C.F. SHARP & CO., INC., PETITIONER, VS. RENATO ZIALCITA, RESPONDENT.

G.R. NO. 157619. July 17, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

The petitioner seeks the reversal of the Decision[1] dated December 12, 2002, of the Court of Appeals in CA-G.R. SP No. 62578, dismissing its petition for certiorari against the National Labor Relations Commission, as well as the Resolution[2] dated March 11, 2003, denying its motion for reconsideration.

Petitioner C.F. Sharp & Co., Inc. deploys Filipino seamen to foreign ship owners. On May 15, 1989, it hired respondent Renato Zialcita as a clerk in its Crewing Department. On February 17, 1992, it promoted him as Assistant Crewing Manager and was tasked to handle the Texaco Marine Account and process shipping papers of the petitioner's seamen.

The petitioner alleged that on May 18, 1993, seaman Marcial Tanoy returned to the country bringing with him US$1,000 from another seaman, Fernando Guerrero. On May 27, 1993, Tanoy gave the money to respondent Zialcita. On June 14, 1993, when Guerrero's father and sister came to the petitioner's office to get the money, the respondent denied he had it. On June 25, 1993, the Guerreros came back together with Tanoy. This time, the respondent acknowledged he had the money but could not give it to them then. On June 29, 1993, he returned US$800 to Guerrero's father who issued a receipt. The respondent also issued a promissory note on the US$200 balance due on July 2, 1993. When the day came, the Guerreros reported[3] the matter to the Senior Crewing Manager, Paquito Apolonio,*** who immediately paid the deficiency. Respondent was served with a notice[4] giving him seventy-two hours to respond to the Guerreros' complaint, and placed on preventive suspension immediately. Under the date July 2, 1993, the respondent submitted his reply.[5]

Respondent averred that Tanoy had approached him on May 28, 1993, but he refused to accept the money due to the petitioner's policy against unauthorized handling of remittances from its seamen. According to respondent, when the Guerreros went to the petitioner's office, he informed them that he did not have the money, and on June 23, 1993, Tanoy returned and begged him to accept the money since he was leaving for the Visayas and Guerrero's wife would pick it up the following day. However, Guerrero's wife did not come so he brought the money home. He added that on June 25, 1993, the Guerreros went to his office but he advised them to come back since the money was in his house. The respondent then brought back the money to his office and placed it inside his drawer. When the Guerreros returned on June 29, 1993, he discovered that US$200 was missing. He gave them the US$800 and promised to return the US$200 on July 2, 1993. The respondent later learned that the Guerreros submitted to Paquito Apolonio, the petitioner's Senior Crewing Manager, a statement/complaint against him. On July 2, 1993, he reimbursed the petitioner the balance of US$200.

Not finding the explanation credible, much less acceptable, the petitioner dismissed Zialcita on July 6, 1993.[6] Thus, respondent filed a complaint for illegal dismissal with money claims and damages before the Arbitration

Branch of the National Labor Relations Commission (NLRC).

On February 22, 1996, the NLRC through Labor Arbiter Sampang held:

> WHEREFORE, judgment is hereby rendered ordering respondent C.F. Shar[p] and Co., Inc., to reinstate the complainant to his former position or equivalent position of equal rank with full backwages including benefits and other privileges from his dismissal up to the time this decision is rendered which, as of 21 February 1996, already amounts to P217[,]350.00.
>
> Complainant is directed to report to this Arbitration Branch for the implementation of the reinstatement aspect by the Sheriff.
>
> SO ORDERED.[7]

On October 30, 1996, the NLRC vacated the decision on the ground that the case was decided prematurely without affording the petitioner the opportunity to present rebuttal evidence.[8] Upon remand, the Labor Arbiter rendered a Decision on September 14, 1998, to wit:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered dismissing the complaint for lack of merit.
>
> SO ORDERED.[9]

On September 29, 2000, the NLRC reversed the Arbiter's decision:

> WHEREFORE, premises considered, the Decision dated September 14, 1998 is hereby set aside. The decision of Labor Arbiter Sampang dated February 22, 1996 is reinstated with modification in that a penalty of one (1) month suspension is imposed upon complainant.
>
> The rest of the Decision dated February 22, 1996 is AFFIRMED.
>
> SO ORDERED.[10]

On appeal, the Court of Appeals affirmed the NLRC:

> IN VIEW OF THE FOREGOING, the assailed decision of the NLRC is AFFIRMED, and the petition DISMISSED.
>
> SO ORDERED.[11]

The appellate court sustained the NLRC finding that the date when the respondent received the money from Tanoy was pivotal. If he received it on May 27, 1993, he would be guilty of gross misconduct for giving the Guerreros a run-around on June 14, 1993. But if he received it only on June 23, 1993, the charge of gross misconduct against him would fail. The appellate court noted that the only evidence on record that the respondent received the money on May 27, 1993 was Tanoy's affidavit and his wife's letter dated June 18, 1993 informing the Guerreros that the money was with the respondent already. Yet, these are insufficient to overcome the respondent's testimony that he received the money only on June 23, 1993.

It will be noted that Tanoy and his wife failed to testify regarding their allegations. Nevertheless, the appellate court affirmed that the respondent indeed received the money. However, since the petitioner failed to show what sanction is imposed in accordance with its policies for the cited violation, the appellate court upheld the NLRC ruling that the respondent should be reinstated and punished only with one (1) month suspension.

Hence, this petition where the petitioner alleges that the appellate court erred:

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I

> ... [IN GIVING] CREDENCE ON THE FINDINGS OF THE NLRC THAT THE AFFIDAVIT EXECUTED BY MARCIAL TANOY CANNOT BE GIVEN WEIGHT ON THE GROUND THAT HE WAS NOT SUBJECTED TO CROSS-EXAMINATION AND THAT THE SAME IS SELF-SERVING, NOTWITHSTANDING THAT THE PRESENT [PROCEEDING] IS A LABOR CASE.
>
> II
>
> ... IN AFFIRMING THE RULING OF THE NLRC WHEN THE EVIDENCE ON RECORD SHOWS THAT THERE IS JUST CAUSE FOR THE DISMISSAL OF RESPONDENT.[12]

In essence, the issues are: (1) Should Tanoy's affidavit be given credence although he was not cross-examined? and (2) Is there just cause to dismiss respondent?

On the first issue, the petitioner contends that Tanoy's affidavit should be given probative value although he was not presented as witness and cross-examined. We agree. In labor cases the rules of evidence prevailing in courts of law or equity are not always controlling.[13] Trial-type hearings are not required in labor cases and these may be decided on verified position papers, with supporting documents and their affidavits.[14] It is not necessary for the affiants to appear and testify and be cross-examined by the counsel for the adverse party.[15] It is sufficient that the documents submitted by the parties have a bearing on the issue at hand and support the positions taken by them.[16]

Be that as it may, Tanoy's affidavit is still insufficient to establish that the respondent was guilty of gross misconduct. Both the NLRC and the appellate court opined that the date when the respondent received the money from Tanoy was pivotal. If he received it on May 27, he would be guilty of gross misconduct for giving the Guerreros a run-around on June 14. If he received it only on June 23, the charge of gross misconduct against him would fail.

We have examined the affidavit carefully and found that Tanoy failed to allege the specific date when he gave the money to the respondent, to wit:

> x x x x
>
> 5. Nang dumating ako sa Maynila, pumunta ako sa opisina ng C.F. Sharp at sinabi ko [kay] Rene Zialcita tungkol sa padala ni Mr. Guerrero. Sinabihan ako ni Zialcita na dalhin ang pera sa mga babae sa "likod" ng desk niya dahil sila ang tumatanggap ng mga perang padala ng mga seamen;6. Nang lumapit naman ako sa babaeng tinuro ni Zialcita, sinabi niya sa akin na hindi sila tumatanggap ng padalang pera dahil marami na ang nawawala;7. Bumalik ako kay Zialcita at sinabi ko na ang pera ay naka- "care of" sa kanya, at ako ay tagadala lamang nito. Sinabi ko rin sa kanya na ayon kay Guerrero, siya na ang bahalang magpadala ng telegrama sa kanyang kapatid o magulang;8. Nag-isip muna siya. Pagkatapos sinabi niya, "O sige, dito na muna sa akin iyan. Ilan ba iyan, bilangin mo muna sa harapan ko". Ginawa ko naman ito. Pagkatapos kong bilangin, sinara ko uli ang sobre, at binigay ko ito sa kanya. Hindi ko na siya pinapirma ng resibo dahil baka mainsulto siya;
> x x x x (Emphasis supplied.)[17]

Thus, the NLRC and the appellate court properly ruled that the respondent was not guilty of gross misconduct. For there is no indubitable proof that as of June 14, 1993, he already had the money.

On the second issue, the petitioner argues that the respondent's violation of its company policy warranted his dismissal from the service under Article 282(c) of the Labor Code which governs termination of employment by reason of loss of confidence.

As Assistant Crewing Manager, the respondent occupied a position of responsibility, imbued with trust and

confidence. To be a valid ground for dismissal, however, 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. Further, the act complained of must be work-related and shows that the employee concerned is unfit to continue working for the employer.[18] It must be premised on the fact that the employee concerned is invested with delicate matters, such as the handling or care and protection of the property and assets of the employer.[19]

After considering the records, we found insufficient reason to dismiss the respondent. Other than processing the shipping papers of the petitioner's seamen, it was not shown that he handled company property and assets. The petitioner merely alleged that the respondent occupied a sensitive position and dealt with both the principal and the seamen. There is no definite showing of what "delicate matters", if any, have been entrusted to him by petitioner.

To be sure, respondent was remiss in his duties when he received the money, failed to turn it over to the proper custodians per petitioner's Memorandum dated February 24, 1993, and failed to produce the entire amount when it was finally claimed. However, we disagree that dismissal is the proper sanction. It is incommensurate, or out of proportion, to the offense committed, especially in the absence of any malicious intent or fraud on the respondent's part. Also, there has been no allegation of any aggravating circumstance. For instance, there is no showing that he had been previously found guilty of accepting remittances and misappropriating them.

It bears stressing that in termination cases, the employer bears the onus of proving that the dismissal was for just cause. Indeed, a condemnation of dishonesty and disloyalty cannot arise from suspicions spawned by speculative inferences. Because of its subjective nature, this Court has been strictly scrutinizing the allegations and the evidence in cases of dismissal based on loss of trust and confidence because they can easily be concocted by an abusive employer. Thus, when the breach of trust or loss of confidence alleged is not borne by clearly established facts, as in this case, such dismissal on the cited grounds cannot be allowed. The fact that respondent is a managerial employee does not by itself exclude him from the protection of the constitutional guarantee of security of tenure.[20] We agree with the NLRC and the CA that one month suspension, and not dismissal, is the proper sanction against respondent under the circumstances of this case.

WHEREFORE, the petition is DENIED. The assailed Decision dated December 12, 2002, of the Court of Appeals in CA-G.R. SP No. 62578, and the Resolution dated March 11, 2003, are AFFIRMED.

Costs against petitioner.

SO ORDERED.

Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.
Carpio, J., on leave

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[*] On official leave.

[**]Also referred to as Renato Zialcita, Jr., in other parts of the records.

[1] Rollo, pp. 32-39. Penned by Associate Justice Mario L. Guariña III, with Associate Justices Godardo A. Jacinto, and Martin S. Villarama, Jr. concurring.

[2] Id. at 41.

[3] CA rollo, pp. 45-46.

[***] Also referred to as Paquito Opelanio in some parts of the records.

[4] CA rollo, pp. 47-48.

[5] Id. at 49-53.

[6] Id. at 54-60.

[7] Id. at 106.

[8] Id. at 136-138.

[9] Id. at 153.

[10] Id. at 39.

[11] Rollo, p. 38.

[12] Id. at 329-330.

[13]Cathay Pacific Airways, Ltd. v. National Labor Relations Commission, G.R. Nos. 141702-03, August 2, 2001, 362 SCRA 316, 322.

[14]Bantolino v. Coca-Cola Bottlers Phils., Inc., G.R. No. 153660, June 10, 2003, 403 SCRA 699, 704.

[15] Rase v. National Labor Relations Commission, G.R. No. 110637, October 7, 1994, 237 SCRA 523, 534.

[16] Cañete, Jr. v. National Labor Relations Commission, G.R. No. 130425, September 30, 1999, 315 SCRA 660, 665; Equitable PCIBank v. Caguiao, G.R. No. 159170, August 12, 2005, 466 SCRA 686, 699.

[17] CA rollo, p. 133.

[18] Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals, G.R. No. 158232, March 31, 2005, 454 SCRA 737, 760.

[19]Caingat v. National Labor Relations Commission, G.R. No. 154308, March 10, 2005, 453 SCRA 142, 151-152.

[20] Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals, supra at 766.

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