

LONGINO BUHISAN, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, FIFTH DIVISION, AND SAN MIGUEL CORPORATION, RESPONDENTS.*G.R. No. 120616. January 14, 1998*

Ponente: ROMERO, J.

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Once again, the resolution of this case hinges on the credibility of the witnesses. Is it the company that dismisses an employee on accusations of arson and estafa, or such disgruntled employee who denies the charges and insists that he is being framed? As in all controversies which call for this Court's just and impartial wisdom, this case must be examined on the basis of the evidence.

Petitioner worked for private respondent San Miguel Corporation (SMC) from March 1, 1978, until April 29, 1991, when his employment was terminated for alleged irregularities amounting to serious misconduct. At the time, he was a warehouse assistant (WA) at SMC's Beer Sales Office in General Santos City primarily tasked with receiving from route salesmen cash and check collections which he deposited in the company's United Coconut Planter's Bank (UCPB) account.

The conflict began on March 6, 1991, when, after comparing company and bank records, SMC Region Finance Officer (RFO) Joel D. Jumalon observed that company funds were not immediately deposited in SMC's UCPB account. He thus confronted petitioner and warehouse operations supervisor (WOS) Danilo Fernandez who both offered apparently unconvincing explanations on the matter. Verification with the bank confirmed that the deposit of daily sales remittances was delayed, sometimes by as much as four days. Later, at around 7:24 p.m., petitioner left for home after making sure that he locked the vault where company funds were kept and the door of the sales office.

At around 8:45 p.m., a fire broke out in the sales office which appeared to have originated from petitioner's office. The walls, ceilings and furniture in his office were damaged, but the cabinet where the vault was kept was still intact. A container of paint thinner was found under petitioner's table and the office reeked with the stench of kerosene. Upon his arrival at the scene an hour before midnight, the vault was immediately opened and the cash was counted. The vault contained P218,713.02, which later turned out to have a shortfall of P101,602.20.

The following day, March 7th, petitioner was relieved of his functions, a situation which became permanent on April 29, 1991, when he was dismissed for allegedly misappropriating company funds in the amount of P101,602.20 and destroying company property through arson. Petitioner was accused of deliberately starting the fire on March 6, 1991, in order to destroy company records which would have revealed that he had been systematically embezzling company funds instead of faithfully depositing them in SMC's account. Consequently, he was charged with arson and estafa before the City Fiscal's Office.

On the other hand, petitioner initiated a case for illegal dismissal with claim for moral and exemplary damages, attorney's fees and back wages against SMC. He alleged, inter alia, that SMC was desirous of getting rid of his

services for being one of the union leaders involved in a failed certification. In explaining the delayed deposit of sales remittances, he said that since a UCPB representative usually picks up their deposit from the sales office, company records reflecting the date when he turned over the deposit to the latter may at times differ from bank records disclosing the date said representative actually deposited the money.

As regards the charge of arson, he pointed out that while the fire began at around 8:45 p.m., he left company premises more than an hour earlier at 7:24 p.m., after turning over the day's collection to his supervisor, Fernandez, and placing it in the vault. When the fire was finally contained that same night, the money in the vault was counted by Jumalon, Fernandez, and accounting supervisor Isidro Estoesta; petitioner was merely made to watch about three meters away. Later, he was asked to sign the cash count sheet, but he was informed of the deficiency in the collection only after two days.

To counter SMC's charge of misappropriation of company funds, petitioner also clarified SMC's control procedure in sales collection and remittance. Route salesmen would submit to the WA (in this case, petitioner) their collection, the supporting sales reports, invoices, and denomination slips. If everything is in order, he would prepare a consolidated denomination slip which, together with the total collection and other supporting documents, would be turned over to the WOS (in this case, Fernandez). In the absence of any discrepancy between the cash and the summary, everything would be deposited inside the vault of the sales office. The WA would lock the inner door of the vault with a key which he shared with the manager of sales operations, then the outer door would be locked by the WOS who alone knew its numerical combination. The vault would be opened only the following day by the WOS and the WA when the bank representative arrives to pick up the deposit.

In the case below, petitioner categorically stated that the collection for March 6, 1991, as well as the sales reports, invoices, and denomination slips prepared by the salesmen were all in order when he handed the same to WOS Fernandez, who reviewed the documents and counted the money before placing it in the vault. SMC tried to dispute this latter claim by saying that the WOS now rarely counts the cash collection but merely glosses over the supporting documents, sometimes just before the money is deposited.[1]

On September 30, 1992, Labor Arbiter Arturo P. Aponesto rendered judgment, the dispositive portion of which reads as follows:

“WHEREFORE, finding that complainant (herein petitioner) Longino Buhisan was dismissed from employment without just or authorized cause, hence illegal, respondent San Miguel Corporation is hereby directed to pay complainant his separation pay and backwages for six (6) months in the total amount of P202,635.00.

Respondent company is further directed to pay his claim for attorney's fees in the sum of P20,263.50.

Thus the total monetary award in favor of complainant is TWO HUNDRED TWENTY TWO THOUSAND EIGHT HUNDRED NINETY EIGHT (P222,898.50) PESOS and 50/100.

The claim for damages (moral as well as exemplary) is however DISMISSED for reasons aforesaid.

SO ORDERED.”

Both parties appealed, with petitioner questioning the decision for not decreeing his reinstatement and granting only six months in back wages despite the finding of illegal dismissal. SMC assailed the judgment for ignoring the resolutions of the City Prosecutor finding petitioner *prima facie* guilty of estafa and arson, which would have bolstered its contention that his dismissal was not ill-motivated, and for awarding him separation pay, back wages, and attorney's fees.

On November 4, 1993, the National Labor Relations Commission (NLRC) dismissed petitioner's appeal for lack of merit, granted the appeal of SMC, reversed and set aside the labor arbiter's decision, and dismissed the complaint for lack of merit.

Presiding Commissioner Musib M. Buat (Commissioners Oscar N. Abella and Leon G. Gonzaga, Jr., concurring) opined and concluded that:

“x x x. (T)he documentary evidence adduced by respondents constitute substantial proof that the charges imputed against the complainant for acts of misappropriation and arson have been duly established with clear and convincing evidence. Indeed, the evidence of guilt of complainant is not only substantial but overwhelming. The evidence undoubtedly show that complainant would have the strongest motive of committing the arson on the company's properties to cover up for his defalcation of company funds. The discovery of the irregularity or discrepancies happened just before the burning incident and the evidence strongly indicate that the same was attributable to complainant. It has also been established by the evidence that it was complainant who was the last one who left the premises of the company before it was burned.

x x x. Moreover, the findings of the Inquest Fiscal should be given more weight as they required not mere substantial evidence nor preponderance of evidence but (were) based on probable cause establishing a prima facie cause (sic) that complainant has committed the crimes of estafa and arson, respectively (sic). In criminal cases, the quantum of proof required is greater than what is required in labor disputes.”

Petitioner's motion for reconsideration was denied for lack of merit in the NLRC's resolution dated February 28, 1995. Petitioner is now before this Court claiming that the NLRC committed grave abuse of discretion in affirming SMC's charge that he committed misappropriation and arson.

After going through the records of this case, the Court finds that the acts attributed to petitioner by private respondent do not justify the termination of his services. Consequently, the instant petition must be granted.

Petitioner was dismissed by SMC for allegedly misappropriating company funds entrusted to him and for destroying its property through arson. They held him accountable on the basis of the city fiscal's finding of probable cause which eventually led to the filing of criminal charges against petitioner. It is for this same reason that the NLRC reversed the ruling of the labor arbiter. A careful examination of the records of this case would, however, reveal that neither the misappropriation nor the arson that petitioner was accused of committing was ever substantiated by SMC.

In charging petitioner with embezzling company funds, SMC presented the sworn statements and affidavits of its employees and officers, to wit:

- RFO Jumalon stated that in the aftermath of the fire on March 6, 1991, he conducted a cash count with WOS Fernandez and Estoesta, and the total amount was P218,713.02. On March 7th, after poring over the previous day's summary of remittances, they discovered that there was a deficit of P101,602.20. They forthwith terminated petitioner's service after concluding that he “misappropriated, misapplied and converted” said amount for his personal use and benefit.[2]
- Sales Operation Manager Ramon O. Locsin signed petitioner's notice of termination when the management established that the latter committed the crimes charged.[3]
- WOS Fernandez stated that the vault was opened in the presence of SMC counsel Atty. Tomas Falgui, Sr., Jumalon, Estoesta, and the owner of the security agency, a certain Mr. Sison. The shortage was discovered only the following day upon final liquidation of the March 6 collection.[4]
- A certain Ernesto Francisco Demecillo, who left with petitioner in the evening of March 6, 1991, surmised that

there was a problem in the day's collection because petitioner was called to the office by Jumalon and Fernandez. He also said, however, that petitioner left the premises before the fire occurred.[5]

These statements, far from proving that petitioner was liable for estafa and arson, merely demonstrate the haste which marked the investigation conducted by SMC and the consequent condemnation of petitioner. They are self-serving and serve no purpose other than to buttress the conclusions already reached by SMC. In no way do said statements lend support to the criminal charges hurled against petitioner which ultimately led to his dismissal. It must be noted that none of the documentary evidence which would prove the alleged misappropriation was ever presented by SMC to justify the dismissal of petitioner. This would include the route salesman's sales/collection report, invoices, denomination slips, cash count sheet, and individual deposit slips, as well as the consolidated denomination slip and summary deposit slip prepared by petitioner himself and the summary of remittances prepared by WOS Fernandez. Even the records of the investigation which SMC claims it carried out were never presented at the hearings. As observed by the Solicitor General:[6]

"All the foregoing points to an alleged act of misappropriation on the part of petitioner based on said affiants' own conclusions and judgments. All of them are however strangely silent on the aspect of the particular basis upon which such conclusion was derived. The particular evidence or document which led to the conclusion that indeed misappropriation was committed on March 6, 1991 and that it amounted to P101,602.20 and that petitioner was the one who committed it is nowhere in the records. The sales/collection report for that day, or the cash count sheet which was supposed to have been acknowledged by petitioner, or the minutes of (the) investigation allegedly conducted, and/or the summary deposit slip prepared by petitioner and the deposit slips individually prepared by the route salesman upon which the summarized deposit slip of petitioner was based, or the summary of remittance(s) allegedly prepared by Warehouse Supervisor Danilo Fernandez from where the unaccounted amount was allegedly seen, could have easily established the alleged shortage and act of misappropriation ascribed to petitioner. However, private respondent opted not to present those documents which would have been the substantial evidence required to sustain a dismissal on account of misappropriation by petitioner. But instead, it relied on the affidavits of employees who are expectedly dependent on it for employment and livelihood.

Moreover, private respondent did not even bother to explain the circumstances surrounding the non-presentation of said vital documentary evidence. x x x"

As blatantly as it failed to prove the alleged manipulation of company funds, SMC likewise floundered in disputing petitioner's claim that he did not, as a matter of procedure and company policy, personally deposit the daily collection, which was regularly picked up by a bank representative who finally deposited it in the company's account. Instead of denying that petitioner had anything to do with the delay in deposit, SMC, through ROF Jumalon, even confirmed the practice. In his sworn statement dated March 25, 1991, he said that the deposit slip was stamped and received by "the bank pick-up teller." Hence, the Solicitor General concluded that:

x x x. In other words, the actual act of depositing those funds actually lies with the bank teller, for once the money has left petitioner's custody, the same has already been entrusted to the bank teller. Whether or not the teller actually records and causes the money to be credited to private respondent's account on the very same day he picked the money from the sales office would already be beyond petitioner's purview and control."[7]

With regard to the charge of arson, there is again evidentiary dearth linking petitioner to the offense. There being no witnesses to the fire, nobody knows who started it and why; hence, SMC relied on secondary evidence and surmises. SMC would like to impress upon this Court that petitioner was the culprit because he was the last one who left the sales office the night of the incident. A can of paint thinner was apparently found under the table in his office where the fire originated. Moreover, he was the only one who had the motive to commit the crime so that he could erase any other traces of his thievery.

In this case, improper motive, if any, cannot be imputed to petitioner for the plain reason that the fact of misappropriation was never established by SMC nor by the fiscal with evidence which proved to be not only self-serving, but also irrelevant. Anyhow, assuming that the estafa was duly proved, it would be foolhardy for him to commit arson to destroy other pieces of evidence, for he would surely be held accountable therefor. Motive, in such a case, would play a material role in proving that he started the fire.

Secondly, that petitioner was the last person to leave the company premises is not conclusive proof of his culpability for arson. Although petitioner admits that he was the one who logged out on the night of March 6, 1991, he stoutly maintains that when he left at 7:24 p.m., his supervisor Fernandez was still at the sales office having a drink with friends. It must be noted, and this was never disputed by SMC, that managers and supervisors do not sign in the company's log book. Even if Fernandez claims that he left the office at 6:00 o'clock in the evening, there is no proof to this effect because he does not have a time card and he never states the time of his arrival and departure in any journal.

The Court cannot likewise disregard the fact that while petitioner left at 7:24 p.m., the fire apparently started at around 8:45 p.m., a time differential of one hour and twenty-one minutes. Within this time frame, nobody saw petitioner, or any other person for that matter, enter the premises of the sales office to set it ablaze. The alleged proof of arson, the can of paint thinner, was too crude an incendiary device to have been set off externally, which is the only way the fire could have been ignited in the absence of any positively identified arsonist.

Finally, the Court notes the inconsistency in private respondent's theory of a cover up. While SMC insists that petitioner stole P101,602.20 from company funds, it also contends that he intentionally burned the office to dispose of evidence linking him to the theft. The absurdity of this notion is readily apparent when one asks why anyone would pilfer the dubious amount of P101,602.20 only to leave the bigger amount of P218,713.02 to go up in smoke with other damaging papers.

WHEREFORE, the instant petition for certiorari is GRANTED. The resolutions of public respondent National Labor Relations Commission dated November 4, 1993, and February 28, 1995, are hereby NULLIFIED and SET ASIDE and a new one is entered ordering respondent San Miguel Corporation:

- to immediately reinstate petitioner Longino Buhisan to his former position without loss of seniority rights or, if reinstatement is no longer feasible in view of the strained relations between the parties, to pay petitioner a separation pay equivalent to one month's pay for every year of actual service;
- to pay petitioner back wages from the time of his dismissal on April 29, 1991, up to his reinstatement or, if this is no longer feasible, up to the time of actual payment of said back wages;
- to pay petitioner attorney's fees equivalent to ten percent (10%) of the total judgment award; and
- to pay the costs of the suit.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Rollo, p. 133.

[2] Annex "B-1," Respondent's Reply and Supplemental Position Paper.

[3] Annex "C," *ibid.*

[4] Annex “D,” id.

[5] Annex “F,” id.

[6] Manifestation and Motion in Lieu of Comment, pp. 8-10; Rollo, pp. 227-229.

[7] Ibid., p. 13; Rollo p. 232.

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