ANTONIO C. CAÑETE JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ROBINSONS LAND CORPORATION, CAPT. RICARDO D. DICON AND PATERNO M. ABELLERA, RESPONDENTS.

G.R. No. 130425. September 30, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This petition for certiorari under Rule 65 of the Rules of Court, as amended, seeks to annul the 13 June 1997 Resolution of the National Labor Relations Commission (NLRC) which held that petitioner's dismissal was valid thereby reversing the 19 August 1996 decision of Labor Arbiter Ernesto B. Dinopol declaring petitioner's dismissal illegal and ordering his reinstatement with payment of back wages and 13th month pay, and its 22 August 1997 Resolution denying reconsideration.

Private respondent Robinsons Land Corporation (RLC) is a domestic corporation engaged in the realty business. Private respondents Paterno M. Abellera and Ricardo D. Dicon are RLC's Asst. Vice-Pres. for Complex Administration, and Corporate Security and Safety Officer, respectively.

In May 1993 petitioner Cañete Jr. was hired by private respondent RLC as Security Officer assigned at the Robinsons Galleria Shopping Mall (hereafter referred to as the MALL) located at Ortigas Avenue, Mandaluyong City, with the latest salary of P6,400.00 per month.

On 1 November 1995 RLC Shift Security Supervisor Jess L. Balajadia caught a vendor by the name of Ben C. Maniago selling food to tenants and employees inside the MALL in violation of RLC's rules and regulations. During interrogation, Maniago claimed that he had the blessings and permission of In-house Security Officer Cañete Jr. and private agency Security Guard-in-Charge Mauro A. Montefalco to sell food inside the MALL. Thereafter, Maniago executed a handwritten statement admitting that he had been selling food inside the MALL since February 1995 and that he was allowed to do so on the condition that he would give "Magnum" (Cañete's call sign) and Montefalco free daily meals. However, he later modified his position and declared that while he supplied Cañete Jr. and Montefalco food everyday they would pay him during payday.

On 2 December 1995 Lt. Col. Rosalina Bailen,[1] Head of RLC Security and Safety, issued a memorandum requiring both Cañete Jr. and Montefalco to submit their written explanation either confirming or denying the allegations.

In his written statement, petitioner Cañete Jr. admitted having ordered food from Ben Maniago but denied that he received the same for free. He claimed that he paid for the food during payday and that Maniago had previously been apprehended but was released after he explained that the food was intended for the MALL's low-wage sales personnel. Cañete Jr. likewise pointed out that vendors also plied food at the Office Tower and the other administrative offices of RLC and their being prevalent made him believe that it was allowed. For his part Montefalco, in his written statement, also admitted having bought food from Maniago but likewise claimed that he paid for the same during payday.

On 6 December 1995, after deliberating on Cañete Jr.'s explanation, private respondent RLC issued a memorandum terminating his services on the ground of loss of confidence, and declaring that "security is a position of trust and confidence" and that his "actuations were observed to be against the normal norm of being an in-house security officer."

On 17 January 1996 Cañete Jr. filed a complaint before the National Labor Relations Commission (NLRC) against private respondents for illegal dismissal, underpayment of overtime pay, non-payment of salaries, overtime pay, holiday pay, 13th month pay, and other money claims. In answer to the charges, private respondents reasoned that in allowing an outside vendor to sell food inside the MALL in exchange for free meals for himself, Cañete Jr. violated Secs. 2.04 and 2.08 of the "Employee Discipline Policies and Guidelines" which specifically provided for the penalty of discharge, to wit:

> Sec. 2.04. Obtaining or accepting money or anything of value by entering into an arrangement(s) with supplier(s) client (s) or other outsider(s) x x x x
>
> Sec. 2.08. Breach by employee of the trust reposed in him by management or by a company representative.

On 19 August 1996 Labor Arbiter Dinopol ruled in favor of Cañete Jr. declaring his dismissal illegal and ordering payment of his back wages and 13th month pay for 1995 but denying his other claims. Labor Arbiter Dinopol further held that the act prohibited by company rules was the "act of obtaining or accepting money or anything of value by entering into unauthorized arrangements" which Cañete Jr. did not do under the premises.

Consequently, private respondents appealed the Labor Arbiter's decision to the NLRC. On 13 June 1997 the NLRC reversed and set aside the decision of the Labor Arbiter declaring that private respondents were justified in dismissing Cañete Jr. since he was tasked with the enforcement of company rules and policies inside the MALL and having been proved to be remiss in his duty by his patent acquiescence to Maniago's illicit activities, private respondents had every reason to lose their trust and confidence in him.

On 17 July 1997 Cañete Jr. moved for reconsideration which the NLRC rejected in its Resolution of 22 August 1997.

Petitioner now contends that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that he was validly dismissed despite the failure of private respondents to sufficiently prove just cause. He argues that the unsworn statements and documents they submitted are inadmissible as evidence as they are mere hearsay and without probative value.

The contention is without merit. The documents submitted by private respondents before the Labor Arbiter are not hearsay and can be accorded probative value because Sec. 3, Rule V, of the New Rules of Procedure of the NLRC specifically allows the parties to submit position papers accompanied by all supporting documents including the affidavits of their respective witnesses which take the place of their testimony. It is not necessary that the affidavits and other documents presented conform with the technical rules of evidence since in labor cases the rules of evidence prevailing in courts of law or equity are not controlling.[2] It is sufficient that the documents submitted by the parties have a bearing on the issue at hand and support the positions taken by them. Moreover, petitioner cannot on this late day object to the admission of evidence on the ground that it is hearsay as the same cannot be raised for the first time on appeal. The failure of a party to object to the admission of evidence constitutes a waiver of his right to make such objection, and consequently, the evidence offered may be admitted.

Petitioner also contends that the NLRC committed grave abuse of discretion in finding just cause for petitioner's dismissal on the basis of its strained interpretation of private respondents' guidelines under Sec. 2.04 specifically the concept of "anything of value." He argues that the extension of credit to him can hardly be equated with

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"anything of value" as the rule intends to deter employees from receiving "kickbacks" in terms of money or anything of value from suppliers, clients or outsiders and does not apply to "vendors."

We do not agree. Sec. 2.04 was correctly interpreted by the NLRC to encompass the extension of credit to petitioner Cañete Jr. by Maniago inasmuch as the latter could not have sold him food on credit if he did not allow Maniago to sell food to other employees inside the MALL. The extension of credit was therefore the consideration for Maniago's entry into the MALL premises without being bothered by MALL security. To limit the meaning of "anything of value" to "kickbacks" alone would be to jeopardize company interests as RLC clearly intended to prohibit its employees from receiving money or any other consideration by entering into "any and all arrangements." It would likewise be a myopic interpretation of said rule if vendors were to be excluded from the prohibition since Sec. 2.04 clearly states "by entering into an arrangement with suppliers, clients or other outsiders." The NLRC thus correctly held that while it may be concluded that Cañete Jr. and Montefalco did not directly receive money from Maniago, the privilege of buying their food from him on credit is indubitably to be considered as something of value in exchange for their assent to Maniago's vending activities.

Petitioner further claims that the NLRC gravely abused its discretion when it declared that private respondents validly dismissed him on the ground of loss of trust and confidence since he merely ordered food from Maniago and allowed him entrance into the MALL premises in the honest belief that the latter was not engaged in vending but was merely delivering food to low-wage earners who could not afford the prices at the fast food stalls. Moreover, he avers that buying food on credit is but a minor infraction which does not warrant his dismissal.

We do not agree. Petitioner Cañete Jr.'s concern for the lowly paid employees of the commercial establishment cannot conceal the fact that he violated company regulations. Evidence submitted by private respondents revealed that Cañete Jr. received food on credit from Maniago and this was the consideration or the thing of value he obtained in exchange for allowing Maniago to perform a prohibited activity. While petitioner's altruism is to be applauded, the same cannot prevail over a clear company policy not to admit vendors and to enter into any arrangement with outsiders for a consideration. His effort to effect good faith in allowing Maniago to enter the MALL premises also fails in view of the 2 February 1995 Memorandum issued by Corporate Security and Safety Officer Ricardo D. Dicon which strictly prohibited illegal vendors from entering and doing business inside the MALL.

> I reiterate to all security personnel that illegal vendors are strictly prohibited to enter and do their business inside the mall. Anybody caught tolerating this business will be dealt with accordingly.
>
> For strict compliance.[3]

Loss of confidence can be a ground for dismissing an employee when there is basis for the same or when the employer has reasonable ground to believe, if not entertain, the moral conviction that the employee is responsible for the misconduct and that the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.[4] By petitioner Cañete Jr.'s actions private respondent RLC lost all faith, trust and confidence in him and in his ability to respect and carry out company policies and regulations.

Petitioner insists that he cannot be dismissed on the basis of loss of trust and confidence since the position of a security officer is not one of trust and confidence. He argues that a security guard is entrusted only with the physical task of protecting property and the employers' trust and confidence in him is to the execution of his ministerial functions alone.[5] He is not entrusted with the duties of safekeeping and safeguarding of company policies, management instructions and company secrets; hence, he cannot be dismissed on the ground of loss of confidence.

Contrary to petitioner's claim, he was not a mere security guard but one of the seven In-house Security and Safety

Officers of private respondent corporation and, as such, occupied a position of trust and confidence. Moreover, apart from being an in-house security officer, he was assigned the following additional responsibility contained in the Memorandum dated 20 June 1995 of the RLC's Security and Safety Office:

> MR. ANTONIO CAÑETE – will be responsible on all cases subject for investigations, thus, he will be acting as Security Investigator on all crimes against persons or properties committed within our jurisdiction.[6]

Private respondent RLC had clearly placed reliance on petitioner Cañete Jr.'s abilities, otherwise it would not have assigned him such a vital function.

Petitioner contends that the NLRC committed grave abuse of discretion in holding that he was validly dismissed despite failure of private respondents to observe due process. He avers that he was terminated without having received a formal charge stating the particular acts or omissions constituting the grounds for his dismissal and was only informed thereof during the proceedings before the Labor Arbiter. On 2 December 1995 he received a memorandum requiring him to confirm or deny the veracity of Security Shift Supervisor Balajadia's report. Shortly thereafter he was fired for loss of confidence without having been informed of the basis thereof. His alleged violation of Secs. 2.04 and 2.08 surfaced only when RLC submitted its position papers before the Labor Arbiter.

Petitioner's contention is baseless. The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to seek a reconsideration of the action or ruling complained of.[7] This requirement is met where one is given a chance to explain his side of the controversy, even if no hearing is conducted. In the instant case, petitioner was apprised of the charges against him as shown by the 2 December 1995 memorandum issued by Head of RLC Security and Safety Lt. Col. Rosalina Bailen requesting him to answer the charges made against him. He then submitted a full-length explanation in his defense and even acknowledged the opportunity given him by the management to explain his side. Hence, contrary to petitioner's allegations, he was accorded due process before his termination.

Lastly, petitioner contends that the NLRC committed grave abuse of discretion in denying him his 13th month pay since private respondents never questioned the award thereof.

We agree. Petitioner should be paid his full 13th month pay for 1995 since private respondents never assailed the award before the Labor Arbiter. We cannot adhere to private respondents' claim that he should only be paid one-half (1/2) thereof on the ground that he received the same in his November payroll since this is the first time this matter has been alleged.

WHEREFORE, the questioned Resolution dated 13 June 1997 of public respondent National Labor Relations Commission declaring the dismissal of petitioner Antonio C. Cañete Jr. to be valid, as well as its Resolution of 22 August 1997 denying reconsideration, is AFFIRMED with the sole MODIFICATION that private respondents Robinsons Land Corporation, Capt. Ricardo D. Dicon and Paterno M. Abellera should pay petitioner his full 13th month pay for the year 1995.

SO ORDERED.

Mendoza, Quisumbing, and Buena, JJ., concur.

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[1] Also referred to as "Rosalita" in the NLRC Resolution of 13 June 1997.

[2] Art. 221, Labor Code as amended; Salonga v. NLRC, G.R. No. 118120, 23 February 1996, 254 SCRA 11, citing Cagampan v. NLRC, G.R. Nos. 85122-24, 28 March 1991, 195 SCRA 533.

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[3] Rollo, p. 206.

[4] Hernandez v. NLRC, G.R. No. 84392,10 August 1989, 176 SCRA 269; Valladolid v. Inciong, G.R. Nos. 52364 and 53349, 25 March 1983, 121 SCRA 205.

[5] Marina Port Services, Inc. v. NLRC, G.R. No. 80962, 28 January 1991, 193 SCRA 420.

[6] Rollo, p. 141.

[7] Ibid.

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