

**LEVY AGAO, SEBASTIAN OCMER, MARIO MORANTE, ROSITO
QUILING, PABLITO GABARDA AND EDMUNDO ABITAN,
PETITIONERS, VS. HONORABLE THIRD DIVISION OF THE NATIONAL
LABOR RELATIONS COMMISSI...**

G.R. No. 102936. October 16, 1997

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

In this petition for certiorari, petitioners assail the decision dated August 22, 1991 of the National Labor Relations Commission in NLRC CA No. L-000147-91 which affirmed with modification the decision of Labor Arbiter that petitioners were validly dismissed. It, however, directed respondent to pay petitioners the sum of P1,000.00 each for failure of the respondent to comply with the constitutional requirement on due process in dismissing petitioners.

Petitioners were delivery workers of private respondent Cathay Pacific Steel Melting Corporation (CAPASCO). They were assigned by group to their respective delivery truck. Each group consisted of a driver and two (2) or three (3) helpers. One group was composed of Carlos Elmido as driver with Honorio Deladia, Edgardo Valenzuela and Columbus Bolabola as helpers; the second group was composed of Levy Agao as driver with Rosito Quiling and Pablito Gabarda as helpers; and the last group was composed of Mario Morante as driver with Sebastian Ociner and Edmundo Abitan as helpers.

On February 10, 1989, the company's checker discovered an attempt by Elmido's group to bring out twenty (20) steel bars, 12 mm. X 25 ft. in size, by inserting it in between the longer ones for dispatch. As a result thereof, the group of Elmido was brought to the police headquarters of Cainta, Rizal, where they were subjected to investigation. During the said investigation, Columbus Bolabola admitted his participation in the attempted theft of the company's steel bars. He also implicated the other members of the group. Due to his disclosure, private respondent did not allow the group of Elmido to report for work.

On March 6, 1989, Bolabola executed affidavits alleging that the group of Agao and Morante had committed pilferages of private respondent's steel bars on several occasions. He also alleged that he knew of such pilferages because he had participated and benefited from such pilferages. With respect to the group of Morante, Gomer and Abitan, he narrated how the said group pilfered the company's steel bars on October 24, 1988, October 29, 1988 and on November 2, 1988, thus:

"4. Na noon ngang araw na iyon, ika-27 ng Oktubre 1988, isa sa pinagdeliberan namin ay ang New Liwayway Hardware sa may Kalookan; na ang idineliber namin noon sa nabanggit na hardware store ay kabilyang 10 mm x 20 ft ngunit ang pagkarga ay sumobra ng 23 piraso (2 bungkos at tatlong iraso, tigsasampu bawat bungkos) hindi napansin ng checker; na ang sobrang kabilya ay ibinenta roon sa Constancia Junk Shop sa may Laon-Laan, Sampaloc, Maynila; na doon sa tabi ng kalsada malapit sa Constancia Junk shop ay inihulog naming dalawa ni Abitan ang sobrang kabilya; kinatulong niya ako; at si Abitan ay nagpaiwan sa naturang

lugar upang ibenta ang kabilya; na ang trak namin ay huminto at naghintay sa unahan; at hindi gaanong katagalan ay dumating si Abitan at inabutan niya ako ng P150 (1 piraso - P100 at 1 piraso - P50); pagkatapos, sabi sa akin ni Abitan na huwag daw akong mag-iingay at huwag magsalita sa opisina namin; na pagkatapos nito ay ipinagpatuloy namin ang pagdeliver ng kabilya sa ibang customer; at pag-uwi ko mula sa trabaho ay nakita kong nag-inuman sina Morante, Gomer at Abitan sa isang lugar sa Cainta kung saan ang mag-ari ng tindahan ay pinsan ni Gomer; at niyakag nila akong uminom ng tagay ng beer-gin na inabot sa akin ni Gomer at sabi niya sa akin 'kung pera, 'wag kang mag-alala. Basta maaga ang pasok, kikita tayo.'

5. Na isa ring pagkakataon na dumale ang naturang grupo ay noong Oktubre 29, 1988; na ang ninakaw nila mula sa Capasco ay misroll billets na dalawang piraso na humigit kumulang ay tumimbang ng 40 kilo ang bawat isa; na ang nabanggit na misroll billets ay inipit sa kabilya na idineliber namin sa araw na iyon; na kami ay nagbiyahe noon sa Bulacan at pagbalik namin sa Maynila, sa isang lugar ng North Expressway ay inalis namin ang nakaipit na billets; kinatulong ako nina gomer at Abitan at si Morante ay nagkunwang iniinspeksiyon ang kalagayang sasakyan; ang nabanggit na billets ay tinakpan ng kahoy at ito ay may kasama pang scrap bars na humigit kumulang ay 25 kilo ang bigat; na ito naipuslit na scrap metals ay ibinenta roon sa Constancia Junk shop; ang trak ay huminto at naghintay sa unahan; si Abitan ang nagpaiwan para ibenta ang scrap metals; pagkatapos, dumating si Abitan at sabi niya ay wala pang bayad dahil ang tauhan ng junk shop ay kukuha pa ng pera at balikan na lang daw namin; pagkatapos, (sic) tuloy ang deliber sa lahat na kustomer ay nakakupit sila ng 16 ng kabilya, 10 mm x 20 ft. at ito ay ipinagbili sa constancia junk shop at inabutan ako ng P100 ni Abitan at nagtaka ako kung bakit P100 lang ang parte ko; sa tantiya ko ay hindi ako nabigyan ng kaparte doon sa pinagbilhan ng scrap metals;

6. Na ang pangatlong pagkakataon na natandaan kong nagnakaw sa Capasco ang naturang grupo ay noong Nobyembre 2, 1988; na ang ninakaw sa pagkakataon na ito ay kabilya, 3 bungkos (tigsasampung pirasong piraso bawat bungkos), ang sukat ay 10mm x 20 ft; na ang naturang kabilya ay pinasobra sa tamang bilang at hindi naman napansin ng checker; na kami ay may delivery noon sa Bulacan at sa isang tabi ng North Expressway ay inilabas nila, katulong ako, ang inipit na kabilya at itinago9 sa chassis dahil takot silang makita ito ng guwardiya ng kustomer na pinagdedeliberan namin sa Bulacan; pagbalik sa Maynila ay ibinenta ang nabanggit na kabilya at si Abitan ang nagpaiwan upang magbenta sa Constancia Junk shop; ang trak namin ay huminto at naghintay sa unahan; pagkatapos, dumating si Abitan at binigyan niya ako ng kaparte na P200."[1]

For the Agao group, the pilferages were committed between November 5 to December 21, 1988 and between January 9 to 27, 1989. He, thus, narrated:

"4. Na napag-alaman ko na ang grupong ito ay nagnanakaw pala ng kabilya sa capasco at ito ay nakita ko noon ika-5 ng Nobyembre 1988 mismo, unang sama ko sa grupong naturan;

5. Na noong araw na iyon ay bigla ako idinestino sa grupo na ito at lingid sa aking kaalaman ay mayroon na pala silang isinigit na 4 na bungkos ng kabilya, tigililimang piraso bawat bungkos, may sukat na 16mm x 20 ft, doon sa mas mahabang kabilya na idineliber noon araw na iyon; na habang kami ay tumatakbo sa Maynila ay pinagtatanong ako ni Gabarda ng ganito; "sinong nagpasok sa iyo?" Sagot ko naman ay ako lang. Tinanaong naman ako "Kapatid mo ba si Lou (bolabola na dating empleyado ng Capasco)? Sabi ko: "oo". Tanong ulit: Tiyuhin mo ba si Kiko (Francisco Llana - maintenance head ng Capasco)?" Sagot ko uli si Gabarda: " Sinong naglagay sa iyo sa trak?" Sabi ko si santi (Santiago Pascual - Delivery Dispatching In-Charge). Pagkatapos, sabi ni Gabarda: "Alam mo na rito?" Sagot ko: "Di ko alam." Dagdag niya: 'May karga tayo. Huwag kang maingay kay Tiyo Kiko mo." Sagot ko naman: "Hindi, hindi ako magiingay diyan." Pagkatapos, huminto ang trak sa isang kalsada na madalang ang sasakyan inilabas nina Gabarda at Quiling ang inipit na kabilya at kinatulong ako: pagkatapos ay tumuloy kami sa Constancia Junk Shop sa may Laon-Laan, Sampaloc, Maynila at doon ipinagbili at tinulungan siya ng junk shop personnel na buhatin ang kabilya; samantala ang trak namin ay huminto at naghintay sa unahan; pagkatapos, dumating si Quiling at binigyan ako ng P200 bilang kaparte ko doon sa pinagbilhan ng ipinuslit na kabilya;

6. Na ang naturang grupo ay kasama ko sa pagitan ng ika-5 ng Nobyembre 1988 hanggang ika-21 ng Disyembre 1988 at sa pagitan ng ika-9 ng Enero 1989 hanggang ika-27 ng Enero 1989;

7. Na sa panahon na iyon ay dalawa o tatlong beses sa isang linggo kung sila'y magnakaw ng kabilya at ang iba nilang biktima ay kustomer ng Capasco na kinukupitan nila ng kabilya kung hindi mahigpit magbilang ang tagatanggap ng kabilya."[2]

On the strength of Bolabola's affidavits, the Agao and Morante groups were dismissed from work on March 13, 1989.

Except for Bolabola, everybody contested the legality of their dismissal. However, while the case was being tried before the Labor Arbiter, the Elmido group executed a Joint Affidavit on December 20, 1990 admitting their guilt and withdrawing their complaint against CAPASCO. Pertinent excerpts from their affidavit are quoted hereunder:

"xxx xxx xxx

3. That relative thereof, we believe that the case we filed against Cathay Pacific Steel Corporation is not meritorious;

4. That we believe we have violated some Rules and Regulations of aforesaid Cathay Pacific Steel Corporation which resulted to the loss of trust and confidence of CAPASCO (sic) Management in us;

5. That we believe that CAPASCO (sic) management has the right to terminate our employment for reason stated above;

6. That to cleanse our conscience, or mitigate somewhat our having violated some Company Rules and Regulations of CAPASCO (sic), we are hereby withdrawing aforesaid case filed by us with the Department of Labor and Employment against Cathay Pacific Steel Corporation;

7. That we have executed this AFFIDAVIT freely and voluntarily to attest to the facts stated herein and for the purpose of withdrawing the labor case filed by us against Cathay Pacific Steel Corporation.

xxx xxx xxx."[3]

Thus, only the groups of Agao and Morante pursued this case.

On March 21, 1991, the Labor Arbiter rendered a decision[4] dismissing their complaint for lack of merit.

Dissatisfied with the decision of the Labor Arbiter, petitioners appealed to the NLRC. On August 22, 1991, the NLRC issued a Decision modifying the appealed decision by directing private respondent to pay petitioners P1,000.00 each for failure to comply with the requirements on due process, before effecting their dismissal, that is, prior notice and investigation.[5]

On November 18, 1991, the NLRC denied petitioners' Motion for Reconsideration.

Hence, this petition.

The issues presented by petitioners are, viz: (1) whether or not they were dismissed from employment for a just cause and (2) whether or not they were deprived of their constitutional right to due process when they were dismissed from employment.

Petitioners contend that there was no tangible evidence such as (a) corroborative testimony and (b) evidence of conspiracy or pilferage, which were presented.

Furthermore, petitioners contend that private respondent had rigid control in the loading, weighing, counting, security, checking and counter-checking of its products before its release or delivery. Petitioners, thus conclude

that it was highly improbable to commit the pilferage imputed to them by private respondent.

We do not agree.

Factual findings of quasi-judicial agencies, like the Labor Arbiter and the NLRC, which have required expertise because their jurisdiction is confined to specific matters, are generally not only entitled to great respect but also given the stamp of finality when such findings are supported by substantial evidence.[6] As such, the truth or falsehood of alleged facts is not for this Court to examine in the absence of a clear showing that is arbitrary and bereft of any rational basis.[7]

In the case at bench, with regard to the Agao group, Bolabola testified that on November 5, 1988, they pilfered four (4) bundles of 16 mm x 20 feet steel bars consisting of five (5) each bundles, which were surreptitiously inserted between longer steel bars for delivery on that day. Bolabola's testimony jibed with CAPASCO's Weighing Slip Memo No. 0745 dated November 5, 1988 showing that he was with Agao's group on that date. He also testified that between November 5, 1988 and November 21, 1988, January 9, 1989 and January 27, 1989 when he was assigned as helper with Agao's group, there were pilferages committed by the group but he did not report them because he was threatened by Quiling and Gabarda, who were members of that group.[8]

With regard to the Morante group, Bolabola testified that on October 27, 1988, there were twenty three (23) pieces of steel bars loaded in excess of the items to be delivered to New Liwayway Hardware in Kalookan, which were sold to the Constancia Junk Shop at Laon-Laan, Sampaloc, and he was given P150.00 as his share; that on October 29, 1988, the group pilfered two (2) pieces of misrolled billets, weighing about 40 kilos each and he was given P200.00.[9]

Petitioner's argument that CAPASCO had rigid controls in the dispatch of the materials is negated by Agao himself who, in his written explanation dated March 9, 1989 to Bisorio, admitted the occurrence of overages in the loading of materials at CAPASCO and its customer. Thus,

"xxx. Sa tutuo (sic) ho Mr. Vissuro (sic) lingid sa inyong kaalaman ay napakarami ng bakal na aming isinasaoli (sic) dito sa CAPASSCO (sic) at ang pinagpaparatingan lamang ng aming isinasaoli (sic) na mga kabilin ay si Nestor Lopez (sic) at si Sante at ang mga sinasabi kong mga sumosubra (sic) ay 7 tali 3 tali 2 tali 1tali at iba pa ang mga papirapirasu (sic) na mga kabilinat ang aking nabanggit na mga bilang ay ang iba ay nagmula dito sa CAPASSCO (sic) at ang iba naman ay nagmula sa customer (sic). xxx." [10]

In another letter dated March 13, 1989 to Bissoro, Agao admitted the existence of petty thieveries inside the company premises. An excerpt from his letter reads:

"xxx at lingid po sa inyong kaalaman ay mayroon (sic) akong gulong na kinahoy ni Paring (sic) Cilso (sic) Moranti na sa kanyang trak nakakabit hangan (sic) sa ngayon. xxx." [11]

It is already established that proof beyond reasonable doubt of the employee's misconduct is not required, it being sufficient that there is a reasonable ground on the part of the employer to believe that the employee is responsible for the misconduct, and his participation therein renders him unworthy of the trust and confidence demanded by his position.[12]

Among the just causes for termination of employment by the employer is "fraud or willful breach for the employee of the trust reposed in him by his employer or duly authorized representative." [13] Thus, an ordinary breach is not enough as the breach must be willful and without justifiable cause. Furthermore, there must be some basis therefor, and it must be supported by substantial evidence and not merely by the whims or caprices of the employer.[14]

In the case at bench, we find no difficulty in agreeing with the public respondents that petitioners committed the pilferages as charged by respondent.

The case of Philippine Associated Smelting and Refining Corporation (PASAR) v. National Labor Relations Commission,[15] is not applicable in the case at bench as the statements of the lone material witness Henry Berezo, in that particular case, vaguely described how and when the pilferage of dole metals was committed and what was the particular participation of each member. Berezo simply enumerated some names and the amount he allegedly received from them as his share of the loot. He was not even aware of the quantity of metals brought out of the plant. Moreso, in that case, the alleged thievery or pilferation was not reported to the police by PASAR nor a criminal case was filed against private respondents.

In this case, the lone witness, Columbus Bolabola, described in detail how the pilferages of respondent's steel bars were done by petitioners such that the Labor Arbiter commented that:

"xxx we are impressed by the straightforward, detailed and vivid account of witness Bolabola of the incidents of pilferages committed by the individual complaints. They are too persuasive to be ignored. Inspired by the intention to tell the truth with no ill-will or axe to grind against any of the herein individual complaints, it can be aptly said that the testimony proceeds from a pure source. It can withstand and pass judicial scrutiny xxx.[16]

Furthermore, the attempted pilferage of steel bars by the Elmido group were referred by private respondent to the police authority of Cainta after its discovery.

Petitioners also contend that their dismissal from employment was effected without prior investigation and formal notice. Hence, they contend that their termination from employment is clearly illegal.

Settled is the rule that the twin requirements of notice and hearing are indispensable for a dismissal to be validly effected.[17] However, if the dismissal was effected for a just and valid cause, the failure to observe these requirements does not invalidate or nullify the dismissal of an employee. Hence, if the dismissal of an employee is for a just and valid cause but he is not accorded due process, the dismissal shall be upheld but the employer must be sanctioned for non-compliance with the requirements of due process.[18]

In the case at bench, although private respondent refuted petitioners allegation that the former's dismissal was effected without due process, the records however, belie the existence of the memoranda, e.g. notice containing the particular acts constituting the cause of dismissal and the notice of decision to dismiss, as issued by respondent to the individual petitioners. The alleged memoranda issued by respondent to the petitioners as reproduced in the Memorandum submitted by the former to this Court can only be considered as self-serving. This is the reason why even the Solicitor General agreed to the award of P1000.00 given by the NLRC to individual petitioners, as an administrative penalty for respondent's failure to comply with the provision on due process before effecting the dismissal of an employee.

WHEREFORE, the petition is DISMISSED and the decision of the National Labor Relations Commission in NLRC CA No. L-000147-91 is hereby AFFIRMED.

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Exhibit "13"; Records, Vol. I, pp. 59-60.

[2] Exhibit "12"; Records, Vol. I, p. 57.

[3] Records, Vol. I, p. 110.

[4] Rollo, pp. 19-28.

[5] Rollo, p. 34.

[6] Vallente v. NLRC, 245 SCRA 662 [1995]; Morales v. NLRC, 241 SCRA 103 [1995]; Cabalan Pastulan Negrito Labor Association v. NLRC, 241 SCRA 643 [1995]; Philippine National Construction Corporations v. NLRC, 245 SCRA 668 [1995].

[7] Magnolia Corporation v. NLRC, 250 SCRA 332 [1995].

[8] Records, Vol. III, pp. 80-84; TSN, August 6, 1990, pp. 20-24.

[9] Records, pp. 134-135.

[10] Exhibit "C"; Records, p. 33.

[11] Exhibit "C-2"; Records, p.34.

[12] Vallende v. NLRC, 245 SCRA 662 [1995]; Isetann Department Store, Inc. v. NLRC, 227 SCRA 647 [1993]; Pampanga II Electric Cooperative Inc. v. NLRC, 250 SCRA 31 [1995]; Dole Philippines, Inc. v. NLRC, 123 SCRA 673 [1983].

[13] Article 282 (C), Labor Code.

[14] Tiu v. NLRC, 215 SCRA 540 [1992].

[15] 174 SCRA 550 [1989].

[16] Rollo, p. 27.

[17] Falguera v. Linsangan, 251 SCRA 365, [1995].

[18] Wenphil Corp. v. NLRC, 170 SCRA 69 [1989]; Seashore Maritime Corp. v. NLRC, 173 SCRA 390 [1989]; Shoemart, Inc. v. NLRC, 176 SCRA 385 [1989].

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