

**PROGRESSIVE DEVELOPMENT CORPORATION — PIZZA HUT AND
DANNY TRINIDAD, PETITIONERS, VS. EVERGISTO ANTONIO E.[]
SARMIENTO, RENATO GALLARDO, JR., ROMARIO CAYABYAB,
CLARK CRUZ, JEFFRE...**

G.R. No. 157076. September 07, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review assails the Decision[1] dated February 13, 2003 of the Court of Appeals in CA-G.R. SP No. 64048 which affirmed the Resolution[2] dated October 16, 2000 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 00-04-02243-96 (CA No. 017899-99). The NLRC had affirmed with modification the Decision[3] dated September 24, 1998 of the Labor Arbiter in NLRC-NCR Case No. 00-04-02243-96.

The antecedent facts in this case are as follows:

Respondents Evergisto Antonio E. Sarmiento, Renato Gallardo, Jr., Romario Cayabyab, Clark Cruz, Jeffrey Centeno, Philip Young, Jr., George Fenol, Bibiano N. Mejorada, Jr., Dennis Sioco, Dwight Leynes, Armando Zamora, Jr., and Bernaddeth Melendrez are employees of Pizza Hut Philippines assigned in its SM North Edsa Branch.

On January 22, 1996, Erwin Sunga, a crew member, was caught sneaking out cooked pizza from the store. When questioned, Sunga gave petitioners a list of crew members (respondents) who were allegedly involved in the same act on previous occasions. Respondents denied any knowledge and participation in the alleged infraction. Thereafter, they were given notices of preventive suspension for dishonesty, to take effect on various dates in February 1996.

On April 2, 1996, respondents filed their complaint for illegal suspension and/or illegal dismissal and monetary claims.

In the meantime, the term contract of Melendrez expired. Young and Leynes were dismissed for dishonesty while the other respondents were suspended for sixty (60) days. On July 2, 1996, the suspended employees were reinstated.

On September 24, 1998, Labor Arbiter Quintin B. Cueto III rendered a decision in respondents' favor. He noted that the handwritten statement of Sunga merely stated that "those people listed above are my co-groups in doing such anomalies at PH-SM2 [Pizza Hut—SM North Edsa Branch]." [4] While the statement declared that respondents were involved in anomalies in the store, it did not specifically point to any of them as having stolen cooked pizza for personal gain. As a result, Labor Arbiter Cueto declared illegal the dismissal of Young and Leynes as well as the suspension of the other respondents, in this wise:

The complainants who were illegally dismissed[,] Mr. Philip Young, Jr. and Mr. Dwight Leynes are hereby ordered to be reinstated to their former position without loss of seniority rights, benefits and privileges accruing thereto and payment of backwages effective June 24, 1996 up to September 24, 1998 the date of the promulgation of the decision without prejudice of a continuing computation of their backwages until the finality of the decision in accordance with the decision of *Bustamante vs. NLRC*, G.R. No. 111681 — November 28, 1996, or for twenty seven (27) months based on their latest salary at the time of their illegal dismissal.

In complainant Bernadette Melendrez case, she should be paid her salary as backwages from the time she was illegally suspended up to the expiration date of her probationary contract of employment which is April 6, 1996.

With the rest of herein complainants who were reinstated and resumed employment with respondents' store they shall be paid [backwages] from the period of their suspension ... since their suspension is illegal. And if some [of] herein complainants are still serving suspension by reason of this case, they must be reinstated with backwages from their first day of illegal suspension up to their actual reinstatement. The following name[s] of complainants who are entitled to reinstatement and backwages are as follows, to wit:

1) Evergisto Antonio [E]. Sarmiento

-

P18,144.00

2) Renato Gallardo, Jr.

-

17,976.00

3) Romario Cayabyab

-

17,976.00

4) Clark Cruz

-

18,648.00

5) Jeffrey Centeno

-

18,648.00

6) George Fenol

-

18,144.00

7) Bibiano N. Mejorada, Jr.

-

18,144.00

8) Dennis Sioco

-

18,648.00

9) Armando Zamora, [Jr.]

-

18,144.00

10) Oliver Mapanao

-

18,648.00

11) Berna[d]det[h] Melendrez

(21.00 x 8 hours x 43 days)

7,224.00

Total

P208,992.00[*]

All other issues and claims not consistent with the above findings are dismiss[ed] for lack of merit.

SO ORDERED.[5]

On appeal, the NLRC affirmed with modification the decision of Labor Arbiter Cueto. First, it noted that there was no basis for the decision in favor of Young and Leynes since they did not articulate their causes of action except in the complaint. Although they attended the hearings conducted by Labor Arbiter Cueto, they did not sign the position paper and memorandum filed by the other respondents. Neither were their causes of action and reliefs prayed for discussed. Second, it affirmed that there was no substantial evidence to prove the alleged infraction committed by respondents. Sunga's statement has no probative value in the absence of corroborating evidence. Thus, if petitioners really conducted an administrative investigation, they should have offered these proceedings in evidence. Third, it adjusted the computation of respondents' salaries from their suspension until their reinstatement since they only worked for four hours a day and six days a week at P18.25 per hour. The dispositive portion of the resolution reads:

A.

Period of suspension[:] 17 February — 02 July 1996

(4 months & 15 days)

P18.25 x 4 hrs. x 26 days x 4.5 mos. P7,810.76[**]

1. Jeffrey Centeno P7,876.70

2. Dennis Sioco 7,876.70

3. Clark Cruz 7,876.70
4. Oliver Mapanao 7,876.70

B.

Period of [s]uspension: 20 February — 02 July 1996
(4 months & 12 days)
 $P18.25 \times 4 \text{ hours} \times 26 \text{ days} \times 4.12 \text{ mos. } P7,810.76^{[***]}$

5. Evergisto Sarmiento P7,819.76
6. Armando Zamora 7,819.76
7. George Fenol 7,819.76
8. Bibiano Meiorada, Jr. 7,819.76

C.

Period of suspension[:] 21 February [—] 02 July 1996
(4 months [&] 11 days)
 $P18.25 \times 4 \times 26 \times 4.11 P7,800.78$

9. Renato Gallardo, Jr. P7,800.78
10. Roma[rio] Cayabyab 7,800.78

D.

Period of suspension to end of contract:
16 February — 16 April 1996
(2 months) $P18.25 \times 4 \times 26 \times 2 = P3,796.00$

11. Berna[d]det[h] Melendrez - P3,796.00

The assailed decision correctly excluded Solicio Arcibal, Jr. from the award. He is not one of the complainants who filed the original complaint as well as the amended complaint. His name only appeared in the position paper. Hence, his cause of action cannot be given due consideration.

WHEREFORE, premises considered, the decision appealed from is affirmed with modification. Respondents are hereby ordered to pay complainants their backwages as follows:

1. Jeffrey Centeno

P7,876.70[]**

2. Dennis Sioco

7,876.00[**]

3. Clark Cruz

7,876.00[**]

4. Oliver Mapanao

7,876.00[**]

5. Evergisto Sarmiento

7,819.76

6. Armando Zamora

7,819.76

7. George [F]enol

7,819.76

8. Bibiano Mejorada, Jr.

7,819.76

9. Renato Gallardo, Jr.

7,800.78

10. Roma[rio] Cayabyab

7,800.78

11. Berna[d]det[h] Melendrez

7,796.00[****]

TOTAL

P82,183.40[***]**

The complaint filed by Philip Young, Jr. and Dwight Leynes is dismissed without prejudice.

SO ORDERED.[6]

Dissatisfied with the NLRC decision, petitioners filed with the Court of Appeals a petition for certiorari which the Court of Appeals dismissed. The appellate court affirmed the NLRC finding that respondents' participation in the alleged infraction had not been sufficiently proven. As averred by petitioners themselves, they did not file any motion for reconsideration of the Court of Appeals' decision dated February 13, 2003.[7]

Instead, petitioners filed the instant petition before us, alleging that the appellate court seriously erred when it ruled that:

I.

THE PETITIONERS HEREIN AND THEREIN FAILED TO ESTABLISH THE VALIDITY/GROUNDS FOR THE RESPONDENTS['] SUSPENSION . . .

II.

THERE WAS NO GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BY THE NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) IN RENDERING ITS DECISION OF OCTOBER 16, 2000 ... AND RESOLUTION OF JANUARY 15, 2001 . .

.[8]

Clearly, the main issue raised by petitioners is whether the appellate court erred in ruling that respondents were illegally suspended for failure of petitioners to sufficiently prove the alleged infraction committed by the respondents. Involved herein are questions of fact regarding the grounds for respondents' suspension, outside the ambit of this Court's jurisdiction under Rule 45 of the Rules of Court.

For as already well established, the jurisdiction of this Court in a petition for review under Rule 45 of the Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings being assailed are not supported by the evidence on record or the impugned judgment is based on a misapprehension of facts. These exceptions are not present here.[9]

Furthermore, this Court has always accorded respect and finality to the findings of fact of the Court of Appeals, particularly if they coincide with those of the Labor Arbiter and the NLRC when supported by substantial evidence. The reason for this is that quasi-judicial agencies, like the NLRC, have already acquired a unique expertise because their jurisdictions are confined to specific matters.[10]

In any case, we have carefully examined the records before us and found nothing therein to warrant our departure from the agreed findings of the Labor Arbiter, the NLRC, and the Court of Appeals as regards the invalidity of respondents' suspension.

In justifying respondents' suspension, petitioners relied on the handwritten statement of Sunga and the result of its administrative investigation. According to them, these pieces of evidence all prove that respondents also stole cooked pizza and sold the same for personal gain.

Suffice it to reiterate that nowhere in all the allegations of petitioners was there substantial proof that respondents participated in the alleged infraction. The handwritten statement of Sunga merely stated in general that respondents were his "co-groups in doing such anomalies." It never pointed to any of the respondents as having stolen cooked pizza and sold the same for personal gain.

In addition, Sunga's statement has no probative value in the absence of corroborating evidence. Petitioners should have offered in evidence the proceedings conducted in the course of the administrative investigation, if one was indeed conducted. Accusation cannot take the place of proof. A suspicion or belief no matter how sincerely felt cannot be a substitute for factual findings carefully established through an orderly procedure.[11]

Apropos respondents' salary during their suspension, we hold that the NLRC properly included the period of respondents' preventive suspension in its computation. During the pendency of the investigation, the employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to life or property of the employer or of his co-workers.[12]

In this case, there is no indication that respondents posed a serious threat to the life and property of petitioners or their co-employees. Neither is it shown that they were in such a position to unduly influence the outcome of an administrative investigation. Hence, their preventive suspension could not be justified, and the payment of their salary from their preventive suspension until their reinstatement is in order.

WHEREFORE, the instant petition is DENIED for lack of merit. The Decision dated February 13, 2003 of the Court of Appeals in CA-G.R. SP No. 64048 is AFFIRMED.

Costs against petitioners.

SO ORDERED.

Carpio, Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[*] Appears as "F" in some parts of the records.

[1]Rollo, pp. 43-49. Penned by Associate Justice Renato C. Dacudao with Associate Justices Eugenio S. Labitoria and Danilo B. Pine concurring.

[2] Id. at 57-66.

[3]Id. at 50-56.

[4]Id. at 54.

[*] The total should be P190,344.00.

[5] Rollo, pp. 55-56.

[**] Should be P8,541.00.

[***]The correct product is P7,819.76.

[****]This should be P3,796.00.

[*****]The total should be P84,840.60.

[6] Rollo, pp. 64-66.

[7]Id. at 20.

[8]Id. at 21.

[9] Cosmos Bottling Corporation v. National Labor Relations Commission, G.R. No. 146397, July 1, 2003, 405 SCRA 258, 263.

[10] Lopez v. National Steel Corporation, G.R. No. 149674, February 16, 2004, 423 SCRA 109, 113.

[11]Austria v. National Labor Relations Commission, G.R. No. 123646, July 14, 1999, 310 SCRA 293, 303.

[12] Valiao v. Court of Appeals, G.R. No. 146621, July 30, 2004, 435 SCRA 543, 554.

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