LBC DOMESTIC FRANCHISE CO., PETITIONER, VS. RUSSEL E. FLORIDO, RESPONDENT.

G.R. No. 162577. August 17, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review[1] seeking the nullification of the Decision and Resolution rendered by the Court of Appeals (CA) on November 20, 2003 and March 5, 2004, respectively, in CA-G.R. SP No. 79079 entitled "LBC Domestic Franchise Company v. National Labor Relations Commission (Second Division) and Russel E. Florido."

The facts are as follows:[2]

Respondent Russel E. Florido was employed by petitioner LBC Domestic Franchise Company on September 5, 1989. From being an Account Executive, he was promoted through the years until he became the company's Vice-President for Operations receiving a monthly salary of P25,000.

In November of 1999, a committee was formed for the purpose of preparing petitioner's Christmas giveaways to its employees. Before Yvonnie Platon, President of petitioner company, left for the United States, a committee meeting was held and it was decided that each employee would receive a ham that will cost P300. Respondent volunteered to find a supplier of the hams, thus saying: "Ako ay may kilala, ako na lang."[3] Platon agreed and entrusted the task to respondent. She likewise designated respondent as the company's Officer-in-Charge.

Platon returned to the Philippines in time for the company Christmas party. At the party, the hams were distributed to the employees. An additional twenty (20) hams were likewise ordered by the company and delivered by respondent.

Meanwhile, the company employees were grouped by teams, and each team was allotted representation expense. From their petty cash, Arnel Fajardo and the QCT Katipunan Team advanced the respective amounts of P3,960 and P4,752. The corresponding receipts supporting the claim for the reimbursement of the cash advances made by the latter indicated: "FLORIDO TRADING, meat dealer."

On February 11, 2000, while respondent was in the middle of a Team Leaders/Branch Managers' meeting, he was served with a memorandum from petitioner's Board Chairman, Mr. Carlos R. Araneta. He was being directed to go on vacation leave and consume all his remaining leave credits, and in the meantime, he shall turn over all his accountabilities to Mr. Gene Santos, an officer of the company. Respondent reluctantly complied with the order. Platon, upon the other hand, was summoned by Mr. Araneta to explain the receipts prepared and signed by respondent for the liquidation of cash advances in connection with the purchase of the hams, as well as the receipts for the Fundador Brandy giveaways.

On March 6, 2000, Platon issued a memorandum requiring respondent to submit a written explanation, as follows:

> It was brought to my attention by our Chief Accountant that the official receipts you used in liquidating the amount of P92,700 and P6,000 representing the purchase of 320 pieces of Purefoods Fiesta Ham as Christmas giveaways to our employees were that of TOBS Meat Supply.
>
> It was further noted that the handwritings in the said receipts were yours and you yourself signed the said official receipts as the authorized personnel to issue the same.
>
> We would like to be clarified why instead of Purefoods receipts, the above-mentioned receipts were the ones used in liquidating the said expenses and why is it that you were the one who issued and signed the same...
>
> In addition to the foregoing, the Chief Accountant likewise brought to my attention the two other receipts allegedly issued by a FLORIDO TRADING in the amount of P3,960 and P4,752.
>
> The receipt for P3,960 was used by Mr. Arnel Fajardo in liquidating the purchase of ten (10) bottles of Fundador Brandy while the other receipt for P4,752 was used by QCT Katipunan in liquidating their purchase of twelve (12) bottles of the same kind of liquor as giveaways. Since the two receipts were without Tax Identification Numbers, hence, not registered with the BIR, Mr. Fajardo and Katipunan Team were asked on the receipts source and were informed that it was you who issued the same.
>
> We would like to be clarified why you issued the said receipt and why it was not registered with the BIR...
>
> Kindly submit your reply within forty eight (48) hours from receipt of this memo.

On March 8, 2000, respondent replied, as follows:

> - I proposed the supply of the product under my name. The company, after careful evaluation of the proposal, approved it exclusively because the price is low compared to prevailing market price. The approval does not carry any requirement as to receipt to be used or company who should supply both product and receipt.
>
> - Pursuant to the approved offer, I delivered the Purefoods Fiesta hams products and the company received the products without any complaint whatsoever, a clear admission of strict compliance of both offer and acceptance.
>
> - I got fully paid for the delivered products by Ms. Pearlie Tobias, LBC-DFC Finance Officer, who had cash advanced the payment for these hams.
>
> - The receipt was in the name of Tobs Meat Supply because I was authorized by the same to act for and in his behalf.
>
> - Relative to the Fundador issue, I have not offered [and] neither the company ordered from me the Fundador brandies. I supplied these liquors through individual orders by the representatives of the concerned teams which by itself is strictly personal and private among employees and myself.
>
> - I have no contract with LBC-FDC for this purpose. Payments for these liquors represent cash advances by these employees.
>
> - These orders were ordered by them because my price was way below the prevailing market price of the liquor. The personnel who ordered the Fundador brandies knew fully well beforehand that I cannot issue receipts because I ordered these Fundador brandies in [the] black market which is the reason why the price was very low.
>
> - Hence, I issued Florido Trading receipts for this purpose.
>
> With this explanation, I hope that the company will be clarified and extend to me the rights rightfully belonging to me under the law by lifting the suspension and allowing me to resume my employment immediately with backwages.

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Respondent reported to work on March 10, 2000 but he was prohibited from entering the General Aviation Compound of the Manila International Airport. The security guard on duty showed him a communication from petitioner dated February 11, 2000 advising the Manila International Airport Authority (MIAA) that respondent will no longer be reporting to the company so that his pending application for the renewal of his MIAA ID/Pass should be cancelled.

On March 15, 2000, a meeting with respondent in the nature of a formal investigation of the matter was arranged by Platon at Seaside Restaurant. Platon allegedly informed respondent that he could bring a legal counsel to the meeting but respondent came to the meeting by himself. At the meeting, respondent reminded Platon that he had informed her of his offer to look for a supplier of ham, and that his proposal/quotation was approved by the management, the same having been e-mailed earlier to Ms. Liza Berenguer, Vice-President for Finance. Respondent added that it was not uncommon for the employees of petitioner to undertake similar transactions with the latter.

On March 16, 2000, respondent was dismissed by petitioner for breach of trust and confidence. Consequently, respondent filed a complaint for illegal dismissal with the Regional Arbitration Branch of the National Labor Relations Commission (NLRC) in Quezon City.[4]

On February 19, 2002, declaring that petitioner overreacted to the report made by its Chief Accountant regarding the receipts submitted by respondent for liquidation purposes, the Labor Arbiter rendered a Decision finding petitioner guilty of illegal dismissal:

> WHEREFORE, premises considered, judgment is hereby rendered, declaring the dismissal of the complainant as illegal and ordering the respondent as follows:
>
> - To reinstate complainant to his former position or substantially equivalent position without loss of seniority rights, benefits and other privileges;
>
> - To pay complainant the sum of Six Hundred Fifty Seven Thousand Five Hundred Sixty Four and 19/100 (P657,564.19) pesos, representing his backwages from the time of his dismissal up to the date of this decision;
>
> - To pay complainant the amount of Five Hundred Thousand (P500,000.00) Pesos by way of moral damages;
>
> - To pay complainant the amount of Three Hundred Thousand (P300,000.00) Pesos by way of exemplary damages;
>
> - To pay complainant attorney's fees equivalent to ten (10%) percent of the total monetary award;
>
> - Should reinstatement be no longer possible, to pay complainant separation pay of one (1) month salary for every year of service.
>
> SO ORDERED.[5]

Petitioner appealed to the NLRC and on April 28, 2003, the Second Division promulgated a Decision affirming in toto the Labor Arbiter's Decision. The pertinent portions of the Decision read:

> As we have discussed above, there must be evidence to sustain the basis for the alleged breach of the trust and confidence in an employee. Without which, such ground would be used indiscriminately in trampling the rights of workers to their security of tenure.
>
> . . .
>
> We now proceed to the issue of questionable receipts being raised by the respondents. We find and so hold that this matter was satisfactorily explained by the complainant that he was authorized by the proprietor of Tobs

> Meat Supply, Mr. Edmund Jumuad. Furthermore, the affidavit executed by the latter gives the reason for the use of his receipts... We find nothing unusual [or] irregular with the transaction. After all, Mr. Jumuad had a hand in the delivery of the hams. In the absence of any controverting evidence which is obtaining in the instant case, We would even find that the transaction benefited the respondent company for getting the maximum worth of its money.
>
> With respect to the receipts issued for the liquor (Fundador Brandy), We agree with the complainant that he never had any transaction with the respondent company. If any, the transaction was made personally with co-workers who wanted to procure the said liquor at a low price. We, therefore, find no evidence to support such a conclusion of loss of trust and confidence on the part of the complainant as claimed by the respondent.
>
> On the matter of the award of damages ... [a] careful evaluation of the records showed that at the time the complainant was suddenly issued a written order to consume all his vacation leave credits he was conducting a meeting or conference with the company's branch managers. The said order did not mention any reason why he was being directed to take his leave and consume all leaves available at that time. It, however, stated, among others, that he should surrender all his accountabilities to another officer of the company. It needs no stretching of the imagination that such situation had created mixed thoughts and/or speculations in the minds of the said branch managers and other employees as well. These thoughts are either of sympathy or ridicule. Either way, it necessarily caused worries and anxieties in the mind of complainant being in the dark as to why he was suddenly asked to surrender all his accountabilities and take a leave. This is made even worse when on the following day, February 11, 2000, respondent communicated to the Manila International Airport Authority (MIAA) and requested that the application of complainant for his renewal of his gate pass [be denied as] the complainant will no longer be reporting to the said office. To Our mind, this has effectively sealed the complainant's fate with respondents without even the benefit of due process. We, therefore, find and so hold that there is sufficient basis to sustain the award of damages to complainant.
>
> . . .
>
> WHEREFORE, the instant appeal is DISMISSED for lack of merit and the decision appealed from is AFFIRMED en toto.
>
> SO ORDERED.[6]

Petitioner's motion for reconsideration having been denied, the case was elevated to the CA.

On November 20, 2003, the CA rendered a Decision modifying the Decisions of the Labor Arbiter and the NLRC but only with respect to the award of damages, thus:

> We now proceed to the issue of damages awarded to private respondent. The NLRC sustained the award of moral and exemplary damages, as well as attorney's fees, in view of the attendant circumstances which it held showed bad faith on the part of petitioner's officers who unceremoniously served a memo on private respondent ordering him to consume his remaining vacation leave credits while he was in the middle of a seminar/conference for branch managers. The sudden and unexplained cancellation of his access to the MIAA General Aviation Compound and renewal application of ID/Control Pass, which effectively prevented him from performing his usual duties, amounted to virtual termination and the subsequent memo requiring him to submit his written explanation to the charges against him followed by a summary meeting/hearing and culminating in his dismissal within a span of only a few days - clearly demonstrated bad faith and oppressive exercise of management prerogative towards private respondent who is a ranking managerial employee. The Labor Arbiter thus noted that such 'knee-jerk' reaction on the part of petitioner's officers resulted in the unjustified dismissal of private respondent for an unfounded charge which caused extreme anxiety and embarrassment to private respondent.
>
> We do not agree.

> Exemplary and moral damages are proper when the dismissal of an employee is attended by bad faith or fraud, or constitutes an act oppressive to labor in a manner contrary to morals, good customs, or public policy. It is basic that for moral damages to be awarded, the claimant must satisfactorily prove its factual basis and causal connection with the respondent's acts.[7]
>
> In this case, however, We fail to conclude that the officers of petitioner company acted in a malevolent or oppressive manner in the course of investigating the questionable receipts submitted by private respondent to liquidate the cash advance used for payment of the hams purchased by him. Admittedly, he signed those receipts but made it appear as the true signature of the owner. Since upon initial inquiry made by the Chief Accountant, it was discovered that the Tobs Meat Supply did not officially issue the two (2) receipts in the regular course of business while the receipts for the Fundador Brandy did not bear a Tax Identification Number (TIN) and hence also unofficial, there [was] reasonable basis for the petitioner to investigate further and act to protect its interest. Private respondent was given the opportunity to explain his side, which though belatedly done by petitioner's officers, due process was accorded said employee. And even if private respondent was subsequently disallowed access to the MIAA and his Control ID/Pass renewal application revoked, this was made at the time the matter was being investigated and does not by itself constitute harassment.
>
> Clearly, the award of moral and exemplary damages [is] not proper in this case. Likewise, it has been held that attorney's fees are not recoverable where there is no sufficient showing of bad faith on the part of petitioner-employer.[8]
>
> WHEREFORE, premises considered, the present petition is hereby PARTLY GIVEN DUE COURSE. The challenged Decision dated April 28, 2003 and Resolution dated July 31, 2003 of the NLRC are hereby AFFIRMED with MODIFICATION in that the award of moral and exemplary damages, as well as attorney's fees, is hereby DELETED.
>
> No pronouncement as to costs.
>
> SO ORDERED.[9]

Petitioner contends that:[10]

> - The Court of Appeals erred in ruling that the dismissal for loss of trust and confidence did not have reasonable factual basis;
>
> - The Court of Appeals erred in ruling that the imposition of the penalty of dismissal on respondent for falsifying the receipts is too harsh; and
>
> - The Court of Appeals erred in sustaining the award of reinstatement and full backwages in respondent's favor.

Petitioner argues, as follows:

Firstly, respondent was dishonest, thus, his termination was with just cause. He profited out of the clandestine transactions in question. He attempted to hide his identity as the real supplier of the hams by submitting to the company, which he is supposed to protect, falsified receipts;

Secondly, respondent effectively transacted business with the company of which he is the Vice-President through his subordinates when he sold Fundador Brandy to them. He is claiming that such transactions were purely private between him and the company employees. This contention is untenable because the payments therefor were to be eventually shouldered by the company. That is precisely the reason why the receipts which he issued for the payments of the bottles of brandy were submitted to the company for the corresponding liquidation process. Respondent, therefore, transacted business with the company through his subordinates over whom, wittingly or unwittingly, he undeniably exercised moral ascendancy in doing so. This was evidently unethical, a serious

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misconduct that justifies the termination of his employment. His submission of the receipts for the brandy without a Tax Identification Number (TIN), in violation of the company requirement which he knew very well, added to the gravity of his undesirable actions;

Thirdly, based on jurisprudence, the employer is allowed a wide latitude in terminating the employment of a managerial employee for loss of trust and confidence, then it follows that petitioner be given a wider latitude in dismissing respondent who was not a mere managerial employee but somebody holding the second highest position in the company as Vice-President;

Fourthly, the penalty of termination is not harsh considering respondent's position in the company;

Finally, since respondent was dismissed with just cause and with due process, the order of reinstatement and backwages is oppressive to petitioner.

In termination cases, the burden of proof rests upon the employer to show that the dismissal is for a valid and just cause. Failure to do so would necessarily mean that the dismissal was not justified, and, therefore, was illegal.[11] It is sufficient to show by substantial evidence that the employee is guilty of misconduct which makes the latter unworthy of the trust and confidence demanded by his position.[12]

Both the NLRC and the CA found that petitioner failed to establish that the dismissal of respondent from his position was justifiable. Absent any showing of arbitrariness and evidence to the contrary, the Court will not disturb the conclusion shared by the NLRC and the CA.

The Court agrees that the penalty of dismissal imposed upon respondent is disproportionate to the alleged infraction committed by the latter. As aptly explained by the CA:[13]

> In this case, We find no such reasonable basis to conclude that private respondent has breached the trust reposed in him by petitioner whose claim that he had purposely or knowingly concealed his identity as the real supplier of the hams was not supported by substantial evidence. Evidence submitted by private respondent clearly showed [that] it was really TOBS Meat Supply owned by Jumuad who supplied the Purefoods Fiesta hams since if not for the latter's contact as a meat dealer, private respondent could not have procured those hams at the price fixed by the management committee who agreed to his suggestion/proposal to make the purchase in behalf of the company. Hence, We cannot give credence to petitioner's contention at this stage that the dismissal of private respondent was justified since petitioner-employer had reasonable basis for the loss of trust and confidence in said managerial employee. Besides, for the allegedly suspicious act of affixing a false signature on the questioned receipts covering an otherwise regular and fair sales transaction on behalf of the company, the extreme penalty of dismissal from service is rather too harsh. It has been held that where a penalty less punitive would suffice, whatever missteps that may have been committed by the worker ought not to be visited with a consequence so severe such as a dismissal from employment.[14]

As shown by the records, respondent had been a competent and loyal employee of the company which is the reason why he was promoted several times until he became the Operations Manager. Also, taking into account respondent's length of service to the company, the penalty of dismissal is not commensurate with his alleged misconduct.[15]

Moreover, the mere fact that respondent was a managerial employee did not give unbridled discretion for petitioner to remove him from his job on the ground of loss of confidence. In Maglutac v. NLRC,[16] this Court declared that while an employer has its own interests to protect, and pursuant thereto, it may terminate a managerial employee for a just cause, such prerogative to dismiss or lay off an employee must be exercised without

abuse of discretion. Its implementation should be tempered with compassion and understanding. The employer

should bear in mind that in the execution of said prerogative, what is at stake is not only the employee's position but his livelihood. The fact that one is a managerial employee does not by itself exclude him from the protection of the constitutional guaranty of security of tenure.

Respondent did not appeal from the CA decision.

In any case, with regard to the award of moral and exemplary damages and attorney's fees, the Court agrees with the CA that the same are not recoverable under the circumstances. Respondent failed to show that petitioner's action to terminate his employment was done in bad faith.

The finding that the employee had been wrongfully dismissed does not automatically warrant an award of moral and other damages. An award of moral damages cannot be justified solely upon the premise that the employer fired his employee without just cause or due process. Additional facts must be pleaded and proven for the grant of moral damages under the Civil Code. There must be a showing that the dismissal was attended by bad faith or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy, and that social humiliation, wounded feelings, grave anxiety and mental anguish resulted therefrom.[17]

Likewise, exemplary damages may be awarded only if the dismissal was shown to have been effected in a wanton, oppressive or malevolent

manner.[18] In the same vein, attorney's fees are not recoverable absent any sufficient evidence of bad faith on the part of the employer.[19]

WHEREFORE, the petition is DENIED. The Decision and Resolution of the Court of Appeals on November 20, 2003 and March 5, 2004, respectively, in CA-G.R. SP No. 79079 are hereby AFFIRMED.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

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[1] Under Rule 45 of the Rules of Court.

[2]Rollo, pp. 29, 51-58.

[3] "I know someone. Let me be the one."

[4] Docketed as NLRC NCR-30-05-01984-00.

[5] Rollo, pp. 258-259.

[6] Id. at 120-122.

[7] Philippine Veterans Bank v. NLRC, 375 Phil. 957 (1999).

[8] Lopez v. NLRC, 358 Phil. 141 (1998).

[9]Rollo, pp. 64-65.

[10] Id. at 36-37.

[11] Royal Crown Internationale v. National Labor Relations Commission, G.R. No. 78085, October 16, 1989, 178 SCRA 569.

[12] Deles, Jr. v. NLRC, G.R. No. 121348, March 9, 2000, 327 SCRA 540.

[13] Rollo, p. 64.

[14] Austria v. NLRC, G.R. No. 124382, August 16, 1999, 312 SCRA 410.

[15] North Camarines Lumber Co., Inc. v. Francisco Barreda, G.R. No. L- 75436, August 21, 1987, 153 SCRA 244.

[16] G.R. No. 78345, September 21, 1990, 189 SCRA 767.

[17] Primero v. Intermediate Appellate Court, G.R. No. L-72644, December 14, 1987, 156 SCRA 435.

[18] Garcia v. NLRC, G.R. No. 110518, August 1, 1994, 234 SCRA 632; In Dee Huang Liong Electrical Equipment Corp. v. Reyes (G.R. No. L-72182, November 25, 1986, 145 SCRA 713), the Supreme Court emphasized that exemplary damages may not be recovered where the party involved is not entitled to moral or compensatory damages.

[19] Lopez v. National Labor Relations Commission, G.R. No. 124548, October 8, 1998, 297 SCRA 508.

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