

MARANAW HOTEL & RESORT CORPORATION (CENTURY PARK SHERATON MANILA), PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND CIRO BETILA, RESPONDENTS.

G.R. No. 110776. May 26, 1995

Ponente: PUNO, J.

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PUNO, J.:

Private respondent CIRO BETILA worked with petitioner Century Park Sheraton Hotel - Manila as a room attendant from June 22, 1980 until July 22, 1989 when his services were terminated. The facts leading to his dismissal are as follows:

On January 22, 1989, Mr. Motomu Okumura, a Japanese guest at the Sheraton Hotel, filed a complaint with the Tourist Security Division* of the Department of Tourism regarding the loss of 40,000 Japanese yen and US\$210.00 inside his hotel room.

An investigation was conducted by the Tourist Security Division. It found out that the room attendant assigned to Mr. Okumura's room on the day of the loss was private respondent. It invited private respondent to appear on January 22, 1989 to shed light on the complaint. Private respondent failed to appear despite receipt of notice. The investigation proceeded in his absence.

On January 26, 1989, the Tourist Security Division submitted a progress report[1] to the hotel, with the following findings:

"Investigation disclosed that Betila reported to (sic) duty on 22 January 1989 and left (at) around 2:00 p.m., earlier than his off duty, but after he had service(d) Room 350 and no other room attendant entered the same room until 5:00 p.m. when the theft was discovered by the victim. The following day, said person (Betila) failed to appear for investigation because such day was his scheduled day-off. The records of Personnel Assignment Where Alleged Losses Occurred, furnished this office by the Security Division, Century Park Sheraton Hotel show that from June 1986 to December 1988, there were 12 reported losses in the room assignments of Betila and all (the lost articles) were not recovered. Two of the mentioned cases were reported to this office and investigated by Investigators Romeo Balanquit and Leo Castillo. Both investigators informed the undersigned that in their respective cases, investigation disclosed that the reported losses in the room assignments of Betila all occurred on the date before his scheduled day off, thereby provid(ing) him (with) the best opportunity to escape investigation immediately after the discovery of the crime committed. Said modus operandi is true in the instant case." (Rollo, p. 54)

Private respondent was recommended to be separated from service.[2]

On April 5, 1989, Mr. Masatoshi Kusumoto, another Japanese guest at the hotel, also lost his money. Again, it appeared that private respondent was the one who cleaned his room on said date. The Tourist Security Division sent private respondent a letter informing him of Mr. Kusumoto's complaint. He was also invited to appear before said office on April 8, 1989 for investigation. Once more, private respondent did not honor the invitation. The

investigation proceeded in his absence. From the Worksheet submitted by private respondent himself to the hotel, it was established that he was the only person who entered the room of Mr. Kusumoto on said date, prior to the discovery of the missing money. The investigator again recommended the dismissal of private respondent "to deter him from victimizing more hotel guests to the detriment of the hotel in particular and the tourism industry in general." [3]

In a letter, [4] dated May 5, 1989, Nicolas R. Kirit, Executive Housekeeper of the hotel, informed respondent Betila of the findings of the Department of Tourism as contained in its two (2) letter-recommendations, copies of which were attached to said letter. Private respondent was required to explain his side within forty-eight (48) hours from receipt of the letter. Despite receipt of said letter on May 11, 1989, private respondent did not submit his explanation.

The hotel's management then proceeded to evaluate the findings and recommendations made by the investigators of the Department of Tourism. It decided to dismiss private respondent from the service and he was informed of his dismissal in a Memorandum, [5] dated July 17, 1989. He refused to acknowledge its receipt. Instead, he filed a complaint for illegal dismissal and unfair labor practice against petitioner. In a Decision, [6] dated November 8, 1991, Labor Arbiter Salimathar V. Nambi declared his dismissal as illegal and ordered his immediate reinstatement. The labor arbiter's decision was affirmed by public respondent National Labor Relations Commission (NLRC) - Second Division [7] on appeal. Petitioner's motion for reconsideration was denied.

Hence, this petition for certiorari under Rule 65.

Petitioner contends that:

RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT PRIVATE RESPONDENT WAS NOT ACCORDED DUE PROCESS.

RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT PRIVATE RESPONDENT WAS DISMISSED WITHOUT JUST CAUSE.

We find for the petitioner.

We do not agree with public respondent that private respondent was denied due process on the ground that he was not formally investigated by the hotel or by the investigator of the Department of Tourism regarding the reported losses. [8]

The records clearly show that petitioner fully complied with the required notice and hearing [9] prior to the dismissal of private respondent. Private respondent was given at least three (3) chances to explain the reported losses. The investigation reports reflect that private respondent was invited on two (2) occasions to shed light on the complaints received from the Japanese guests of the hotel. Private respondent did not appear in said investigations. Nor did he submit any written explanation to the investigators exculpating himself from the charges. Finally, petitioner itself notified private respondent of the result of the investigation conducted by the two (2) investigators. He was required to explain but private respondent did not take heed. He persisted to remain silent as a sphinx.

These established facts belie the finding that private respondent was denied due process before he was dismissed. Time and again, we have stressed that due process is simply an opportunity to be heard. Private respondent was given more than ample opportunity to defend himself. He chose not to use his opportunities.

In a belated effort, private respondent tried to explain why he was unable to honor the invitation to go to the Tourism office on January 22, 1989. Allegedly, he served as Chairman of the union's COMELEC to oversee the referendum conducted by their union on the same date.[10] This afterthought excuse cannot justify his repeated failure to explain his side. What is telling is that from the time he was first summoned to shed light on the complaint on January 22, 1989 until he was dismissed from service on July 22, 1989, there was not a single denial or explanation which came from private respondent as to his complicity in the charges of theft. There is not a thread of evidence in the record to show that he exerted any effort to attend the investigations conducted nor even to air his side either in person or in writing.

We also find that the public respondent erred when it found no just cause to warrant the dismissal of private respondent. Its reliance on the case of *Manila Midtown Commercial Corporation v. Nuwhrain* (Ramada Chapter)[11] is misplaced. The factual backdrop of the Manila Midtown case is totally different, thus:

"Records likewise reveal that complainant [private respondent Masangkay] was investigated relative to the aforesaid incidents. The investigation took place during the months of January, June and July 1979 and the fourth or last one was on January 31, 1980. In the four investigations, no evidence was found which would link complainant to the alleged acts of thievery. In all these four instances, respondent [petitioner corporation] initiated numerous steps to ascertain the complaints of its guests and to find out the guilt or involvement of the employee complained of. Among the steps or measures adopted by the respondent was the body search of the suspect, an intensive search of the suspect's belongings and a thorough investigation in respondent's security office. All these steps taken by respondent against complainant produced negative results. x x x

"Records further reveal that there were other persons who had free access to the hotel rooms such as the friends or visitors of the guests, janitor, chambermaid and the housekeeper supervisor who inspects the work of the roomboy, janitor and the chambermaid.

x x x x x x x x

"If respondent was really determined in its quest to find the culprit, it should have investigated not only the roomboy [respondent Masangkay] but also its other employees who likewise had free access to the hotel guest's room. The record is bereft of any evidence relative to this matter. (Italics supplied)"

In an attempt to align the case at bench with Manila Midtown, public respondent opined that as a standard operating procedure, all employees of a hotel are searched before they leave. It is a fact, however, that searches of this nature are usually cursory. They are not done with the specific intention of looking for stolen articles, unless there has been a reported loss and the search is focused on a specific employee suspected to be responsible therefor. Thus, in the Manila Midtown case, it had come to the knowledge of the Ramada Hotel that the belongings of one of its hotel guests were missing and Masangkay, private respondent therein, was one of the persons who had access to the guest's room. On the day the loss was discovered, private respondent was already suspected as responsible for the burglary and he was bodily searched and his things were thoroughly probed on that very day. In the case at bench, however, the loss came to the knowledge of the hotel only after private respondent had already left for the day. In fact, on January 22, 1989, private respondent left at 2:00 p.m., earlier than he should. Hence, private respondent was not given an on-the-spot thorough search.

Finally, in the Manila Midtown case, it was shown that there were other persons and employees of the hotel who had access to the rooms serviced by the private respondent. The theft could not be exclusively attributed to the private respondent. In the case at bench, it has been established that only private respondent had access to and actually entered the unoccupied rooms of Mr. Okumura and Mr. Kusumoto on the day of the burglary. No other person could have perpetrated the thefts.

We reiterate the rule that in cases of dismissal for breach of trust and confidence, proof beyond reasonable doubt

of an employee's misconduct is not required. It is sufficient that the employer had reasonable ground to believe that the employee is responsible for the misconduct which renders him unworthy of the trust and confidence demanded by his position.[12] In the case at bench, it cannot be doubted that petitioner succeeded in discharging its burden of proof.

IN VIEW WHEREOF, the petition is hereby GRANTED. The Decision of public respondent NLRC (Second Division), dated April 27, 1993, is SET ASIDE. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Mendoza, JJ., concur.

* Agency specifically charged with receiving and investigating complaints filed by tourists.

[1] Rollo, pp. 54-55.

[2] *id.*, p. 55.

[3] *id.*, p. 56.

[4] *id.*, p. 57.

[5] *id.*, p. 65.

[6] *id.*, pp. 99-106.

[7] Penned by Commissioner Rogelio I. Rayala and concurred in by Presiding Commissioner Edna Bonto-Perez. Commissioner Domingo H. Zapanta, however, registered his dissent; Decision, dated April 27, 1993, Rollo, pp. 32-44.

[8] Rollo, at p. 105.

[9] Article 277 (b), Labor Code, as amended.

[10] Comment, Rollo, at p. 181.

[11] No. L-57268, March 25, 1988, 159 SCRA 212.

[12] *Auxilio, Jr. v. National Labor Relations Commission*, G.R. No. 82189, August 2, 1990, 188 SCRA 263; *Ocean Terminal Services, Inc. v. National Labor Relations Commission*, G.R. No. 85446, May 27, 1991, 197 SCRA 491.

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