PHILIPPINE PIZZA, INC., FORMERLY PHILIPPINE FRANCHISE PROGRESSIVE DEVELOPMENT CORP., PIZZA HUT DIVISION, AND JANET RUTH M. SOLSOLOY, PETITIONERS, VS. KIM M. BUNGABONG, RESPONDENT.

G.R. NO. 154315. May 09, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

In this petition for review on certiorari, petitioners Philippine Pizza, Inc., and Janet Ruth M. Solsoloy assail the Decision[1] of the Court of Appeals, dated July 11, 2002, in CA-G.R. SP No. 62774. Said decision affirmed that of the National Labor Relations Commission (NLRC),[2] dated April 28, 2000, in NLRC NCR CA No. 022449-00, as well as its Resolution[3] denying the motion for reconsideration on August 31, 2000. The NLRC affirmed the Labor Arbiter's Decision[4] that petitioners illegally dismissed respondent Kim M. Bungabong. It ordered petitioners, jointly and severally, to pay Bungabong separation pay in lieu of reinstatement, backwages, and attorney's fees totaling P153,358.06.

The facts of the case are uncomplicated.

Respondent Bungabong had been working for five years as a food attendant in petitioners' Ermita outlet. On December 6, 1997 at around 1:30 a.m., the Duty Manager Alvin Biscocho, allegedly caught one Felix Sabado, another employee, consuming some beer from the establishment's beer dispenser. While the duty manager did not actually see respondent, he concluded that respondent was involved too, because earlier that night, a driver, Jonathan Andra, reported that he saw respondent with Sabado drinking beer from the dispenser. The next day, the duty manager called respondent, inquiring about the latter's involvement, and showed him a letter of Sabado admitting to the offense of drinking beer, and then told him to file an incident report. Thereafter, Criselda Cusi, the outlet's unit manager, issued an offense notice. Respondent denied any involvement in the theft of beer, asserting that only Sabado was involved and was caught. Cusi reported the incident to the head office of Pizza Hut.

On December 15, respondent was informed of his preventive suspension. He was told to report to the Human Resources Department (HRD) of the company for investigation. During the investigation, respondent stated, driver Andra was with the Vice-President for HRD, co-petitioner Janet Ruth M. Solsoloy. Andra then pointed to respondent, and stated that respondent was with Sabado in drinking the company's beer on December 5, 1997, at around 11:30 to 12:00 p.m. A guard on duty, Rossman Manaloto, also stated that on the evening of said date, he confronted respondent and asked why respondent smelled of beer, but respondent ignored the inquiry and hurriedly left. A crew member of the outlet, Daniel Gatdula, also reported on how the respondent bragged how much beer he could drink on his way passing out of the beer dispenser area.

After the investigation, a certain Ms. Ellen of the HRD explained to the respondent the penalty for his alleged offense. She told respondent he should no longer report for work. Respondent was advised to go home. He then

refused to receive his letter of termination, which followed after the investigation.

Aggrieved, respondent filed a complaint against the company for illegal dismissal before the National Labor Relations Commission on January 21, 1998. He sought reinstatement and claimed backwages, holiday pay, bonus and attorney's fees.[5]

On July 30, 1999, the Labor Arbiter decided the case in respondent's favor. The decision held that the testimonies of Andra, Manaloto and Gatdula were fabricated to justify respondent's dismissal. The Labor Arbiter concluded that respondent was terminated without just cause, and decreed as follows:

> WHEREFORE, decision is hereby rendered finding that complainant was illegally dismissed; that reinstatement is no longer practicable at this stage and in lieu thereof, complainant must be paid separation pay; and ordering the respondents to pay, jointly and severally, complainant the total amount of One Hundred Fifty-Three Thousand Three Hundred Fifty-Eight Pesos & 06/100 (P153,358.06) representing his separation pay, backwages and attorney's fees, subject to further computation in case of appeal, until the decision in this case becomes final and executory.
>
> SO ORDERED.[6]

Petitioners appealed to the NLRC, which affirmed the decision of the Labor Arbiter. The NLRC also denied petitioners' motion for reconsideration.

Petitioners brought the case to the Court of Appeals in a special civil action for certiorari, docketed as CA-G.R. SP No. 62774.[7] On July 11, 2002, the Court of Appeals denied the petition, thus,

> WHEREFORE, finding no grave abuse of discretion amounting to lack or excess of jurisdiction in arriving at the assailed decision, the instant petition is hereby DENIED.
>
> SO ORDERED.[8]

Hence, the instant appeal, on the following grounds:

> THE HONORABLE COURT OF APPEALS. . . HAS DECIDED QUESTIONS OF SUBSTANCE IN A WAY PROBABLY NOT IN ACCORD WITH THE APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT IN HOLDING. . .THAT:
> (1) THE PETITIONERS. . ."[F]AILED TO SUBSTANTIALLY COMPLY WITH THE ABOVE REQUIR[E]MENTS" (ON TWO NOTICES AND HEARING IN LABOR DISMISSAL CASES)...;
>
> (2) THE PETITIONERS HEREIN FAILED TO PROVE THAT THE TERMINATION OF THE RESPONDENT WAS FOR A VALID AND AUTHORIZED CAUSE; AND
>
> (3) THERE WAS NO GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BY THE NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION) IN RENDERING ITS DECISION OF APRIL 28, 2000. . . AND RESOLUTION OF AUGUST 31, 2000. . . .[9] [Emphasis supplied.]

Essentially, for our resolution is whether the appellate court erred in sustaining the decisions of the NLRC and the Labor Arbiter that herein respondent was illegally dismissed.

Petitioners insist that loss of trust and confidence, a valid ground for dismissal under Article 282 of the Labor Code,[10] exists in this case.[11] They aver that respondent's dismissal was in accordance with procedural due process. Petitioners contend that the offense notice sufficiently apprised respondent of the nature and cause of the charge against him. According to petitioners, the said notice was sufficient in form and substance. It stated respondent's complete name, the facts constituting the offense, the time of the commission of the offense, and the

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place where the offense was committed.[12] Petitioners also aver that respondent was given the opportunity to explain his side when respondent submitted his written answer to the offense notice.[13]

For his part, respondent argues that the instant petition essentially raises questions of fact which are improper in a petition for review on certiorari.[14] He maintains that the findings of fact of the Labor Arbiter, which are supported by substantial evidence, have been affirmed by both the NLRC and the Court of Appeals. Thus, the factual findings should be accorded great respect and even finality.[15] In our view, we have to determine whether this case is an exception to the general rule.

Long settled is the rule that this Court will not uphold erroneous conclusions unsupported by substantial evidence.[16] Factual findings of administrative agencies are not infallible, and we will set these aside when they fail the test of arbitrariness.[17]

In concluding that the employee's dismissal was without just cause, the Labor Arbiter stated as follows:

> Settled is the rule that in a complaint for illegal dismissal, it is incumbent upon the respondent [employers] to prove that the dismissal is valid and justified. Further, the proof must be clear and convincing.
>
> The statements of respondents' witnesses, namely: Jonathan S. Andra (Annex "3", respondents' Position Paper), security guard Rossman Manaloto (Annex "4") and Daniel Gatdula (Annex "5") cannot be considered relevant evidences [sic] to prove that complainant drank or stole beer from respondent company's beer dispenser at Pizza Hut-Ermita, Manila.
>
> Complainant positively asserted in his Position Paper that on December 7, 1997 at around 7:45 p.m., Mr. Alvin/Marvin Biscocho, the closing duty manager of Pizza Hut-Ermita, informed him that he (Mr. Biscocho) caught Mr. Felix Sabado drunk on December 6, 1997 at approximately 1:30 a.m. just after he (complainant) left the store premises and that he (Mr. Biscocho) requested him to submit an incident report.
>
> The statement concerning Felix Sabado is confirmed by Sabado himself in his own statement (Annex "6", respondents' Position Paper) wherein he admitted liability for his action. Surprisingly however, he did not mention anything about complainant's involvement in the incident (beer drinking). More importantly, if it were true that Jonathan Andra and Daniel Gatdula saw complainant stealing or drinking beer, why did they not report it to the closing duty manager, Mr. Biscocho, who was present. Likewise, why did Jonathan Andra report the matter to the security guard on duty, Rossman Manaloto and not to Mr. Biscocho. Further, why was there no statement at all coming from Mr. Biscocho himself regarding the incident.
>
> Under the premises, this Office is inclined to believe that the statements of Andra, Manaloto and Gatdula were worked out by respondents to justify an otherwise illegal dismissal of herein complainant.[18]

The NLRC affirmed the Labor Arbiter's findings. Yet, we find no evidence to support that Andra, Gatdula, and Manaloto lied in their written testimonies, and that the three do not deserve to be believed. No evidence was presented to show that they had ill motives to lie that herein respondent Bungabong was involved in the theft of some beer. Neither is there any indication in the records that they were coerced into making their written statements. In contrast, the tenor of their statements connote that they freely and voluntarily made these statements.

Moreover, the fact that Felix Sabado did not mention the respondent in his letter of apology cannot reasonably be taken as proof that respondent was not involved in the beer-drinking incident. It is clear that Sabado only intended to apologize for his own misdeed. He had no basis nor reason to apologize for respondent, let alone seek to exonerate him.

Neither can Andra and Gatdula's failure to immediately report the alleged incident to the manager be taken as

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proof that respondent was not involved in the theft. The time when the manager learned of respondent's alleged infraction is immaterial. The fact remains that he was informed on the night of the incident and he confronted Sabado at once concerning the offense. That Biscocho did not learn about it sooner so he could catch respondent with Sabado does not also prove that respondent was not involved in the theft, as concluded by the Labor Arbiter. Nor does it support the Labor Arbiter's conclusion that Andra, Gatdula, or Manaloto was merely "worked out by [petitioners] to justify an otherwise illegal dismissal."[19]

Confronted with Andra's categorical declaration that he saw respondent dispensing beer to Sabado, and Manaloto's declaration that respondent smelled of beer when the latter passed him while on inspection at the exit, respondent had simply denied the accusations. On this score, we are more inclined to believe Andra and Manaloto, for we see no reason why they should lie.

In termination cases, the settled rule is that the burden of proving that the termination was for a valid or authorized cause rests on the employer.[20] But just as the Labor Arbiter or the NLRC is not bound to observe the strict technicalities enforced in courts of law, an employer is not required to prove the existence of just cause beyond reasonable doubt.[21] Termination of an employee on the ground of loss of trust and confidence is allowed so long as there is basis for the loss of trust or that the employer has reasonable ground to believe that the employee is responsible for the misconduct that rendered him unworthy of the trust and confidence demanded by his position.[22] In this regard, the employer must establish clearly and convincingly by substantial evidence the facts and incidents upon which the loss of trust and confidence in the employee may fairly be made to rest.[23]

Contrary to the ruling of the Labor Arbiter and the NLRC, which eventually the Court of Appeals affirmed, we find that petitioner Philippine Pizza, Inc. established the existence of just cause to terminate respondent on the ground of loss of trust and confidence.

Where the employee has access to the employer's property in the form of merchandise and articles for sale, the relationship of the employer and the employee necessarily involves trust and confidence.[24] Hence, when respondent drank stolen beer from the dispenser of Pizza Hut-Ermita on December 6, 1997, he gave cause for his termination and his termination was within the ambit of Article 282 of the Labor Code.

Now, however, as regards violations of the procedural requirement for valid dismissal, the petitioners could be justly faulted. Book V, Rule XIV of the Omnibus Rules Implementing Batas Pambansa Blg. 130 in effect at the time respondent was terminated, outlines the procedure for termination of employment.[25] It provides as follows:

> Sec. 1. Security of tenure and due process. – No worker shall be dismissed except for a just or authorized cause provided by law and after due process.
>
> Sec. 2. Notice of Dismissal. – Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omissions constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.
>
> . . .
>
> Sec. 5. Answer and hearing. – The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representatives, if he so desires.
>
> Sec. 6. Decision to dismiss. – The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.

In this case, we find that petitioners violated respondent's right to due process, particularly the requirement of first notice. The offense notice[26] petitioners gave to respondent is insufficient first notice because it did not comply

with the requirement of the law that the first written notice must apprise the employee that his termination is being considered due to the acts stated in the notice.[27] The first notice issued in this case merely stated that respondent is being charged of dispensing and drinking beer on December 5, 1997, around 11:30 to 11:45 p.m.,[28] and nothing more.

In particular, we find also that petitioners violated respondent's right to a hearing. It is well settled that if the employee denies the charges against him, a hearing is necessary to thresh out any doubt.[29] The records of the case show that respondent submitted his explanation denying that he stole beer from the company dispenser,[30] but he was not given a fair and reasonable opportunity to confront his accusers and defend himself against the charge of theft. The termination letter was issued by co-petitioner Solsoloy on December 15, 1997, one day before respondent went to the HRD Office for the alleged investigation. Clearly then, the decision to terminate respondent which was made effective on December 19, 1997, was already final, even before respondent could present his side and refute the charges against him. Indeed, at that point, nothing that respondent could say or do would have changed the decision to dismiss him. Such failure by petitioners to give respondent the benefit of a hearing and an investigation before his termination, in our view, constitutes an infringement of respondent's constitutional right to due process.[31]

In Agabon v. NLRC,[32] we said that when the dismissal was for cause, the lack of statutory due process will not nullify the dismissal or render it illegal or ineffectual. But the violation of herein respondent's right to statutory due process by petitioners clearly 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.[33] Accordingly, we deem the amount of P30,000 as nominal damages sufficient vindication of respondent's right to due process under the circumstances of this case.

WHEREFORE, the assailed Decision, dated July 11, 2002, of the Court of Appeals in CA-G.R. SP No. 62774 is hereby MODIFIED. Respondent's dismissal is SUSTAINED, but petitioners Philippine Pizza, Inc., and Janet Ruth M. Solsoloy, jointly and severally, are ORDERED to pay respondent Kim M. Bungabong the amount of P30,000.00 as nominal damages for non-compliance with the requirements of due process pursuant to current jurisprudence. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., cocnur.

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[1] Rollo, pp. 55-66. Penned by Associate Justice Eloy R. Bello, Jr., with Associate Justices Godardo A. Jacinto, and Rebecca De Guia-Salvador concurring.

[2] Records, pp. 265-279.

[3] Id. at 303-305.

[4] Id. at 228-239.

[5] Id. at 2.

[6] Rollo, p. 139.

[7] CA Rollo, pp. 2-14.

[8] Rollo, p. 65.

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[9] Id. at 27-28.

[10] 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.

[11] Rollo, pp. 274-277.

[12] Id. at 38-39, 269-270, 272.

[13] Id. at 61.

[14] Id. at 195, 229.

[15] Id. at 196-199, 230.

[16] Corporal, Sr. v. National Labor Relations Commission, G.R. No. 129315, 2 October 2000, 341 SCRA 658, 665.

[17] Diamond Motors Corporation v. Court of Appeals, G.R. No. 151981, 1 December 2003, 417 SCRA 46, 50.

[18] Records, pp. 139-140.

[19] Id. at 140.

[20] Sy v. Court of Appeals, G.R. No. 142293, 27 February 2003, 398 SCRA 301, 310.

[21] Salvador v. Philippine Mining Service Corporation, G.R. No. 148766, 22 January 2003, 395 SCRA 729, 738; Auxilio, Jr. v. National Labor Relations Commission, G.R. No. 82189, 2 August 1990, 188 SCRA 263, 266.

[22] Central Pangasinan Electric Cooperative, Inc. v. Macaraeg, G.R. No. 145800, 22 January 2003, 395 SCRA 720, 726.

[23] Condo Suite Club Travel, Inc. v. NLRC, G.R. No. 125671, 28 January 2000, 323 SCRA 679, 688-689.

[24] Phil. Education Co., Inc. v. Union of Phil. Education Employees and CIR, No. L-13778, 29 April 1960, 107 Phil. 1003, 1005-1006.

[25] Farrol v. Court of Appeals, G.R. No. 133259, 10 February 2000, 325 SCRA 331, 337-338.

[26] Rollo, p. 91.

[27] See Colegio de San Juan de Letran-Calamba v. Villas, G.R. No. 137795, 26 March 2003, 399 SCRA 550, 560.

[28] Rollo, p. 91.

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[29] Roche (Philippines) v. National Labor Relations Commission, G.R. No. 83335, 5 October 1989, 178 SCRA 386, 394.

[30] Rollo, p. 92.

[31] Felix v. NLRC, G.R. No. 148256, 17 November 2004, pp. 14-15.

[32] G.R. No. 158693, 17 November 2004, p. 15.

[33] Id. at 16.

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