

DOMINADOR S. PEREZ AND CELINE CAMPOS, PETITIONERS, VS. THE MEDICAL CITY GENERAL HOSPITAL, ALFREDO BENGZON, BENITA MACALAGAY AND MARIANNE FRANCISCO, RESPONDENTS

G.R. NO. 150198. March 06, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

The present case arose from the dismissal of two orderlies of respondent Medical City General Hospital (the Hospital) for allegedly pilfering hospital property. As follows are the antecedent facts:[1]

Prompted by reports of missing medicines and supplies in the Emergency Room/Trauma Room (ER/TR) and upon the suggestion of one of the Hospital's staff nurses, the Hospital, on September 9, 1999, opened 22 lockers of employees assigned to the ER/TR. The Hospital found four lockers with items belonging to it. The employees corresponding to the lockers and the items found are as follows:

Dominador Perez Four rolls of micropore

One ovum forcep

adson forceps

laryngoscope ear pieces

monkey wrench

Celine Campos Two berodual

Two ventolin nebules

Two tongue depressors

Lailanie Espiritu nulain (a regulated drug)

Ventolin nebules

Mateo Butardo micropore

bath towel

PIMS (prescription manual)

white linen

Dominador Perez, Celine Campos, Lailanie Espiritu and Mateo Butardo were directed to submit written explanations as to why these items were inside their lockers. Perez, Campos and Butardo submitted their written explanations, while Espiritu opted to resign. An administrative hearing was held where the three employees who responded were represented by a union counsel. At the end of the proceedings, the charge against Butardo was dismissed while Perez and Campos, herein petitioners, were found to have violated category seven of the company rules, a serious infraction meriting dismissal. The Hospital offered them the opportunity to voluntarily resign with separation pay, under a clause provided in the Collective Bargaining Agreement. They refused and the Hospital dismissed them from the service.

On January 19, 2000, petitioners filed a complaint for illegal dismissal with the National Labor Relations Commission (NLRC).[2] On August 29, 2000, after the submission of position papers, the Labor Arbiter found respondents guilty of illegal dismissal and ordered the reinstatement of petitioners with backwages and without loss of seniority rights.[3] On appeal to the NLRC,[4] the Labor Arbiter's decision was reversed and the complaint was dismissed.[5] Petitioners then went to the Court of Appeals (CA) on a petition for certiorari.[6] On August 7, 2001, the CA issued the assailed decision, denying the petition and affirming the decision of the NLRC.[7] Hence, petitioners have filed the present petition for review on certiorari under Rule 45 of the Rules of Court, asking the Court to reinstate the decision of the Labor Arbiter.

In attempting to account for the presence of the items inside their lockers, petitioners gave the following explanations:

Perez maintained that on the day before the lockers were opened, he was replacing the bed sheets in the ER and found a monkey wrench tucked under one of the bed cushions. Not finding any proper person to hand over the wrench, and wanting to go home already, he decided to keep the wrench inside his locker for purposes of safekeeping until he could turn it over at his next shift. As for the ovum and adson forceps, he took these instruments on September 2, 1999 because he noticed that they were already due for evaluation and subsequent condemnation. He claimed that he placed them inside his locker with the intention of eventually endorsing them to his supervisor. Lastly, he explained that the micropore plastics were instruments used by him while on duty and the laryngoscope ear piece was kept by him with the consent of his supervisor.

Campos asserted that it has been her practice to carry nebulas in her pocket whenever she was on duty as a matter of convenience for patients who suffer from sudden asthma attacks. On September 5, 1999, being tired and in a hurry to get home, she just left these in her locker and simply forgot to endorse them to the proper person. They were eventually abandoned inside the locker after she moved out her stuff when she transferred from the ER to Pediatrics.

Petitioners, in essence, maintain that they have sufficiently accounted for the presence of these items inside their lockers and that the evidence presented against them is insufficient to show that they are guilty of misappropriating company property. Moreover, assuming *ex gratia argumenti* that there was violation of company rules, the penalty of dismissal would be too harsh considering their long years of dedicated service to the Hospital.

The Court is not a trier of facts, and this rule applies with greater force in labor cases. Hence, the factual findings of the NLRC are generally accorded not only respect but even finality if supported by substantial evidence and especially when affirmed by the CA. However, a disharmony between the factual findings of the Labor Arbiter and the NLRC opens the door to a review by this Court.[8]

The Labor Arbiter ruled, as follows:

We disagree with the respondent company's contention that the complainants were found guilty of misappropriation considering that there was no taking of property for the purpose of depriving the respondents of ownership and possession of the same. The hospital did not incur losses on the alleged misappropriated items since they were placed in the lockers for temporary safekeeping. Undoubtedly, the imputation of misappropriation of company properties entirely rests on speculative inferences, which according to the Supreme Court in *Pilipinas Bank vs. NLRC*, 215 SCRA 756, can never be the basis of illegal dismissal on the ground of dishonesty. The complainants gave valid explanations and justifications on the questioned items found in their lockers, but respondents ignored their explanations and decided to terminate their services x x x.

In reversing the Labor Arbiter, the NLRC concluded:

The hospital has convincingly established that all employees, including the herein complainants, are not

allowed to place hospital items in their respective lockers as this is contrary to the rules and procedures of the hospital. In the case of the monkey wrench allegedly found by complainant Perez, he should have placed this item in the ER (emergency room) drawer where the instruments are placed in accordance with the Hospital's rules and procedure and not in his locker. The other instruments should be endorsed to the next staff on duty and should not be kept as what Perez did (Annex "B," respondent's position paper). With respect to the items for evaluation as well as items to be condemned[,] the same should be submitted to a ward clerk who will endorse it to the Physical Pleat for evaluation. The clerks are the only authorized personnel to keep condemned items and nobody else and these condemned items are to be placed inside the supplies locker. The procedure was attested to by Ms. Imelda M. Lloren, E[R]-TR Supervisor in her latter dated November 19, 1999 (Annex "13," respondent's position paper). In the same manner, all staffs in the ER-TR of the hospital are not allowed to put medicines in their pockets. All medicines are placed and should be made accessible in the hospital['s] E-Cart so that in cases of emergency, the said medicines are easily accessible for patients' use (Annex "14," respondents['] position paper) x x x.

Contrary to the position taken by the Labor Arbiter, the Hospital's dismissal of petitioners did not rest on speculative inferences. Petitioners themselves have admitted that properties belonging to the Hospital were found inside their lockers. As to how these items got inside the lockers, petitioners acknowledged having placed them there against company rules. In view of these admissions, there is ample evidence to support a charge for pilferage unless petitioners can satisfactorily explain their possession.

Perez contends that he had the wrench and the forceps inside his lockers for safekeeping with every intention of turning them over. While this may be considered to explain the presence of the wrench, since he claims he found it only a day before the lockers were opened, it does not fully account for the forceps. Perez alleged that he took these instruments on September 2, 1999 after noticing that they were already due for evaluation and condemnation and was going to endorse them to the supervisor. If this were the case, why was he not able to endorse them at his next shift? Instead, the instruments remained inside his locker for more than a week until the Hospital discovered them when it conducted a search. Secondly, as stated in the December 19, 1999 letter of the ER-TR Supervisor,[9] Perez's responsibility is limited to checking and recommending defective or non-functional equipment. He is not allowed to keep the items but is required to deliver them to the ward clerk who, in turn, will keep them in the supplies locker until their delivery to the scrap officer on the last Friday of the month. It was made clear to all hospital staff that hospital equipment should only be kept in the supplies locker. Plainly, Perez had no business taking instruments into his locker, even if these were already defective. As for the micropore and laryngoscope ear piece, Perez claims that the former is used by him while on duty while the latter was kept by him with the consent of his supervisor. According to the Hospital, micropore is a supply charged to the patient and is not issued to orderlies, while a laryngoscope ear piece is a doctor's instrument.[10] The Court sees no reason why Perez needed to have such items. As an orderly, he was not charged with giving out micropores nor did his job entail the use of a laryngoscope ear piece.

For her part, Campos claims that it has been her practice to put nebulas inside her pocket for emergencies. Similarly, the Court cannot comprehend the need for her to keep them in her pocket when she can easily get hold of them from the emergency cart. Also, keeping nebulas inside her pocket does not explain why she had to keep two at a time, as two were found inside her locker. Even assuming that she found it convenient to have nebulas in her pocket, this does not explain the need to also keep it in her locker as she could, without much effort, return it to the emergency cart at the end of every shift. Lastly, there were other items found in her locker (the berodual and tongue depressors) for which Campos failed to account.

Based on the foregoing consideration, the Court finds there was sufficient basis to hold that petitioners misappropriated hospital property. The next issue is whether dismissal was the appropriate penalty.

The power to dismiss an employee is a recognized prerogative that is inherent in the employer's right to freely manage and regulate his business. An employer cannot be expected to retain an employee whose lack of morals, respect and loyalty to his employer or regard for his employer's rules and appreciation of the dignity and responsibility of his office has so plainly and completely been bared. An employer may not be compelled to continue to employ a person whose continuance in service will patently be inimical to his interest. The dismissal of an employee, in a way, is a measure of self-protection. Nevertheless, whatever acknowledged right the employer has to discipline his employee, it is still subject to reasonable regulation by the State in the exercise of its police power.[11] Thus, it is within the power of this Court not only to scrutinize the basis for dismissal but also to determine if the penalty is commensurate to the offense, notwithstanding the company rules.

In this case, the Court agrees with the Labor Arbiter that dismissal would not be proportionate to the gravity of the offense considering the circumstances present in this case. Perez has been an employee of the Hospital for 19 consecutive years. Campos, while not employed with the Hospital as long as Perez, can lay claim to seven consecutive years. During their long tenure with the Hospital, it does not appear that they have been the subject of disciplinary sanctions and they have kept their records unblemished. Moreover, the Court also takes into account the fact that petitioners are not managerial or confidential employees in whom greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected.[12] This can be gleaned from the supervisor's letter explaining that orderlies' duties are limited to checking equipment and recommending their condemnation.[13]

Furthermore, in previous cases decided by this Court, a number of employees were granted reinstatement after a determination that their dismissals were not proportionate to the offense committed.[14] In *Associated Labor Unions-TUCP v. NLRC*, [15] cited by petitioners, the involved employee was dismissed after being caught pilfering a pair of boots, an aluminum container and 15 hamburger patties. This Court took into account the value of the articles taken, his two years of unblemished service and his position as a rank and file, and ordered his reinstatement without backwages.

The reinstatement of petitioners is in line with the social justice mandate of the Constitution. Nevertheless, the Court does not countenance the wrongful act of pilferage but simply maintains that the extreme penalty of dismissal is not justified and a lesser penalty would suffice. Under the facts of this case, suspension would be adequate. Without making any doctrinal pronouncement on the length of the suspension in cases similar to this, the Court holds that considering petitioners' non-employment since January 2000, they may be deemed to have already served their period of suspension. Consequently, the Labor Arbiter's order of reinstatement is upheld, with the deletion of the award of backwages, so as not to put a premium on acts of dishonesty.

WHEREFORE, the petition is **PARTIALLY GRANTED** and the assailed Decision dated August 7, 2001 rendered by the Court of Appeals is **SET ASIDE**. Petitioners Dominador Perez and Celine Campos are ordered **REINSTATED WITHOUT BACKWAGES BUT WITHOUT LOSS OF SENIORITY**. No pronouncement as to costs.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Extracted from Petitioners' and Respondents' Position Papers, Rollo, pp. 55 and 67.

[2] Rollo, p. 54.

[3] Id. at 85.

[4] Third Division.

[5] Rollo, p. 124.

[6] Id. at 153.

[7] Id. at 37.

[8] Manila Water Company, Inc. v. Peña, G.R. No.158255, July 8, 2004, 434 SCRA 53; Agabon v. NLRC, G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[9] Presented by both petitioners and respondents as their evidence, Rollo, p. 49.

[10] Respondents' Reply to Petitioners' Position Paper, Rollo, p. 79.

[11] Philippine-Singapore Transport Services, Inc. v. NLRC, G.R. No. 95449, August 18, 1997, 277 SCRA 506.

[12] Metro Drug Corp. v. NLRC, G.R. No. L-72248, July 22, 1986, 143 SCRA 132.

[13] Supra, See Note 9.

[14] Gutierrez, v. Singer Sewing Machine Co., G.R. No. 140982, September 23, 2003, 411 SCRA 512; Caltex Refinery Employees Association (CREA) v. NLRC, G.R. No. 102993, July 14, 1995, 246 SCRA 271; Radio Communications of the Philippines, Inc. v. NLRC, G.R. No. 102958, June 25, 1993, 223 SCRA 656; PAL v. PALEA, G.R. No. L-24626, June 28, 1974, 57 SCRA 489.

[15]G.R. No. 120450, February 10, 1999, 302 SCRA 708.

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