

LOLITA S. CONCEPCION, PETITIONER, VS. MINEX IMPORT CORPORATION/MINERAMA CORPORATION, KENNETH MEYERS, SYLVIA P. MARIANO, AND VINA MARIANO, RESPONDENTS.*G.R. No. 153569. January 24, 2012*

Ponente: BERSAMIN, J.

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The employer may validly dismiss for loss of trust and confidence an employee who commits an act of fraud prejudicial to the interest of the employer. Neither a criminal prosecution nor a conviction beyond reasonable doubt for the crime is a requisite for the validity of the dismissal. Nonetheless, the dismissal for a just or lawful cause must still be made upon compliance with the requirements of due process under the Labor Code; otherwise, the employer is liable to pay nominal damages as indemnity to the dismissed employee.

Antecedents

Respondent Minex Import-Export Corporation (Minex) engaged in the retail of semi-precious stones, selling them in kiosks or stalls installed in various shopping centers within Metro Manila. It employed the petitioner initially as a salesgirl,[1] rotating her assignment among nearly all its outlets. It made her a supervisor in July 1997, but did not grant her any salary increase. On October 23, 1997, respondent Vina Mariano, an Assistant Manager of Minex, assigned the petitioner to the SM Harrison Plaza kiosk with the instruction to hold the keys of the kiosk. Working under her supervision there were salesgirls Cristina Calung and Lida Baquilar.

On November 9, 1997, a Sunday, the petitioner and her salesgirls had sales of crystal items totaling P39,194.50. At the close of business that day, they conducted a cash-count of their sales proceeds, including those from the preceding Friday and Saturday, and determined their total for the three days to be P50,912.00. The petitioner wrapped the amount in a plastic bag and deposited it in the drawer of the locked wooden cabinet of the kiosk.

At about 9:30 am of November 10, 1997, the petitioner phoned Vina Mariano to report that the P50,912.00 was missing, explaining how she and her salesgirls had placed the wrapped amount at the bottom of the cabinet the night before, and how she had found upon reporting to work that morning that the contents of the cabinet were in disarray and the money already missing.

Later, while the petitioner was giving a detailed statement on the theft to the security investigator of Harrison Plaza, Vina and Sylvia Mariano, her superiors, arrived with a policeman who immediately placed the petitioner under arrest and brought her to Precinct 9 of the Malate Police Station. There, the police investigated her. She was detained for a day, from 11:30 am of November 10, 1997 until 11:30 am of November 11, 1997, being released only because the inquest prosecutor instructed so.

On November 12, 1997, the petitioner complained against the respondents for illegal dismissal in the Department of Labor and Employment.

On November 14, 1997, Minex, through Vina, filed a complaint for qualified theft against the petitioner in the

Office of the City Prosecutor in Manila.

To the charge of qualified theft, the petitioner insisted on her innocence, reiterating that on November 9, 1997 she, together with Calung and Baquilar, had first counted the cash before placing it in a plastic bag that she deposited inside the drawer of the cabinet with the knowledge of Calung and Baquilar. She explained that on that night Baquilar had left for home ahead, leaving her and Calung to close the kiosk at around 8:00 pm; that at exactly 8:01 pm she proceeded to SM Department Store in Harrison Plaza to wait for her friends whom she had previously walked with to the LRT station; that she noticed upon arriving at the kiosk the next morning that the cabinet that they had positioned to block the entrance of the kiosk had been slightly moved; and that she then discovered upon opening the cabinet that its contents, including the cash, were already missing.

Calung executed a sinumpaang salaysay, however, averring that she had left the petitioner alone in the kiosk in the night of November 9, 1997 because the latter had still to change her clothes; and that that was the first time that the petitioner had ever asked to be left behind, for they had previously left the kiosk together.

Vina declared that the petitioner did not call the office of Minex for the pick-up of the P39,194.50 cash sales on Sunday, November 9, 1997, in violation of the standard operating procedure (SOP) requiring cash proceeds exceeding P10,000.00 to be reported for pick-up if the amount could not be deposited in the bank.

After the preliminary investigation, the Assistant Prosecutor rendered a resolution dated February 4, 1998 finding probable cause for qualified theft and recommending the filing of an information against the petitioner.[2] Thus, she was charged with qualified theft in the Regional Trial Court (RTC) in Manila, docketed as Criminal Case No. 98-165426.

The petitioner appealed by petition for review to the Department of Justice (DOJ), but the DOJ Secretary denied her petition for review on July 4, 2001.[3]

As to the petitioner's complaint for illegal dismissal, Labor Arbiter Jose G. de Vera rendered his decision dated December 15, 1998, viz:[4]

WHEREFORE, all the foregoing considered, judgment is hereby rendered in favor of the complainant and against the respondents declaring the dismissal of the latter from work illegal and ordering her reinstatement to her former work position with full backwages counted from November 10, 1997 until her actual reinstatement without loss of seniority or other employees' rights and benefits.

Respondents are likewise ordered to pay complainant her monetary claims above as well as moral damages of P50,000.00 and exemplary damages of P20,000.00.

Lastly, respondents are liable to pay ten percent (10%) of the total award as and by way of payment of attorney's fees.

SO ORDERED.

On appeal by the respondents, the National Labor Relations Commission (NLRC) reversed the decision of the Labor Arbiter on December 28, 2000, declaring that the petitioner had not been dismissed, but had abandoned her job after being found to have stolen the proceeds of the sales; and holding that even if she had been dismissed, her dismissal would be justifiable for loss of trust and confidence in the light of the finding of probable cause by the DOJ and the City Prosecutor and the filing of the information for qualified theft against her.[5]

The NLRC deleted the awards of backwages, service incentive leave pay, holiday pay and 13th month pay, moral and exemplary damages and attorney's fees, opining that the petitioner would be entitled to an award of damages only when the dismissal was shown to be effected in bad faith or fraud or was an act oppressive to labor, or was

done in a manner contrary to good morals, good customs, or public policy.[6]

After the NLRC denied her motion for reconsideration on March 16, 2001, the petitioner challenged the reversal by the NLRC in the Court of Appeals (CA) on certiorari, claiming that the NLRC thereby committed grave abuse of discretion amounting to excess of jurisdiction for finding that there had been lawful cause to dismiss her; and insisting that the NLRC relied on mere suspicions and surmises, disregarding not only her explanations that, if considered, would have warranted a judgment in her favor but even the findings and disquisitions of the Labor Arbiter, which were in full accord with pertinent case law.

On December 20, 2001,[7] however, the CA sustained the NLRC mainly because of the DOJ Secretary's finding of probable cause for qualified theft, holding:

With the finding of probable cause not only by the Investigating Prosecutor but by the Secretary of Justice no less, it cannot be validly claimed, as the Petitioner does, in her Petition at bench, that there is no lawful cause for her dismissal. The felony of qualified theft involves moral turpitude.

"Respondent cannot use social justice to shield wrongdoing. He occupied a position of trust and confidence. Petitioner relied on him to protect the properties of the company. Respondent betrayed this trust when he ordered the subject lamp posts to be delivered to the Adelfa Homeowners' Association. The offense he committed involves moral turpitude. Indeed, a City Prosecutor found probable cause to file an information for qualified theft against him." (United South Dockhandlers, Inc., versus NLRC, et al., 267 SCRA 401, at page 407, supra)

Admittedly, there is no direct evidence that the Petitioner took the money from the drawer in the cabinet in the Kiosk. But direct evidence that the Petitioner took the money is not required for the Petitioner to be lawfully dismissed for the loss of the money of the Private Respondent corporation. If circumstantial evidence is sufficient on which to anchor a judgment of conviction in criminal cases under Section 4, Rule 133 of the Revised Rules of Evidence, there is no cogent reason why circumstantial evidence is not sufficient on which to anchor a factual basis for the dismissal of the Petitioner for loss of confidence.

IN THE LIGHT OF ALL THE FOREGOING, the Petition at bench is denied due course and is hereby DISMISSED.

SO ORDERED.

On May 13, 2002, the CA denied the petitioner's motion for reconsideration.[8]

Issues

In her appeal, the petitioner submits that:

THE COURT OF APPEALS ERRED IN FINDING THAT THERE WAS NO ILLEGAL DISMISSAL IN THE CASE AT BAR, PARTICULARLY IN FINDING THAT:

- THERE WAS JUST CAUSE FOR HER DISMISSAL, AND
- RESPONDENT NEED NOT AFFORD THE PETITIONER DUE PROCESS TO PETITIONER.

Ruling

The petition lacks merit.

The decisive issue for resolution is whether or not the petitioner was terminated for a just and valid cause.

To dismiss an employee, the law requires the existence of a just and valid cause. Article 282 of the Labor Code

enumerates the just causes for termination by the employer: (a) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or the latter's representative in connection with the employee's 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 his 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.

The NLRC held that the termination of the petitioner was due to loss of trust and confidence. Sustaining the NLRC, the CA stated:

With the finding of probable cause not only by the investigating prosecutor but by the Secretary of Justice no less, it cannot be validly claimed, as the Petitioner does, in her Petition at bench, that there is no lawful cause for her dismissal xxx.

xxx

Admittedly, there is no direct evidence that the Petitioner took the money from the drawer in the cabinet in the Kiosk. But direct evidence that the Petitioner took the money is not required for the Petitioner to be lawfully dismissed for the loss of the money of the Private Respondent corporation. If circumstantial evidence is sufficient on which to anchor a judgment of conviction in criminal cases under Section 4, Rule 133 of the Revised Rules of Evidence, there is no cogent reason why circumstantial evidence is not sufficient on which to anchor a factual basis for the dismissal of the Petitioner for loss of confidence.[9]

The petitioner still argues, however, that there was no evidence at all upon which Minex could validly dismiss her considering that she had not yet been found guilty beyond reasonable doubt of the crime of qualified theft.

The petitioner's argument is not novel. It has been raised and rejected many times before on the basis that neither conviction beyond reasonable doubt for a crime against the employer nor acquittal after criminal prosecution was indispensable. Nor was a formal charge in court for the acts prejudicial to the interest of the employer a pre-requisite for a valid dismissal.

In its 1941 ruling in *National Labor Union, Inc. v. Standard Vacuum Oil Company*, [10] the Court expressly stated thus:

xxx The conviction of an employee in a criminal case is not indispensable to warrant his dismissal by his employer. If there is sufficient evidence to show that the employee has been guilty of a breach of trust, or that his employer has ample reason to distrust him, it cannot justly deny to the employer the authority to dismiss such employee. All that is incumbent upon the Court of Industrial Relations (now National Labor Relations Commission) to determine is whether the proposed dismissal is for just cause xxx. It is not necessary for said court to find that an employee has been guilty of a crime beyond reasonable doubt in order to authorize his dismissal. (Emphasis supplied)

In *Philippine Long Distance Telephone Co. (BLTB Co.) vs. NLRC*, [11] the Court held that the acquittal of the employee from the criminal prosecution for a crime committed against the interest of the employer did not automatically eliminate loss of confidence as a basis for administrative action against the employee; and that in cases where the acts of misconduct amounted to a crime, a dismissal might still be properly ordered notwithstanding that the employee was not criminally prosecuted or was acquitted after a criminal prosecution.

In *Batangas Laguna Tayabas Bus Co. v. NLRC*, [12] the Court explained further, as follows:

Fraud or willful breach of trust reposed upon an employee by his employer is a recognized cause for termination of employment and it is not necessary that the employer should await the employee's final conviction in the criminal case involving such fraud or breach of trust before it can terminate the employee's

services. In fact, even the dropping of the charges or an acquittal of the employee therefrom does not preclude the dismissal of an employee for acts inimical to the interests of the employer.

To our mind, the criminal charges initiated by the company against private respondents and the finding after preliminary investigation of their prima facie guilt of the offense charged constitute substantial evidence sufficient to warrant a finding by the Labor Tribunal of the existence of a just cause for their termination based on loss of trust and confidence. The Labor Tribunal need not have gone further as to require private respondent's conviction of the crime charged, or inferred innocence on their part from their release from detention, which was mainly due to their posting of bail. (Emphasis supplied)

Indeed, the employer is not expected to be as strict and rigorous as a judge in a criminal trial in weighing all the probabilities of guilt before terminating the employee. Unlike a criminal case, which necessitates a moral certainty of guilt due to the loss of the personal liberty of the accused being the issue, a case concerning an employee suspected of wrongdoing leads only to his termination as a consequence. The quantum of proof required for convicting an accused is thus higher – proof of guilt beyond reasonable doubt – than the quantum prescribed for dismissing an employee – substantial evidence. In so stating, we are not diminishing the value of employment, but only noting that the loss of employment occasions a consequence lesser than the loss of personal liberty, and may thus call for a lower degree of proof.

It is also unfair to require an employer to first be morally certain of the guilt of the employee by awaiting a conviction before terminating him when there is already sufficient showing of the wrongdoing. Requiring that certainty may prove too late for the employer, whose loss may potentially be beyond repair. Here, no less than the DOJ Secretary found probable cause for qualified theft against the petitioner. That finding was enough to justify her termination for loss of confidence. To repeat, her responsibility as the supervisor tasked to oversee the affairs of the kiosk, including seeing to the secure handling of the sales proceeds, could not be ignored or downplayed. The employer's loss of trust and confidence in her was directly rooted in the manner of how she, as the supervisor, had negligently handled the large amount of sales by simply leaving the amount inside the cabinet drawer of the kiosk despite being aware of the great risk of theft. At the very least, she could have resorted to the SOP of first seeking guidance from the main office on how to secure the amount if she could not deposit in the bank due to that day being a Sunday.

Yet, even as we now say that the respondents had a just or valid cause for terminating the petitioner, it becomes unavoidable to ask whether or not they complied with the requirements of due process prior to the termination as embodied in Section 2 (d) of Rule I of the Implementing Rules of Book VI of the Labor Code, viz:

Section 2. Security of tenure. – xxx

xxx

(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. (emphasis supplied)

xxx

We answer the query in the negative in the light of the circumstances of the petitioner's termination set forth in her affidavit, to wit:

xxx

14. While I was giving my statement to the security officer of the Mall, respondents Vina and Sylvia Mariano came with a policeman and they brought me to Precinct 9, Malate Police Station. Cristina Calung also arrived and together with the sister of Vina and Sylvia, they operated the booth as if nothing happened;

15. I was detained at the police station from 11:15 a.m., November 10, up to 11:30 a.m., November 11, 1997;

16. After my release from the police precinct, I contacted by phone our office and I was able to talk to respondent Sylvia Mariano. I told her that since I was innocent of the charges they filed against me, I will report back to work. She shouted at me on the phone and told me she no longer wanted to see my face. I therefore decided to file a complaint for illegal dismissal against respondents with the NLRC, hence this present suit; (emphasis supplied) [13]

xxx

The petitioner plainly demonstrated how quickly and summarily her dismissal was carried out without first requiring her to explain anything in her defense as demanded under Section 2 (d) of Rule I of the Implementing Rules of Book VI of the Labor Code. Instead, the respondents forthwith had her arrested and investigated by the police authorities for qualified theft. This, we think, was a denial of her right to due process of law, consisting in the opportunity to be heard and to defend herself.[14] In fact, their decision to dismiss her was already final even before the police authority commenced an investigation of the theft, the finality being confirmed by no less than Sylvia Mariano herself telling the petitioner during their phone conversation following the latter's release from police custody on November 11, 1997 that she (Sylvia) "no longer wanted to see" her.

The fact that the petitioner was the only person suspected of being responsible for the theft aggravated the denial of due process. When the respondents confronted her in the morning of November 10, 1997 for the first time after the theft, they brought along a police officer to arrest and hale her to the police precinct to make her answer for the theft. They evidently already concluded that she was the culprit despite a thorough investigation of the theft still to be made. This, despite their obligation under Section 2 (d) of Rule I of the Implementing Rules of Book VI of the Labor Code, firstly, to give her a "reasonable opportunity within which to explain (her) side;" secondly, to set a "hearing or conference during which the employee concerned, with the assistance of counsel if (she) so desires is given opportunity to respond to the charge, present (her) evidence, or rebut the evidence presented against (her);" and lastly, to serve her a "written notice of termination xxx indicating that upon due consideration of all the circumstances, grounds have been established to justify (her) termination." They wittingly shunted aside the tenets that mere accusation did not take the place of proof of wrongdoing, and that a suspicion or belief, no matter how sincere, did not substitute for factual findings carefully established through an orderly procedure.[15]

The fair and reasonable opportunity required to be given to the employee before dismissal encompassed not only the giving to the employee of notice of the cause and the ability of the employee to explain, but also the chance to defend against the accusation. This was our thrust in *Philippine Pizza, Inc. v. Bungabong*, [16] where we held that the employee was not afforded due process despite the dismissal being upon a just cause, considering that he was not given a fair and reasonable opportunity to confront his accusers and to defend himself against the charge of theft notwithstanding his having submitted his explanation denying that he had stolen beer from the company

dispenser. The termination letter was issued a day before the employee could go to the HRD Office for the investigation, which made it clear to him that the decision to terminate was already final even before he could submit his side and refute the charges against him. Nothing that he could say or do at that point would have changed the decision to dismiss him. Such omission to give the employee the benefit of a hearing and investigation before his termination constituted an infringement of his constitutional right to due process by the employer.

The respondents would further excuse their failure to afford due process by averring that “even before the respondents could issue the petitioner any formal written memorandum requiring her to explain the loss of the P50,912.00 sales proceeds xxx she went post haste to the NLRC and filed a case for illegal dismissal” in order to “beat the gun on respondents.”[17] However, we cannot excuse the non-compliance with the requirement of due process on that basis, considering that her resort to the NLRC came after she had been told on November 11, 1997 by Sylvia that she (Sylvia) “no longer wanted to see” her. The definitive termination closed the door to any explanation she would tender. Being afforded no alternative, she understandably resorted to the complaint for illegal dismissal.

In view of the foregoing, we impose on the respondents the obligation to pay to the petitioner an indemnity in the form of nominal damages of P30,000.00, conformably with *Agabon v. NLRC*,[18] where the Court said:

Where the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights, as ruled in *Reta v. National Labor Relations Commission*. The indemnity to be imposed should be stiffer to discourage the abhorrent practice of “dismiss now, pay later,” which we sought to deter in the *Serrano* ruling. The sanction should be in the nature of indemnification or penalty and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer.

Under the Civil Code, nominal damages is adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

As enunciated by this Court in *Viernes v. National Labor Relations Commissions*, an employer is liable to pay indemnity in the form of nominal damages to an employee who has been dismissed if, in effecting such dismissal, the employer fails to comply with the requirements of due process. The Court, after considering the circumstances therein, fixed the indemnity at P2,590.50, which was equivalent to the employee’s one month salary. This indemnity is intended not to penalize the employer but to vindicate or recognize the employee’s right to statutory due process which was violated by the employer.

The violation of the petitioners’ right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at P30,000.00. We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules. (emphasis is in the original text)

WHEREFORE, the Court AFFIRMS the decision promulgated on December 20, 2001 by the Court of Appeals, but ORDERS the respondents to pay to the petitioner an indemnity in the form of nominal damages of P30,000.00 for non-compliance with the requirements of due process.

No pronouncement as to costs of suit.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Peralta, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and Perlas-Bernabe, JJ., concur.

Brion, J., on official leave.

[1] The petitioner claimed that she started working for Minex on July 27, 1994 but Minex stated that it employed her in 1991.

[2] Rollo, pp. 496-497.

[3] Id., pp. 468-472.

[4] Id., pp. 275-286.

[5] Id., pp. 227-246.

[6] Id.

[7] Id., pp. 113-124; penned by Associate Justice Romeo J. Callejo, Sr. (later a Member of the Court, but already retired), with Associate Justice Remedios Salazar-Fernando and Associate Justice Josefina Guevarra-Salonga concurring.

[8] Id., p. 126.

[9] Id., pp. 123-124.

[10] 73 Phil. 279, 282 (1941).

[11] G.R. No. L-63193, April 30, 1984, 129 SCRA 163, 172.

[12] G.R. No. L-69875, October 28, 1988, 166 SCRA 721, 726-727.

[13] Rollo, p. 360.

[14] Agabon v. NLRC, G.R. No. 158693, November 17, 2004, 442 SCRA 573; citing Santos v. San Miguel Corporation, G.R. No. 149416, March 14, 2003, 399 SCRA 172, 182.

[15] Austria v. NLRC, G.R. No. 123646, July 14, 1999, 310 SCRA 293, 303.

[16] G.R. No. 154315, May 9, 2005, 458 SCRA 288, 299-300.

[17] Rollo, p. 531.

[18] Supra, note 14 at pp. 616-617.

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