

CONDO SUITE CLUB TRAVEL, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) AND FLORENCIO LALO, RESPONDENTS.

G.R. No. 125671. January 28, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This special civil action for certiorari assails the decision of public respondent dated January 29, 1996 in NLRC NCR Case 09-06751-94, and its resolution dated June 28, 1996, which denied petitioner's motion for reconsideration.

The records show that private respondent was first employed by Sunette Realty Development Corporation as "housekeeper" with a monthly compensation of P8,000.00. After two months, private respondent signed a new employment contract with petitioner, Condo Suite Club Travel Inc., under the same terms of employment. Both firms belong to ARCON Group of Companies, run by the same management and board of directors.

In July 1992, private respondent's salary was reduced to P6,000.00 because of adverse business conditions. Expectedly, private respondent complained with the management. To placate him, private respondent's salary was adjusted to P6,500.00. Private respondent was receiving such salary until his dismissal although he was then already performing the duties and responsibilities of a front desk supervisor in petitioner's hotel. Aside from his employment with petitioner, private respondent owned a car-for-hire, which he regularly rented to a certain Joselito Landrigan at the rate of P400.00 a day. Landrigan, in turn, operated the car as a taxi with himself as driver.

On August 15, 1994, Landrigan approached Editha Mariano, front desk clerk at petitioner's hotel. He requested Mariano that his alleged collectible from a certain In Hu, a Korean guest in the hotel, be included in the hotel bill of said guest. He claimed that Mr. Hu owed him P2,000.00 for two-day rental of private respondent's car. Acceding to Landrigan's request, Mariano entered the amount in the statement of account of the guest to make the total billing of P16,710.00. Upon checking-out from the hotel, Mr. Hu paid his bill through his credit card. As he was in a hurry, he left without verifying his statement of account. This incident is reflected in the handwritten account of Mariano dated September 23, 1994, herein below quoted:

"I was the front desk clerk on duty when Mr. In Hu Rm. 2002 checked-out on August 15, 1994. Before he checked-out Lito (driver) approached me and told me that a Korean from Room 2002 hired him for two days. He told me to charged (sic) him (the guest) P2,000.00

I entered P2,000.00 to his Statement of Account and inform him of the total. He was so much in a hurry that he didn't get the latest Statement of Account for P16,710.00. I gave him the Card Holder's Copy and Company's Receipt for the same amount."[1]

While in Korea, Mr. Hu noticed the discrepancy between the statement of account issued by petitioner and the

charge slip of his credit card. Thus, on coming back to the Philippines, he dropped by at petitioner's hotel and complained about the overbilling. The report of Allan Padua dated September 13, 1994, regarding the incident states:

"Last August 8, 1994, Mr. In Hu checked in at Rm. 2002. He stayed for seven (7) days. He was so in a hurry when he checked out on August 15, 1994. He was charged thru his Visa card the amount of P16,710.00 without noticing that the written amount on his Statement of Account is only P14,710.00. He only noticed the discrepancy when he reached Korea.

Yesterday, September 12, 1994 in the morning, he came to the Front Desk and was complaining. I approached him and he showed me his charge slip and Statement of Account. Both seem not to tally. I made an investigation and found out that Front Desk personnel made a big mistake by charging him P2,000.00 higher than his actual bill in his (Mr. Hu) Statement of Account which is only P14,710.00.

Upon further investigation, I found out that the P2,000.00 in contention was entered as a transportation account which the guest denied because he (Mr. Hu) paid for his own transportation from the airport to [the] Condo Suite.

This incident resulted to Mr. Hu's transfer to the competitor, Suite Shine."[2]

In response to the abovequoted report, private respondent averred that although Padua's report did not mention him as the one responsible for the overbilling, he had to explain his side being the front desk supervisor and owner of the car involved in the controversy. He pointed out that the statement of account referred to by Mr. Hu was given a day before he checked out and did not reflect the latest charges, hence, the total billing shown amounted only to P14,710.00. Private respondent related that on his last day at the hotel, Mr. Hu was informed of his total account amounting to P16,710.00 which the latter acknowledged by signing and accepting the corresponding receipt. He recalled that Mr. Hu was indeed in a hurry so that the Korean did not get his latest statement of account which by then reflected the additional P2,000.00 and making the total charges P16,710.00.[3]

In the investigation that ensued, it was shown that there was really no car accommodation as claimed by Landrigan. In his handwritten statement dated September 16, 1994, Landrigan admitted that he approached Mariano at the front desk and demanded payment for Mr. Hu's alleged transportation expense. He also claimed to have received the amount P2,000.00 through a check issued by petitioner on August 17, 1994 or two days after Mr. Hu left for Korea. However, he asserted that he returned the said amount on September 16, 1994, in order not to tarnish the image of petitioner hotel.[4]

Eventually, petitioner's staff confirmed the error in the billing of Mr. Hu. Upon return of the P2,000.00 by Landrigan, petitioner refunded the amount to the Korean.

On September 26, 1994, petitioner terminated the services of private respondent on the ground of loss of confidence for the latter's malicious intent to defraud a guest of the hotel.[5]

On September 14, 1994, before his dismissal, private respondent filed a complaint for diminution of salary before the Arbitration Branch of NLRC. Subsequently, after having been dismissed, private respondent amended aforesaid complaint and included the charge of illegal dismissal from employment. During the arbitration proceedings, petitioner offered to reinstate private respondent which the latter rejected. Thereafter, the labor arbiter, in a decision dated July 6, 1995, dismissed said complaint for diminution of salary and illegal dismissal for lack of merit.

On appeal, public respondent NLRC affirmed the order dismissing the complaint for diminution of salary, but

modified the decision of the labor arbiter as regards illegal dismissal. It held that the overbilling incident is the singular handiwork of Landrigan as there is no evidence linking private respondent with the anomaly. It also ordered the reinstatement of private respondent with backwages but only up to the time when the offer of reinstatement was made on January 31, 1995. It disposed of the case as follows:

"WHEREFORE, premises considered, the respondents are hereby ordered to reinstate herein complainants with backwages in the amount of P26,866.64. Accordingly, the dismissal of the complaint for diminution of salary is affirmed.

The appealed Decision is thus accordingly modified.

SO ORDERED."[6]

Its motion for reconsideration having been denied, petitioner filed the present petition. It seeks to annul the decision of public respondent ordering the reinstatement of private respondent. However, petitioner does not state the grounds relied upon for said annulment. We note that petitioner imputes neither lack or excess of jurisdiction, nor grave abuse of discretion, on the part of public respondent in rendering the assailed judgment.

Resort to a special civil action for certiorari under Rule 65 of the Rules of Court is limited to the resolution of jurisdictional issues, that is, lack or excess of jurisdiction and grave abuse of discretion amounting to lack of jurisdiction.[7] The respondent acts without jurisdiction if he does not have the legal power to determine the case. There is excess of jurisdiction where the respondent, being clothed with the power to determine the case, oversteps his authority as determined by law. And there is grave abuse of discretion where the respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of his judgment as to be said to be equivalent to lack of jurisdiction.[8] Since petitioner neither assails the jurisdiction of public respondent nor attributes grave abuse of discretion on part of the labor tribunal, this petition must fail.

Besides, petitioner did not comply with the rule on certification against forum shopping. The certification in this petition was improperly executed by the external legal counsel of petitioner. For a certification of non-forum shopping must be by the petitioner, or any of the principal parties and not by counsel unless clothed with a special power of attorney to do so. This procedural lapse on the part of petitioner is also a cause for the dismissal of this action.[9]

Even if the abovementioned procedural defects were to be set aside, the petition would still not prosper. Public respondent cannot be faulted for grave abuse of discretion. For we find its assailed judgment supported by factual and legal bases.

In its memorandum petitioner raises the following queries:

- Whether there were just causes to terminate the private respondent?
- Whether the reinstatement order by the Hon. NLRC is legal and proper?
- Whether the award of backwages in the amount of P 26, 866.64 by the Hon. NLRC is legal and proper?"[10]

Simply stated, the proper issue now for resolution is whether or not public respondent committed grave abuse of jurisdiction in modifying the decision of the labor arbiter and in ordering the reinstatement of private respondent.

The fundamental guarantee of security of tenure dictates that no worker shall be dismissed except for just and authorized cause provided by law, and after due process. The just and authorized causes are enumerated under Articles 282, 283 and 284 of the Labor Code. The due process requirement of notice and hearing is set-out in Article 277 (b) of the said Code.

As provided for in the Labor Code: "ART. 282. Termination by employer. – An employer may terminate an employment for any of the following causes: xxx (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative. xxx" But it must be stressed that loss of confidence as a just cause for termination of employment is premised by the fact that an employee concerned holds a position of trust and confidence. This situation holds where a person is entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. In the case of supervisory personnel occupying positions of responsibility, this Court has repeatedly held that loss of trust and confidence justifies termination.[11]

Termination of an employment on this ground does not require proof beyond reasonable doubt of the employee's misconduct. It is sufficient that there is some basis for the loss of trust or that the employer has 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]

The Court, however, has repeatedly stressed that the right of an employer to dismiss employees on account of loss of trust and confidence must not be exercised arbitrarily. Just cause must be shown, so as not to render the employee's constitutional right to security of tenure nugatory. Besides, for loss of confidence to be a valid ground for dismissal, the basis thereof must arise from particular proven facts. In other words, this ground must be founded on facts established by the employer who must clearly and convincingly prove by substantial evidence the facts and incidents upon which loss of confidence in the employee may be fairly made to rest; otherwise the dismissal will be rendered illegal.[13]

In the instant case, petitioner failed to prove by ample evidence that private respondent intended to defraud Mr. Hu, as herein explained. Hence, there is no basis for petitioner to claim it lost the trust and confidence it had reposed upon private respondent. Noteworthy are the following circumstances that favor private respondent's innocence:

First. Mariano admitted in her written statement that she was the one responsible for entering the amount of P2,000.00 in Mr. Hu's statement of account. Nowhere in her written statement did she declare that private respondent directed her to make such entry. Further, petitioner failed to refute Mariano's declaration that the statement of account which she gave to Mr. Hu reflected only the total charges due up to August 14, 1994, albeit he actually checked out of the hotel on August 15, 1994. This shows that the billing reflected on August 14, 1994 statement was not yet complete as the P2,000.00 outstanding account of Mr. Hu had yet to be incorporated therein.

Second. Landrigan, in his written statement admitted that he approached Mariano and he demanded payment of the transportation fee due him because he was previously hired by Mr. Hu's group for two days. Private respondent had nothing to do with Landrigan's demand for such payment. Landrigan believed in good faith that Mr. Hu actually owed him P2,000.00 when he served as driver for two days. That Landrigan returned the amount to petitioner did not in any way prove private respondent's wrongdoing.

Furthermore, the second statutory requirement for a valid dismissal stipulates notice and hearing. Before an employee can be dismissed, the employer must furnish the worker with two notices: (1) notice which apprises the employee of the particular acts or omissions for which dismissal is sought and (2) subsequent notice which informs the employee of the employer's decision to dismiss him. The twin requirements of notice and hearing constitute essential elements of the statutory process, and neither of these elements can be eliminated without running afoul of the procedural mandate.[14]

In this case, the evidence on record is devoid of any indication that petitioner complied with the requirements of

due process prior to termination, as shown in the following discussion.

First. Petitioner did not notify private respondent of the particular acts or omissions for which he was dismissed. The incident report prepared by Mr. Padua is not the notice contemplated by law. Such report merely narrates the complaint aired by Mr. Hu against the front desk personnel. And, nowhere in said incident report did petitioner pinpoint private respondent as the person responsible for overcharging. In fact, it was only upon service of termination order that private respondent realized that the complaint of Mr. Hu was directed at him.

Second. Private respondent was not afforded his right to be heard. The hearing affords the employee an opportunity to answer the charge against him and to defend himself personally or with the help of a representative before dismissal is effected. Private respondent's reply letter addressed to Mr. Padua does not satisfy the requirement of ample opportunity to be heard. The said reply letter was written by private respondent in his capacity as front desk supervisor in order to shed light on the events that transpired involving Mariano and Landrigan. Private respondent was not then aware that the complaint was directed at him. Moreover, as there was no investigation conducted by petitioner, private respondent was not afforded an opportunity to confront Landrigan, Mariano or Mr. Hu.

In sum, there is no valid and just cause in terminating the employment of private respondent. With the finding that private respondent was illegally dismissed, he is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[15]

Hence, aside from reinstatement, private respondent here is entitled to full backwages. However, the backwages awarded by public respondent was inadequate compensation for his travail. Public respondent limited private respondent's backwages from the date of his dismissal and up to the time when petitioner allegedly offered to reinstate private respondent. It explained that the failure of private respondent to work, after the supposed offer was made, can no longer be attributed to the fault of petitioner. This, in our view, does not suffice to provide complete relief to the painful socio-economic dislocation of the employee and his family.

As previously stated, an employee who is unjustly dismissed is entitled to his full backwages computed from the time his compensation was withheld from him up to the time of his reinstatement. Mere offer to reinstate a dismissed employee, given the circumstances in this case, is not enough. If petitioner were sincere in its intention to reinstate private respondent, petitioner should have at the very least reinstated him in its payroll right away. We are thus constrained to conclude that private respondent should be paid by petitioner not only the sum of P26,866.64 awarded by the NLRC, but the petitioner should be held liable for the entire amount of backwages due the private respondent from the day he was illegally dismissed up to the date of his reinstatement. Only then could observance of labor laws be promoted and social justice upheld.

WHEREFORE, the instant petition is DISMISSED. The assailed DECISION of NLRC is AFFIRMED with the MODIFICATION that petitioner is hereby ordered not only to reinstate private respondent to his position but also to pay his full backwages from the day of his illegal dismissal until his actual reinstatement. Public respondent NLRC is hereby directed to make the computation of said full backwages including allowances and other benefits owing to the private respondent, and inform soonest all parties as well as this Court accordingly, within thirty days after receipt of this decision. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, JJ., concur.

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- [1] Rollo, p. 138.
- [2] Id. at 136.
- [3] Id. at 139.
- [4] Id. at 137.
- [5] Id. at 140-141.
- [6] Id. at 19-25.
- [7] *St. Martin Funeral Home vs. NLRC*, 295 SCRA 494, 503 (1998)
- [8] I F. Regalado, *Remedial Law Compendium*, p. 707 (1997)
- [9] *Escorpizo vs. University of Baguio*, GR-121962, April 30, 1999, p. 4.
- [10] Rollo, p. 98.
- [11] *Caoile vs. NLRC*, 299 SCRA 76, 81-82 (1998)
- [12] *Del Val vs. NLRC*, 296 SCRA 283, 289 (1998)
- [13] *Jardine Davies Inc. vs. NLRC*, GR-76272, July 28, 1999, pp. 6-7.
- [14] cf *Vinta Maritime Co. Inc. vs. NLRC*, 284 SCRA 656, 671-672 (1998)
- [15] Article 279, Labor Code.

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