

WAH YUEN RESTAURANT, PETITIONER, VS. PRIMO JAYONA, RESPONDENT.

G.R. NO. 159448. December 16, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Primo Jayona (respondent) was hired in December 1998 as Assistant Manager of Wah Yuen Restaurant (petitioner).

By respondent's claim, his initial monthly salary was P9,000.00, which was increased to P9,450.00 effective January 15, 2000.

By letter-memorandum dated January 5, 2000,[1] Betty Chua, the President of petitioner, directed respondent to explain within 72 hours why he should not be dismissed from the service for grave dishonesty and loss of confidence for billing a customer in an amount considerably less than the cost of the actual stuff ordered. And Betty warned respondent that a repetition of the same act would cause his automatic dismissal from the service. A handwritten note with an unidentified initial at the lower portion of the letter-memorandum indicates that respondent refused to acknowledge receipt thereof.[2]

Subsequently, petitioner through counsel, by letter of April 5, 2000 which was served upon respondent on even date, terminated his services effective that same date, upon the ground that he was "found for the second time on April 3, 2000 (the first was on January 3, 2000) to have charged/billed a customer an amount, which was considerably less than the actual order, [which] is certainly prejudicial to the interests of [his] employer, a practice which can bring about the collapse of the business in the long run; that is if the practice is not checked immediately." [3]

Respondent thus filed a complaint for illegal dismissal, recovery of overtime pay, service incentive leave pay and 13[th] month pay.[4]

The Labor Arbiter dismissed respondent's complaint on the ground that as an assistant manager, he works for as long as he enjoys the trust and confidence of his employer, but once the trust and confidence are lost, he has no more reason to stay as such.

On appeal, the National Labor Relations Commission (NLRC), by Resolution of December 14, 2001, affirmed the dismissal in this wise:

Documentary evidence of the respondents all unerringly point to wrongdoing on the part of the complainant. In particular, Annex "C", Records, p. 27 unmistakably show[s] that complainant refused to acknowledge receipt of this memorandum apprising him of the sanction of termination of employment for a repetition of unauthorized grant of discounts to customers.

Having been forewarned that a repetition of what he committed on January 3, 2000 would mean his termination, complainant cannot be allowed to boldly state that he was not duly informed of the offense which

caused his eventual dismissal from the service. By itself, Annex "C", in Our view, is more than sufficient notice. As a managerial employee, complainant need not be subjected to the rigorous process of the twin notice requirement, more so that the act he was accused of and on which he offered no plausible defense is deleterious to the interests of the respondents.[5] (Emphasis and underscoring supplied).

On respondent's Petition for Certiorari, the Court of Appeals reversed and set aside the NLRC Resolution, it observing as follows:

x x x Indeed, if it is true that Petitioner [herein respondent] allegedly committed an infraction on January 3, 2000, why was his salary increased on January 15, 2000? It is beyond reason that in less than two (2) weeks after an employee commits an alleged serious breach of trust, he will be given a substantial salary increase of P450.00 a month. There is, therefore, serious doubts in Our minds as to the truth of the alleged incident of January 3, 2000. Such being the case, Petitioner was illegally dismissed.

Granting arguendo that there is truth to the April 5, 2000 incident, the same does not warrant the sanction of dismissal. The right of an employer to dismiss employees on account of loss of trust and confidence must not be exercised arbitrarily. The twin requirements of notice and hearing constitute essential elements of the statutory process, and neither of these elements can be eliminated without running afoul of the procedural mandate (*Condo Suite Club Travel, Inc. vs. NLRC*, 323 SCRA 79).

For loss of trust and confidence to be a valid ground for dismissal of an employee, it must be substantial and founded on clearly established facts, sufficient to warrant the employee's separation from employment (*Cruz vs. NLRC*, 324 SCRA 770). In the case at bench, Private Respondent has not clearly established the facts sufficient to warrant Petitioner's dismissal. Neither has Private Respondent proven and established that the ground for Petitioner's dismissal is substantial.[6] (Emphasis and italics in the original; underscoring supplied).

The appellate court accordingly disposed:

WHEREFORE, foregoing premises considered, the Petition having merit in fact and in law, is hereby GIVEN DUE COURSE. Accordingly, the decision of the Labor Arbiter dismissing the Petitioner's Complaint and the Resolution of the National Labor Relations Commission dismissing Petitioner's appeal are hereby REVERSED and SET ASIDE, and Petitioner declared to have been illegally dismissed. Resultantly, the records of this case are REMANDED to the Labor Arbiter, thru the Public Respondent NLRC, for the Labor Arbiter to determine whether Petitioner may be reinstated, and if not, to determine the amount of separation pay plus back wages and the other benefits Petitioner is entitled to under Articles 91 or 93 of the Labor Standards Law. No costs. (Underscoring supplied)[7]

Hence, the present petition for review, petitioner faulting the appellate court in

decid[ing] a question of substance not in accord with law and applicable decisions of the Honorable Supreme Court, when it reversed the factual findings of the Labor Arbiter, as affirmed by the NLRC, holding that respondent's dismissal was illegal.[8]

Petitioner harps on the "unwarranted stress on respondent's rather self-serving claim that he was granted a salary increase barely two (2) weeks after he committed his first infraction."

Thus petitioner argues:

x x x FIRST. Other than respondent's self-serving claim, no proof was ever presented to show that indeed it was only on January 5, 2000 (should have been January 15) that respondent's salary rate of P9,450.00 took effect. Besides, an increase in the salary of an erring employee does not necessarily indicate that said employee never committed the infraction only for the first time prior to the alleged increase in his salary. Further, the supposed increase, if indeed one was given, may have been granted after the respondent promised not to repeat the same infraction in the future. SECOND. The record would likewise show that respondent has not

satisfactorily disproved the fact that indeed he committed the questioned infractions. THIRD. As already stated earlier, respondent's infractions were proven and established by witnesses who submitted sworn statements before the Labor Arbiter.[9] (Underscoring in the original; emphasis supplied).

Petitioner further argues that contrary to the findings of the appellate court, it substantially complied with the twin notice requirement, for the April 3, 2000 incident was respondent's second infraction and he had been priorly warned, in the letter-memorandum of January 5, 2000, that a repetition of the same offense would be a cause for the termination of his services.

That respondent was a managerial employee and that the ground for the termination of his employment was loss of confidence under Article 282 (c) of the Labor Code[10] are undisputed. Due to its subjective nature which makes it prone to abuse, however, this Court has set guidelines to be followed if the ground for termination of services of an employee is loss of confidence.

Thus, in order to be a valid cause for dismissal, loss of confidence should not be (a) simulated, (b) used as a subterfuge for causes which are improper, illegal or unjustified, (c) arbitrarily asserted in the face of overwhelming evidence to the contrary, and (d) a mere afterthought to justify earlier action taken in bad faith.[11]

While in the termination of services of managerial employees for loss of confidence, employers are given wider latitude of discretion, there must, however, be substantial proof thereof. The employer's evidence must clearly and convincingly establish the facts and incidents upon which the loss of confidence may fairly be made to rest.[12]

In the case at bar, petitioner, which has the onus of proving that the dismissal of respondent on account of loss of confidence arose from particular facts, failed to discharge the same.

On respondent's claim that his salary was increased effective January 15, 2000, petitioner argues that other than respondent's self-serving claim, no evidence was presented to show that indeed the salary increase took effect on January 15, 2000.

This Court notes that in its Position Paper before the Labor Arbiter, petitioner stated that respondent was hired in December 1998 at a monthly salary of P9,540.00 "more or less." If respondent was hired at such amount, contrary to respondent's claim that his initial salary was P9,000.00 but that it was increased to P9,450 on January 15, 2000 or twelve days after he was alleged to have committed an infraction on January 3, 2000, it would have been easy for petitioner to present documentary proof of its claim. But none was produced.

Under Article 277 (b) of the Labor Code[13], as well as Section 2, Rule XXIII, Book V[14] and Section 2, Rule I, Book VI,[15] of the Implementing Rules and Regulations of the Labor Code, the dismissal of an employee must be for a just or authorized cause and after due process.

Procedural due process requires the employer to give the employee two notices. The first is to apprise him of the particular acts or omissions for which his dismissal is sought, and the second is to inform him of the decision to terminate him.[16]

Failure to comply with these mandatory procedural requirements taints the dismissal with illegality and any judgment rendered by the employer without compliance therewith can be considered void and inexistent.[17] The rationale for the strict adherence to the procedural requirements is explained in *Radio Communications of the Philippines, Inc. v. NLRC*: [18]

[I]t should be emphasized that due process must be observed in effecting an employee's dismissal because the dismissal of an employee affects not only his position but also his means of livelihood and his dependents' sustenance. Thus, strict adherence to the requirements set forth in the Labor Code, as amended, is essential.[19] (Underscoring supplied).

For petitioner to consider the letter-memorandum of January 5, 2000 as the first notice, and the letter of April 5, 2000 as the second notice of termination of employment is erroneous. For albeit the two letters dealt with infractions of the same nature, they were separate and distinct.

The April 5, 2000 termination letter itself clearly stated that respondent was being terminated for committing a second infraction. As such he should have been given the chance to give his side thereon. But he was not.

In any event, not only did petitioner fail to observe the due process requirements. It also failed to establish by substantial evidence that the alleged second infraction was committed.

Loss of confidence then, which is the usual ground for the removal of a managerial employee, not having been established, like any other lawful cause, [20] the petition must fail.

Although the loss of confidence on petitioner's part is unfounded, reinstating respondent to his former position would not be advisable given the souring of their relationship.

x x x Where the relationship of employer to employee is so strained and ruptured as to preclude a harmonious working relationship should reinstatement of the employee be decreed, the latter should be afforded the right to separation pay where the employer does not have to endure the continued services of the employee in whom it has lost confidence. (citations omitted.)[21]

This Court now, therefore, directs petitioner to just afford respondent his right to separation pay, backwages, and other benefits under the law.

Since the records do not provide a basis for the determination of the amount of separation pay plus backwages and other benefits to which respondent is entitled, a remand of the case to the Labor Arbiter is thus in order.

WHEREFORE, the Decision dated June 6, 2003 and Resolution dated August 7, 2003 of the Court of Appeals in CA-GR SP No. 72351 are AFFIRMED with MODIFICATION.

The records of this case are REMANDED to the Labor Arbiter, through the National Labor Relations Commission, only for the determination of the amount of separation pay plus backwages and other benefits to which respondent is entitled.

Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] The Letter-Memorandum reads:

January 5, 2000

MR. PRIMO JAYONA
C/O Wah Yuen Hot Pot and Sea Food Restaurant
270-272 Calvo Building
270-272 Calvo Building
Escolta, Manila

Dear Mr. Jayona,

It has been reported to us by the cashier that on January 3, 2000, you billed/charged a certain customer an amount considerably less than the actual order. This practice is not only unauthorized but could also bring about the collapse of our business in the long run if not immediately corrected. Clearly, also, your abovesaid

act is tantamount of grave dishonesty considering your high position as Assistant Manager.

In view thereof, you are hereby directed to explain within 72 hours why you should not be dismissed from service for grave dishonesty and loss of confidence in your part by the management.

A repetition of the same act would constrain the management to automatically terminate your service as Assistant Manager.

Please be guided accordingly.

(Sgd.)

BETTY A. CHUA

President

[2] Annex "C", NLRC Record at 27.

[3] NLRC Records at 19.

[4] Id. at 2-3.

[5] Id. at 153-154.

[6] CA Rollo at 112-113.

[7] Id. at 115.

[8] Rollo at 10-11.

[9] Petition, Rollo at 12.

[10] ART. 282. Termination by employer. – An employer may terminate an employment for any of the following causes:

x x x

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

[11] *Vitarich Corporation v. National Labor Relations Commission*, 307 SCRA 509 (1999); *Midas Touch Food Corporation v. NLRC*, 259 SCRA 652 (1996); *China City Restaurant Corporation v. National Labor Relations Commission*, 217 SCRA 443 (1993); *General Bank & Trust Co. v. Court of Appeals*, 135 SCRA 575 (1985).

[12] *Felix v. National Labor Relations Commission*, 442 SCRA 465 (2004); *Philippine Long Distance Telephone Company v. Tolentino*, 438 SCRA 555 (2004); *Sulpicio Lines, Inc. v. Gulde*, 377 SCRA 525 (2002); *Concorde Hotel v. Court of Appeals*, 362 SCRA 583 (2001); *Cruz v. NLRC*, 324 SCRA 770 (2000); *Atlas Consolidated Mining and Development Corporation v. National Labor Relations Commission*, 290 SCRA 479 (1998); *Estiva v. National Labor Relations Commission*, 225 SCRA 169 (1993) citing *Commercial Motors Corporation v. Commissioners, et al.*, 192 SCRA 191 (1990).

[13] Art. 277. Miscellaneous provisions. – xxx

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated with a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with

company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. xxx

[14] SEC. 2. Standards of due process; requirements of notice. – In all cases of termination of employment, the following standards of due process shall be substantially observed:

I. For termination of employment based on just cause as defined in Article 282 of the Code:

(a)

A written notice served on the employee specifying the ground or grounds for termination,, and giving to said employee reasonable opportunity within which to explain his side;

(b)

A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

(c)

A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

[15] SEC. 2. Security of tenure. – x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

[16] Santos v. San Miguel Corporation, 399 SCRA 172, 185 (2003) citing Manuel v. NC Construction, 282 SCRA 326, 335 (1997); Wallem Maritime Services, Inc. v. NLRC, 263 SCRA 174, 186 (1996) citing Jones v. NLRC, 250 SCRA 668, 674 (1995).

[17] Santos v. San Miguel Corporation, supra at 184, citing Equitable Banking Corporation v. NLRC, 273 SCRA 352, 378 (1997); Concorde Hotel v. Court of Appeals, 362 SCRA 583 (2001).

[18] 221 SCRA 782 (1993).

[19] Id. at 787.

[20] Hellenic Philippine Shipping, Inc. v. Siete, 195 SCRA 179, 185 (1991) citing Batongbacal v. Associated

Bank, 168 SCRA 600 (1988).

[21] Maglutac v. National Labor Relations Commission, 189 SCRA 767, 779 (1990).

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