

ALEJANDRO Y. CAOILE, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), COCA-COLA BOTTLERS, PHILIPPINES, INC. (ZAMBOANGA PLANT), RENE P. HORRILLEN, PLANT MANAGER AND N...

G.R. No. 115491. November 24, 1998

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This special action for certiorari seeks to annul the Resolution of the Fifth Division of the National Labor Relations Commission dated December 6, 1993[1] in NLRC Case No. M-00123-93 (Case No. RAB-09-11-00303-92) dismissing petitioner's complaint for illegal dismissal and money claims, and its Resolution dated March 7, 1994 denying petitioner's Motion for Reconsideration.

Petitioner Alejandro Caoile was employed by private respondent Coca-Cola Bottlers Philippines, Inc. ("CCBPI") as an Electrician Data Processing (EDP) Supervisor in its Zamboanga plant, but was later dismissed on the ground of loss of trust and confidence for his involvement in the anomalous encashment of check payments to a contractor. Contesting the ground for his dismissal, petitioner filed a complaint for illegal dismissal and money claims against private respondents CCBPI and its officers, Rene P. Horrilleno, the Plant Manager, and Noriel B. Enriquez, the Plant Finance Manager.

The facts as culled from findings on record below reveal the following:

On June 6, 1992, private respondent CCBPI, through the local plant management, contracted the services of Mr. Redempto de Guzman for the installation of a Private Automatic Branch Exchange (PABX) housewiring in the plant premises for the sum of P65,000.00. Since the project fell under the direct supervision of petitioner, all cash advances by the contractor were course through him.

On June 13, 1992, Mr. De Guzman, the contractor, requested for an initial cash advance of P10,000.00. Petitioner caused the preparation of the Payment Request Memo (PRM) in the amount of P15,000.00 and the issuance of Bank of the Philippine Islands (BPI) Check No. 878306 in the amount of P15,000.00. After securing the endorsement of the contractor, petitioner encashed the check with the plant teller Mr. Dominador S. Pila and handed over P10,000.00 to Mr. De Guzman while retaining the amount of P5,000.00 for himself. When queried by Mr. De Guzman about the P5,000.00, complainant replied that it was for the higher ups as arranged by Mr. Arthur Soldevilla, an alleged partner of Mr. de Guzman.

The contractor requested for second and third cash advances on June 23, 1992 and June 30, 1992 in the amounts of P5,000.00 and P10,000.00 respectively. As in the first cash advance, petitioner caused the preparation of BPI Check No. 878350 dated June 23, 1992 and BPI Check No. 010355 dated June 30, 1992 in the amounts of P10,000.00 and P15,000.00 respectively. After securing the endorsements of the contractor the requested cash advances while retaining for himself the difference of P10,000.00.

After the project was completed, the contractor requested payment of the balance of the contract price in the amount of P25,000.00. Petitioner caused the issuance of BPI Check No. 010499 dated July 8, 1992 in the amount of P24,350.00 (after deducting 1% of the total contract price by way of withholding tax). As in the earlier instances, petitioner secured the endorsement of the contractor, encashed the check with the teller, then handed over to the contractor only P19,350.00 while retaining for himself the amount of P5,000.00.

The contractor was later requested to do additional services no longer included in the original contract. His original quotation for the additional services was P8,000.00. However, this was increased to P8,500.00 upon advice of petitioner. Upon completion of the additional project, petitioner caused the issuance of BPI Check No. 01530 dated July 9, 1992, and after securing the endorsement of the contractor, petitioner encashed the check and delivered P8,000.00 to the contractor and retained P500.00 for himself.

On September 4, 1992, Mr. de Guzman executed an affidavit exposing the fraudulent acts perpetrated by petitioner, which prompted the company to conduct an investigation. On October 1, 1992, petitioner was temporarily prevented from performing his usual duties and functions, but was required to report daily from Monday to Friday from 8:00 a.m. to 12:00 noon and from 1:30 p.m. to 5:30 p.m. with full pay.

On October 7, 1992, petitioner was served a Notice of investigation to take place on October 13, 1992 at 2:00 p.m. in the plant conference room. During the investigation, petitioner admitted that the initials in the check vouchers were his but denied having encashed the checks and delivering the cash payments to the contractor. However, GM Secretary Carmencita B. Macasinag and the teller, Mr. Dominador Pila, confirmed the fact that complainant personally handled the deliveries of the cash payments of advances made to the contractor. It was established through the testimony of Mrs. Macasinag and Mr. Pila that petitioner personally withdrew the checks from the GM Secretary and had them encashed with the teller after Mr. de Guzman has endorsed the same.

The result of the investigation, with its recommendation for dismissal of petitioner, was submitted by Noriel B. Enriquez, the Plant Finance Manager, to Mr. Rene P. Horrilleno, the Plant Manager, who forwarded the same to Mr. Mariano A. Limjap, Senior Vice-President and Administration Director in Manila. On November 12, 1992, Mr. Limjap, issued an Inter-office Memorandum sustaining the findings and recommendation of the local plant management for the termination of complainant from his employ as EDP Supervisor on the grounds of grave misconduct and dishonesty considering that his position as EDP Supervisor is bestowed with the highest trust and confidence by the respondent as may be seen from the description of his duties and responsibilities.

As a consequence of his dismissal, petitioner filed a complaint for illegal dismissal with damages before the Regional Arbitration Branch IX, Zamboanga City, on November 27, 1992. Efforts towards an amicable settlement failed. After the submission of the respective position papers of the parties, the Labor Arbiter^[2] rendered a decision dated February 17, 1993^[3] finding that petitioner was illegally dismissed and ordering his reinstatement to his former position without loss of seniority or to a substantially equivalent position without loss of seniority rights; the payment of backwages for two (2) months in the amount of P26,400.00, unpaid 14th and 145th month pay and other benefits for the year 1992 rightfully earned by petitioner; moral damages in the amount of P20,000.00 and exemplary damages in the amount of P20,000.00. All other money claims were dismissed for lack of merit.

Dissatisfied with the decision, private respondents appealed to NLRC which, in its questioned Resolution dated December 6, 1993, reversed the Labor Arbiter's decision. In the said Resolution,^[4] the NLRC held that petitioner committed acts constituting a breach of trust and confidence reposed on him by his employer, thereby justifying his dismissal. His motion for reconsideration having been denied,^[5] petitioner filed the instant petition^[6] before us.

At issue is whether or not the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in reversing and setting aside the Labor Arbiter's decision finding private respondents guilty of illegal dismissal.

We find no cogent reason to depart from the ruling of the NLRC.

Law and jurisprudence have long recognized the right of employers to dismiss employees by reason of loss of trust and confidence. As provided for in the Labor Code, "Art. 282. An employer may terminate an employment for any of the following causes: x x x (c) Fraud or willful breach of the trust reposed in him by his employer or his duly authorized representative. x x x." In the case of supervisors or personnel occupying positions of responsibility, this Court has repeatedly held that loss of trust and confidence justifies termination.[7] Obviously, as a just cause provided by law, this ground for terminating employment, springs from the voluntary or willful act of the employee, or "by reason of some blameworthy act or omission on the part of the employee".[8]

Loss of confidence as a just cause for termination of employment is premised from the fact that an employee concerned holds a position of trust and confidence.[9] This situation holds where a person is entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of employer's property.[10] But, in order to constitute a just cause for dismissal, the act complained of must be "work-related" such as would show the employee concerned to be unfit to continue working for the employer.[11]

Now it must be noted the recent decisions of this Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus with respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertion and accusations by the employer will not be sufficient.[12] But, as regards as a managerial employee, mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal.[13] Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.[14]

In the present case, petitioner is not an ordinary rank-and-file employee. He is the EDP Supervisor tasked to directly supervise the installation of the PABX housewiring project in respondent company's premises. He should have realized that such sensitive position requires the full trust and confidence of his employer. Corollary, he ought to know that his job requires that he keep the trust and confidence bestowed on him by his employer unsullied. Breaching that trust and confidence, for example, by pocketing money as "kickback" for himself in the course of the implementation of the project under his supervision could only mean dismissal from employment. For, regrettably, while petitioner vehemently denies having obtained money from the contractor, the evidence on record proves otherwise.

First, public respondent noted that petitioner volunteered to personally encashed the checks issued to the contractor, De Guzman, and then retained certain amounts for himself despite the objection of De Guzman. What is even reprehensible is that petitioner gave the impression that the money would be shared with the 'higher-ups'. This finding is based on the sworn declaration of De Guzman and corroborated by the testimonies of Carmencita B. Macasinag who is in charge of the release of checks and Dominador Pila, the plant teller. Interestingly, while petitioner disclaims even seeing the subject checks, he admitted as his own those initials appearing on the check vouchers.

Second, in claiming he never retained the amount of P20,500.00 for his own benefit, petitioner referred to the

letter of Soldevilla dated October 5, 1992, addressed to the Manager of Zamboanga Coca-Cola plant. With that letter, petitioner would like to show that the amounts allegedly retained by him from the cash advances of De Guzman were eventually turned over to Soldevilla. However, this is belied by the fact that during the investigation, Soldevilla was still asking for his share in the contract proceeds from De Guzman. Clearly, petitioner did not remit the money to Soldevilla.

Third, petitioner adverted to the "letter-notes" of Soldevilla issued coincidentally with the release of the checks. These letter-notes were supposed to remind De Guzman of his agreement with Soldevilla that the latter's share given to his (Soldevilla) representative who happens to be the petitioner. Public respondent did not give credence to these letter-notes as they were brought out by petitioner only during the arbitration proceedings and not at the company-level investigation. These letter-notes were mere afterthought, hence, of questionable probative value.

Petitioner's contention that he was denied due process during the company-level investigation, in our view, is without basis. As an essential requirements, due process is one which hears before it condemns, which proceeds upon inquiry and renders judgment only after hearing.[15] Even if the employee committed an act which could constitute a lawful cause or justification for his dismissal, nevertheless the employer should first give him the opportunity to explain or present his side.[16] Where the employee denies the charges against him, a hearing is necessary to thresh out any doubt.[17]

From the record it appears that petitioner was given the opportunity to present his side and to defend himself against the charges against him. Moreover, public respondent noted that the petitioner had no objection to the manner of the company-level investigation was conducted. Nor did he seek the assistance of counsel despite being duly apprised of such right by the hearing officer. Under the attendant circumstances, there is no basis for the protestation of petitioner that he was deprived of due process.

In sum, we hold that public respondent committed no grave abuse of discretion in reversing the decision of the Labor Arbiter and dismissing the complaint for illegal termination.

WHEREFORE, premises considered, the petition is DISMISSED for lack of merit. the Resolutions of National Labor Relations Commission dated December 6, 1993 and March 7, 1994 are hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED

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

[1] Penned by Presiding Commissioner Musib M. Buat, and concurred in by Commissioners Oscar M. Abella and Leon G. Gonzaga, Jr.

[2] Labor Arbiter Reynaldo S. Villena.

[3] Annex, "C" to the Petition, pp. 46-58.

[4] Rollo, pp. 21-39.

[5] Resolution dated March 7, 1994, Annex "B" to the Petition, Rollo, pp. 42-43.

[6] Rollo, p. 3-19.

[7] *Kwikway Engineering Works v. NLRC*, 195 SCRA 526 (1991), at p. 529 citing *Lamsam Trading v. Leogardo*, No. 73245, September 30, 1986, 144 SCRA 571; *Reynolds v. Eslava*, No. L-48814, June 27, 1985, 137 SCRA

259; *New Frontier v. NLRC*, No. 51578, May 29, 1984, 129 SCRA 502; *Associated Citizens Bank v. Hon Blas F. Ople, et al.* No. L-48896, 103 SCRA 130.

[8] *Wiltshire File Co., Inc. v. NLRC*, 193 SCRA 665 (1991) at p. 674.

[9] *Quezon Electric Cooperative v. NLRC*, 172 SCRA 88 (1989) at p. 94.

[10] *Panday v. NLRC*, 209 SCRA 122 (1992) at p. 125.

[11] *Aris Philippines, Inc. v. NLRC*, 238 SCRA 59 (1994) at p. 62

[12] *Manila Midtown Commercial Corp. v. Nuwhrain (Ramada Chapter)*, 159 SCRA 212 (1988) at p. 217.

[13] *Supra* at note 4, p. 529.

[14] *Sajonas v. NLRC*, 183 SCRA 182 (1990) at p. 188, citing *Reyes v. Minister of Labor, et al.*, 170 SCRA 134 (1989).

[15] *Wenphil Corporation v. NLRC*, 170 SCRA 69 (1989) at p. 75 citing *Lopez v. Director of Lands* 47 Phil 23.

[16] *Robusta Agro Marine Products, Inc. v. Gorombalen*, 175 SCRA 93 (1989) at pp. 99-100.

[17] *Roche (Philippines) v. NLRC*, 178 SCRA 386 (1989) at p. 394.

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