

MCDONALD'S (KATIPUNAN BRANCH) AND/OR MCGEORGE FOOD INDUSTRIES, INC., PETITIONERS, VS. MA. DULCE ALBA, RESPONDENT.

G.R. No. 156382. December 18, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Ma. Dulce Alba (respondent) was hired as part of the service crew of petitioner McDonald's Katipunan Road, Loyola Heights branch on November 15, 1993. During the orientation of newly hired employees, petitioner provided respondent with a copy of the Crew Employee Handbook on rules and regulations including its meal policy which instructs:

GUIDELINES FOR MEAL POLICY

- All breaks must be consumed in the crewroom or designated area.
- Crew are prohibited from taking their meals in the lobby when there are a lot customer [sic] (for stores without a crewroom)
- Crew are advised to follow these steps in requesting for their meal breaks:
 - Inform crew's zone manager he/she wishes to take a break.
 - Punch out for break and proceed to assemble meal. Sandwiches/Entrees must be taken from the warming bin.
 - Crew brings assembled meal to zone manager for checking and signing of the timecard.
 - Crew takes his/her break in the crewroom.
- Upon completion of allotted break time, crew punches in for work and has same zone manager sign the timecard. (NOTE: Crew must consume the allotted break time completely before he punches back in for work).

X X X X

EXAMPLES OF MISCONDUCT RESULTING IN SUMMARY DISMISSAL

X X X X

- Consuming any food without authority or payment including deviation from the employee meal policy, (i.e. eating from breaks of other crew or food offered by friends or family while you are on duty). This includes sampling uncompleted/completed products during operations while crew is on duty.

x x x x.[1] (Emphasis and underscoring supplied)

Rizza Santiago, also a crew member, witnessed respondent eating inside the crew room while on duty[2] on April 8, 1995 which she reported to the store manager Kit Alvarez (Alvarez) by an undated written account.[3]

Petitioner McDonald's thus suspended respondent for five days starting April 14 until April 18, 1995.[4]

Explaining her questioned act, respondent, whose duty on April 8, 1995 was from 5:45 a.m. to 1:00 p.m., in a written but unsigned letter dated April 15, 1995, stated as follows, quoted verbatim:

Saturday (April 8) at around 10:45 in the morning, Zel took her break and I came with her. I ask her if I can have a piece of her chicken because I'am hungry, and my stomach was aching bad. She told someone might see it, but I told just a piece just to ease the pain of my stomach. I do feel this pain, but it was only last Saturday that I can't control it bec. I wasn't able to drink medicine. I do not do this everytime. It was just last Saturday. Because I know it's wrong and against the policies of the store.[5] (Underscoring supplied)

Petitioner thereafter sent a show cause notice to respondent why no disciplinary action should be meted against her.[6] Replying, respondent, despite her initial above-quoted written admission of the questioned act, denied having violated the meal policy.[7]

After petitioner conducted what it claimed to be a "thorough investigation," it found respondent guilty of flouting company regulations and immediately terminated her services in a letter of April 27, 1995 reading:

We believe that based on the incident report you made and submitted to me [sic] last April 15, 1995, you acknowledge[d] having eaten a piece of fried chicken because you were hungry and you were having a stomach ache[.] [I]n fact[,] on the said incident report[,] you acknowledge[d] that the said act is againts [sic] the company policy and in addition, to the incident report of Rizza Santiago who personally witness [sic] your act of eating a piece of fried chicken without authorization or payment and in violation of employee meal policy.

x x x x.[8] (Underscoring supplied)

Respondent thus lodged a complaint against petitioners McDonald's and/or McGeorge Food Industries, Inc. before the National Labor Relations Commission (NLRC) NCR Arbitration Branch which dismissed it without prejudice, for failure to prosecute, by Order of October 30, 1995.[9]

Respondent refiled her complaint on January 24, 1996. After the submission of the parties' respective position papers and responsive pleadings, petitioners moved to have a clarificatory hearing before the Arbitration Branch. The motion was, however, denied.

Finding for respondent, Labor Arbiter Pablo Espiritu Jr., by Decision[10] of August 22, 1997, held that while respondent violated the meal policy of McDonald's, dismissal was too harsh a penalty, and suspension without pay would have sufficed. The fallo of the decision reads:

WHEREFORE, premises considered[,] judgment is hereby rendered finding Respondents [petitioners herein] liable for illegal dismissal and concomitantly[,] Respondents are liable to pay complainant full backwages in the amount of P113,922.90 from her dismissal till promulgation since reinstatement is no longer decreed.

Respondents are further ordered to pay separation pay based on ½ month salary for every year of credited service a fraction of at least six (6) months to be considered as one (1) whole year in the amount of P7,789.60;

Furthermore, Respondents are ordered to pay 10% attorney's fees based on the total judgment award.

All other monetary claims are hereby disallowed for lack of merit.

SO ORDERED. (Underscoring in the original)

On appeal to the NLRC, petitioners raised as errors the Labor Arbiter's finding of illegal dismissal and the judgment award.[11] By Decision[12] of March 31, 1998, the NLRC denied the appeal and ruled that there was

no "intentional or willful conduct on the part of the [respondent] to disregard the rules regarding meal policy."

After filing a Motion for Reconsideration, petitioners filed a Manifestation and Motion on June 18, 1998 to present three payroll sheets to show that respondent did not render eight (8) hours a day of work.[13]

Their Motion for Reconsideration having been denied, petitioners went to the Court of Appeals on certiorari[14] wherein, in addition to imputing grave abuse of discretion on the part of the NLRC, it raised as new issue the denial of their constitutional right to due process, the Arbiter having failed to set the case for hearing.

The appellate court, by Decision[15] of May 23, 2002, affirmed the decision of the NLRC, it finding in order the NLRC resolution of the case on the basis of the parties' position papers, responsive pleadings and documentary evidence. It bewailed petitioners' belated presentation of the payroll sheets only when they filed their Motion for Reconsideration of the NLRC decision.

Hence, the present petition for review, petitioners contending that:

- . . . THE LABOR ARBITER SHOULD HAVE CONDUCTED A CLARIFICATORY HEARING TO RESOLVE THE FACTUAL ISSUES IN THE INSTANT CASE.

x x x x

- . . . THE PENALTY IMPOSED UPON RESPONDENT WAS [NOT] EXCESSIVE.

x x x x

- . . . THE PAYROLL SHEETS FILED BY THE COMPANY DURING APPEAL SHOULD HAVE BEEN GIVEN APPRECIATION. (Underscoring supplied)

The petition fails.

On the procedural issue, the Court finds the Arbiter's not conducting a clarificatory hearing unavailing. This issue was raised for the first time before the appellate court, hence, it may not be considered.[16]

In any event, the NLRC Rules allow the Labor Arbiter to motu proprio determine whether there is a need for a hearing or clarificatory conference.[17] In this case, the Labor Arbiter prudently saw it best to dispense with a hearing since the position papers and responsive pleadings, together with the attached documentary evidence, provided more than sufficient bases to resolve the case. Petitioners' right to due process was thus not violated.

Respecting petitioner's submission of additional evidence on appeal, the same may be allowed as the rules of evidence prevailing in courts of law or equity are not controlling in labor proceedings.[18] What the Court disallows, however, is the tardy submission of the supposed additional evidence. As reflected above, petitioners presented payroll sheets only when they moved for a reconsideration of the NLRC decision. At any rate, the NLRC did not find those payroll sheets compelling enough to warrant a reversal of its decision.

Indeed, payroll sheets are inconclusive to disprove respondent's eight-hour-per-day work shift. Instead of payroll sheets, the time cards would have been more reliable. Petitioners, however, did not present the same. When a party has in its power to produce evidence that would overthrow the case made against it but fails to do so, the presumption arises that such evidence, if produced, would operate to its prejudice and support the case of the other party.[19]

On the substantive issue, there is no dispute that respondent violated petitioners' meal policy. The only issue is whether such violation amounts to or borders on "serious or willful" misconduct or willful disobedience, as petitioners posit, to call for respondent's dismissal. By any measure, the Court holds not.

Under Article 282 (a) of the Labor Code,[20] willful disobedience to the employer's lawful orders as a just cause for termination of employment needs the concurrence of at least two requisites, viz: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude;" and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which one has been engaged to discharge.[21]

With respect to serious misconduct, it is not sufficient that the act or the conduct complained of must have violated some established rules or policies. It must have been performed with wrongful intent.[22]

Petitioners, on which the onus of proving lawful cause in sustaining the dismissal of respondent lies,[23] failed to prove that respondent's misconduct was induced by a perverse and wrongful intent, they having merely anchored their claim that she was on her knowledge of the meal policy.

While petitioners wield a wide latitude of discretion in the promulgation of policies, rules and regulations on work-related activities of its employees, these must, however, be fair and reasonable at all times, and the corresponding sanctions for violations thereof, when prescribed, must be commensurate thereto as well as to the degree of the infraction.[24]

Given respondent's claim that she was having stomach pains due to hunger, which is not implausible, the same should have been properly taken into account in the imposition of the appropriate penalty for violation of the meal policy. Respondent's suspension for five days sufficed. With that penalty, the necessity of cautioning other employees who may be wont to violate the same policy was not compromised.

Moreover, petitioners likewise failed to prove any resultant material damage or prejudice on their part as a consequence of respondent's questioned act. Their claim that the act would cause "irremediable harm to the company's business" is too vague to merit consideration.

Petitioners finally harp on the supposed checkered employment record of respondent to justify her dismissal, viz:

x x x Her employment record was marred by numerous infractions of Company rules for which she was repeatedly sanctioned by her superiors, to wit: a written warning for failing to report for work (07 December 1994); a three-day suspension (14 to 16 February 1995) for incurring several absences; two (2) verbal warnings (10 January and 24 March 1995) for incurring cash shortages of P61.00 and P80.00 and a written warning (11 January 1995) for incurring a cash shortage of P52.00. Furthermore, respondent was given five (5) verbal warnings for reporting late for work on 01 December 1993, 25 March, 02 May, 17 July and 05 November, all in the year 1994. x x x.[25]

The resort by petitioners to respondent's past conduct is a desultory attempt to explain their drastic action. Previous offenses may be used as valid justification for dismissal from work only if they are related to the subsequent infraction-basis of the termination of employment. Previous infractions, in other words, may be used if they have a bearing on the proximate offense warranting dismissal.[26] No such bearing exists, however, between the above-detailed alleged infractions with respondent's meal policy violation.

Parenthetically, the employment record of respondent reflects her fairly outstanding work ethic and performance, which is punctuated by at least 31 counts of commendations[27] from the management no less.

In fine, given the totality of respondent's employment record, the penalty of dismissal is too discordant with the infraction she committed.

The Court, however, modifies the dispositive portion of the Labor Arbiter's decision in that the award of full backwages, inclusive of allowances and other benefits, should be reckoned from the time of respondent's dismissal on April 27, 1995 up to the finality of the Court's decision while the award of separation pay, in lieu of

reinstatement, should be computed from the time petitioners engaged respondent's services on November 15, 1993 up to the finality of this decision.

WHEREFORE, the Decision of August 22, 1997 of the Labor Arbiter is AFFIRMED with MODIFICATION in that the award of full backwages, inclusive of allowances and other benefits, should be reckoned from the time of respondent's dismissal on April 27, 1995 up to the finality of the Court's decision, while the award of separation pay, in lieu of reinstatement, should be computed from the time petitioners engaged the services of respondent on November 15, 1993 up to the finality of this decision. In all other respects, the Labor Arbiter's decision is AFFIRMED.

There being no data from which the Court can properly assess petitioners' total monetary liability, the case is remanded to the Labor Arbiter only for that purpose.

Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, pp. 50-51.

[2] Id. at 8.

[3] Id. at 64; Annex "E" of Petition.

[4] Id. at 65; Annex "F" of Petition.

[5] Id. at 68; Annex "G" of Petition.

[6] Id. at 69; Annex "H" of Petition.

[7] Id. at 70; Annex "I" of Petition.

[8] Id. at 72; Annex "J" of Petition.

[9] Id. at 74.

[10] Id. at 126-138.

[11] Id. at 144.

[12] Id. at 253-262.

[13] CA rollo, pp. 170-175.

[14] Id. at 3-28.

[15] Penned by Justice Juan Q. Enriquez, Jr. with the concurrence of Justices Eugenio S. Labitoria and Teodoro P. Regino, CA rollo, pp. 371-375.

[16] *Salafranca v. Philamlife (Pamplona) Village Homeowners Association*, 360 Phil. 652, 665-666 (1998).

[17] Section 8, Rule V of the New Rules of Procedure of the NLRC.

[18] Article 221 of the Labor Code; *Precision Electronics Corp. v. NLRC*, G.R. No. 86657, October 23, 1989, 178 SCRA 667, 670.

[19] *Nokom v. National Labor Relations Commission*, 390 Phil. 1228, 1241 (2000).

[20] ART. 282. Termination by employer. x x x

(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.

[21] *Rosario v. Victory Ricemill*, 445 Phil. 830, 839 (2003); *Villeno v. NLRC*, G.R. No. 108153, December 26, 1995, 251 SCRA 494, 497 citing *San Miguel Corporation v. Ubaldo*, G.R. No. 92859, February 1, 1993, 218 SCRA 293.

[22] *NLRC v. Salgarino*, G.R. No. 164376, 31 July 2006, 497 SCRA 361, 375-376.

[23] *Austria v. NLRC*, 369 Phil. 557, 565 (1999).

[24] *VH Manufacturing Inc. v. National Labor Relations Commission*, 379 Phil. 444, 451 (2000).

[25] *Rollo*, p. 8.

[26] *La Carlota Planters Association Inc. v. NLRC*, 358 Phil. 732, 739 (1998).

[27] *Rollo*, pp. 52-65; Some of respondent's 31 commendations read, viz: The management team would like to recognize your exceptional performance in the month of September 1994 which earned for you the Best in Production award for that month. Congratulations and keep up the good work; I would like to commend you for delivering fast and friendly at the counter during today's non-stop lunch. Keep up the good work!!; Given commendation for incurring an 'A' in cashiering today. Keep it up; Given commendation for hitting a star in doing cashier work! Job well done!; Given commendation for a good performance at production area. Your effort is highly appreciated! Thanks!; Given commendation for showing great teamwork in the production area today, for stocking up in your station & helping out in preparation of party food orders. Thanks!; Given commendation for winning the profit center-wide competition for presentation for our X'mas party themed 'The 8 Corporate Values.' Thank you and good work; Given commendation for being a star in cash handling. Keep up the good work!!; and Given commendation for hitting a [star] in front counter. Thank and keep it up! Smile!

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