COCA-COLA BOTTLERS PHILIPPINES, INC., PETITIONER, VS. DOMINIC E. VITAL, RESPONDENT.

G.R. No. 154384. September 13, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

While it is well recognized that an employee's violation of lawful and reasonable company rules or regulations constitutes a just cause for his dismissal, it is also true that the application of such company rules must be done without abuse of discretion, for what is at stake is not only his position, but also his means of livelihood.[1]

For resolution is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[2] dated April 30, 2002 and the Resolution[3] dated June 28, 2002 rendered by the Court of Appeals in CA-G.R. SP No. 54428, entitled “Coca-Cola Bottlers Phils., Inc. vs. National Labor Relations Commission and Dominic E. Vital.”

The facts as borne by the records are:

On June 1, 1980, Dominic E. Vital, respondent, was employed by Coca-Cola Bottlers Philippines, Inc., petitioner, as route driver/helper at its Antipolo Plant, with a monthly salary of P12,860.00. He was also assigned to perform the duties of a salesman.

Sometime in October, 1995, petitioner, intending to increase the sale of its products, implemented “Operation Rurok,” a local marketing campaign that allows its trusted wholesaler outlets to retrieve foreign empties and/or bottles of petitioner’s competitors, such as Pepsi Cola and Cosmos, from regular customer outlets, in exchange for Coca-Cola containers and products.

On February 6, 1996, Hector C. Lagula, District Sales Supervisor, issued respondent Miscellaneous Slip No. 66772 authorizing him to deliver, in exchange for retrieved Pepsi-Cola and Cosmos empties or bottles, 57 cases of 12 oz. Coca-Cola products to AMC Viray Store situated in Tambunting Street, Blumentritt.

Subsequently or on February 9, 1996, Lagula again handed respondent Miscellaneous Slip No. 75711 authorizing him to deliver, pursuant to an “exclusivity agreement,” 90 cases of 12 oz. Coca-Cola products to Cora’s Store situated in Cuenco Street.

For the third time or on June 29, 1996, Lagula issued respondent Miscellaneous Slip No. 87449 authorizing him to deliver, as replacement for retrieved foreign empties, 95 cases of 12 oz. Coca-Cola products to John Uy at La Loma, Quezon City.

On October 10, 1996, petitioner sent respondent a notice of an investigation of its complaint against him for forgery, fictitious sales transactions, falsification of company documents, unauthorized retrieval of empties, pursuant to Sections 10 and 12, Rule 005-85 of the company’s Code of Disciplinary Rules and Regulations. Petitioner then placed respondent under preventive suspension.

In the meantime, petitioner, in an Interoffice Memorandum dated October 14, 1996, stopped implementing "Operation Rurok."

During the clarificatory hearing conducted by petitioner on January 10, 1997, respondent admitted that he deviated from the instructions stated in the Miscellaneous Slips handed to him by his supervisor, Lagula. He stated that in three separate instances, Lagula instructed him to deliver the Coca-Cola products to other outlets.[4]

Eventually, petitioner sent respondent an Interoffice Memorandum dated February 8, 1997 terminating his services for loss of trust and confidence.

On March 19, 1997, respondent filed with the Labor Arbiter a complaint for illegal dismissal and damages against petitioner, docketed as NLRC NCR Case No. 00-03-02203-97.

In due course, the Labor Arbiter rendered a Decision dated August 7, 1998 dismissing respondent's complaint for lack of merit.

Upon appeal, the National Labor Relations Commission (NLRC) promulgated a Decision dated March 17, 1999 reversing the Arbiter's assailed Decision. The dispositive portion of which reads:

> "ACCORDINGLY, the decision appealed from is reversed and set aside and a new one entered finding complainant's termination illegal. Thus, he is hereby ordered reinstated with full backwages until actual reinstatement.
>
> The claim for moral and exemplary damages is denied for lack of merit.
>
> With attorney's fees and costs of litigation against respondent.
>
> SO ORDERED."

Petitioner then filed a motion for reconsideration but was denied by the NLRC in a Resolution dated May 25, 1999. Hence, it filed with the Court of Appeals a petition for certiorari and mandamus, docketed as CA G.R. SP No. 54428.

On April 30, 2002, the Appellate Court rendered a Decision affirming the assailed Decision of the NLRC holding that respondent was illegally dismissed from the service, thus:

> "To Our minds, petitioner's dismissal of Vital's services is too capricious and whimsical, and therefore, invalid and unjustified. x x x.
>
> x x x
>
> In fine, We rule and so hold that no abuse, much less grave abuse of discretion, may be imputed against the respondent Commission in rendering the assailed Decision and Resolution.
>
> WHEREFORE, the petition is hereby DISMISSED and the challenged issuances AFFIRMED.
>
> Costs against petitioner.
>
> SO ORDERED."

On May 22, 2002, petitioner filed a motion for reconsideration, but was denied by the Appellate Court in a Resolution dated June 28, 2002.

Petitioner now comes to this Court via a petition for review on certiorari contending that respondent's dismissal from employment is lawful since he admitted during the clarificatory hearing that he willfully defied or violated the company disciplinary rules and regulations.

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A careful perusal of the minutes of the clarificatory hearing reveals that respondent did not categorically make such admission, thus:

> "T:
>
> Tama ba iyong gawain na iyon?
>
> S:
>
> Kung ako ho ang tatanungin ninyo ay hindi ho tama, pero iyon ho ang ipinag-uutos ng nakakataas sa amin eh. Kagaya ho ng manager at saka DSS.
>
> T:
>
> Ikaw ba ay aware sa policy natin na bawal ang gawaing iyan?
>
> S:
>
> Aware po ako sa policy natin.
>
> T:
>
> Bakit ka sumusunod doon sa mga gawain...?
>
> S:
>
> Kami po ay miniting ng manager na ito hong paraang ito ay paggawa ng pagdagdag at paglaki ng benta ho sa Coca-Cola, wala po akong magagawa diyan kundi sumunod kundi ho ako ay titirahin nila ng insubordination."[5]

As gleaned from the above minutes, respondent's delivery of the products of petitioner to other places not indicated in Miscellaneous Slips Nos. 66772, 75711 and 57449 was actually done in good faith, being in compliance with the instructions of his supervisor. Where a violation of company policy or breach of company rules and regulations was found to have been tolerated by management, as in the instant case, then the same could not serve as a basis for termination.[6] Clearly, the dismissal of respondent from the service on the ground of willful disobedience or violation of company rules and regulations is not justified. We sustain the Appellate Court's finding that there is no just cause in terminating respondent's employment, thus:

> "Admittedly, during the investigation held on January 10, 1997, Vital admitted his deviations in delivering petitioner's products. He explained, however, that these deviations were all done at the behest of his immediate supervisor Hector Lagula, who, in turn, is merely implementing the business scheme known as 'Operation Rurok,' thus, condoned by petitioner's officers. As elucidated by Vital, in his Comment to this petition, 'Operation Rurok' which has been implemented in October of 1995 and carried out under any or a combination of the following methods: (a) entering into an exclusivity contract with the store/outlet/client; (b) delivering Coca-Cola products to the client in exchange for picked-up foreign empties and goods; and (c) delivering picked up foreign empties and goods at Coca-Cola warehouses for disposal. Under this scheme, petitioner company, conniving with trusted wholesalers, allows the latter to collect bottles, filled or empty, and shells of their rival brands, then these bottles and shells would be clandestinely retrieved by petitioner through a third party for disposal, thereafter, the number of shells and bottles collected would be replaced by petitioner by an equivalent volume of Coca-Cola products. The delivery of this replacement would be in the guise of granting and delivering complimentary products. As an internal control measure, petitioner then issues

> miscellaneous slips. Although a covert operation, 'Operation Rurok' is actually an open secret among petitioner's sales personnel, who are tasked to deliver Coca-Cola products as replacements (Annex '"A" of Annex "13" of Petition, Rollo, p. 100).
>
> Noticeably, petitioner had not even once denied nor admitted having knowledge of said scheme. As it is, all that petitioner vehemently insists is that whether the said scheme was in existence or not, the same cannot alter the fact that it has lost its confidence in Vital whose services are no longer needed by it."

In fact, there is no showing that respondent's acts were inimical to petitioner's interest. Petitioner has not also shown that previously, respondent violated any of its rules or regulations. Certainly, respondent's acts may be considered as isolated incidents not amounting to a willful disobedience or violation of petitioner company's rules and regulations.

Verily, respondent who was illegally dismissed from work is entitled to reinstatement without loss of seniority rights, full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[7]

However, the circumstances obtaining in this case do not warrant the reinstatement of respondent. Antagonism caused a severe strain in the relationship between him and petitioner company. A more equitable disposition would be an award of separation pay equivalent to at least one month pay, or one month pay for every year of service, whichever is higher, (with a fraction of at least six (6) months being considered as one (1) whole year),[8] in addition to his full backwages, allowances and other benefits.[9]

Records show that respondent was employed from June 1, 1980 to February 8, 1997, or for sixteen (16) years and eight (8) months, with a monthly salary of P12,860.00. Hence, he is entitled to a separation pay of P218,620.00.

WHEREFORE, the assailed Decision dated April 30, 2002 and Resolution dated June 28, 2002 of the Court of Appeals in CA G.R. SP No. 54428 are hereby AFFIRMED with MODIFICATION in the sense that, in lieu of reinstatement, respondent is awarded separation pay equivalent to P218,620.00, plus his full backwages, and other privileges and benefits, or their monetary equivalent, during the period of his dismissal up to his supposed actual reinstatement.

Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), and Corona, JJ., concur.
Carpio-Morales, J., on official leave.

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[1] See Catalan vs. Genilo, G.R. No. 62391, June 8, 1992, 209 SCRA 544, citing Remerco Garments Manufacturing Co. vs. Minister of Labor and Employment, 135 SCRA 167 (1985); Bachiller vs. NLRC, 98 SCRA 393 (1980); Kapisanan ng Manggagawa sa Camara Shoes vs. Camara Shoes, 111 SCRA 477 (1982); International Harvester Macleod vs. IAC, 149 SCRA 641 (1987); and Unitran/Bachelor Express, Inc. vs. Olvis, et al., 165 SCRA 254 (1988).

[2] Annex "T", Petition for Review, Rollo at 162-171.

[3] Annex "U", id. at 172.

[4] On February 6, 1996, respondent delivered 57 cases of 12 oz. Coca-Cola products to Cesar Cuya, owner of Antipolo Rice Dealer, not to AMC Viray Store. Then, on February 9, 1996, he delivered 90 cases of 12 oz.

Coca-Cola products to Wilfredo Libed of New Syping Store, instead of Cora's Store. Also, on June 29, 1996, he delivered 95 cases of 12 oz. Coca-Cola products to Cesar Cuya of Antipolo Rice Dealer, instead of John Uy at La Loma, Quezon City.

[5] Annex "F", Petition for Review, Rollo at 43-44.

[6] Permex, Inc. vs. NLRC, G.R. No. 125031, January 24, 2000, 323 SCRA 121, 129, citing Tide Water Associated Oil Co. vs. Victory Employees and Laborers' Association, 85 Phil 166 (1949).

[7] Pursuant to Article 279, Labor Code, as amended by Section 34, R.A. 6715; Bolinao Security and Investigation Service, Inc. vs. Toston, G.R. No. 139135, January 29, 2004 at 11, citing Cebu Marine Beach Resort vs. NLRC, G.R. No. 143252, October 20, 2003 and Damasco vs. NLRC, 346 SCRA 714 (2000).

[8] Ibid.,citing Jardine Davies, Inc. vs. NLRC, 311 SCRA 289 (1999) and Lopez vs. NLRC, 297 SCRA 508 (1998).

[9] Ibid., citing Cebu Marine Beach Resort vs. NLRC, id., Samarca vs. Arc-Men Industries, Inc., G.R. No. 146118, October 8, 2003 and Philippine Tobacco Flue-Curing and Redrying Corp. vs. NLRC, et al., 300 SCRA 37 (1998).

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