

LEON G. REYES, JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, MERCURY DRUG CORPORATION, AND/OR VIVIAN QUE ASCONA, RESPONDENTS.

Ponente: SORONGON, J.

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SORONGON, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court assailing the April 29, 2011 Decision[1] and June 24, 2011 Resolution[2] of the National Labor Relations Commission (NLRC) which affirmed in toto the decision[3] of the Labor Arbiter, dismissing petitioner's complaint for illegal suspension and illegal dismissal against private respondent Mercury Drug Corporation with a directive to the latter to pay petitioner his proportional 13th month pay from the period January 1 to October 7, 2009.

The records bear the following salient facts:

Mercury Drug Corporation (MDC) is a domestic corporation engaged in the business of operating drug stores nationwide and distributing medicines, pharmaceutical products and selected grocery items to the public while private respondent Vivian Que Ascona is the president thereof.

MDC hired petitioner as a utility man on July 1, 1971[4] and was eventually promoted as merchandiser in 1991.[5] Petitioner was again promoted to Purchasing Assistant[6] on May 1, 2003 with an initial monthly salary of Php38,106.00 which was later raised to his current salary of Php55,256.00 per month. As Purchasing Assistant, he is responsible for examining the accreditation request from suppliers and finally recommending to Mrs. Corazon S. Lim (Mrs. Lim), Vice President for Merchandising, the approval of the accreditation of products to be displayed on the shelves of MDC outlets for sale to the public.[7]

Some of the products accredited and displayed for sale by MDC were Ever Bilena and Careline Cosmetic products supplied by DSS Trading/Ever Bilena Cosmetics Inc. (EBCI) through its Key Accounts Specialist, Richard Go (Mr. Go). The work of Mr. Go was subsequently taken over by Renato Añel (Mr. Añel), Current Sales Manager of EBCI.

Sometime in February, 2008, Mr. Añel inquired with Mrs. Lim about the "listing fee" which his predecessor, Mr. Go, had been paying to MDC for the accreditation of EBCI's products. Mrs. Lim, however, told Mr. Añel that no "listing fee" was ever imposed by MDC. On February 14, 2008, Mrs. Lim called petitioner and another supervisor named Florante Gandoza (Mr. Gandoza) to her office, and asked them about the so called "listing fee" and the discount in display rentals but both denied any knowledge thereof.

Meanwhile, petitioner submitted a letter[8] to Mrs. Lim on April 16, 2008, applying for optional retirement based on his 37 years of service. No action, however, was taken by MDC.

On June 2, 2008, petitioner received a show-cause notice[9] from MDC requiring him to explain why he should not be terminated for dishonesty for allegedly receiving money from Mr. Go to facilitate the accreditation of Ever Bilena products. The "show-cause notice" came about after Mr. Go implicated petitioner during the May 30, 2008

administrative investigation on the dishonesty case against Mr. Gandoza, wherein the latter received a total amount of Php195,000.00 as "listing fees" for Ever Bilena products. Immediately, petitioner submitted his written explanation denying the charge of dishonesty and calling Mr. Go a big liar.[10]

On June 6, 2008, Mr. Go executed a sworn statement[11] stating that in 2004, in order to facilitate the accreditation of some Ever Bilena products, petitioner asked money from him which he gave after getting the approval of his superior.

On June 23, 2008 petitioner was suspended for 30 days. Thus, an investigating committee was formed to conduct hearing on the charges against petitioner.

On August 13, 2009, petitioner filed with the Labor Arbiter a complaint for illegal suspension, non-payment of holiday pay, service incentive leave, 13th month pay, retirement benefits, damages and attorney's fees. MDC's counsel then charged[12] petitioner with Estafa before the Quezon City Prosecutor's Office which was later on dismissed.

On October 8, 2009, petitioner received from MDC a notice of termination dated October 7, 2009, for dishonesty and loss of trust and confidence. Accordingly, petitioner's complaint with the Labor Arbiter was amended on November 11, 2009, to include illegal dismissal as a cause of action.

On March 26, 2010, the Labor Arbiter rendered a decision[13], the dispositive portion whereof reads:

"WHEREFORE, judgment is hereby made DISMISSING as wanting in merit the charge of illegal dismissal but ordering the respondent company to pay Complainant a proportionate 13th month pay (January 1, 2009 to October 7, 2009).

Vivian Que Ascona is hereby dropped as party respondent.

Other claims are DISMISSED for lack of merit

SO ORDERED."

Therefrom, petitioner appealed[14] to the NLRC but by Decision[15] dated April 29, 2011, it affirmed in toto the ruling of the Labor Arbiter in this fashion:

"WHEREFORE, finding no reversible error in the decision under appeal, the appeal is DISMISSED for lack of merit and the decision dismissing the complaint is AFFIRMED en toto.

SO ORDERED."

Petitioner's motion for reconsideration[16] likewise failed.[17] Hence, this recourse raising as issues the following:[18]

- Whether or not the NLRC gravely erred in affirming in toto the finding of the Labor Arbiter that herein petitioner was not illegally suspended by the respondents;
- Whether or not the NLRC gravely erred in affirming in toto the finding of the Labor Arbiter that herein petitioner was not illegally dismissed by the respondents;
- Whether or not the NLRC gravely erred in affirming in toto the finding of the Labor Arbiter that petitioner is not entitled to attorney's fees, moral and exemplary damages; and
- Whether or not the NLRC gravely erred in affirming in toto the finding of the Labor Arbiter that Vivian Que Ascona should be dropped as party-respondent.

We filter these issues into two main issues:

- Whether or not petitioner was illegally suspended; and
- Whether or not petitioner was illegally dismissed.

On the first issue, petitioner contends that his suspension by MDC is illegal due to the following grounds: (1) it is tainted with bad faith because he was deprived of the opportunity to confront Mr. Go, his accuser during the committee hearing; (2) that the investigative committee failed to produce any rules and regulation of the proceedings before the investigating committee; and (3) the preventive suspension lasted for more than one year.

We disagree.

It is an established rule that preventive suspension in administrative cases is not a penalty in itself. It is designed as a measure of precaution so that the employee who is charged may be separated, for obvious reasons from the scene of his alleged misfeasance while the same is being investigated.[19] An 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 his co-workers.[20] It is undisputed that petitioner, by virtue of his position, was in direct contact with MDC's business partners, and possessed documents pertaining to MDC's accreditation process which he could manipulate while the latter's investigation of the charge against him is on-going. The NLRC thus correctly found that:

"Respondent MDC was merely exercising its right to self-preservation when it placed complainant under preventive suspension. The company felt that complainant's irregular act of soliciting a listing fee would further erode the goodwill and the good name it has generated towards companies who trusted it with their products for long periods of time. The preventive suspension of the employee(s) responsible thereof, is one way of abating the damage to its name."

The lack of confrontation between petitioner and his accuser and the absence of formal rules and regulations during the proceedings before the investigative committee does not mean

that petitioner has been deprived of due process. In administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense.[21] There is no requirement under the Labor Code for the investigative committee to adopt a fixed set of rules in the conduct of its proceedings. Due process is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof[22]. The essence of due process in administrative proceedings is an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of.[23] Before an employee can be validly dismissed, the Labor Code requires the employer to furnish the employee with two (2) written notices: (a) a written notice containing a statement of the cause for termination to afford the employee ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires; and (b) if the employer decides to terminate the services of the employee, the employer must notify him in writing of the decision to dismiss him, stating clearly the reasons therefor.[24] The above requisites have been complied by private respondent in this case.

Also, the Implementing Rules and Regulations of the Labor Code provides that while no preventive suspension shall last longer than thirty (30) days, an employer has the option to extend the period of suspension provided that during the period of extension, the employer pays the wages and other benefits that are due to the worker.[25] When MDC extended the preventive suspension of petitioner on account of the prolonged investigation conducted by its investigative committee, it only exercised its legal option to just pay the wages and benefits due to

petitioner instead of fully reinstating him, which fact is not disputed by petitioner.

On the second issue, petitioner disputes the factual findings of the NLRC and the Labor Arbiter and insists that his dismissal was based on mere speculation, surmises or conjectures of respondent and probably done to prevent him from receiving his retirement and other labor benefits.

It is well-settled that this Court is not a trier of facts and that the remedy of certiorari is limited to issues involving grave abuse of discretion. It was held in the case of *Dela Rosa vs. Michaelmar Philippines, Inc., et al.*[26], that factual findings of quasi-judicial bodies are generally binding as long as they are substantially supported by evidence. Also in the case of *Bolinao Security and Investigation Service, Inc. v. Toston*,[27] it was ruled:

"It is axiomatic that factual findings of the NLRC affirming those of the Labor Arbiter, who are deemed to have acquired expertise in matters within their jurisdiction, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on this Court. As long as their Decisions are devoid of any unfairness or arbitrariness in the process of their deduction from the evidence proffered by the parties before them, all that is left is the Court's stamp of finality by affirming the factual findings made by the NLRC and the Labor Arbiter."

Here, we do not see any cloud of arbitrariness and caprice in the way the labor tribunals appreciated the evidence presented before them. Hence, their partial finding shall not be disturbed anymore. An affirmance is therefore indicated.

Under Article 282[28] of the Labor Code, an employee's dishonesty may qualify as a just cause for termination under serious misconduct or willful breach of trust. It has been held that misconduct "involves 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 a mere error and judgment," and to be a valid ground for dismissal, it must be serious or of a grave or aggravated character and not merely trivial or unimportant and connected with the work of the employee.[29]

Loss of trust and confidence applies to cases involving employees who occupy positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer's money or property.[30] To be a valid ground for an employee's dismissal, loss of trust and confidence must be based on a willful breach,[31] and such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse.[32] In dismissing an employee on the ground of loss of confidence, it is sufficient that the employer has a reasonable ground to believe, based on clearly established facts, that the employee is responsible for the misconduct and the nature of his participation renders him unworthy of the trust and confidence demanded by his position.[33]

It is undisputed that petitioner is a supervisor occupying a position of trust and confidence, who is entrusted with the examination of the accreditation documents of MDC's suppliers for the purpose of recommending the approval of the products that it will accredit for sale to the public. As found by both the Labor Arbiter and NLRC, MDC was able to prove by substantial evidence the existence of petitioner's nefarious scheme of receiving "listing fees," without the latter's permission, to expedite the processing of the accreditation of supplier's products, which would otherwise normally last from two to three months.[34] Petitioner's dishonest activities did not only breach MDC's trust and confidence but also tarnish its business reputation. In fine, the NLRC thus correctly found that petitioner was not illegally dismissed because his dismissal is grounded on a just cause prescribed by the Labor Code.

We equally agree with the labor tribunals that petitioner is not entitled to retirement benefits. As held in the case of *Eastern Shipping Lines vs. Sedan*,[35] the age of retirement is primarily determined by the existing agreement

between the employer and the employees, and in the absence of such agreement, it shall be fixed by law. Since petitioner did not reach the prescribed retirement age under the Labor Code[36], his application for optional retirement would be subject to his compliance with the procedures outlined in MDC's Optional Retirement Program and its prior approval.

Verily, petitioner's long years of service cannot be used to obviate his malfeasance but should be taken against him. The finding of petitioner's dishonesty and abuse of authority reflects a regrettable lack of loyalty, which he should have strengthened through his long years of service with MDC instead of betraying it by acts inimical to the interest of the latter. Petitioner's case is similar to the case of *Etcuban vs. Supicio Lines*[37] where the Supreme Court held that if an employee's length of service is to be regarded as a justification for moderating the penalty of dismissal, it will actually become prize for disloyalty, perverting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of all undesirables.

Petitioner's imputation of bad faith on respondent's part for not allowing him to attend the other hearings and confront persons allegedly summoned during the other hearings of the investigative committee also lacks merit. As discussed above, the element of due process was duly observed by private respondent's adherence to the twin notice requirement and the undisputed fact that petitioner was given reasonable opportunity to explain his side and present evidence during the proceedings before the investigative committee.

The above findings that petitioner was neither illegally suspended nor illegally dismissed, coupled with petitioner's failure to substantiate any procedural infirmity on his dismissal clearly negate his claims for backwages, damages, and attorney's fees. However, as correctly held by the Labor Arbiter and NLRC petitioner, nonetheless, is entitled to his 13th month pay for the year 2009. The finding that Vivian Que Ascona, MDC's President, should be dropped as party respondent is also sustained for failure of petitioner to present any proof that she committed any actionable wrong in connection with his dismissal.

WHEREFORE, the petition is DENIED. Accordingly, the April 29, 2011 Decision[38] and June 24, 2011 Resolution[39] of the National Labor Relations Commission (NLRC) are AFFIRMED in toto.

SO ORDERED.

[*]Gonzales-Sison, (Acting Chairman), and [**]Ybanez, JJ., concur.

[*] Acting Chairman per Office Order No. 485-14-RSF dtd. 11/24/14.

[**] Senior Member per Office Order No. 485-14-RSF dtd. 11/24/14.

[1] Rollo pp. 229-244.

[2] Id., pp. 266-267.

[3] Id., pp. 173-185.

[4] Id., p. 31. Copy of appointment letter attached as Annex "B" of the petition.

[5] Id., p. 32. Copy of MDC Personnel Action Memo attached as Annex "C" of the petition.

[6] Id., p. 35. Copy of MDC Personnel Action Memo attached as Annex "F" of the petition.

[7] Id., p. 230.

[8] Id., p. 110.

[9] Id., p. 124.

[10] Id., pp. 41-42.

[11] Id., pp. 121-123. Mr. Go's full name is Mr. Richard JK Cruz Go

[12] Id., pp. 136-141.

[13] Supra note 3.

[14] Id., pp. 518-572.

[15] Supra note 1.

[16] Rollo, pp. 245-254.

[17] Supra note 2.

[18] Rollo, p. 14 and 285.

[19] Bautista vs. Peralta, G.R. No. L-21967, September 29, 1966 (18 SCRA 223).

[20] Philippine Airlines, Inc. vs. NLRC, 354 Phil. 37, 43 (1998). Section 3, Rule XIV of the Omnibus Rules Implementing Book V of the Labor Code provides that:

Sec. 3. 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.

[21] Samalio vs. Court of Appeals, G.R. No. 140079, March 31, 2005.

[22] Perez vs. PT & T, et al., G.R. No. 152048, April 7, 2009.

[23] Arboleda vs. NLRC, G.R. No. 119509. February 11, 1999.

[24] Id.

[25] Sections 4, Rule XIV of the Omnibus Rules Implementing Book V of the Labor Code provides that:

"Section 4. Period of suspension. - No preventive suspension shall last longer than 30 days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the workers. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker." (underlining supplied)

[26] G.R. No. 182262, April 13, 2011.

[27] G.R. No. 139135, January 29, 2004, citing PAL vs. Arthur B. Tongson, G.R. No. 153157, October 14, 2003.

[28] Article 282 of the Labor Code provides that:

Article 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 representatives; and

(e) Other causes analogous to the foregoing.

[29] John Hancock Life Insurance vs. Davis, 564 SCRA 592 (2008).

[30] Del Rosario vs. Makati Cinema Square Corporation, G.R. No. 170014, July 3, 2009.

[31] Easycall Communications Phils., Inc. v. King, 478 SCRA 102 (2006).

[32] San Miguel Corporation vs. NLRC, G.R. No. 153983, May 26, 2009.

[33] Del Rosario case supra note 37.

[34] The NLRC quoted the Labor Arbiter's decision that substantial evidence of petitioner's of dishonesty consisted of the following:

1. Affidavit dated September 16, 2009 of Renato Anel, Sales Manager of Ever Bilena Cosmetics, Inc. (Annex 1 respondent's Position Papers).

2. Affidavit dated June 6, 2008 of Richard JK Cruz, Account Specialist of DDS Trading (Annex A-A-2)

3. Report of the Investigating Committee (Annex 7)

4. Complainant-Appellant dated October 6, 2009 of Edsel R. Manuel, Director for Administration of Respondent Company, attested before Assistant Prosecutor Tobias (Annex 8).

[35] G.R. No. 159354, April 7, 2006.

[36] Article 287 of the Labor Code provides that an employee may retire upon reaching 60 years or more, but not beyond 65 years, and has served at least 5 years in the same establishment.

[37] G.R. No. 184410, January 17, 2005.

[38] Supra note 1.

[39] Supra note 2.

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