

ALDEGUER & CO., INC./LOALDE BOUTIQUE, PETITIONER, VS. HONEYLINE TOMBOC, RESPONDENT.

G.R. No. 147633. July 28, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

In 1993, Aldeguer and Co., Inc./Loalde Boutique (petitioner), a corporation engaged in the retail and wholesale of Loalde brand products, hired Honeyline Tomboc (respondent).

Petitioner promoted respondent in 1996 as Officer-in-Charge (OIC) of its Loalde Ayala Boutique (Loalde Ayala) in the Ayala Center, Cebu City. As OIC, respondent had the following responsibilities:

- Monitors daily the inventory status of the stocks per product line and per product class
- Coordinate with the area manager with the following matters
 - stock requirement
 - maintenance of the boutique
 - new directives of the mall management
 - customer's problems
 - other boutique problems
- Supervises the sales staff assigned in the respective boutiques
- Implements the company rules and regulations
- Checks the PR and deposit slips prepared by the cashier against the sales tally report
- As per internal control, the OIC is not allowed to handle cashiering except [in] emergency cases which must have prior approval by the management. Keyholding of the cash drawer is the responsibility of the cashier.
- Must at all times submit a written memo of any irregular incident that may occur inside the boutique or if there's any deviation [from] company policy due to circumstances.[1]

After conducting an audit of sales in Loalde Ayala, petitioner concluded that respondent misappropriated P28,137.70[2] which is a just cause for termination under Art. 282 of the Labor Code,[3] and accordingly notified her on May 24, 1997 of the termination of her services effective June 24, 1997. Petitioner also notified her as follows:

Aside from these undeposited cash collections, there are reports submitted by three (3) cashiers who were assigned in the Loalde Boutique that you, being the OIC in the boutique meddles [sic] [with] the cash for deposit, and delaying [sic] such for more than three (3) days. This has prompted the management to believe that you were really using the money.[4] (Underscoring supplied)

Respondent thereupon filed on June 25, 1997 a Complaint[5] before the National Labor Relations Commission (NLRC) against petitioner for illegal dismissal, illegal salary deductions, underpayment of wages, non-payment of 13[th] month pay, and damages.

In her Position Paper,[6] respondent gave the following version:

After being cleared of her accountabilities on May 19, 1997 by Nenita Pamisa (Nenita), the Accounting Manager of petitioner, she went on leave the following day, her application for the purpose having been earlier approved. On her report back for work, she received a memorandum[7] dated May 24, 1997 informing her that effective May 25, 1997, she was no longer allowed to enter the premises of Loalde Ayala and that she should instead report to petitioner's Head Office at Mandaue City. Complying, she reported to the Head Office where she was assigned to fold and pile dresses in the stockroom.

In the same Position Paper, respondent posited that she was terminated from employment because she refused to sign a voucher acknowledging receipt of wage differentials which she did not in fact receive.[8]

From the records, it is gathered that at the scheduled conciliation conference before the Labor Arbiter, petitioner sent no representative.[9] And it twice failed to send any representative at the formal hearing of the case. Further, it failed to submit its position paper,[10] drawing the Labor Arbiter to declare on February 5, 1998 the case submitted for decision on the basis of respondent's position paper.[11] Petitioner was later to file the following day or on February 6, 1998 its position paper[12] cum affidavits of Nenita, Kay Malagar (Kay), Jinky Diongson (Jinky), Joanne Bernaldez, and Jocelyn Martinez (Jocelyn),[13] proffering the following version:

It is its policy to require a boutique-in-charge to conduct a "cash count . . . every end of the day or on the first hour of the following day after her day off [and a]ny collection for the day must be deposited without fail on the succeeding banking day." [14]

On May 19, 1997, Nenita audited the sales of Loalde Ayala and discovered undeposited cash sales covered by six receipts detailed as follows:[15]

Official Receipt Number

Date

Amount

6565

April 27, 1997

P 8,338.00

6582

May 6, 1997

5,542.50

6586

May 7, 1997

10,035.40

6801

May 11, 1997

12,090.00

6802

May 12, 1997

9,203.40

6803

May 13, 1997

6,844.30

When asked to explain, respondent claimed that the amounts were all deposits-in-transit, meaning, the bank had already picked up the amounts but had not yet returned the validated deposit slips.[16]

Respondent having been scheduled to go on vacation leave starting May 20, 1997, she was asked to and did report for work on even date during which she conferred with Nenita and the General Boutique and Sales Manager Cora Anzano. At the conference, respondent maintained that the questioned amounts were already deposited in the bank. Petitioner's bank passbook did not, however, reflect the amounts covered by the last three above-indicated official receipts.[17]

Investigation showed that deposits on May 13, 1997 (comprising the proceeds of sales for May 9, 11, and 12, 1997 which were Friday, Sunday, and election day, respectively) and May 14, 1997 were all check deposits, and that there were no cash deposits even if there were cash sales in the amount of P28,137.70 covering the said period.

On her scheduled return to work on May 24, 1997, respondent did not show up; hence, the issuance of the notice of her dismissal which was mailed to her on May 29, 1997.[18]

Respondent committed other irregularities in the past. Thus, on February 24, 1997, she incurred a cash shortage of P46,491.35 and when made to account therefor, she claimed that a representative of Solidbank Mandaue picked up the amount on the morning of the same day. The bank denied her claim, however.

Verification with the bank revealed that the cash sales for February 15 and 16, 1997 were deposited only on February 25, 1997, and the cash sales for February 20-23, 1997 were deposited only on February 26, 1997.[19] Respondent later explained that her deviation from petitioner's policy of requiring the deposit of the day's sale on the following banking day arose from the sudden change in the pick-up system of the bank.[20]

On another occasion or on April 24, 1997, respondent instructed an employee, Jocelyn, to issue an official receipt for P4,307.25 antedated April 3, 1997, and another for P6,030.30 antedated April 18, 1997, to cover amounts which Loalde Ayala received on those dates and which were being traced by the head office.

Still on another occasion, respondent falsified the signature of the bank teller on deposit slips dated April 3, 1997 and April 18, 1997.

By Decision[21] of March 16, 1998, Labor Arbiter Ernesto F. Carreon dismissed respondent's complaint.

The NLRC upheld[22] the Labor Arbiter's Decision and denied respondent's Motion for Reconsideration,[23] prompting her to file a Petition for Certiorari[24] before the Court of Appeals.

By Decision[25] of February 27, 2001, the Court of Appeals, concluding that respondent was illegally dismissed,

reversed the NLRC decision and ordered her reinstatement with full payment of back wages and without loss of seniority rights.[26]

In reversing the NLRC decision, the Court of Appeals found the Labor Arbiter to have "committed grave abuse of discretion when it admitted [herein petitioner's] Position Paper even if submitted almost two (2) months late, aggravated by the fact that said Position Paper was unverified and no copy thereof furnished [herein respondent]"[27] (Underscoring partly in the original, partly supplied). And it found respondent to have been illegally dismissed.[28] It further found that respondent was denied due process as she was not afforded a chance to refute the charge of misappropriation against her. Finally, it found the charge to be "a product of [respondent's] refusal . . . to sign a fictitious voucher." [29]

Hence, the present petition[30] faulting the Court of Appeals to have erred:

- x x x IN HOLDING THAT THE LABOR ARBITER COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT ADMITTED HEREIN PETITIONER'S POSITION PAPER ONE DAY AFTER THE CASE WAS DEEMED SUBMITTED FOR DECISION.
- x x x IN BRUSHING ASIDE THE FINDINGS OF FACTS OF BOTH THE NLRC AND THE LABOR ARBITER WHICH HELD THE TERMINATION OF RESPONDENT VALID BASED ON SUBSTANTIAL EVIDENCE ON RECORD.
- x x x IN ORDERING THE REINSTATEMENT OF RESPONDENT TOMBOC AS SUBSTANTIAL EVIDENCE HAS ESTABLISHED THE JUST CAUSE FOR RESPONDENT'S DISMISSAL.
- x x x IN HOLDING THAT PETITIONER FAILED TO COMPLY WITH PROCEDURAL DUE PROCESS IN DISMISSING THE RESPONDENT.[31] (Underscoring supplied)

The petition is impressed with merit.

A Labor Arbiter is mandated by law to use every reasonable means to ascertain the facts of each case speedily and objectively, without technicalities of law or procedure, all in the interest of due process.[32] Failure to submit a position paper on time is not a ground for striking it from the records.[33] And lack of verification of petitioner's position paper is only a formal, not a jurisdictional, defect.[34]

In finding the admission of the belatedly filed position paper of petitioner to have been attended with grave abuse of discretion, the Court of Appeals relied on, inter alia, the following pronouncement in *Mañebo v. National Labor Relations Commission*: [35]

x x x Firstly, while it is true that the Rules of the NLRC must be liberally construed and that the NLRC is not bound by the technicalities of law and procedure, the Labor Arbiters and the NLRC itself must not be the first to arbitrarily disregard specific provisions of the Rules which are precisely intended to assist the parties in obtaining just, expeditious, and inexpensive settlement of labor disputes. One such provision is Section 3, Rule V of the New Rules of Procedure of the NLRC which requires the submission of verified position papers within fifteen days from the date of the last conference, with proof of service thereof on the other parties. The position papers "shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's testimony." After the submission thereof, the parties "shall . . . not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits, and other documents." [36] (Emphasis and underscoring supplied)

In finding *Mañebo* to have been denied due process, this Court held:

[T]he Labor Arbiter gravely abused his discretion in disregarding the rule governing position papers by admitting the Supplemental Position Paper and Memorandum, which was not even accompanied by proof of service to the petitioner or his counsel, and by taking into consideration, as basis for his decision, the alleged facts adduced therein and the documents attached thereto.[37] (Emphasis and underscoring supplied)

As partly reflected in the above-quoted portions of the decision in Mañebo, the Court noted that the labor arbiter principally based its decision on the facts alleged in, and documents attached to the therein respondent-employer's "Supplemental Position Paper and Memorandum," no copy of which was even furnished the petitioner-employee Mañebo to thus deny him due process.

In the case at bar, petitioner submitted its Position Paper on February 6, 1998 or a day after the labor arbiter considered the case submitted for decision. Unlike Mañebo, herein respondent was furnished a copy of petitioner's Position Paper on February 6, 1998.[38] Between February 6, 1998 and March 16, 1998 when the labor arbiter promulgated its decision, respondent does not even appear to have rebutted petitioner's Position Paper.

From the recital of the facts of the case at bar then, respondent was not deprived of due process.

ON THE MERITS, petitioner has shown just cause for the termination of respondent's employment under Art. 282 of the Labor Code on the ground of "fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative." [39]

Nenita's affidavit and audit report are corroborated by petitioner's Solidbank passbook showing that the P12,090.00 cash sales for May 11, 1997, P9,203.40 cash sales for May 12, 1997, and P6,844.30 cash sales for May 13, 1997 - all duly receipted[40] - were not deposited in petitioner's account with Solidbank.[41]

The claim of Jinky, a cashier, in her affidavit that it was respondent who turned over the deposits to the bank representative on May 13, 1997 was corroborated by Kay, the branch head of the Solidbank-Gorordo Branch who personally picked up the deposits from Loalde Ayala on May 13 and 14, 1997. Petitioner in fact presented deposit slips showing that, contrary to its policy, cash sales for the day were on several occasions not deposited on the next banking day.[42]

Respondent's contention that the Labor Arbiter and the NLRC ignored the Memorandum issued by petitioner on February 29, 1997 indicating her duties and responsibilities which do not include handling cash collection of sales and making deposits with the bank[43] does not lie. It has been established that while a boutique-in-charge is ordinarily not allowed to handle cashiery, she may do so, however, if the need arises.[44] At any rate, Jinky and some of the affiants stated in their affidavits that respondent interfered with cashiery tasks, in violation of company policy.

On respondent's claim that petitioner framed her up in retaliation for her refusal to sign a voucher showing receipt of payment of wage differentials which she never received,[45] the same fails. The copy of the voucher dated April 1996 which respondent presented shows that she did, in fact, sign it.[46]

IN FINE, the Court finds that respondent's employment was terminated for just cause. It finds, however, that petitioner failed to observe the requirements of procedural due process.

The rules implementing Book VI of the Labor Code require the following in the termination of employment based on just causes as defined in Article 282 of the Labor Code:

x x x x

(i)

A written notice on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity to which to explain his side.

(ii)

A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii)

A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

x x x x [47]

Effective May 25, 1997, you are not allowed to enter the Ayala Boutique. You have been given a letter of Notice of Termination, and [it] has been advised that you shall directly report to the Head Office at M.L. Quezon St., Cabancalan, Mandaue City upon your return after your vacation leave. Since May 25, 1997 is a Sunday, you are required to report to Mandaue Office on Monday, May 26, 1997.

Should you want to get your personal belongings in the boutique, you have to course everything through the General Boutique & Sales Manager, Ms. Cora G. Anzano. The latter will handle the withdrawal of your personal things in the boutique, and shall turn-over everything to you personally. Ms. Anzano will be at the Ayala Boutique tomorrow morning, May 25, 1997.

You have to take heed of this directive to avoid a more drastic action.[49]

Such single notice does not comply with the requirements of the law.[50]

Petitioner argues, however, that "respondent was terminated not only for the offenses she committed [in] May 1997 but also for the other offenses particularly those committed [in] February 1997 for which she was already required to explain in writing x x x." [51] (Emphasis in the original, underscoring supplied). The argument fails. For, for the first notice requirement to be satisfied, the following conditions must be met:

[T]he first notice must inform outright the employee that an investigation will be conducted on the charges particularized therein which, if proven, will result to his dismissal. Such notice must not only contain a plain statement of the charges of malfeasance or misfeasance but must categorically state the effect on his employment if the charges are proven to be true.

This notice will afford the employee an opportunity to avail [of] all defenses and exhaust all remedies to refute the allegations hurled against him for what is at stake is his very life and limb[,] his employment. Otherwise, the employee may just disregard the notice as a warning without any disastrous consequence to be anticipated. Absent such statement, the first notice falls short of the requirement of due process. x x x [52]

Petitioner having failed to comply with the first notice requirement, respondent is, following *Agabon v. National Labor Relations Commission*, [53] entitled to indemnity in the form of nominal damages in the amount of P30,000.

WHEREFORE, the February 27, 2001 Decision of the Court of Appeals is REVERSED and SET ASIDE. The January 12, 1999 Decision of the National Labor Relations Commission is REINSTATED with the MODIFICATION that petitioner, Aldeguer & Co., Inc./Loalde Boutique, is ORDERED to pay respondent, Honeyline Tomboc, nominal damages in the amount of P30,000.00.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] NLRC records, p. 22.

[2] Id. at 27.

[3] Art. 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing. (Underscoring supplied)

[4] Id. at 27.

[5] Id. at 1.

[6] Id. at 13-21.

[7] Id. at 26.

[8] Id. at 14-15, 18.

[9] Id. at 113.

[10] Id. at 40-42.

[11] Id. at 42.

[12] Id. at 44-52.

[13] Id. at 62-64, 73-77, 83-84.

[14] Id. at 301.

[15] Id. at 45, 60, 62.

[16] Id. at 45

[17] Id. at 46, 59-60, 67-68, 70-72.

[18] Id. at 87. Vide id. at 29.

[19] Id. at 80.

[20] Id. at 47, 80-82.

[21] Id. at 118-121.

[22] Id. at 161-168.

[23] Id. at 169-175, 195.

[24] CA rollo, pp. 2-26.

[25] Penned by Court of Appeals Associate Justice Jose L. Sabio, Jr. with the concurrence of Associate Justices Hilarion L. Aquino and Mercedes Gozo-Dadole. Id. at 335-345.

[26] Id. at 344.

[27] Id. at 339-340.

[28] Id. at 342-344.

[29] Id. at 343.

[30] Rollo, pp. 10-44.

[31] Id. at 24.

[32] ABS-CBN Broadcasting Network v. Nazareno, G.R. No. 164156, September 26, 2006, 503 SCRA 204, 222.

[33] Ibid.

[34] Vide Rural Bank of Alaminos Employees Union v. NLRC, 376 Phil. 18, 31 (1999) (citation omitted).

[35] G.R. No. 107721, January 10, 1994, 229 SCRA 240.

[36] Id. at 248.

[37] Id. at 249.

[38] Vide NLRC records, p. 52.

[39] Labor Code, Article 282 (c).

[40] NLRC records, pp. 70-72.

[41] Id. at 66-69.

[42] Id. at 91-92.

[43] Rollo, p. 128. Vide records, p. 22.

[44] Records at 90.

[45] Id. at 112.

[46] Id. at 25.

[47] Rules Implementing Book VI, Rule I, Section 2.

[48] CA rollo, p. 343.

[49] NLRC records, p. 26.

[50] Vide Perpetual Help Credit Cooperative, Inc. v. Faburada, 419 Phil. 147, 157 (2001).

[51] Rollo, p. 173.

[52] Maquiling v. Philippine Tuberculosis Society, Inc., G.R. No. 143384, February 4, 2005, 450 SCRA 465, 477

(citation omitted).

[53] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

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