

SAN MIGUEL CORPORATION, CARLATAN B-MEG DIVISION AND ROMEO BABAO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND RAFAELITO JUICO, RESPONDENTS.

G.R. No. 100168. July 08, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for review on certiorari seeks to annul and set aside the Resolution of respondent National Labor Relations Commission dated April 30, 1991, the dispositive portion of which provides as follows:

"WHEREFORE, the decision appealed from is hereby reversed and set aside and a new one entered directing the respondent to reinstate the complainant to his former position without loss of seniority rights and with full backwages from the time of his dismissal up to actual reinstatement but in no case to exceed three (3) years.

"SO ORDERED." (p. 45, Rollo)

The facts of the case are briefly narrated below:

"After a sales meeting of the personnel of the Carlatan B-Meg Sales Office in the afternoon of July 20, 1988, Rafaelito M. Juico, checker, informed the Sales Office Supervisor, Mr. Romeo Babao, that the collection for that day amounted to P80,353.20 of which P25,269.45 was in cash while the balance was in the form of checks which he thereafter placed inside the vault.

"The next day, together with his officemates Mr. Agbunag and Mr. Velasco, Rafaelito M. Juico discovered that the vault had been opened, the previous day's cash collection missing, while the checks were still inside the vault.

"As a consequence of the incident, Mr. Babao was reassigned to Manila, and Juico was transferred to the Laoag B-Meg Sales Office.

"Rafaelito M. Juico was subsequently investigated by the respondent on the following dates: July 26, 1988 at Carlatan, San Fernando, La Union; July 27, 1988 at Manila; August 3, 1988 at Carlatan, and on September 20 and 23, 1988 at Manila.

"Informed that his mother had become seriously ill and had been brought to a hospital in Pampanga, Rafaelito M. Juico decided to stay with his ailing mother, who died soon thereafter.

"At his mother's wake, Rafaelito M. Juico was apprised by his relatives that law enforcement authorities were looking for him in connection with a case of qualified theft filed against him by respondent's Mr. Cornejo.

"After posting bail for his provisional release, Rafaelito M. Juico reported to the Carlatan B-Meg Sales Office where he requested the Personnel Manager to dismiss his case, as he claims to have nothing to do with it, but he was told that the criminal complaint had already been filed in San Fernando, La Union.

"On August 25, 1988, the respondent directed the complainant to explain his unauthorized leave since August

5, 1988, which the latter answered. Relative to his unauthorized absences, complainant was sent memoranda on September 14, 1988 and on October 28, 1988, asking him to put forth reasons why he should not be charged of being AWOL. Both memoranda were responded to by the complainant. With the dismissal by the Provincial Prosecutor of the criminal complaint against him, Rafaelito M. Juico sought to be reinstated to his former position, only to receive the information that his services had been terminated at the close of business hours of April 11, 1989 by the respondent for the following reasons: (a) serious misconduct for possible involvement in the burglary incident; and (b) abandonment of work for failure to report for work for nine (9) days after investigation." (pp. 38-40, Rollo).

Labor Arbiter Melquiades Sol D. del Rosario disregarded Rafaelito Juico's (hereafter, "Juico") contention that he had been denied due process, since petitioner San Miguel (hereafter, "San Miguel") had undertaken a series of administrative investigations which thus provided Juico more than ample opportunity to be heard and to defend himself from the charges levelled against him. The Labor Arbiter further pointed out that the dismissal of the criminal complaint against Juico was no guarantee of reinstatement to his former position, since petitioner's act of terminating the employee from his work "is simply an exercise of employer's prerogative for the protection of its interest."

Juico's dismissal was upheld premised on "serious misconduct for possible involvement in the burglary incident, and/or abandonment."

Juico appealed. The NLRC reversed the Labor Arbiter and declared Juico's termination for employment illegal, there being no proof other than possession by Juico of a set of keys and knowledge of the safely vault's combination.

Hence, this petition by San Miguel, reiterating breach of trust as a just cause for termination, since Juico had been performing "functions which, by their nature, required the full trust and confidence of his employer.

The petition is without merit. Evidence brought out during the hearing of his case shows that Juico was employed as "Checker." The position belongs to the rank and file category of employees. During his investigation, Juico enumerated his functions, as follows:

"T: Bilang Carlatan B-Meg Sales Office (checker) ay ano-ano ba ang iyong trabahong ginagampanan?

S: Ito po ay ang mga sumusunod:

- 1) Pagwala ang Sales Office Supervisor (SOS) ay ginagampanan ko ang kanyang tungkulin katulad ng paggawa ng report.
- 2) Inventory sa hapon at rechecking ng bodega stock tuwing umaga.
- 3) Paggawa ng Daily Sales and Movement Report.
- 4) Nagiisyu ng resibo ng bodega sales sa mga customers.
- 5) Supervision sa unloading ng incoming shipment at outgoing load for route.
- 6) Pag wala din ang SOS ay nirereceive ko ang benta ng salesman.
- 7) Pagwala din ang SOS ay ako na ang nagrereemit ng cash sales/checks sa Metro Bank armor car (na dumarating) sa pagitan ng alas 10 ng umaga at alas 12 ng tanghali.
- 8) Ang SO(P) din, ang hindi naremit na benta ay pag wala siya ay ako na ang nagtatago sa Mosler Safety vault na-naka embed sa floor sa loob ng Carlatan B-Meg Sales Office. Kinabukasan ay ako na ang nagrereemit kong wala din ang SOS.

9) Dahil walang Security Guard ay ako na ang nagsesecure ng padlock ng bodega at ng sales office. Ang mga susi dito ay nasa aking possession sa aking paglabas at paguwi ng compound. Record of Investigation, July 26, 1988, Annex '1,' petitioner's (Juico's Position Paper)" (pp. 13-14, Rollo) (emphasis ours)

As regards the discharge of certain duties in the absence of his Sales Supervisor, Romeo Babao (Babao, for brevity) the latter testified as follows:

"ATTY. FE:

Q - During the time that you were in the Sales Office who accepts the cash that are paid to the Sales Office?

A - It's me sir.

Q - Is it not a fact even in your presence you delegated such functions to Rafaelito Juico?

A - Yes sir.

Q - And what is your purpose for that, Mr. Witness?

A - For facilitating the work sir.

Q - Is it not a fact that the handling of cash requires a high degree of trust on the part of the employee concerned.

A - Yes sir.

Q - And that is because the position of this Sales Office Supervisor requires a high degree of trust, Mr. Witness?

A - Yes sir.

Q - How about the position of a checker?

A - I trust him, sir.

Q - You trust him, supposed to be you do not know if the company trust him, is that correct?

A - As checker you handle the cas(h) flow meaning to say

COURT:

Q - Is the function of handling cas(h) with the directive of the company in Manila or was it from your directive?

A - As I have discussed earlier he acted many times as Sales Officer Supervisor, your Honor.

Q - Where did that authority come from? Did that come from Manila or (from) your instruction only?

A - It is from my instruction, your Honor.

ATTY. FE:

Q - Is it not a fact that almost all your functions as Sales Office Supervisor you delegate to Rafaelito Juico?

A - I delegate to him during my absence.

Q - By the way as the Head of the Office, will you please inform us the functions of a checker?

A - I already told you before.

Q - Please inform us again Mr. Witness?

A - The functions of a checker are: To check the area, arrival and, the deliveries of stocks from the sales office to the outlets, sir.

COURT:

Q - Is that all the functions of a checker?

A - He acted as Sales Office Supervisor, (his) functions (are) related to the operation if the Sales Office Supervisor is not around, your Honor.

Q - Is that a part of the functions of a checker?

A - No your Honor (underscoring supplied for emphasis)

Q - And that instruction delegating the work of a Sales Supervisor to the checker merely came from you?

A - Yes, your Honor, (underscoring supplied (TSN, July 10, 1990, Criminal Case No. 2437 pp. 62, 63, 64 and 65)." (pp. 88-90, Rollo) (emphasis ours)

Thus, while Art. 283(c) of the Labor Code allows an employer to terminate an employment for "willfull breach by the employee of the trust reposed in him by his employer or duly authorized representative," the basic premise for dismissal on this ground, is that the employee concerned holds a position of trust and confidence and it is the breach of this trust that results in the employer's loss of confidence in the employee (*Quezon Electric Cooperative v. NLRC*, G.R. No. 79718-22, April 12, 1982, 172 SCRA 88 at p. 94).

Juico's enumerated duties do not include the receipt of cash collections. Babao had testified that this was a duty assigned to Juico to be performed in Babao's absence. The expected trust and confidence, inherent in an employer-employee relationship, is therefore not present, since Babao is not Juico's employer, but merely his supervisor.

On the issue of "serious misconduct for possible involvement in the burglary", employers are generally allowed wider latitude of discretion in terminating managerial personnel, or those of similar rank, performing functions which, by their nature, require the employer's full trust and confidence. However, the termination of employment of ordinary rank and file employee based on the same ground requires proof of involvement in the events in question (*Manila Midtown Commercial Corporation v. NUHRAIN (Ramada Chapter)*, G.R. No. 57268, March 25, 1988 159 SCRA 212).

We note that the Regional Trial Court had acquitted Juico in the Criminal Case of Theft (Case No. 2437 (see Annex "D," p. 144, Rollo).

Acquittal of an employee in a criminal case filed against him by his employer does not guarantee his reinstatement if the employer has lost confidence in him (*Ocean Terminal Services, v. NLRC*, G.R. No. 85446, May 27, 1991; 197 SCRA 491; *Mercury Drug Corporation v. NLRC*, G.R. No. 75662, September 15, 1989, 177 SCRA 580); even the dropping of a criminal prosecution for an employee's alleged misconduct does not bar his dismissal (*Starlite Plastic Industrial Corp. v. NLRC*, G.R. No. 78491, March 16, 1989, 171 SCRA 315). However, in such cases, there is still some basis for the loss of trust as when the employer has reasonable grounds to believe that the employee is responsible for the misconduct. In the case at bar, Juico was acquitted precisely because his actual involvement or participation in the event has not been proven. His dismissal, therefore, based on breach of trust is illegal.

The NLRC had correctly observed:

"We cannot see Our way clear into the adequacy of the respondent's contention that it was compelled to terminate the complainant's services on the ground of 'serious misconduct' for possible involvement in the burglary, there being no proof, other than possession by the complainant of a set of keys and knowledge of the safe vault's combination, adduced to substantiate such ground." (p. 44, Rollo)

The Regional Trial Court in its decision in the Criminal Case 2437 stated:

"x x x. The evidence for the prosecution and the defense are one and the same and that not only the accused knows the combination of the safe and holds the key to the vault. The original key is held by Romeo Babao, the Sales Supervisor and the duplicate is held by the accused. Nothing in the evidence for the prosecution directly points to the accused as the same persons who perpetrated the crime as charged in the information. The evidence for the prosecution is merely based on inference that since the accused held the key and knows the combination, could have logically committed the crime. However, the Court perceives the fact that other persons as stated above who knew the combination and have access one time or another to the keys and combination of the safe. This places the other three persons, namely Mr. Senen, Mr. Cruz and Mr. Babao to be in the same position and all are fairly and similarly situated as that of the accused. Considering the circumstances under which the other three aforementioned persons herein, there was no impossibility of committing the offense complained of. The possibility or impossibility of committing the crime as charged varies apropos the circumstances under which the said persons were in. Nonetheless, the possibility of any of them committing the crime as charged is not impossible. x x x." (pp. 154-155, Rollo)

The NLRC therefore committed no grave abuse of discretion in stating that:

"Where the termination of an employee is sought on so serious a charge as theft, as in the case at bar, the employer is required, considering that what is at stake is the means of livelihood of the employee, to furnish proof that the employee whose services are being dispensed with has in fact committed the offense of which he is charged." (p. 13, Rollo)

and in ruling against Juico's dismissal.

ACCORDINGLY, the petition is hereby DISMISSED for lack of merit. The temporary restraining order (TRO) issued on June 26, 1991 is LIFTED. Costs against petitioner.

SO ORDERED.

Cruz, (Chairman), Grino-Aquino, and Bellosillo, JJ., concur.

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