

JEGUER S. VERBAL, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, RIGHT GOODS PHILIPPINES, INC. / RICA CRUZ / RHEA DE TORRES / KAYE GAMBOA / FLORDELIZA DIALEMAS, RESPONDENTS.

Ponente: PAREDES, J.

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PAREDES, J.:

THE CASE

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the Decision[1] dated May 9, 2012, of the National Labor Relations Commission (NLRC), Sixth Division, in NLRC NCR Case No. 11-16697-10 (NLRC LAC No. 08-002256-11), which affirmed the ruling of Labor Arbiter Adela S. Damasco dismissing the case; and the Resolution[2] dated June 29, 2012, which denied the motion for reconsideration.

THE ANTECEDENTS

In his Position Paper[3], Jeguer S. Verbal (now, petitioner) alleged that in September 1998, he started as a driver of Right Goods Philippines, Inc. (Right Goods), a corporation existing under Philippine laws. He was promoted as a sales person at Right Goods albeit he was still with an agency, Humanshield. Later, in January 2000, he became a regular employee of Right Goods. Eventually, he was promoted as a supervisor and RDLP point person with six (6) salespersons and one (1) driver under his supervision. In the third week of August 2010, he was again promoted as Drug Store Specialist.

On October 21, 2010, at around 4 o'clock in the afternoon, respondent Rhea De Torres (De Torres) of the Human Resource Department and Kaye Kharen Conti of Accounting summoned him in connection with the stores/customers handled by his former RDLP team. Allegedly, Nikko Store had an unpaid account in the amount of P360,871.71, while Maglente Store was unpaid in the amount of P398,630.91.

During an investigation, one of his salespersons, Jose Alcala (Alcala), admitted that he was the one who delivered the stocks and collected the payment from these stores. Alcala even gave the Human Resource Officer, Flor Dialema (Dialema), a Banco De Oro (BDO) deposit slip, which was allegedly the payment of Nikko Store. Alcala promised to pay the remaining amount at 8 o'clock the next day, but when he reneged on his promise, petitioner was charged with Alcala's wrongdoings.

Out of fear of incarceration, petitioner wrote a letter[4] admitting his mismanagement of the accounts and asking for forgiveness and promising that such incident would not happen again. Despite this, on October 22, 2010, petitioner received a Notice of Preventive Suspension[5] dated October 21, 2010 suspending petitioner for a month without pay, from October 23 to November 23, 2010.

On November 23, 2010, petitioner reported to De Torres, at her behest, and was served a Notice of Termination[6] effective November 24, 2010. This prompted petitioner to file, immediately the following day, a

complaint[7] for illegal dismissal against the respondents before the NLRC.

On the other hand, respondents' Position Paper⁸ gave the following version:

Petitioner conspired with Alcala by allowing the latter to sell Right Goods' products to a closed account store, Maglente Store, while extending a credit term of P20,000.00 to Nikko's Store and using that credit term, which was declined by Nikko's Store, for their personal benefit, defrauding Right Goods and violating its rules and regulations.

Upon investigation, respondents found “ghost” purchases under the credit term of Nikko's Store amounting to P360,871.17 while the purchases on the closed account of Maglente Store amounted to P398,603.91.

After the submission of their respective position papers, the Labor Arbiter rendered a Decision[9] dated July 22, 2011 dismissing the complaint for lack of merit.

Petitioner appealed to the NLRC which, on May 9, 2012, rendered the assailed Decision[10] affirming the decision of the Labor Arbiter. His motion for reconsideration having been denied, petitioner interposed this appeal via a petition for certiorari under Rule 65 of the Revised Rules of Civil Procedure.

ISSUES

I.

WITH ALL DUE RESPECT, PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN NOT EVEN TACKLING, DISCUSSING AND RULING ON THE ISSUE OF WHETHER OR NOT PRIVATE RESPONDENTS' POSITION PAPER HAVE CREDENCE AND PROBATIVE VALUE DESPITE THE LACK OF IT OF THE REQUIRED SECRETARY'S CERTIFICATE.

II.

WITH ALL DUE RESPECT, PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN NOT EVEN RULING ON THE ISSUE PERTAINING TO PETITIONER'S SUSPENSION.

III.

WITH ALL DUE RESPECT, PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN NOT HOLDING THAT PETITIONER WAS DENIED DUE PROCESS.

IV.

WITH ALL DUE RESPECT, PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN HOLDING THAT PETITIONER WAS NOT ILLEGALLY DISMISSED.

V.

WITH ALL DUE RESPECT, PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN NOT EVEN RULING ON THE ISSUE OF PETITIONER'S ENTITLEMENT TO 13TH MONTH PAY, MORAL AND EXEMPLARY DAMAGES INCLUDING ATTORNEY'S FEES.

THE COURT'S RULING

The Petition is, in part, meritorious, warranting the modification of the assailed Decision.

Petitioner argues that respondents' position paper is a mere scrap of paper and should not be given credence because the Human Resource Officer who signed the verification and certification, does not have any authority to sign or execute the same through a Board Resolution or Secretary's Certification.[11] We disagree.

The Supreme Court in *Roy D. Pasos vs. Philippine National Construction Corporation*[12] ruled that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.

Respondents' position paper signed by Right Good's Human Resource Officer or personnel officer, is valid.

Issues II to V, being interrelated, will be discussed jointly.

The requisites of a valid dismissal are: (1) the employee must be afforded due process; and (2) the dismissal must be for any of the just causes provided in Article 282[13] of the Labor Code or for any of the authorized causes under Articles 283[14] and 284[15] of the same Code.[16]

Petitioner maintains that he was instantly and summarily suspended and terminated without due process.[17] We agree.

It is settled that the essence of due process is simply an opportunity to be heard[18] and its essential elements in the dismissal of an employee are notice and hearing[19]. To meet the requirements of due process in the dismissal of an employee, an employer must furnish the worker with two written notices: (1) a written notice specifying the grounds for termination and giving to said employee a reasonable opportunity to explain his side, and (2) another written notice indicating that, upon due consideration of all circumstances, grounds have been established to justify the employer's decision to dismiss the employee[20].

Right Goods as employer has the burden of proving its observance of this two written notice requirement.[21] In the instant case, records fail to show that Right Goods furnished petitioner a first written notice specifying the grounds for suspension or termination and giving petitioner a reasonable opportunity to explain his side.

Moreover, assuming that petitioner received the first notice, he was not given a reasonable time to answer the charges against him and seek the assistance of a representative to defend himself. This is because, as could be gleaned from the Notice of Preventive Suspension[22], petitioner's infractions was only revealed to respondents through an audit report submitted on October 20, 2010. The next day, or on October 21, 2010, a decision had been reached to suspend petitioner and a Notice of Preventive Suspension was furnished to petitioner on October 22, 2010.

In *Jarl Construction and Armando K. Tejada vs. Simeon A. Atencio*[23], the Supreme Court declared that the second written notice or the notice of the employer's decision to terminate must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge and ample opportunity to be heard and defend himself with the assistance of a representative, if he so desires.

Assuming that petitioner was first notified on October 20, 2010, one day is not enough for petitioner to prepare his defense, answer the charges against him and seek the assistance of a representative to defend himself.

Non-compliance to the two-notice requirement is fatal because these are conditions sine qua non before dismissal may be validly effected.[24] Consequently, for respondents' failure to comply with the two notice requirement,

petitioner's dismissal is considered illegal.

Although, respondents did not afford petitioner due process, he was still dismissed for just cause. In fact, petitioner admitted[25] his mismanagement and negligence which resulted to a great loss in profit to Right Goods. His infractions were serious offenses that warranted his dismissal from employment and proved that his termination from work was for a just cause; hence, he is not entitled to backwages, reinstatement or separation pay.

In *Unilever Philippines, Inc. vs. Maria Ruby M. Rivera*[26], the Supreme Court declared that "separation pay is only warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 283 and 284 of the Labor Code, as well as in cases of illegal dismissal in which reinstatement is no longer feasible. It is not allowed when an employee is dismissed for just cause."

However, petitioner is entitled to a proportionate 13th month pay and unused leave credits, to be computed based on his salary during the period relevant to the case.

Although an employer may legally dismiss an employee for a just cause, the non-observance of the requirements of due process before effecting the dismissal warrants the payment of indemnity in the form of nominal damages[27] in the amount of P30,000.00[28] based on jurisprudential precedence.[29]

As to moral and exemplary damages. Moral damages are awarded only where the dismissal was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy[30]. Exemplary damages may avail if the dismissal was effected in a wanton, oppressive or malevolent manner to warrant an award for exemplary damages.[31] Considering that petitioner was dismissed for just cause, he is, therefore, not entitled to moral and exemplary damages.

Neither is petitioner entitled to attorney's fees since his case does not fall under any of the exceptions stated in Art. 2208[32] of the Civil Code.

WHEREFORE, premises considered, the Petition is GRANTED in part. The Decision dated May 9, 2012, and the Resolution dated June 29, 2012, of the National Labor Relations Commission (NLRC), 6th Division, in NLRC NCR LAC No. 08-002256-11 (NLRC NCR Case No. 11-16697-10) are AFFIRMED with modification in that Right Goods Philippines, Inc. is ORDERED to pay Jeguer S. Verbal the following:

- A proportionate 13th month pay and unused leave credits, to be computed based on his last salary during the period relevant to the case; and,

- Nominal damages in the amount of P30,000.00.

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.

Dicdican, I.P., Chairperson and Elbinias, M.P., JJ., concur.

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- [1] Rollo, pp. 90-100.
- [2] Rollo, pp. 45-6.
- [3] Rollo, pp. 206-23.
- [4] Rollo, p. 243.
- [5] Rollo, p. 242.
- [6] Rollo, p. 244.
- [7] Rollo, pp. 249-50.
- [8] Rollo, pp. 227-241.
- [9] Rollo, pp. 178-90.
- [10] Rollo, pp. 90-100.
- [11] Petition, rollo, pp. 3-42, 12.
- [12] G.R. No. 192394, July 3, 2013.
- [13] 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.
- [14] Art. 283. Closure of establishment and reduction of personnel. – xxx
- [15] Art. 284. Disease as ground for termination. – xxx
- [16] Limaland, Inc., et al. vs. Marlyn Cuevas, G.R. No. 169523, June 16, 2010.
- [17] Petition, Rollo, pp. 3-42, 13.
- [18] Limaland, Inc., et al. vs. Marlyn Cuevas, G.R. No. 169523, June 16, 2010.
- [19] Philippine Pasay Chung Hua Academy and Emilio Ching vs. Servando L. Edpan, G.R. No. 168876 , February 10, 2009.
- [20] Dolores T. Esguerra vs. Valle Verde Country Club, Inc. and Ernesto Villaluna, G.R. No. 173012, June 13, 2012.
- [21] Jarl Construction and Armando K. Tejada vs. Simeon A. Atencio, G.R. No. 175969, August 1, 2012.

[22] Rollo, p. 242.

[23] G.R. No. 175969 , August 1, 2012.

[24] Jarl Construction and Armando K. Tejada vs. Simeon A. Atencio, G.R. No. 175969, August 1, 2012.

[25] Letter dated October 21, 2010, Rollo, p. 243.

[26] G.R. No. 201701, June 3, 2013.

[27] Samar-Med Distribution vs. National Labor Relations Commission and Josafat Gutang, G.R. No. 162385, July 15, 2013.

[28] Unilever Philippines, Inc. vs. Maria Ruby M. Rivera, G.R. No. 201701, June 3, 2013.

[29] Samar-Med Distribution vs. National Labor Relations Commission and Josafat Gutang, G.R. No. 162385, July 15, 2013; Unilever Philippines, Inc. vs. Maria Ruby M. Rivera, G.R. No. 201701, June 3, 2013.

[30] Macario R. Lopez vs. Hon. NLRC Commissioners, et al., G.R. No. 102874, January 22, 1996.

[31] Nelson A. Culili vs. Eastern Telecommunications Philippines, Inc., G.R. No. 165381, February 9, 2011.

[32] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

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