ST. LUKE’S MEDICAL CENTER, INC. AND ROBERT KUAN, CHAIRMAN, PETITIONERS, VS. ESTRELITO NOTARIO, RESPONDENT.

G.R. No. 152166. October 20, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Before the Court is a petition for review on certiorari seeking to set aside the Decision[1] dated September 21, 2001 and Resolution[2] dated February 12, 2002 of the Court of Appeals (CA), Second Division, in CA-G.R. SP No. 58808, entitled St. Luke's Medical Center, Inc. and Robert Kuan, Chairman v. National Labor Relations Commission and Estrelito Notario, which affirmed the Resolutions dated January 19, 2000[3] and March 20, 2000[4] of the National Labor Relations Commission (NLRC), Third Division, in NLRC NCR Case No. 00-03-02177-97. The NLRC Resolution dated January 19, 2000 reversed and set aside the Decision[5] dated November 11, 1998 of the Labor Arbiter dismissing respondent's complaint for illegal dismissal against petitioners, St. Luke's Medical Center, Inc. and its Chairman, Robert Kuan, and ordered them to reinstate respondent to his former position, without loss of seniority rights and other benefits and full backwages from the date of dismissal until actual reinstatement, and should reinstatement be no longer feasible, to further pay him separation pay equivalent to one (1) month's pay for every year of service, with the following monetary award, namely, backwages of P250,229.97 and separation pay of P31,365.00, or a total amount of P281,594.97.

The antecedent facts are as follows:

On June 23, 1995, St. Luke's Medical Center, Inc. (petitioner hospital), located at Quezon City, employed respondent as In-House Security Guard. In August 1996, Nimaya Electro Corporation installed a closed-circuit television (CCTV) system in the premises of petitioner hospital to enhance its security measures[6] and conducted an orientation seminar for the in-house security personnel on the proper way of monitoring video cameras, subject to certain guidelines.[7]

On December 30, 1996, respondent was on duty from 6:00 p.m. to 6:00 a.m. of the following day, December 31, 1996. His work consisted mainly of monitoring the video cameras. In the evening of December 30, 1996, Justin Tibon, a foreigner from Majuro, Marshall Island, then attending to his 3-year-old daughter, Andanie De Brum, who was admitted since December 20, 1996 at room 257, cardiovascular unit of petitioner hospital, reported to the management of petitioner hospital about the loss of his mint green traveling bag, which was placed inside the cabinet, containing, among others, two (2) Continental Airlines tickets, two (2) passports, and some clothes. Acting on the complaint of Tibon, the Security Department of petitioner hospital conducted an investigation. When the tapes of video camera recorder (VCR) no. 3 covering the subject period were reviewed, it was shown that the VCR was focused on camera no. 2 (Old Maternity Unit), from 2103H to 2215H [or 9:03 p.m. to 10:15 p.m.] of December 30, 1996, and camera no. 1 (New Maternity Unit), from 0025H to 0600H [or 12:25 a.m. to 6:00 a.m.] of December 31, 1996. The cameras failed to record any incident of theft at room 257.

On January 6, 1997, petitioner hospital, through Abdul A. Karim, issued a Memorandum[8] to respondent, the

CCTV monitoring staff on duty, directing him to explain in writing, within 24 hours upon receipt thereof, why no disciplinary action should be taken against him for violating the normal rotation/sequencing process of the VCR and, consequently, failed to capture the theft of Tibon's traveling bag at room 257.

In his letter[9] dated January 6, 1997, respondent explained that on the subject dates, he was the only personnel on duty as nobody wanted to assist him. Because of this, he decided to focus the cameras on the Old and New Maternity Units, as these two units have high incidence of crime.

Finding the written explanation of respondent to be unsatisfactory, petitioner hospital, through Calixton, served on respondent a copy of the Notice of Termination,[10] dated January 24, 1997, dismissing him on the ground of gross negligence/inefficiency under Section 1, Rule VII of its Code of Discipline.

Thus, on March 19, 1997, respondent filed a Complaint[11] for illegal dismissal against petitioner hospital and its Chairman, Robert Kuan, seeking reinstatement with payment of full backwages from the time of his dismissal up to actual reinstatement, without of loss of seniority rights and other benefits.

Petitioners countered that they validly dismissed respondent for gross negligence and observed due process before terminating his employment.

On November 11, 1998, the Labor Arbiter dismissed respondent's complaint for illegal dismissal against petitioners. He stated that a CCTV monitoring system is designed to focus on many areas in a programmed and sequential manner and should not to be focused only on a specific area, unless the situation requires it. He concluded that during respondent's duty from December 30 to 31, 1996, he was negligent in focusing the cameras at the Old and New Maternity Units only and, consequently, the theft committed at room 257 was not recorded. He said that respondent's infraction exposed petitioners to the possibility of a damage suit that may be filed against them arising from the theft.

On appeal by the respondent, the NLRC issued a Resolution dated January 19, 2000, reversing the Decision of the Labor Arbiter. It stated that petitioners failed to submit proof that there was an existing Standard Operating Procedure (SOP) in the CCTV monitoring system, particularly on the focusing procedure. It observed that respondent was not negligent when he focused the cameras on the Old and New Maternity Units, as they were located near the stairways and elevators, which were frequented by many visitors and, thus, there is the likelihood that untoward incidents may arise. If at all, it treated the matter as a single or isolated act of simple negligence which did not constitute a just cause for the dismissal of an employee. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the decision dated November 11, 1998 is hereby SET ASIDE and a new one entered ordering respondents-appellees to reinstate complainant-appellant to his former position without loss of seniority rights and other benefits, with full backwages from the date of dismissal until actual reinstatement. Should reinstatement be no longer feasible, to further pay complainant-appellant separation pay equivalent to one (1) month pay for every year of service.
>
> As computed, complainant-appellant's monetary award as of this date of decision are as follows:
>
> Backwages P250,229.97
> Separation Pay..... + 31,365.00
> Total P281,594.97
>
> SO ORDERED.[12]

On February 14, 2000, petitioners filed a Motion for Reconsideration, but the same was denied by the NLRC in its Resolution dated March 20, 2000.

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On September 21, 2001, the CA dismissed petitioners' petition for certiorari, affirming the NLRC's finding that while respondent may appear to be negligent in monitoring the cameras on the subject dates, the same would not constitute sufficient ground to terminate his employment. Even assuming that respondent's act would constitute gross negligence, it ruled that the ultimate penalty of dismissal was not proper as it was not habitual, and that there was no proof of pecuniary injury upon petitioner hospital. Moreover, it declared that petitioners failed to comply with the twin notice rule and hearing as what they did was to require respondent to submit a written explanation, within 24 hours and, thereafter, he was ordered dismissed, without affording him an opportunity to be heard.

As their motion for reconsideration was denied in the CA's Resolution dated February 12, 2002, petitioners filed this present petition.

Petitioners allege that, by not focusing the CCTV cameras on the different areas of the hospital, respondent committed gross negligence which warrants his dismissal. According to them, there was no need to prove that the act done was habitual, as the occurrence of the theft exposed them to possible law suit and, additionally, there might be a repetition of a similar incident in the future if respondent would remain in their employ.

Respondent maintains that he was not negligent in the discharge of his duties. He said that there was no actual loss to petitioner hospital as no complaint or legal action was taken against them and that the supposed complainant, Tibon, did not even report the matter to the police authorities.

Contrary to the stance of petitioners, respondent was illegally dismissed without just cause and compliance with the notice requirement.

Article 282 (b) of the Labor Code provides that an employer may terminate an employment for gross and habitual neglect by the employee of his duties. Corollarily, regarding termination of employment, Section 2(a) and (d), Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code, as amended, provides that:

> Section 2. Security of Tenure. (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.
> x x x x
>
> (d) In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> For termination of employment based on just causes as defined in Article 282 of the Labor Code:
>
> (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within 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

To effectuate a valid dismissal from employment by the employer, the Labor Code has set twin requirements, namely: (1) the dismissal must be for any of the causes provided in Article 282 of the Labor Code; and (2) the employee must be given an opportunity to be heard and defend himself. This first requisite is referred to as the

substantive aspect, while the second is deemed as the procedural aspect.[13]

An employer can terminate the services of an employee only for valid and just causes which must be supported by clear and convincing evidence. The employer has the burden of proving that the dismissal was indeed for a valid and just cause.[14]

A perusal of petitioner hospital's CCTV Monitoring Guidelines,[15] disseminated to all in-house security personnel, reveals that that there is no categorical provision requiring an in-house security personnel to observe a rotation sequence procedure in focusing the cameras so that the security monitoring would cover as many areas as possible.

This fact is corroborated by Tito M. Maganis, petitioners' former In-House Security Department Head, in his Affidavit[16] dated October 28, 1997, stating, among others:

> x x x x
>
> 2. That as Department Head of the In-House Security of SLMC [St. Luke's Medical Center], I am familiar with the standard operating procedures governing the conduct and operation of equipment and devices for observance by all security personnel of SLMC to secure the premises;
>
> 3. That to the best of my personal knowledge, there had been no rules on rotation/sequencing process of CCTVs disseminated for observance by security personnel;
>
> 4. That in the past, there were occasions when the CCTVs were focused on specific areas where untoward incidents usually happen; That no penalty of dismissal had been imposed, thus far, on any security personnel found focusing these CCTVs; and
>
> x x x x

Further, the Certification[17] dated April 14, 1998, issued by Himaya Electro Corporation, indicating respondent as one of the participants in the orientation conducted for in-house security personnel[18] contradicted the joint statement,[19] dated April 15, 1998, by therein participants, which excluded respondent as one of the attendees. Thus, the certification cannot support petitioners' theory that respondent ought to know the rudiments of monitoring the CCTV cameras on the basis that he was one of the participants in the said orientation. Probably, respondent was listed as one of the participants, but he failed to attend.

For his part, respondent denied having attended the said orientation and being informed of the SOP of CCTV cameras. Despite the foregoing, respondent had been efficiently performing his assigned task. In fact, in the Letter of Commendation[20] dated December 8, 1996, petitioner hospital, through Alfredo D. Calixton, Jr., commended the vigilance of respondent and other four in-house security personnel in preventing the occurrence of thefts and thwarting the loss of the personal belongings of a confined patient.

Under Article 282 (b) of the Labor Code, an employer may terminate an employee for gross and habitual neglect of duties. Neglect of duty, to be a ground for dismissal, must be both gross and habitual. Gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.[21] Under the prevailing circumstances, respondent exercised his best judgment in monitoring the CCTV cameras so as to ensure the security within the hospital premises. Verily, assuming arguendo that respondent was negligent, although this Court finds otherwise, the lapse or inaction could only be regarded as a single or isolated act of negligence that cannot be categorized as habitual and, hence, not a just cause for his dismissal.

Petitioners anchor on the postulate that even a single or isolated act of negligence by respondent constitutes a just cause for his dismissal as it engendered the possibility of a legal action that may be taken against them by the owner of the lost items. This is purely speculative. The Certification,[22] dated July 8, 1999, issued by Renato Politud Valebia, Police Superintendent, Station Commander of Galas Police Station (Station II), located at Unang Hakbang Street, corner Luzon Avenue, Galas, Quezon City, stated that no incident of theft was reported by the management of petitioner hospital or any of its authorized representatives involving the loss of the plane tickets and other personal belongings of Justin Tibon and Andanie De Brum. Even the supposed complainant, Tibon, did not institute any complaint against petitioner hospital. Therefore, it cannot be said that petitioners incurred actual loss or pecuniary damage.

Petitioners question the findings of the CA that there was no compliance with the twin-notice rule and hearing, while respondent maintains that they violated his right to due process.

The employee must be furnished two written notices: the first notice apprises the employee of the particular acts or omissions for which his dismissal is sought, and the second is a subsequent notice, which informs the employee of the employer's decision to dismiss him.[23]

The CA found that petitioner hospital failed to comply with the rule on twin notice and hearing as it merely required respondent to give his written explanation within 24 hours and, thereafter, ordered his dismissal.

The facts showed that on January 6, 1997, petitioner hospital, through Abdul A. Karim, issued a Memorandum to respondent, with the directive to require him to explain in writing, within 24 hours upon receipt thereof, why no disciplinary action should be taken against him for violating the normal rotation or sequencing process of the VCR which led to the loss of the traveling bag of Tibon, the patient's father, at room 257. On the same day, January 6, 1997, respondent submitted a written explanation, stating that during the subject hours on December 30 to 31, 1996, he was the only personnel on duty as nobody wanted to assist him and, this being so, he decided to focus the cameras on the Old and New Maternity Units as these two units usually have high incidence of theft and other untoward incidents. Later, on January 24, 1997, petitioner hospital served a copy of the Notice of Termination upon the respondent for gross negligence/inefficiency.

Petitioners claim that since the dismissal of respondent was made in good faith, as he even admitted his infraction, the award of backwages was erroneous; while respondent seeks reinstatement with payment of full backwages from the time of his dismissal up to actual reinstatement, without of loss of seniority rights and other benefits.

Where the dismissal was without just cause and there was no due process, Article 279 of the Labor Code, as amended, mandates that the employee is entitled to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances and other benefits, or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.

The awards of separation pay and backwages are not mutually exclusive and both may be given to respondent.[24] An employee who is illegally dismissed is entitled to the twin reliefs of full backwages and reinstatement. If reinstatement is not viable, separation pay is awarded to the employee. In awarding separation pay to an illegally dismissed employee, in lieu of reinstatement, the amount to be awarded shall be equivalent to one month salary for every year of service.[25]

Petitioners' lack of just cause and non-compliance with the procedural requisites in terminating respondent's employment renders them guilty of illegal dismissal. Consequently, respondent is entitled to reinstatement to his former position without loss of seniority rights and payment of backwages. However, if such reinstatement proves impracticable, and hardly in the best interest of the parties, perhaps due to the lapse of time since his dismissal, or

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if he decides not to be reinstated, respondent should be awarded separation pay in lieu of reinstatement.[26]

Prescinding from the foregoing, the Court deems that since reinstatement is no longer feasible due to the long passage of time, petitioners are required to pay respondent his separation pay equivalent to one (1) month's pay for every year of service. Petitioners are thus ordered to pay respondent his backwages of P250,229.97 and separation pay of P31,365.00, or a total amount of P281,594.97.

WHEREFORE, the petition is DENIED. The Decision dated September 21, 2001 and Resolution dated February 12, 2002 of the Court of Appeals, Second Division, in CA-G.R. SP No. 58808, which affirmed the Resolutions dated January 19, 2000 and March 20, 2000 of the National Labor Relations Commission, Third Division, are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Leonardo-De Castro,[*] and Mendoza, JJ., concur.

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[*] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 905, dated October 5, 2010.

[1] Penned by Associate Justice Hilarion L. Aquino, with Associate Justices Cancio C. Garcia (now a retired Associate Justice of this Court) and Jose L. Sabio, Jr., concurring; rollo, pp. 31-35.

[2] Id. at 37.

[3] Penned by Commissioner Tito F. Genilo, with Presiding Commissioner Lourdes C. Javier and Commissioner Ireneo B. Bernardo, concurring; id. at 52-61.

[4] Id. at 69-71.

[5] Per Labor Arbiter Edgardo M. Madriaga; id. at 43-50.

[6] The Certification dated April 14, 1998, issued by Himaya Electro Corporation, stated that an orientation on standard procedures was conducted in August 1996, involving the following topics, to wit: a.) systems basic/general operation (composed of cameras, monitors, sequential switchers and time lapse recorders); b.) features and functions; c.) proper usage (operational procedure); d.) do's and don't's; e.) safety suggestions/warnings; and f.) question and answer/other queries (Records, Vol. I, p. 82.)

[7] CCTV MONITORING GUIDELINES

1.) Focus on the CCTV screen. See to it that all cameras and VCRs are well-functioning at all times. VCRs must be with blank tapes at all times to ensure recording. All malfunctioning cameras/VCRs must be reported immediately to HIMAYA personnel.

2.) Set VCRs at 240H regularly. Adjust to 2H setting immediately upon notice of any "unusual movements" to enhance recording.

3.) Inform the duty Desk Officer at least 3 days before tape shortage occurs.

4.) Reading of newspapers, magazines, etc. is strictly prohibited while on CCTV monitoring duty.

5.) CCTV room must not be left unmanned.

6.) Cleanliness and orderliness must be strictly observed inside the CCTV monitoring room.

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7.) DOs are tasked to monitor compliance of all of the above.

8.) Any violation of these guidelines will be dealt with accordingly. (Id. at 84.)

[8] Duly noted by Alfredo D. Calixton, Senior Assistant Department Manager of the Security Department of petitioner hospital, id. at 36.

[9] Records, Vol. 1, p. 37.

[10] Duly noted by Mecita B. Arañas, Senior Executive Assistant, and Grace Enriquez, Personnel Manager of petitioner hospital, id. at 38.

[11] Id. at 2.

[12] Rollo, pp. 60-61.

[13] Ting v. Court of Appeals, G.R. No. 146174, July 12, 2006, 494 SCRA 610, 620. (Citations omitted)

[14] Id. at 620-621.

[15] See note 7.

[16] NLRC records, Vol. I, p. 60.

[17] Id. at 82.

[18] Id. at 83.

[19] Id. at 85. The statement reads:

To Whom It May Concern:

We, the undersigned, In-House Security personnel do hereby depose and say that:

1. We have attended and participated the orientations on CCTV Systems and Operational Procedures conducted by Himaya Electro Corp. in August 1996 at the In-House Security Department, St. Luke's Medical Center.

2. The said orientations were participated in by all In-House Security Guards and Managers (100% attendance).

3. There were four (4) cameras/areas in each monitor/VCR thus, there were sequential switches and time lapse records.

4. There were verbal and written procedures regarding CCTV Operations.

[20] Noted by Mecita Aranas, both Senior Assistant Department Manager of petitioner hospital; id. at 18.

[21] Talidano v. Falcon Maritime & Allied Services, Inc., G.R. No. 172031, July 14, 2008, 558 SCRA 279, 296. (Citations omitted)

[22] Records, Vol. 1, p. 226.

[23] AMA Computer College-East Rizal v. Ignacio, G.R. No. 178520, June 23, 2009, 590 SCRA 633, 653. (Citation omitted)

[24] Century Canning Cororation, Ricardo T. Po, Jr. and Amancio C. Ronquillo v. Vicente, Randy R. Ramil, G.R. No. 171630, August 9, 2010.

[25] Picop Resources, Incorporated (PRI) v. Anacleto L. Tañeca, et al., G.R. No. 160828, August 9, 2010.

[26] AFI International Trading Corporation (Zamboanga Buying Station) v. Lorenzo, G.R. No. 173256, October 9, 2007, 535 SCRA 347, 355. (Citations omitted)

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