stop before exiting the gate.

Further, other than Andres' lone testimony, nothing was shown to prove that the vehicle indeed had metal plates inside when the petitioner drove it to the Plant. Nobody else saw the plates. Andres did not report such occurrence until there was already an investigation. Andres' testimony that the petitioner delivered the plates to Suarez was belied not only by the petitioner but by Suarez as well who executed a notarized affidavit stating that he bought only five (5) plates from Cabatuan in December 2003 and those were the only plates he used on the petitioner's jeep. Cabatuan likewise corroborated Suarez's claims. Although the company's chief security personnel claims that Suarez admitted receiving steel plates from the petitioner, We find the notarized affidavit of the Suarez stating otherwise and denying such receipt of plates from the petitioner more credible. As settled, a notarized instrument is admissible in evidence without further proof of its due execution, is conclusive as to the truthfulness of its contents, and has in its favor the presumption of regularity.[17]

Moreover, even after the initial investigation by the company, no inventory report or record confirmed that there

indeed were lost metal plates. There was no accounting for the alleged lost items. Besides, as maintained by the private respondent, their metal plates were used for heavy equipment and not for ordinary cars. A jiffy/jeep could hardly be regarded as heavy equipment that could have utilized the metal plates used for trucks.

In the case of *Prudential Guarantee and Assurance Employee Labor Union v. NLRC*,^[18] the Supreme Court held:

"The burden of proof is upon the employer to show that the employee's termination from service is for a just and valid cause. The employer's case succeeds or fails on the strength of its evidence and not the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them. Often described as more than a mere scintilla, the quantum of proof is substantial evidence which is understood as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise. Failure of the employer to discharge the foregoing onus would mean that the dismissal is not justified and, therefore, illegal."

In the case before Us, although proof beyond reasonable doubt is not necessary, the private respondent, however, still fell short in adducing substantial evidence which a reasonable mind can accept as adequate to support a conclusion. Apparently, without clear basis for their averments, the private respondent's rationale for its loss of trust and confidence on the petitioner rested only on whims, caprices or suspicions which this Court cannot give countenance. Hence, We see no reason for the NLRC to reverse its previous findings considering the glaring evidence for the petitioner.

Accordingly, the petitioner is entitled to reinstatement and full backwages per Article 279 of the Labor Code, without loss of seniority rights and other privileges. However, by jurisprudence, separation pay may also be awarded to an illegally dismissed employee in lieu of reinstatement.^[19]

In the case of *Bani Rural Bank, Inc. v. de Guzman*,^[20] the Supreme Court explained that the computation of backwages depends on the final awards adjudged as a consequence of illegal dismissal, in that: first, when reinstatement is ordered, the general concept under Article 279 of the Labor Code, as amended, computes the backwages from the time of dismissal until the employee's reinstatement. The computation of backwages (and similar benefits considered part of the backwages) can even continue beyond the decision of the labor arbiter or NLRC and ends only when the employee is actually reinstated; Second, when separation pay is ordered in lieu of reinstatement or reinstatement is waived by the employee, backwages is computed from the time of dismissal until the finality of the decision ordering separation pay.

On the other hand, the separation pay is computed from the time of the illegal dismissal up to the date of the finality of the decision awarding the separation pay at the rate of one (1) month pay per year of service.

In the case at bench, the petitioner already sought employment abroad as per records attached. Thus, his reinstatement is no longer probable. Further, We are of the belief that it is for the best interest of the parties if separation pay is paid in lieu of the reinstatement. As expounded by the Supreme Court in the case of *Emeritus Security and Maintenance Systems, Inc. v. Dailig*,^[21]

"Over time, the following reasons have been advanced by the Court for denying reinstatement under the facts of the case and the law applicable thereto; that reinstatement can no longer be effected in view of the long passage of time (22 years of litigation) or because of the realities of the situation; or that it would be 'inimical to the employer's interest;' or that reinstatement may no longer be feasible; or, that it will not serve the best interests of the parties involved; or that the company would be prejudiced by the workers' continued employment; or that it will not serve any prudent purpose as when supervening facts have transpired which make execution on that score unjust or inequitable or, to an increasing extent, due to the resultant atmosphere of 'antipathy and antagonism' or 'strained relations' or 'irretrievable estrangement' between the employer

and the employee."

WHEREFORE, the instant petition is GRANTED. The February 2, 2007 Resolution is REVERSED and SET ASIDE. The September 4, 2006 Resolution of the National Labor Relations Commission 5[th] Division, Cagayan de Oro City is REINSTATED with MODIFICATION in that instead of reinstatement, the private respondent is ordered to pay Edgar Hipol (a) separation pay equivalent to one (1) month pay for every year of service and (b) backwages computed from the time compensation was withheld from him when he was unjustly terminated, up to the time of the finality of this Decision. Other awards are sustained.

For this purpose, the records of this case are hereby REMANDED to the Labor Arbiter for proper computation of said awards in view of this Decision.

SO ORDERED.

Camello, (Chairperson), and Perez, JJ., concur.

[1] Rollo, pp. 20-23 and 24-28.

[2] Rollo, pp. 364-369.

[3] Ibid.

[4] Supra, p. 118.

[5] Supra, p. 91.

[6] Supra, p. 119.

[7] Supra, p. 453.

[8] Supra, p. 455.

[9] Supra, p. 456.

[10] Supra, pp. 462-465.

[11] Supra, pp. 204-223.

[12] *Aujero v. Philippine Communication Satellite Corporation*, G.R. No. 193484, January 18, 2012.

[13] *C.F. Sharp Crew Management, Inc. et.al. v. Taok*, G.R. No. 193679, July 18, 2012.

[14] *Alvarez v. Golden Tri Bloc, Inc.*, G.R. No. 202158, September 25, 2013.

[15] *The Coca-Cola Export Corporation v. Gacayan*, G.R. No. 149433, June 22, 2011.

[16] *Prudential Guarantee and Assurance Employee Labor Union v. NLRC*, G.R. No. 185335, June 13, 2012.

[17] *Skunac Corp. v. Sylianteng*, G.R. No. 205879, April 23, 2014.

[18] Supra.

[19] *Bani Rural Bank, Inc. v. de Guzman*, G.R. No. 170904, November 13, 2013.

[20] Supra.

[21] G.R. No. 204761, April 2, 2014.

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