

**DANTE B. MASUTA AND ROMEO L. CASTE, PETITIONERS, VS.
OMNIPACK INDUSTRIAL CORPORATION, ALEXANDER NG, GENER
GABUTEN AND NATIONAL LABOR RELATIONS COMMISSION,
RESPONDENTS.**

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GALAPATE-LAGUILLES, J:

This Amended Petition for Certiorari[1] filed under Rule 65 of the Rules of Court impugns the Decision[2] dated 11 February 2011 of public respondent National Labor Relations Commission, Second Division (NLRC for brevity) which dismissed the appeal of petitioners Dante B. Masuta (Masuta) and Romeo L. Caste (Caste) for lack of merit. Likewise assailed is the Resolution[3] dated 16 March 2011 denying the Motion for Reconsideration[4] thereof.

The instant controversy arose from a complaint for illegal dismissal, illegal suspension, non-payment of salary, damages and attorney's fees filed by Masuta and Caste against private respondents Omnipack Industrial Corporation (Omnipack), Alexander Ng and Gener Gabuten before the Arbitration Branch of the NLRC in Quezon City. Omnipack is a domestic corporation engaged in the business of manufacturing and sale of packaging products particularly for snack food products.[5]

In his Position Paper,[6] Masuta alleged that in the morning of 28 January 2010, while he, together with his two (2) delivery helpers, was about to drive the delivery truck out of the company premises of Omnipack, the security guard on duty flagged down the delivery truck and asked him (Masuta) to open the rear door of the truck. The security guard further told Masuta that “may timbre kayo galing kay Bobby Tan.” Although this was unusual, Masuta complied and opened the truck's rear door and thereupon, the security guard ordered him to unload ten (10) of the seventeen (17) wooden pads[7] on board. Masuta was then allowed to leave the company premises to continue with the itinerary of the day.[8]

For his part, Caste averred that in the morning of 28 January 2010, before leaving Omnipack's premises to make deliveries, he was requested by his two (2) delivery helpers, Rafael Gumban (Gumban) and William C. Hije, Jr. (Hije, Jr.), to stop the delivery truck near Warehouse-Moulding, across the Administration Office of the company premises to unload the scrap wooden pads. Gumban and Hije, Jr. had previously gathered the said wooden pads at the far end of the company compound and loaded them in the truck to be brought near the Administration Office for the payment of its total cost later that day. Finding nothing wrong with the request, Caste thus complied.[9]

When Masuta and Caste reported for work on 29 January 2010, they were prevented from punching their time cards. Instead, they were directed verbally by their Section Head John Paul Caneta to explain in writing why they were taking out excessive wooden pads. On even date, Masuta and Caste wrote their respective explanations on the alleged baseless charge.[10]

Masuta and Caste further claimed that on 3 February 2010, they were asked to attend a conference with the management of Omnipack. Then, on 5 February 2010, they were told to report to Omnipack and were asked to sign what appears to be suspension notices that were antedated to 29 January 2010.[11]

On 26 February 2010, Masuta received through the mails his Termination Letter dated 17 February 2010. Caste, on the other hand, maintained that he never received a Termination Letter but he was nevertheless refused entry at Omnipack.[12]

In its Position Paper,[13] Omnipack countered that at around 9:30 in the morning of 28 January 2010, its Warehouse Officer-In-Charge Robert Tan (Tan) was informed by Warehouse Clerk Ernie Duriman that he and driver Mamerto Lucas saw Masuta and his truck helpers loading into the delivery truck some wooden pads. Immediately, Tan called up the Security Guard Allan Abogado (Abogado) to check the delivery truck driven by Masuta which was about to leave the company premises.[14]

At around 9:50 in the morning, Abogado flagged down the delivery truck driven by Masuta which was about to leave the company premises. Upon inspection, Abogado discovered some wooden pads stowed inside the delivery truck which were not listed in the gate pass. When Abogado was about to inspect the top of the truck, Masuta drove the truck and sped towards the warehouse area. Abogado saw the delivery truck proceeding in front of Building “A” where Masuta and his delivery helpers hurriedly unloaded wooden pads. Warehouse Section Head Caneta likewise saw Masuta and his helpers unloading wooden pads, five (5) pieces in front of Building A and another fifteen (15) at the side thereof.[15]

When the delivery truck driven by Masuta was about to leave Omnipack's compound, Abogado discovered and intercepted about seventeen (17) wooden pads inside the truck.[16]

Simultaneously, on the same day of 28 January 2010, Zenon Doblas (Doblas), a delivery driver of Omnipack, saw the delivery van driven by Caste heading to Building 4 instead of proceeding to the guardhouse for inspection. Thereat, Caste and his helpers unloaded forty (40) pieces of scrap wood. It was later found out that the said forty (40) pieces of scrap wood were not listed in the gate pass, thus not authorized to be loaded in the truck.[17]

Accordingly, Masuta and Caste were each issued a Hiling Paliwanag[18] on 28 January 2010 by Warehouse Section Head Caneta, advising them of their violation of Alituntunin Blg. V Sek 17 of the company Rules and Regulations or “Walang kapahintulutang paglabas ng anumang bagay na pag-aari ng kumpanya at iba pang kauri nito.” which is punishable by dismissal for the first offense. They were also directed to submit an explanation on their alleged violation of the said company rule. On even date, Masuta submitted his Letter[19] explaining his side of the incident.

On 29 January 2010, Caste, on the other hand, submitted his Letter[20] to clarify his version of the incident. On the said date, Masuta and Caste were placed under preventive suspension.[21]

On 3 February 2010, Omnipack conducted an administrative hearing regarding the incident that took place on 28 January 2010. Both Masuta[22] and Caste[23] attended the said hearing.

On 17 February 2010, Omnipack terminated the employment of Masuta and Caste effective 20 February 2010. They were each furnished their individual Termination Letter[24] via registered mail. They were also personally served with a copy of their Termination Letter which they refused to acknowledge.[25]

On 27 August 2010, the Labor Arbiter rendered a Decision dismissing the Complaint of petitioners for lack of merit.

Feeling aggrieved, petitioners appealed the Decision of the Labor Arbiter to the NLRC. Thus, on 11 February 2011, the NLRC rendered its Decision dismissing the appeal of petitioners for lack of merit.

Still undaunted, petitioners filed their Motion for Reconsideration, which the NLRC denied in its Resolution dated 16 March 2011.

Hence, the instant Petition.

The crux of the controversy is whether or not Masuta and Caste were validly dismissed from employment and were afforded due process.

The instant Petition is bereft of merit.

In cases of termination of employees, the well-entrenched policy is that no worker shall be dismissed except for just or authorized cause provided by law and after due process.[26] Dismissals of employees have two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and second, the legality in the manner of dismissal, which constitutes procedural due process.[27]

Masuta was dismissed by Omnipack for allegedly violating Alituntunin Blg. V Sek 17 of the company Rules and Regulations prohibiting the carrying of company-owned items outside the company premises or in the vernacular, “Walang kapahintulutang paglabas ng anumang bagay na pag-aari ng kumpanya at iba pang kauri nito.” Caste, on the other hand, was dismissed for allegedly violating Alituntunin Blg. V Sek 16 penalizing the act of hiding, harbouring or concealing items which are the fruits of any violation of company regulation, or, in the vernacular, “Paglilihim at o pagtatago ng anumang bagay na labag sa alituntunin. Ang pagkunsinti at/o pagkakaroon ng kaugnayan sa sinumang tao na naakusahan ng pang-uumit or pagnanakaw.” These grounds are among the just causes for termination of employment under Article 282 of the Labor Code, to wit:

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. (*Italicization supplied*)

Misconduct is defined as “the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.”[28] For serious misconduct to justify dismissal under the law, “(a) it must be serious, (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer.”[29]

Unarguably, the quantum of proof which the employer must discharge is substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[30]

In the case at bar, in his Letter[31] dated 28 January 2010, Masuta explained that it was never his intention to steal the wooden pads which were being used as cushion for the products when making deliveries. His only mistake was his failure to include in the gate pass the said wooden pads when he was about to leave Omnipack's compound. However, during the administrative hearing conducted on 3 February 2010, Masuta admitted having loaded extra wooden pads into the delivery truck to be given to checkers out of pakikisama.[32] Clearly, Masuta intentionally circumvented a strict company policy against the taking out of company property without consent or permission. This transgression was a serious offense that warranted his dismissal from employment and proved that Masuta's termination from work was for a just cause.

It is well to emphasize that Omnipack's charge of theft against Masuta was amply proven by substantial evidence consisting of the affidavits of various employees of Omnipack. In their respective affidavits, Warehouse OIC Tan,[33] Warehouse Clerk Duriman,[34] driver Lucas[35] and Security Guard Abogado[36] positively asserted that Masuta loaded into the delivery truck wooden pads not listed in the gate pass. Were it not for the timely discovery of the theft committed by Masuta, Omnipack could have been defrauded more by the amount it could have possibly earned since it invariably sells the wooden pads to interested employees at a reduced rate.

With respect to Caste, he explained in his Letter dated 29 January 2010 that he merely complied with the request of his delivery helpers to load the forty (40) pieces of scrap wood into the truck to be brought near the Administration Office for the payment of its total cost later that day. Nonetheless, during the administrative hearing conducted on 3 February 2010, Caste admitted that the said pieces of scrap wood were not included in the gate pass. He was also aware of the company policy against loading of scraps of wood into the delivery truck not within the time designated for payment.[37] It is quite apparent that Caste was aware of the infraction he committed against Omnipack but he chose to violate the company policy against loading of scraps of wood into the delivery truck not within the time designated for payment. Despite his good intentions to accommodate his delivery helpers, Caste still chose to violate Omnipack's policy, without regard to his responsibilities to the company.

Hence, We find no cogent reason to diverge from the findings of the NLRC that there was a valid ground for the dismissal of Masuta and Caste. Notably, the primary issue of whether or not Masuta and Caste committed violations of company regulations calls for a factual determination of the events that were obtaining when the alleged infractions were committed. Case law on the matter is decisive. Factual findings of the NLRC affirming those of the Labor Arbiter, both bodies being deemed to have acquired expertise in matters within their jurisdictions, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on this Court.[38] As long as their decisions are devoid of any arbitrariness in the process of their deduction from the evidence proffered by the parties, all that is left is for the Court to stamp its affirmation.[39]

As for the procedural due process of Masuta and Caste's termination, this Court likewise saw compliance with such requirement from Omnipack.

The long established jurisprudence holds that to justify the dismissal of an employee for a just cause, the employer must furnish the worker with two written notices. The first is the notice to apprise the employee of the particular acts or omissions for which his dismissal is sought. This may be loosely considered as the charge against the employee. The second is the notice informing the employee of the employer's decision to dismiss

him. This decision, however, 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 his representative, if he so desires. The requirement of notice is not a mere technicality, but a requirement of due process to which every employee is entitled.[40]

It is well settled that the basic requirement of notice and hearing in termination cases is for the employer to inform the employee of the specific charges against him and to hear his side and defenses. This does not, however, mean a full adversarial proceeding. The parties may be heard through pleadings, written explanations, position papers, memorandum or oral argument. In all of these instances, the employer plays an active role by providing the employee with the opportunity to present his side and answer the charges in substantial compliance with due process.[41]

In this case, Masuta and Caste were each furnished a Hiling Paliwanag on 28 January 2010 by Omnipack, through its Warehouse Section Head Caneta, advising them of their violation of Alitutunin Blg. V Sek 17 of the Company rules which is punishable by dismissal for the first offense. They were likewise required to explain their side of the incident which took place on even date. The following day, or on 29 January 2010, Omnipack issued individual Suspension Letters to Masuta and Caste informing them that they were preventively suspended in view of their violation of Alitutunin Blg. V Sek 17 of the company Rules and Regulations or “Walang kapahintulutang paglabas ng anumang bagay na pag-aari ng kumpanya at iba pang kauri nito.” We find that the Hiling Paliwanag and the Suspension Letter satisfy the due process requirement to apprise the employee of the particular acts or omissions for which dismissal is sought.

With regard to the requirement of a hearing, the essence of due process lies in an opportunity to be heard. Such opportunity was afforded to Masuta and Caste when they were each asked to explain their side of the story in the Hiling Paliwanag furnished to them on 28 January 2010. In fact, on even date, Masuta submitted his Letter explanation, while Caste, on the other hand, submitted his Letter the next day. Likewise, an administrative hearing was also held on 3 February 2010 giving Masuta and Caste ample opportunity to explain their side of the controversy.[42]

After finding cause for Masuta and Caste's termination, a final notice apprising them of the decision to terminate their employment was served.[43]

As for Caste's contention that he never received his Termination Letter,[44] We find the same specious. What appears from the records is that apart from the individual Termination Letter being mailed to Masuta and Caste, they were also personally served thereof which they declined to acknowledge. Caste was definitely aware of his termination from employment but only feigned ignorance of the same. Even granting arguendo that the post office was not able to deliver the 17 February 2010 Termination Letter and serve it on Caste, still it cannot be denied that he in fact received a copy of said Termination Letter upon accepting a copy of Omnipack's Position Paper where a copy of the said letter was attached as Annex "V." It should be noted that neither Article 277[45] of the Labor Code nor the Omnibus Rules implementing the Labor Code prescribe a time frame within which the termination letter of the employee must be served.[46] Indubitably, there was compliance with the second required notice on Caste's termination from employment.

We find that Omnipack had dispensed with its burden to prove the legality of Masuta and Caste's dismissal from service, both on the substantive and procedural aspect of termination of employment.

Verily, the public respondent NLRC, having acted correctly in the premises, did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment which is equivalent to an excess or lack of jurisdiction. The abuse of discretion

must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[47] Mere abuse of discretion is not enough.[48] Quite the contrary, public respondent NLRC issued the assailed Decision and Resolution in accordance with law and jurisprudence.

On a final note. The constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers. The commitment under the fundamental law is that the cause of labor does not prevent us from sustaining the employer when the law is clearly on its side.[49]

WHEREFORE, premises considered, the instant Amended Petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Librea-leagogo, (Chairperson), and Diamante, JJ., concur.

[1] Rollo, pp. 183-203.

[2] Id., pp. 204-217, Annexes “H-1” to “H-14” to the Amended Petition.

[3] Id., pp. 174-175, Annex “J” to the Petition.

[4] Id., pp. 166-173, Annex “I” to the Petition.

[5] Id., 55.

[6] Id., pp. 25-35, Annex “A” to the Petition.

[7] A wooden pad is a piece of plywood with a hole in the middle. It measures about 20x20 and is used as cushion to protect the products for delivery. Omnipack invariably sells the wooden pad to interested employees at a reduced rate of Php 5.50. See NLRC Decision dated February 11, 2011, id., p. 206.

[8] Id., pp. 26-27.

[9] Id., pp. 27-28.

[10] Id., p. 28.

[11] Id.

[12] Id., pp. 28-29.

[13] Id., pp. 55-67, Annex “C” to “C-12” to the Petition.

[14] Id., p. 56.

[15] Id., pp. 56-57.

[16] Id., p. 57.

[17] Id., p. 59.

[18] Id., p. 78, Annex “C-23” to the Petition; id., p. 93, Annex “C-38” to the Petition.

[19] Id., pp. 36-38, Annex “A-12” to “A-13” to the Petition.

[20] Id., p. 38, Annex “A-14” to the Petition.

[21] See Suspension Letter for Masuta, id., p. 79, Annex “C-24” to the Petition; See Suspension Letter for Caste, id., p. 94 to the Petition.

[22] See Minutes of Administrative Hearing for Masuta, id., p. 83, Annex “C-28” to the Petition.

[23] See Minutes of Administrative Hearing for Caste, id., p. 96, Annex C-41 to the Petition.

[24] See Termination Letter for Masuta, id., p. 263, Annex “M” to the Comment; see Termination Letter for Caste, id., p. 277, Annex “V” to the Petition.

[25] Id., p. 58 and 60.

[26] Triumph International (Phils), Inc. v. Apostol, G.R. No. 164423, June 16, 2009, citing Tirazona v. Court of Appeals, G.R. No. 169712, 14 March 2008, 548 SCRA 560; Shoemart, Inc. v. NLRC, G.R. No. 74229, 11 August 1989, 176 SCRA 385, 390.

[27] Id.

[28] Nagkakaisang Lakas ng Manggagawa sa Keihin (NLMK-OLALIA-KMU), et al., v. Keihin Philippines Corporation, G.R. No. 171115, August 9, 2010, citing Austria v. National Labor Relations Commission, 371 Phil. 340, 360 (1999).

[29] Id., citing Nagkakaisang Lakas ng Manggagawa sa Keihin (NLMK-OLALIA-KMU), et al., v. Keihin Philippines, supra, citing Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission, 387 Phil. 250, 261 (2000).

[30] Surigao Del Norte Electric Cooperative, Inc. v. Gonzaga, G.R. No. 187722, June 10, 2013, citing Caltex Philippines, Inc. v. Agad, G.R. No. 162017, April 23, 2010, 619 SCRA 196

[31] Rollo, pp. 36-37, Annex “A-12” to “A-13” to the Petition.

[32] Id., p. 83.

[33] Id., pp. 68-70 , Annex “C-13” to “C-15” to the Petition.

[34] Id., p. 71, Annex “C-16” to the Petition.

[35] Id.

[36] Id., pp. 72-73, Annex “C-17” to “C-18” to the Petition.

[37] Id., p. 96.

[38] China Banking Corporation v. Borromeo, G.R. No. 156515, October 19, 2004, citing Ignacio v. Coca-Cola Bottlers Phils., Inc., 365 SCRA 418 (2001).

[39] Id.

[40] CRC Agricultural Trading v. NLRC, G.R. No. 177664, December 23, 2009.

[41] Ventura v. Court of Appeals, G.R. No. 182570 , January 27, 2009, citing Cruz, Jr. v. Court of Appeals, G.R. No. 148544, July 12, 2006, 494 SCRA 643, 658-659.

[42] See Minutes of Administrative Hearing for Masuta, id., p. 83, Annex “C-28” to the Petition and Minutes of Administrative Hearing for Caste, id., p. 96, Annex C-41 to the Petition.

[43] See Termination Letter for Masuta, id., p. 263, Annex “M” to the Comment; see Termination Letter for Caste, id., p. 277, Annex “V” to the Petition.

[44] Rollo, p. 199.

[45] ART. 277 – MISCELLANEOUS PROVISIONS

x x x x

(b) x x x, 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 x x x.

[46] Salazar v. Philippine Duplicators, Inc., G.R. No. 154628, December 6, 2006.

[47] Ligeralde v. Patalinghug, G.R. No. 168796, April 15, 2010, citing Salma v. Hon. Miro, G.R. No. 168362, January 25, 2007, 512 SCRA 724.

[48] Manila Electric Company v. Barlis, G.R. No. 114231, June 29, 2004.

[49] Salazar v. Philippine Duplicators, Inc., supra.

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