

SARABIA OPTICAL AND VIVIAN SARABIA-ONG, PETITIONERS, VS. JEANET B. CAMACHO, RESPONDENT.

G.R. No. 155502. June 18, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is an appeal from the Decision[1] dated September 30, 2002 of the Court of Appeals in CA-G.R. SP No. 58803 affirming the Decision[2] dated October 11, 1999 of the National Labor Relations Commission in NLRC NCR CA Case No. 016418-98. The NLRC had affirmed the Decision[3] dated September 22, 1997 of the Labor Arbiter in NLRC NCR Case No. 03-02049-96-A which declared Camacho's dismissal from her employment illegal.

Petitioner Sarabia Optical is a single proprietorship engaged in the optical business and is owned and managed by petitioner Vivian Sarabia-Ong. Respondent Jeanet B. Camacho was the branch manager of Sarabia Optical-SM Megamall at the time of her dismissal on March 9, 1995.

Sarabia-Ong claimed that during the inventory of consigned products in the SM Megamall Branch in August 1994, she was advised that twelve (12) pieces of Rayban™ eyewear were missing. Since Camacho could not explain the missing stocks, Camacho suggested that the costs thereof be deducted from her salary and that of her personnel.

On February 15, 1995, Sarabia-Ong received a phone call from an employee of the SM Megamall Branch informing her of an anomaly in the branch. In a one-on-one conference with the branch personnel, she learned that almost all of them were aware of the anomaly and they pointed to Camacho as its mastermind. They revealed that instead of reporting the income derived from the sale of screws, solutions, and other miscellaneous items from September to November 1994, Camacho divided it among the branch personnel. They added that Camacho devised the practice to cover for the deductions in their salaries due to the missing Rayban™ eyewear.

On March 3, 1995, Sarabia-Ong conducted an investigation and asked Camacho to explain her side. On March 8, 1995, Camacho was dismissed effective March 9, 1995 on the ground of loss of trust and confidence.[4]

Camacho filed a complaint for illegal dismissal, illegal deduction, separation pay, and attorney's fees. She claimed that sometime in 1994, Sarabia-Ong requested her to cooperate in fabricating a case against three old employees of the SM Megamall Branch to justify their dismissal. She refused to cooperate and offered to resign provided she would be paid separation pay. Because of this, Sarabia-Ong fabricated a case against her and accused her of not reporting the income derived from the sale of screws, solutions, and other miscellaneous items from September to November 1994.

In a Decision dated September 22, 1997, the Labor Arbiter ruled that petitioners failed to present material evidence that would support the charge against Camacho. First, petitioners failed to present an audit report showing the inventory of the screws, solutions, and other miscellaneous items at the time Camacho took over the

management of the SM Megamall Branch and the number of stocks that were eventually sold. Neither were the sales invoices or purchase receipts presented. Second, petitioners did not show that they filed a complaint with the police authorities although the charge against Camacho amounted to qualified theft or estafa. Third, petitioners failed to prove that an administrative investigation was conducted since they did not present any written notice of the charge against Camacho and her purported answer thereto. The decretal portion of the decision reads:

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding complainant's dismissal to be illegal. Accordingly, complainant should be reinstated or if not feasible because of a strained employer-employee relationship then in lieu thereof, payment of separation pay at one (1) month per year of service, a fraction of six (6) months being considered as one whole year. In addition, complainant should be paid her backwages which as of August 31, 1997 has amounted to P232,030.00.

All other claims are dismissed for lack of merit.

SO ORDERED.[5]

Petitioners appealed to the NLRC which affirmed in toto the Labor Arbiter's finding of illegal dismissal.

Dissatisfied, petitioners elevated the matter to the Court of Appeals.

On September 30, 2002, the appellate court affirmed the NLRC decision. It agreed with the Labor Arbiter and the NLRC that the charge against Camacho was not satisfactorily proven. The Joint Affidavit[6] of Glenda Navarro, Evelyn Jasmin, and Roselle Cosep merely stated that Camacho used her position and authority and engaged them to carry out the anomaly. Petitioners also failed to submit any proof that they incurred losses from September to November 1994 due to the non-reporting of the sales. If the charge against Camacho was true, then petitioners should have filed the appropriate criminal complaint against her. Furthermore, petitioners failed to satisfy the requirements of due process before dismissing Camacho. Although a notice of termination was sent to Camacho, no written notice of the charge was given to her.

Petitioners now submit the following issues for our consideration:

I.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT RESPONDENT'S DISMISSAL FOR LOSS OF TRUST AND CONFIDENCE WAS ILLEGAL.

II.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT PETITIONERS FAILED TO SATISFY THE REQUIREMENTS OF DUE PROCESS.

III.

THE COURT OF APPEALS GRAVELY ERRED IN ORDERING THE PAYMENT OF BACKWAGES AND SEPARATION PAY TO RESPONDENT.[7]

In essence, the issue is: Was Camacho dismissed for cause and with due process?

Petitioners contend that their decision to dismiss Camacho on the ground of loss of trust and confidence was based on the Joint Affidavit of Navarro, Jasmin, and Cosep. These employees swore under oath that Camacho had been pocketing the income of the SM Megamall Branch. Petitioners also aver that they observed due process prior to dismissing Camacho from her employment. She was notified of the charge against her, confronted with the adverse evidence, and given several opportunities to refute the charge and explain her side.

Camacho did not file her Comment to the petition despite several directives from this Court.

In any case, we resolve to deny the petition.

It is an established rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the Court of Appeals are conclusive and binding on the Court.[8] We have likewise held that factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded not only respect, but even finality, and bind the Supreme Court.[9]

As borne by the records, the findings of facts of the Labor Arbiter, the NLRC and the Court of Appeals, are unanimous.

To be a valid ground for dismissal, loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer.[10] Further, the act complained of must be work-related and must show that the employee concerned is unfit to continue working for the employer.[11]

In this case, petitioners failed to substantiate their claim that instead of reporting the income derived from the sale of screws, solutions, and other miscellaneous items from September to November 1994, Camacho distributed the income among the branch personnel. The only evidence they presented was the Joint Affidavit of Navarro, Jasmin, and Cosep which merely stated that Camacho used her position and authority and engaged them to carry out the anomaly. Further, petitioners did not submit any audit report which would show the inventory of the screws, solutions, and other miscellaneous items before and after the period September to November 1994. Such audit report would have concretely shown the number of stocks sold which Camacho did not report as income of the SM Megamall Branch. Neither did petitioners present the sales invoices or purchase receipts of such screws, solutions, and other miscellaneous items. If an anomaly indeed took place, petitioners could have easily verified and proved it through an audit or inventory instead of relying on their employees' Joint Affidavit.

To boot, petitioners failed to satisfy the requirements of due process before dismissing Camacho from her employment. Procedural due process requires the employer to give the employee two notices: (1) notice apprising him of the particular acts or omissions for which his dismissal is sought, and (2) subsequent notice informing him of the employer's decision to dismiss him.[12] Apparently, no written notice of the charge informing Camacho of the specific act complained of and its corresponding penalty was sent to her. If petitioners gave Camacho such notice, then the same should have been presented as evidence and should have appeared on record.

In sum, we find that Camacho was illegally dismissed due to petitioners' failure to show adequately that a valid cause for terminating her employment exists, and their failure to comply with the twin notice requirement.

WHEREFORE, the instant petition is DENIED. The Decision dated September 30, 2002 of the Court of Appeals in CA-G.R. SP No. 58803 is AFFIRMED.

SO ORDERED.

Ynares-Santiago, Chico-Nazario, Leonardo-De Castro, and Brion, JJ., concur.

[*] Designated member of the Second Division per Special Order No. 645 in place of Associate Justice Conchita Carpio Morales who is on official leave.

[**] Designated member of the Second Division per Special Order No. 658.

[***] Designated member of the Second Division per Special Order No. 635 in view of the retirement of Associate Dante O. Tinga.

[1] Rollo, pp. 34-44. Penned by Associate Justice Ruben T. Reyes (now a retired member of this Court), with Associate Justices Andres B. Reyes, Jr. and Mariano C. Del Castillo concurring.

[2] Id. at 65-69.

[3] Id. at 143-156.

[4] Id. at 90.

[5] Id. at 155.

[6] Id. at 88, 142.

[7] Id. at 19-20.

[8] Bank of the Philippine Islands v. Sarmiento, G.R. No. 146021, March 10, 2006, 484 SCRA 261, 267-268; Manila Electric Company v. Benamira, G.R. No. 145271, July 14, 2005, 463 SCRA 331, 347.

[9] Pelayo v. Aarema Shipping and Trading Co., Inc., G.R. No. 155741, March 31, 2006, 486 SCRA 368, 376; The Philippine American Life and General Insurance Co. v. Gramaje, G.R. No. 156963, November 11, 2004, 442 SCRA 274, 283.

[10] AMA Computer College, Inc. v. Garay, G.R. No. 162468, January 23, 2007, 512 SCRA 312, 316-317; Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals, G.R. No. 158232, March 31, 2005, 454 SCRA 737, 760.

[11] C.F. Sharp & Co., Inc. v. Zialcita, G.R. No. 157619, July 17, 2006, 495 SCRA 387, 394; Cruz, Jr. v. Court of Appeals, G.R. No. 148544, July 12, 2006, 494 SCRA 643, 655.

[12] Millares v. Philippine Long Distance Co., Inc., G.R. No. 154078, May 6, 2005, 458 SCRA 102, 110-111. See Heavylift Manila, Inc. v. Court of Appeals, G.R. No. 154410, October 20, 2005, 473 SCRA 541, 550.

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