

CALTEX (PHILIPPINES), INC., WILLIAM P. TIFFANY, E.C. CAVESTANY, AND E.M. CRUZ, PETITIONERS, VS. HERMIE G. AGAD AND CALTEX UNITED SUPERVISORS' ASSOCIATION, RESPONDENTS.

G.R. No. 162017. April 23, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review on certiorari[1] assailing the Decision[2] dated 22 May 2003 and Resolution[3] dated 27 January 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 74199, which reversed the Decision[4] dated 6 June 2001 and Resolution[5] dated 24 September 2002 of the National Labor and Relations Commission (NLRC) in NLRC NCR CA No. 018872-99.

The Facts

On 1 September 1983, petitioner Caltex Philippines, Inc. (Caltex) employed respondent Hermie G. Agad (Agad) as Depot Superintendent-A on a probationary basis for six months. On 28 February 1984, Agad became a regular employee with a monthly salary of P2,560 and cost of living assistance of P380.

For the next eleven years, Agad obtained various commendations[6] and held the positions of Depot Superintendent-A, Field Engineer, Senior Superintendent, and Bulk Depot Superintendent until his dismissal on 8 August 1994. Agad received a monthly gross salary of P31,000, a mid-year bonus equivalent to one month's salary and 13th month pay at the time of his termination.

After Agad had served for two years since 1990 as Superintendent of the Tacloban Bulk Depot (Depot) in Leyte, Caltex transferred Agad to Bauan Bulk Depot in Batangas effective 16 May 1992.[7]

To transfer his belongings from Leyte to Batangas, Agad secured the carpentry services of Alfredo Delda (Delda), the owner of A.A. Delda Engineering Services (Delda Services) for the construction of two crates. Agad paid Delda P15,500, evidenced by Official Receipt No. 0970[8] dated 12 May 1992. Agad submitted the receipt sometime in August 1992 and Caltex reimbursed him the said amount.

On 13 April 1993, Caltex conducted its regular audit of employees' account and expenses as of 31 December 1992.[9] The company auditor of Caltex verified the crating expense incurred by Agad with Delda. Delda, through an Affidavit dated 5 May 1993,[10] disclosed that Delda Services did not perform any crating service for Agad or receive the amount of P15,500 as stated in the official receipt. Delda alleged that he was forced by Agad to issue the official receipt in order to get a favorable recommendation from the incoming superintendent of the Depot.

Further investigations revealed that Arsenio Asperas (Asperas), a carpenter from Tacloban, was commissioned by Agad to build two wooden crates on 12 May 1992. Asperas attested that Agad paid him the amount of P400 and

he completed the work in 2 ½ days beside the quarters of Agad inside the Depot.[11] Basilia Villalino (Villalino), a household staff of the Depot Staff House, corroborated Asperas' statement in a Sworn Testimony dated 24 May 1993 that Agad did hire Asperas to make two wooden crates inside the Depot before he left for his next post.[12]

In another audit report dated 12 May 1993,[13] the company auditor declared that 190 pieces of 11 kg. liquefied petroleum gas (LPG) cylinders from the Depot were allegedly withdrawn for scrap and repair purposes without proper documentation on 8 February 1991 when Agad was still depot superintendent. Isidro B. Millanes (Millanes), the depot's LPG cylinder repair/reconditioning contractor and owner of IBM Enterprises, claimed that the LPG cylinders were hauled to his compound and allegedly later sold, upon the express instructions of Agad, to Leyte Development Corporation and Ernesto Mercado, a service station dealer.

On 5 July 1993, petitioner E.C. Cavestany (Cavestany), the Regional Manager of Caltex, issued a Memorandum[14] to Agad directing him to explain the following audit review findings: (1) the questionable reimbursement of crating expense; and (2) the alleged unauthorized withdrawal and sale of 190 pieces of LPG cylinders.

On 29 July 1993, Agad sent his reply[15] answering all the charges against him. Agad stated: (1) that Delda Services constructed the two crates worth P15,500 as evidenced by an official receipt issued by Delda; and (2) that the withdrawal of the scrap LPG cylinders formed part of his housekeeping duties as depot superintendent. The scrap materials consisting of tanks, pumps and pipelines of Gebarin, a logging account of Caltex located in Marabut, Samar, were bidden out to a certain Rogelio "Boy" H. Bato on an "as is, where is" basis.[16] However, the scrap materials went missing and Boy Bato demanded that such be replaced with equivalent materials. The scrap LPG cylinders were released instead after Agad secured the approval of his superiors as evidenced in a Memorandum dated 12 February 1992.[17] After the approval, Boy Bato's buyer, a certain Mr. Ang, allegedly acquired the scrap cylinders from IBM Enterprises.

Caltex created an investigating panel chaired by Cavestany to look into the offenses allegedly committed. On 17 August 1993, the investigating panel held its first formal inquiry.[18] The transcript of the investigation was dated 2 September 1993.[19]

On 29 April 1994, Caltex placed Agad under preventive suspension. On 26 May 1994 or almost 10 months after the first formal inquiry, the investigating panel conducted another hearing.[20] Two other hearings were held on 14 June and 6 July 1994.

In a Confidential Memorandum dated 8 August 1994,[21] Cavestany informed Agad of his dismissal on the grounds of serious misconduct and loss of trust and confidence, both just causes for termination of employment. Agad received the memorandum on 25 August 1994.

On 1 September 1994, respondents Agad and Caltex United Supervisors' Association filed a complaint[22] with the Labor Arbiter (LA) for illegal dismissal, illegal suspension with prayer for full backwages of P31,000 per month from 25 August 1994 until reinstatement, moral damages of P5,000,000, exemplary damages of P5,000,000 and 10% of the total monetary award as attorney's fees against petitioners Caltex and its officers - William P. Tiffany, President and Chief Executive Officer; E.M. Cruz, General Manager for Distribution; and Cavestany.

On 16 November 1998, the LA rendered a decision in favor of Agad.[23] The LA held that there were no just causes for Agad's termination of employment. On the charge of fraudulent reimbursement of crating expense, the LA found no basis for this since Delda issued an official receipt which served as best evidence that the crating expense was actually incurred. According to the LA, Delda's claim that he was only forced by Agad to issue the

receipt for fear of losing his job as a contractor does not appear to be credible. In the administrative inquiry held on 26 May 1994, it was clearly established that Delda held a grudge against Agad since Agad did not recommend him to be a contractor of Caltex for failure to meet the minimum capital required of aspiring contractors. Also, the LA did not give any weight to the testimonies of Asperas and Villalino since they were not presented for cross-examination during the investigation.

As to the charge of unauthorized withdrawal and sale of the LPG cylinders, the LA ruled that Agad was denied the right to present his witnesses and other evidence in support of his defense which constitutes a denial of due process. Thus, the LA ruled that Agad had been illegally dismissed by Caltex. The dispositive portion of the LA's decision states:

Since there was no just cause for termination of the services of the complainant; and since the complainant was not given due process in the proceedings to terminate his services; and since he was illegally placed under preventive suspension, we therefore rule that the complainant is entitled to the twin remedies of reinstatement, with full backwages, from the time of his dismissal until his reinstatement to his former position as Depot Superintendent of the Bauan Bulk Depot, or to a similar position, without any loss of seniority rights.

By reason of the arbitrary nature of the termination of the service of the complainant, and the denial of due process in the denial of his right to present evidence in his defense in the administrative inquiry prior to the termination of his services, we hold further the respondents liable to the complainant for moral damages, in the sum of P5,000,000.00; exemplary damages in the sum of P5,000,000.00; and attorney's fees in the sum of ten (10%) percent of the total monetary awards.

SO ORDERED.[24]

Caltex filed an appeal with the NLRC.

The Ruling of the NLRC

On 6 June 2001, the NLRC reversed the decision of the LA. The NLRC held that there existed just causes which justified Agad's dismissal. With regard to the first allegation, the NLRC ruled that the amount of crating expense reimbursed by Agad was fictitious. The fact that a receipt was issued by Delda does not conclusively prove that the crating service was performed by Delda. At the most, the existence of the receipt only proves its execution. The NLRC declared that Delda's testimony, made under oath, enjoys the presumption of regularity and good faith. Corroborated by two other witnesses, Asperas and Villalino, Delda's testimony clearly established that Agad was dishonest in his dealings. The NLRC added that even if the amount involved was only worth P15,500, the same was of no moment since what was involved was Agad's propensity to commit dishonesty against the company. As a supervisor, a greater degree of diligence, honesty and trust was expected of him. The NLRC further stated that Caltex had no bad motive to pick on Agad and tell lies about him if indeed he was trustworthy since Agad was given awards and commendations before the discovery of the questioned acts.

On the second allegation, the NLRC ruled that Agad had no authority to withdraw the LPG cylinders from the Depot. The NLRC declared that Agad did not observe existing company rules and regulations in procuring the required forms, in the submission of periodic LPG cylinders inventory and in selling the LPG cylinders without the requisite bidding. Thus, the NLRC concluded that Caltex validly dismissed Agad. The dispositive portion of the NLRC's decision states:

WHEREFORE, finding sufficient reasons/grounds to warrant reversal of the findings of the Arbiter a quo, the assailed decision is hereby SET ASIDE and a new one entered ordering the DISMISSAL of the complaint for lack of basis both in fact and in law.

SO ORDERED.[25]

Agad filed a Motion for Reconsideration which was denied in a Resolution dated 24 September 2002.

Agad then filed a petition for certiorari under Rule 65 with the CA. Agad sought the nullification of the decision of the NLRC.

The Ruling of the Court of Appeals

On 22 May 2003, the CA modified the judgment of the NLRC and ruled in favor of Agad. On the issue of fraudulent reimbursement of crating expense, the CA concurred with the LA. According to the CA, the regularity of the official receipt remained untarnished since the only other proof relied upon by petitioners, Delda's affidavit, failed to substantiate his allegations. Delda never assailed the due execution of the receipt and even admitted that he actually issued the receipt. The supporting affidavits of Asperas and Villalino, since they were not cross-examined, must be rejected for being hearsay. Thus, no sufficient evidence was presented to prove that the amount in the receipt was fictitious. Further, the CA indicated that Caltex did not make any limitations to the crating expense to be reimbursed such that Agad was entitled to move his personal and household effects at reasonable costs.

On the second issue of unauthorized withdrawal and sale of LPG cylinders, the CA agreed with the NLRC that Agad did not comply with company rules and regulations. Nonetheless, the CA held that the penalty of dismissal imposed upon Agad was too harsh considering that this was his first infraction and that Agad had been awarded several commendations in the past and had worked for Caltex for more than 10 years. The dispositive portion of the CA's decision states:

WHEREFORE, premises considered, the petition is hereby GRANTED, and the judgment of the NLRC is hereby MODIFIED. Accordingly, finding no just cause for the termination of employment of the petitioner Hermie G. Agad, we therefore rule that the petitioner was illegally dismissed; he should be entitled to reinstatement, with full backwages, from the time of his illegal dismissal until his reinstatement to his former position as Depot Superintendent of the Bauan Bulk Depot, or to a similar position without any loss of seniority rights.

SO ORDERED.[26]

Caltex filed a Motion for Reconsideration which was denied in a Resolution dated 27 January 2004.

Hence, the instant petition.

The Issue

The main issue is whether Caltex legally terminated Agad's employment on just causes: (1) acts tantamount to serious misconduct and willful violation of company rules and regulations; and (2) willful breach of trust and confidence as Depot Superintendent.

The Court's Ruling

Article 282 of the Labor Code states:

ART. 282. TERMINATION BY EMPLOYER. - An employer may terminate an employment for any of the following causes:

(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.

In termination cases, the burden of proof rests on the employer to show that the dismissal is for just cause. When there is no showing of a clear, valid, and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause.[27]

The quantum of proof which the employer must discharge is substantial evidence. An employee's dismissal due to serious misconduct and loss of trust and confidence must be supported by substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[28]

In the present case, petitioners terminated Agad's employment based on these acts: (1) Agad's submission of a fictitious crating expense amounting to P15,1500; and (2) the unauthorized withdrawal and sale of 190 pieces of 11 kg. LPG cylinders for his personal gain and profit.

Crating expense is reasonable

Petitioners insist that the CA erred in ruling that the crating expense of P15,500 was justifiable without however stating the basis for such a ruling. According to petitioners, the records prove that there were more than ample evidence to show that the crating expense was fictitious. Petitioners reiterate the sworn testimonies of Delda, Esperas, and Villalino, and that of Augusto Cabugao, the Regional Audit Manager of Caltex, who testified that the crating expense of P15,500 was unreasonably high considering that depot houses of Caltex were fully furnished and expenses incurred in transferring personal effects were usually very small.

Respondents, on the other hand, maintain that the crating expense was necessary and reasonable under the circumstances. First, Caltex readily approved the reimbursement claim when Agad submitted the official receipt. It was only a year later, during a regular audit, when Caltex sought Delda's affidavit of denial when the company questioned the authenticity and reasonableness of the amount of the crating expense. Second, of the first three witnesses for the petitioners, only Delda was presented for cross-examination during the administrative investigation. Thus, the affidavits of Esperas and Villalino remain hearsay and deserve scant consideration. Last, George Taberrah, the former Manager for Distribution of Caltex, testified on 26 February 1996 that the amount of P15,500 for crating expense was reasonable. Even Roger San Jose, the former auditor of Caltex, testified on the necessity and reasonableness of said amount.

In *R & E Transport, Inc. v. Latag*,[29] we held that factual issues may be reviewed by the CA when the findings of fact of the NLRC conflict with those of the LA. By the same token, this Court may review factual conclusions of the CA when they are contrary to those of the NLRC or of the LA.

In the present case, the evidence of the parties with respect to the crating expense reimbursed by Agad finds discord on the official receipt issued by Delda vis-a-vis Delda's sworn testimony denying that he received the amount stated in the receipt or rendered any crating service for Agad. The petitioners presented the affidavits of Asperas and Villalino to corroborate Delda's testimony while Agad relied on the official receipt as the best evidence that he contracted Delda's services and that Delda indeed issued said receipt. The decisions of the CA and NLRC produced different factual conclusions on this issue.

After a careful review of the records, we find no cogent reason to disturb the findings of the CA.

First, the official receipt submitted by Agad serves as the best evidence of payment and is presumed regular on its face absent any showing to the contrary.

Second, records show that the reimbursement of the crating expense was approved by Agad's superior upon presentment of the receipt. At the time, Agad's superior did not mention that the amount of the crating expense incurred was unreasonable.

Third, Delda, in his affidavit, disclosed that he was forced to issue the receipt in order to get a favorable recommendation from the incoming superintendent who would replace Agad in the Depot. However, in the same affidavit, Delda mentioned that he had been a standby worker at the Depot from 1956 to 1982 and a piece-worker from 1982 up to 1993, the date he executed the affidavit. It appears then that Delda had established a name for himself and his business with Caltex. Any favorable recommendation from Agad, as the outgoing superintendent, would not provide much impact compared to the reputation he had built all those years.

Fourth, the testimonies of the two corroborating witnesses, Esperas and Villalino, cannot be given credence since Agad was not given an opportunity to cross-examine them. Their testimonies are considered as hearsay evidence.

Last, petitioners did not present any other evidence to show that Agad violated company policy dealing with crating expenses to be limited to a certain amount. Reasonableness was the only criterion given by the employer.

Thus, all these taken into consideration, we conclude that petitioners were not able to fully substantiate the alleged fictitious reimbursement of the crating expense. Delda's testimony alone, without any corroborating evidence to prove otherwise, is insufficient to overcome the presumption of regularity in the issuance of his own official receipt which he gave to Agad.

Withdrawal and sale of 190 pieces of LPG cylinders is unauthorized

Petitioners assert that Agad committed serious violation of internal control procedures and company policies due to the following: (1) no Records of Materials Received/Delivered (RMRD) were issued to cover the withdrawal of the empty cylinders for repair purposes; (2) the testimony of Millanes demonstrates that the cylinders were initially stored at his premises on 8 February 1991 and later sold as good units without bidding, upon the instructions of Agad, to Leyte Development and Ernesto Mercado; (3) no evidence was submitted to show that the sales proceeds were turned over to Caltex and petitioners surmise that the total prevailing price of the LPG cylinders would have been from a low of P95,000 to a high of P133,000; (4) the periodic report of inventory of the LPG cylinders, considered part of storehouse materials, to Head Office Accounting was not submitted by the depot; and (5) the depot clerk acted beyond his authority when he approved the gate passes for the withdrawal of the cylinders.[30]

Respondents, on the other hand, maintain the following: (1) that as depot superintendent, Agad had the authority to transfer materials, including

scrap, from one place to another; (2) Agad had specific authority, per Memorandum dated 12 February 1992, to withdraw the scrap materials as replacement for the missing scrap tanks, pumps and pipelines earlier sold to Boy Bato; (3) the withdrawal of the LPG cylinders was covered by gate passes 8499 and 8500, negating any fraudulent intent on Agad's part; and (4) petitioners' own witness, Millanes, testified that the LPG cylinders withdrawn were actually junk or scrap materials and of no accounting value. In addition, even assuming that the withdrawal of the LPG cylinders was unauthorized, the penalty of dismissal is too harsh a penalty.

We agree with petitioners.

The findings of the CA in the present case revealed:

With regard to the second issue, the petitioner contends that the withdrawal/sale of 190 LPG cylinders in the Tacloban Bulk Depot was well within his authority as a Depot Superintendent and covered by an authority stated in an instrument, as a consequence of a contract of sale with Mr. Bato. Furthermore, such cylinders were already considered as scrap or without monetary value. Therefore, its withdrawal/sale could not constitute just cause for dismissal.

The contention is without merit. Although his position as Depot Superintendent includes such authority, as part of his housekeeping duties, it does not automatically justify his acts which were contrary to company rules and regulations. The company rules required the issuance of RMRDs for any company properties with value to be withdrawn from the Bulk Depot. Petitioner failed to comply with this rule. Furthermore, he ordered the sale of the cylinders without bidding, and there were no evidence that the proceeds of such sale were turned over to the company. Mere existence of authority does not justify his acts, he must show that he properly exercised such authority as contemplated in the company rules and regulations, especially when the act is not within his discretion.

His contention that such withdrawal was merely a part of a contract of sale between the company and Mr. Bato, is likewise erroneous. The instrument never mentioned of any LPG cylinders, what was mentioned therein was 3,000 B.I. plates. And even if the contract involved LPG cylinders, still, its withdrawal must be accounted for.

The petitioners' assumption that the subject LPG cylinders were merely scrap materials is likewise erroneous. The cylinders, although declared as scraps, still has monetary value because it can still be sold even as scrap materials. Moreover, even if such cylinders were merely scrap, the petitioner cannot just appropriate them without the company's consent. Being company property, its disposal is still within the discretion and prerogative of the company.[31]

In the same manner, the NLRC, in its Decision dated 6 June 2001, held:

x x x It was sufficiently established that complainant Agad had no authority to withdraw the LPG cylinders from the Tacloban Bulk Depot. Complainant Agad's claim that he merely withdrew the LPG cylinders in view of the loss of certain scrap materials earlier sold to Mr. Boy Bato is belied by the fact that the alleged loss was not established. On the other hand, the records show that complainant Agad's request for the withdrawal of scrap materials only covered 3,000 kilograms of B.I. plates. This request, however, did not include the LPG cylinders, numbering 190, which were withdrawn from the Tacloban Depot.

Complainant Agad also did not observe the existing company rules and regulations on the withdrawal of LPG cylinders from the Tacloban Bulk Depot. According to the Audit Report, which was not controverted by complainant Agad, no Records of Materials Received/Delivered were issued to cover the withdrawal of the cylinders. Also, the periodic inventory of the LPG cylinders was not submitted by complainant Agad to the accounting department. Further, the LPG cylinders were not sold through bidding, which was corroborated by the statement of Mr. Isidro B. Millanes, who testified that the subject LPG cylinders were first stored at his premises and later sold without bidding upon the express instructions of complainant Agad.

In this regards, it cannot be validly claimed that the LPG cylinders in question were mere scrap materials, i.e. they had no monetary value anymore and therefore not subject to the strict requirement laid down by the company rules and regulations. As testified to by Mr. Cabugao, and by no less than complainant Agad himself and his own witnesses, Mr. George Taberrah, and Mr. Roger San Jose, Jr., the LPG containers have monetary value as they can still be sold even as scrap.[32]

The findings of the CA and NLRC establish the following: (1) Agad's request for withdrawal of the 190 pieces of LPG cylinders as stated in a Memorandum dated 12 February 1992 cannot be given credence since the

Memorandum pertains to the replacement of the scrap materials due to Boy Bato consisting of 3,000 kilograms of black iron plates and not to the subject LPG cylinders; (2) Agad did not observe Caltex's rules and regulations when he transferred the said cylinders to Millanes' compound without the RMRD form as required under Caltex's Field Accounting Manual; (3) Agad gave specific instructions to Millanes to sell the cylinders without bidding to third parties in violation of company rules; (4) Agad failed to submit the periodic inventory report of the LPG cylinders to the accounting department; (5) Agad did not remit the proceeds of the sale of the LPG cylinders; and (6) even if considered as scrap materials, the LPG cylinders still had monetary value which Agad cannot appropriate for himself without Caltex's consent.

Considering these findings, it is clear that Agad committed a serious infraction amounting to theft of company property. This act is akin to a serious misconduct or willful disobedience by the employee of the lawful orders of his employer in connection with his work, a just cause for termination of employment recognized under Article 282(a) of the Labor Code.

Misconduct has been defined as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. To be serious, the misconduct must be of such grave and aggravated character.[33]

Further, Agad's conduct constitutes willful breach of the trust reposed in him, another just cause for termination of employment recognized under Article 282(c) of the Labor Code. Loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence. The employee must be invested with confidence on delicate matters, such as the custody, handling, care and protection of the employer's property and funds.[34]

As a superintendent, Agad occupied a position tasked to perform key and sensitive functions which necessarily involved the custody and protection of Caltex's properties. Consequently, Agad comes within the purview of the trust and confidence rule.

In *Sagales v. Rustan's Commercial Corporation*,[35] we held that in loss of trust and confidence, as a just cause for dismissal, it is sufficient that there must only be some basis for the loss of trust and confidence or that there is reasonable ground to believe, if not to entertain the moral conviction, that the employee concerned is responsible for the misconduct and that his participation in the misconduct rendered him absolutely unworthy of trust and confidence.

In sum, even if Agad did not commit the alleged charge of fictitious reimbursement of crating expense, he was found to have acted without authority, a serious infraction amounting to theft of company property, in the withdrawal and sale of the 190 pieces of LPG cylinders owned by the company. Caltex, as the employer, has discharged the burden of proof necessary in terminating the services of Agad, who was ascertained to have blatantly abused his position and authority. Thus, Agad's dismissal from employment based on (1) acts tantamount to serious misconduct or willful violation of company rules and regulations; and (2) willful breach of trust and confidence as Depot Superintendent was lawful and valid under the circumstances as mandated by Article 282 (a) and (c) of the Labor Code.

WHEREFORE, we GRANT the petition. We SET ASIDE the Decision dated 22 May 2003 and Resolution dated 27 January 2004 of the Court of Appeals in CA-G.R. SP No. 74199. We DECLARE as valid the termination from employment of respondent Hermie G. Agad for just causes prescribed under the law.

SO ORDERED.

Brion, Del Castillo, Abad, and Perez, JJ., concur.

[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] Rollo, pp. 33-44. Penned by Justice Bienvenido L. Reyes with Justices Salvador J. Valdez, Jr. and Danilo B. Pine, concurring.

[3] Id. at 65-66.

[4] CA rollo, pp. 45-53. Penned by Commissioner Alberto R. Quimpo with Commissioner Roy V. Señeres, concurring. Commissioner Vicente S.E. Veloso inhibited from the case.

[5] Id. at 54-55.

[6] Id. at 72-73 and 130-136.

[7] Id. at 129.

[8] Id. at 114.

[9] Id. at 112-113.

[10] Id. at 115.

[11] Rollo, p. 14.

[12] Id. at 15.

[13] CA rollo, p. 116.

[14] Id. at 144.

[15] Id. at 146-147.

[16] Id. at 208-209. Deed of Sale with Waiver executed by Caltex and Rogelio Bato on 8 January 1992.

[17] Id. at 210.

[18] Id. at 75.

[19] Id. at 162-166.

[20] Id. at 167-173.

[21] Id. at 152.

[22] Id. at 66-67. Docketed as NLRC NCR Case No. 00-09-06449-94.

[23] Id. at 57-65.

[24] Id. at 64.

[25] Id. at 52.

[26] Rollo, p. 43.

[27] AMA Computer College-East Rizal v. Ignacio, G.R. No. 178520, 23 June 2009, citing Cosep v. National

Labor Relations Commission, 353 Phil. 148, 157-158 (1998).

[28] Id., citing Philippine Commercial Industrial Bank v. Cabrera, G.R. No. 160368, 30 March 2005, 454 SCRA 792, 803.

[29] 467 Phil. 355 (2004).

[30] Based on the Audit Review Report dated 12 May 1993. Supra note 13.

[31] Rollo, p. 40.

[32] CA rollo, pp. 49-50.

[33] Colegio de San Juan de Letran-Calamba v. Villas, 447 Phil. 692 (2003).

[34] Cruz v. Coca-Cola Bottlers, Phils., Inc., G.R. No. 165586, 15 June 2005, 460 SCRA 340.

[35] G.R. No. 166554, 27 November 2008, 572 SCRA 89, citing Central Pangasinan Electric Cooperative, Inc. v. Macaraeg, G.R. No. 145800, 22 January 2003, 395 SCRA 720 and Gonzales v. NLRC, G.R. No. 131653, 26 March 2001, 355 SCRA 195.

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