

**JUANCHO ROSITES, SR. & FERNANDO ESCUETA, PETITIONERS,
VS. NATIONAL LABOR RELATIONS COMMISSION, MAKATI
SHANGRI-LA HOTEL MANILA & DARIO DE LOS REYES, HR
MANAGER, RESPONDENTS.**

Ponente: VILLON, J.

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VILLON, J.:

Assailed in this petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure is the Decision dated November 28, 2003[1] of public respondent National Labor Relations Commission (NLRC), Third Division in NLRC CA No. 035810-03 which affirmed the Decision dated May 13, 2003[2] of Labor Arbiter Florentino R. Darlucio in NLRC NCR Nos. 08-06830-2002 and 08-06793-2002, as well as its Resolution dated January 24, 2006[3] denying petitioners' motion for reconsideration of the assailed NLRC Decision for having been filed out of time and for lack of merit.

The facts of the case as quoted in the decision of the NLRC are as follows:

“Complainant-appellant Juancho S. Rosites, Sr. was employed on March 1, 1993 as Service Assistant Housekeeping Roomboy. On August 5, 2002, he was assigned to two (2) rooms at the 13th floor and to three (3) rooms at the 15th floor of the hotel. While on the way to his place of assignment, he was asked by a co-employee, complainant-appellant Fernan Escueta, to deliver a complimentary bottle of red wine to Room 1606 of the hotel, made in the presence and within the hearing distance of three (3) other employees of the hotel. Thinking he would do complainant-appellant Escueta a favor, he took it seriously and intended to bring the wine to said room. He then proceeded to Room 1310 to attend to the checking-out of the occupant thereof when Perry Avecilla, Executive Assistant for Housekeeping, appeared and asked him about the bottle of wine. He got it from his trolley then handed it over to Avecilla, saying he was asked to deliver it to Room 1606. On the same day, complainant-appellant Rosites received a Memorandum requiring him “to explain in writing within forty-eight (48) hours from receipt why no disciplinary action should be imposed against him for alleged involvement in the deliberate concealment of a bottle of red wine which was part of the Golden Circle amenities and reported missing by Romeo Laguerta. On the same day, he submitted his handwritten explanation. On August 7, 2002 he was subjected to an interrogation without assistance of counsel and without having been given a chance to confront Avecilla and the witnesses against him. Having been asked also to give his side about the incident, complainant-appellant Escueta submitted a handwritten explanation dated August 5, 2002 and a Supplemental Answer/Explanation dated August 14, 2002 wherein he admitted having played a practical joke on complainant-appellant Rosites by ordering him to deliver to Room 1606 the bottle of red wine which was being prepared by mini bar attendant Laguerta. On August 19, 2002, complainant-appellant Rosites received another Memorandum terminating his services.

Upon the other hand, Complainant-appellant Escueta narrated that on August 5, 2002 he received a Memorandum from Avecilla ordering him to explain in writing forty-eight (48) hours why no disciplinary action should be imposed against him for his alleged involvement in the deliberate concealment of a bottle of red wine. On the same day, he filed his written explanation. On August 14, 2002, he filed a Supplemental Answer/Explanation stating, in material points, that:2. x x x Romy Laguerta a mini bar attendant arrived at the

store room and place(d) two (2) bottles of softdrinks and a bottle of complimentary red wine on top of a cabinet near him. While we were exchanging pleasantries and wisecrack with each other, I play(ed) a practical joke with Romy by kiddingly making it appear that I am ordering Jong Rosites, a room boy, assigned at 15th and 16th floors to give/deliver the bottle of red wine at 'VIP Room 1606' xxx Note that this is within the hearing distance of all my co-employees (Sammy, Danny and Ricky) and even by Romy Laguerta himself who (was) standing beside me just by a few meters (approximately 4 meters away);

3. Juancho Rosites, I left them all at the storeroom not knowing that Jong would make good and seriously consider my comical intentions;

4. After sometime, Mr. Perry Avecilla xxx asked me where the red wine is, I immediately answered back 'nasa storeroom.' Mr. Perry Avecilla then called Romeo Laguerta by phone. I talked to Romy and told him that the bottle of red wine is at the storeroom. Romeo Laguerta replied that xxx 'wala doon.' Aghast of finding the red wine allegedly missing at the streroom, I told Mr. Perry Avecilla that the red wine might probably be with Juancho Rosites. True enough, Mr. Perry Avecilla was able to locate the red wine predominantly placed at the trolley of Juancho Rosites who is then at the thirteenth (13th) floor.'

On August 24, 2002 complainant-appellant Escueta received a memorandum from respondent-appellees terminating his services.

Respondents-appellees countered that as Housekeeping Attendants, complainants-appellants' job was basically to ensure the cleanliness, sanitation, orderliness and adequate supply of assigned guestrooms, work areas and equipment. Their job did not include setting up nor delivering bar amenities to hotel guests. On August 5, 2002, at about three o'clock in the afternoon, Romeo Laguerta went to the Hotel's storeroom where he saw some of his co-employees including complainants-appellants. Laguerta then proceeded to set up the Hotel's Golden Circle amenities which included two (2) bottles of soda and a bottle of red wine. While thus preoccupied, he placed the bottle of red wine on top of a cabinet near him. He left the room and shortly thereafter, returned. However, he noticed the bottle of red wine was already missing. He was then informed by co-employee Dante Janesan that complainant-appellant Escueta took and gave it to complainant-appellant Rosites. Laguerta then proceeded to the Room Controller office to page complainant-appellant Rosites. It was at this point that Avecilla chanced upon Laguerta who was in an angry state and asking the Room Controller to page complainant-appellant Escueta. When Avecilla inquired from Laguerta what the problem was, he was informed about the missing bottle of red wine. Avecilla decided to personally look for complainant-appellant Escueta. Avecilla saw him at the pantry area. Avecilla asked him for the bottle of red wine. He immediately replied that he did not take it and that it was in the storeroom. Avecilla called up Laguerta who confirmed to complainant-appellant Escueta that the bottle of red wine was still missing. Complainant-appellant Escueta then mentioned to Avecilla the name of complainant-appellant Rosites. Avecilla went to look for complainant-appellant Rosites. At the 13th floor of the hotel, Avecilla saw three (3) trolleys blocking the hallway. It was then that complainant-appellant Rosites came out of Room 1310. Avecilla asked from him the bottle of red wine. Complainant-appellant Rosites then went to the trolley and took the bottle of red wine from the compartment hidden behind folded pillow cases.

On August 5, 2002, the respondent hotel issued a memorandum to complainants-appellants ordering them to explain in writing, within forty-eight (48) hours from receipt, why no disciplinary action should be imposed against them for concealment of the bottle of red wine. The memorandum further stated that complainants-appellants were being placed under preventive suspension for thirty (30) days, impelled by the fact that they were entrusted with several hotel properties and due to a well grounded fear that similar incident may happen again. On the same day, complainant-appellant Rosites explained in writing that he did not have the intention to steal the missing bottle of red wine. And that he was merely instructed to deliver it to Room 1606 by complainant-appellant Escueta. Complainant-appellant Escueta likewise submitted a written explanation

admitting having instructed complainant-appellant Rosites to take the bottle of red wine but argued that it was a practical joke he played on him.

On August 7, 2002, an administrative investigation was conducted wherein complainants-appellants admitted the following facts:

- That Escueta took the red wine from the Golden Circle amenities being set up by Mr. Romeo Laguerta xxx without the latter's knowledge and consent;
- That when Escueta took it, the red wine was already due for delivery to the VIP guest at room 915;
- That Escueta gave the red wine to Mr. Juancho Rosites and instructed him to deliver the said wine to the VIP guest at room 1606;
- That there was no request for red wine from the guest at room 1606 and that neither was there an instruction from your superiors to deliver the said item to room 1606; and that it was not the duty of either of the complainants to do so;
- That both were aware of the expected arrival of VIP guest at room 1606 on that day at 7:30 P.M., which fell within their duty shift of 2 P.M. to 10 P.M. and which arrival was discussed at the briefing held that afternoon; and
- That when Mr. Avecilla went to look for the wine, he found it inside the trolley compartment of Rosites, hidden behind pillow cases.

Likewise, during said investigation, Sammy Magay, Ricky Aguas and Danny Benedicto, whom complainants-appellants claimed to have been present in the storeroom and heard the joke played by complainant-appellant Escueta on complainant-appellant Rosites, testified that they did not hear complainant-appellant Escueta instruct complainant-appellant Rosites, in a joking manner, to take the red wine and deliver it to room 1606. Based on the foregoing inquiries, respondents concluded that there was a conspiracy between complainants-appellants to intentionally take and, thereafter, conceal the bottle of red wine. On August 19, 2002, respondents issued notices of termination to both complainants-appellants stating:

‘After a careful review of all the foregoing facts, there exist sufficient bases for the company to believe that you were responsible for the deliberate concealment of the red wine. Also, the facts indubitably show that there was a malicious intent on your part to personally gain from giving away the said company property to said VIP guest.

Accordingly, we find that you have violated the following provisions of the Code of Discipline:

CLASS D Section I #4 – ‘stealing in any form whether from Hotel, co-employee or guests.’

CLASS D Section I #16 – ‘concealing or deliberately misplacing without justifiable purpose Hotel property, another employee's property or guest(s)/visitor(s) property within Hotel premises.’

Xxx another Class d offense, under Section I, Number 18 of the Hotel's Code of Discipline which provides as follows:

‘Loss of confidence or breach by employees of the trust vested in him by Management or by a hotel representative.’

In view of the above, we have no other recourse but to terminate your services from the Hotel effective immediately upon your receipt of this Memorandum.”⁴

Petitioners Juancho Rosites, Sr. (“Rosites”) and Fernando Escueta (“Escueta”) filed their respective complaints for illegal dismissal with prayer for reinstatement and payment of backwages, moral and exemplary damages and attorney’s fees.

On May 13, 2003, after submission of the parties’ respective position papers, Labor Arbiter Florentino R. Darlucio rendered a decision, the pertinent portion of which reads:

“As culled from the records, the charges against the complainants were substantiated by the sworn statements of witnesses Perry Avecilla and Romeo Laguerta (Annexes “2” & “3” respectively, respondents’ position paper) which established the fact that the bottle of Red Wine was taken by complainant Escueta; and handed the same to complainant Rosites; and that the bottle of Red Wine was later found in the trolley of Rosites, hidden behind folded pillow cases.

Complainants’ infractions therefore, constitute a violation of the respondents’ Code of Discipline which are sufficient bases for termination of employment on the grounds of service misconduct and loss of confidence under Article 282 of the Labor Code of the Philippines.

In fine. This Office is of the view that there exists justifiable causes in the termination of the complainants’ services, thus, their complaint for illegal dismissal, as well as their money claim, must perforce, fail.

WHEREFORE, premises considered, let the complaint be, as it is hereby, DISMISSED for lack of merit.

SO ORDERED.” [5]

Unsatisfied, petitioners appealed to the NLRC.

On November 28, 2003, the NLRC rendered the assailed Decision which affirmed the Decision of the Labor Arbiter and dismissed the appeal. Petitioners filed a motion for reconsideration, but the same was likewise dismissed for having been filed out of time and for lack of merit in the Resolution dated January 24, 2006.

Hence, this petition raising the following assignment of errors:

I

THE HONORABLE MEMBERS OF THE THIRD DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN FINDING THAT THE APPEAL SHOULD BE DISMISSED AND THAT NO COGENT OR COMPELLING REASON EXIST TO MODIFY, MUCH LESS REVERSE THEIR DECISION DATED NOVEMBER 28, 2003 WHICH AFFIRMED THE MAY 13, 2003 DECISION OF THE HONORABLE ARBITER FLORANTE DARLUCIO.

II.

THE HONORABLE MEMBERS OF THE THIRD DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT THE MOTION FOR RECONSIDERATION FILED BY THE COMPLAINANTS-APPELLANTS WERE FILED OUT OF TIME AND LACKS MERIT.

Petitioners Rosites and Escueta contend that there is no just or authorized cause as provided for in Article 282 of the Labor Code for them to be validly terminated by Makati Shangri-la Hotel (respondent “Hotel”); that they were not afforded due process by respondent Hotel in terminating their employment; that petitioner Rosites was merely acting upon the request of Escueta, a co-employee, not knowing that he was a victim of the latter’s practical joke; that petitioner Escueta had no intention to deliberately conceal the complimentary bottle of red wine but was just playing comical and doing a practical joke on Romy Laguerta, the bar attendant and petitioner

Rosites; that said practical joke was made within the hearing distance of his co-employees including Laguerta himself; that it is clear from the testimony of Dante Janesan, petitioners' co-employee, that petitioner Escueta was just kidding and playing comical; that the intention of the memorandum of Avecilla, the Hotel's Executive Assistant for Housekeeping was merely to discipline them and not to dismiss them; that the investigation was not fair and impractical as it was conducted by managerial staffs; that the penalty of dismissal, assuming they were guilty of the charge is so severe a penalty because it was their first time to be charged and considering their long service with respondent and unblemished record; that they are entitled to reinstatement, backwages and damages; and that the NLRC should have acted on their motion for reconsideration without strict reliance on the technical rules of procedure.

Petitioners' contentions are bereft of merit.

There is no dispute that the bottle of red wine was taken from the Hotel's Golden Circle amenities by Escueta without the knowledge and permission of Laguerta and gave it to Rosites. This was clearly admitted by both petitioners during the administrative investigation conducted on August 5, 2002.

As correctly ruled by the NLRC:

"Complainants-appellants' job as Housekeeping Attendants was basically to ensure the cleanliness, sanitation, orderliness and adequate supply of assigned guestrooms, work areas and equipment. Their job did not include setting up nor delivering bar amenities to hotel guests. If indeed it was a practical joke complainant-appellant Escueta played on complainant-appellant Rosites, he should have immediately taken back the bottle of red wine from complainant-appellant Rosites then returned it on top of the cabinet. Had this been done, he could have saved himself and complainant-appellant Rosites from being intertwined in a cobweb of trouble. From the facts thus established during the investigation, complainant appellant- Escueta left the room after handing over the bottle of red wine to complainat-appellant Rosites, without authority from Laguerta or any superior. Noteworthy is the categorical assertion of Maggay, Aguas and Benedicto that they did not hear complainant-appellant Escueta instruct complainant-appellant Rosites in a joking manner, to take the red wine and deliver it to room 1606. Moreover, the instruction could not have been given jokingly because complainant-appellant Rosites himself took it seriously.

On the part of complainant-appellant Rosites, on subject date of the incident, he was assigned to the 13th and 15th floors such that, aside from the aforementioned fact that his job and that of complainant-appellant Escueta did not include delivering bar amenities to hotel guests, he had no business to be at the 16th floor. Besides, when Avecilla asked him about the bottle of red wine it was retrieved by him from the trolley compartment, hidden behind folded pillow cases. If there was no intention to conceal it, it should have been placed in the trolley in plain view of anyone."

Indeed, Rosites had no authority to deliver the bottle of red wine to room 1606 as it was not his place of assignment. Likewise, Escueta had no authority to give to Rosites the instruction to do so. The assertions of their co-employees who were present in the storeroom belied the allegation of Escueta and Rosites that the instruction to deliver the bottle of red wine to room 1606 was just given as a practical joke. No substantial evidence was ever presented in support of such claim. It bears stressing that mere allegations are not evidence.[6]

Petitioners' contention that they were not afforded due process, is also misplaced. As the records disclose, an investigation on the subject incident was immediately conducted which led to petitioners' dismissal from service. In the said investigation, petitioners were given ample opportunity to present their defense against the charges leveled against them by private respondents. The absence of counsel during the administrative investigation, did not affect the regularity of the proceedings nor does it mean that their right to due process was transgressed. It bears stressing that the requirement of due process is satisfied as long as a party is given a reasonable opportunity

to explain his side.[7] This was satisfied when petitioners submitted their respective answers to the show cause memorandum of AVECILLA and by their participation in the investigation.

The thirty (30) day period of suspension imposed upon petitioners pending investigation, was also valid. Section 8, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code is instructive, thus:

“Section 8. Preventive suspension. – The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.”

Moreover, petitioners asseverate that assuming that they are guilty of the charges, their acts do not amount to a just cause for termination under Article 282 of the Labor Code, which provides:

“ART. 282. TERMINATION BY EMPLOYER. – An employer may terminate an employment for any of the following causes:

- Serious Misconduct or willful Disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- Gross and habitual Neglect by the employee of his duties;
- Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- 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
- Other causes analogous to the foregoing.”

We find that private respondents validly terminated the services of petitioners on the ground of loss of trust and confidence in view of the latter's violation of company policy. Indeed, violation of company policies without justifiable reason is tantamount to willful disobedience of the lawful orders of the employer. More so, petitioners' act of stealing/concealing company properties constitutes breach of trust, which is a just cause for termination pursuant to Shangri-la Hotel's Code of Discipline and punishable by dismissal.

Likewise, petitioners occupy sensitive positions in the Hotel. Having access to hotel rooms occupied by clients, a great deal of trust has been reposed upon them as they carry the good name and goodwill of the establishment in all their actions. Any misconduct committed in the course of the discharge of their duties reflects upon the quality of the hotel's service to its guests.

Petitioners' contention that the NLRC committed grave abuse of discretion in dismissing their motion for reconsideration of the assailed decision for having been filed out of time and for lack of merit, is likewise, without merit.

While the technical rules of procedure are not mandatory in the resolution of labor disputes, it is emphasized that it is not an excuse for litigants to brush them aside. In short, the rule on liberal construction is not a license to disregard the rules of procedure. And as held in series of cases decided by the Supreme Court, procedural rules, especially those concerning periods, must be followed in strictissimi juris. It cannot be overemphasized that procedural rules have their own wholesome rationale in the orderly administration of justice. Justice has to be administered according to the Rules in order to obviate arbitrariness, caprice, or whimsicality.[8]

There being just cause to terminate petitioners' employment, their claim for reinstatement, backwages, moral and exemplary damages and attorney's fees, must perforce fail.

In the absence of showing that the findings complained of are totally devoid of support in the evidence on record, or that they are so glaringly erroneous as to constitute grave abuse of discretion, such findings must stand. As a general rule, the factual findings and conclusions drawn by quasi-judicial agencies, such as public respondent NLRC, are accorded great weight and respect, even finality, on appeal, so long as they are supported by substantial evidence. Findings of facts of the NLRC, particularly where the NLRC and the Labor Arbiter are in agreement, are deemed binding and are conclusive upon the appellate court.[9] We find no cogent and compelling reasons to depart from such factual findings as they are supported by the evidence on record.

WHEREFORE, finding no grave abuse of discretion on the part of the National Labor Relations Commission, Third Division in rendering the assailed Decision dated November 28, 2003 and Resolution dated January 24, 2006 in NLRC NCR CA NO. 035810-03, the instant petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Asuncion and Mendoza, JJ., concur.

[1] pp. 55-72, Rollo

[2] pp. 34-53, Rollo

[3] pp. 74-75, Rollo

[4] pp. 2-8, Decision of the NLRC, pp. 56-62, Rollo

[5] p. 20, Decision of Labor Arbiter, p. 53, Rollo

[6] *Luxuria Homes, Inc. v. CA, et al.*, 302 SCRA 315

[7] *U.I.C, et al. v. U.I.C. Teaching and Non-Teaching Personnel and Employees Union, et al.*, G.R. No. 144702, July 31, 2001.

[8] *Republic v. Hernandez*, G. R. No. 117209, February 9, 1996.

[9] *Permex, Inc. v. NLRC*, 323 SCRA 121

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