

NORSK HYDRO (PHILS.), INC. AND HANS T. NEVERDAL, PETITIONERS, VS. BENJAMIN S. ROSALES, JR., RESPONDENT.

G.R. NO. 162871. January 31, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari is the Court of Appeals' Decision[1] dated July 31, 2003 in CA-G.R. SP No. 69721, as well as its Resolution[2] dated March 18, 2004, denying the motion for reconsideration. The Court of Appeals set aside the Decision[3] dated December 13, 2001 of the National Labor Relations Commission (NLRC) which had dismissed respondent's appeal from the decision of the Labor Arbiter dismissing his complaint for illegal dismissal.

The facts, culled from the records, are as follows:

On November 27, 1986, petitioner Norsk Hydro (Philippines), Inc. employed respondent Benjamin S. Rosales, Jr. as Operations Supervisor. Rosales later became Assistant Operations Manager, and later on, Operations Manager before he was dismissed. As Operations Manager, Rosales was tasked to scout for properties in Poro Point, San Fernando, La Union and in Cagayan de Oro suitable for a company warehouse and fertilizer blending plant.

Sometime in July 1997, Rosales informed the president of Norsk Hydro, Hans Neverdal, of a seven-hectare land in Barangay Luz Banzon, Jasaan, Misamis Oriental offered by a real estate broker, Virgie Azcuna-Capulong. After inspection, Neverdal found the land suitable and instructed Rosales to check on it. After consultation with the broker, Rosales informed Neverdal that certain portions of the land were priced at P1,200 per square meter while the rest at P400 per square meter. Neverdal agreed to the purchase and instructed Rosales to close the deal. Accordingly, Deeds of Conditional Sale were executed by Virgie Azcuna-Capulong and Ismael Laya, who were the designated attorneys-in-fact of the landowners, in favor of the buyer, Norsk Hydro. The ownership was subsequently transferred to Norsk Hydro.

On September 1, 1999, one Pepito Abecia, a real estate broker from Misamis Oriental, wrote Neverdal claiming that Rosales participated in overpricing the aforementioned land. He executed an affidavit divulging that Rosales, the other real estate brokers and he agreed to markup the price, such that each of them would receive P100 for every square meter sold. Abecia said he told on the group because he was not paid his share of the overprice. He attached a copy of the complaint for estafa that he filed against the other real estate brokers.

Consequently, on October 18, 1999, Neverdal sent Rosales a show-cause memorandum accusing the latter of serious misconduct and willful breach of the company's rules and regulations when he participated in the purchase of real properties by conniving to overprice the properties in a manner grossly disadvantageous to the company. Neverdal also sent Rosales a notice of preventive suspension for a period of 15 days and gave Rosales 72 hours within which to explain his side. An administrative hearing was conducted on October 28, 1999. On grounds of loss of trust and confidence, the company terminated the employment of Rosales on November 3, 1999.

On November 11, 1999, Rosales filed before the Labor Arbiter a complaint for illegal dismissal against Norsk Hydro. He claimed that there was no evidence showing that he defrauded the company. He also claimed that he was not given opportunity to go over the records incriminating him and that the investigation was hastily terminated. Rosales alleged that upon receiving the show-cause memorandum, he requested permission to have access to his personal things and documents in the office to prepare his defense; permission to talk to other employees who could help him with his defense; investigation by objective and neutral persons; and extension of the 72-hour deadline to be counted from the time he finished examining the evidence against him. He claimed that the company did not respond to his requests, and it was only on the scheduled investigation on October 28, 1999, that he was furnished with copies of Abecia's letter, affidavit, and criminal complaint for estafa, as well as the memorandum of criminal investigation by the Office of the City Prosecutor. In addition, he said that the administrative hearing was terminated without giving him sufficient time to prepare and submit his written reply.

For their part, petitioners Norsk Hydro and Neverdal maintained that Rosales was dismissed for a just cause, having connived with the real estate brokers to overprice the properties and profited from it to the gross disadvantage of the company. They contended that Rosales was given time to explain. They had set a hearing, yet Rosales failed to answer the charges against him.

The Labor Arbiter dismissed the complaint. It held that the company was justified in terminating Rosales's employment on the ground of loss of trust and confidence. The Labor Arbiter found Abecia's sworn statement sufficient basis for the company to lose its trust and confidence on Rosales. Moreover, the Labor Arbiter found nothing irregular in the manner Rosales was dismissed.

Rosales appealed to the NLRC, which affirmed^[4] the decision of the Labor Arbiter. The NLRC ruled that the issue of whether there was overpricing is secondary only to the issue of whether Rosales breached the trust and confidence reposed upon him by his employer.

The NLRC held that the requirements of notice and hearing have been sufficiently met when: (1) the show-cause memorandum was served upon Rosales requiring him to submit an explanation within 72 hours; and (2) notice was sent to him regarding an administrative hearing on October 28, 1999.

Undaunted, Rosales filed a petition for certiorari before the Court of Appeals ascribing grave abuse of discretion on the part of the NLRC because (1) there was no legal basis for his dismissal; and (2) his right to due process was violated.

The Court of Appeals granted certiorari notwithstanding the lack of a motion for reconsideration before the NLRC.

The Court of Appeals reversed the decision of the NLRC and declared that Rosales was illegally dismissed. The decretal portion of the decision reads:

WHEREFORE, the petition is GRANTED. The assailed December 13, 2001 decision of the National Labor Relations Commission is hereby SET ASIDE. A new judgment is hereby entered declaring the dismissal of petitioner by private respondents as illegal and without just cause, and ordering private respondent Norsk Hydro (Philippines), Inc. to pay to petitioner full back wages computed from November 3, 1999 up to the finality of this decision, plus accrued allowances and benefits, and in lieu of reinstatement, to grant separation pay equivalent to one (1) month salary for every year of service.

SO ORDERED.^[5]

The Court of Appeals held that Norsk Hydro failed to prove with substantial evidence that Rosales participated in the alleged overpricing nor had it shown the extent of his participation. According to the Court of Appeals, the

company should not have relied on the affidavit of Abecia, who was not a representative of any of the owners and that, without being cross-examined, his affidavit was hearsay. It ruled that Norsk Hydro did not observe due process because it did not furnish Rosales or his counsel with the documents for him to prepare intelligent answers to the charges against him.

The Court of Appeals denied the company's motion for reconsideration. Hence, this appeal raising one issue:

THE HONORABLE COURT OF APPEALS seriously erred and ruled contrary to law and jurisprudence when it acted as a trier of facts and declared: (i) the dismissal of respondent Rosales illegal and without just cause; (ii) directed petitioner norsk hydro to pay Rosales full backwages plus accrued allowances and benefits; and (iii) in lieu of reinstatement, ordered petitioner to grant separation pay in favor of respondent.[6]

Simply put, the issue is whether the Court of Appeals erred when it declared the termination of Rosales's employment illegal.

Petitioners argue that the Court of Appeals erred in ignoring the findings of facts of the NLRC and the Labor Arbiter; that review by the Court of Appeals is limited only in whether the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion; that the Court of Appeals erred in taking cognizance of the petition for certiorari despite respondent's failure to file a motion for reconsideration of the NLRC decision.

Indeed, a petition for review on certiorari under Rule 45 of the Rules of Court is limited to questions of law, and the Court is not a trier of facts. This rule, however, is not without exceptions. This Court may review the factual findings of the trial and the lower appellate courts when the findings of the Court of Appeals are contrary to those of the NLRC or of the Labor Arbiter.[7] Such is the situation in this case. We must caution, however, that the factual findings of labor officials, who possess the expertise in matters within their jurisdiction, have conclusive effect on this Court provided substantial evidence supports such factual findings.[8]

Law and jurisprudence have long recognized the right of employers to dismiss employees by reason of loss of trust and confidence,[9] especially in cases of employees occupying positions of responsibility, on the premise that an employee concerned holds a position of trust and confidence.[10]

It should also be stressed that proof beyond reasonable doubt is not needed to justify the loss of trust and confidence on the responsible officer. It is sufficient that there be some basis for the same, or that the employer has reasonable ground to believe that the employee is responsible for the misconduct, and his participation therein renders him unworthy of trust and confidence demanded of his position.[11] Article 282(c) of the Labor Code states, however, that the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by his employer. Ordinary breach will not suffice; it must be willful. Such 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.[12] More specifically the loss of trust must be founded on clearly established facts.

In the present case, Neverdal, as president of the company, issued a show-cause memorandum and a notice of preventive suspension to Rosales. Despite its directive to Rosales to explain, within 72 hours, the charges against him, he did not do so. On the scheduled hearing, he did not present any evidence, constraining the company to evaluate the case based on the documents available, the affidavit of Abecia who appears to have no reason to implicate Rosales except for the fact that Rosales and the other brokers reneged on their agreement on his share of the overprice. Likewise, it appears that Abecia's affidavit was a declaration against himself, lending it substantial credibility. Further, it appears that Rosales's right to notice and hearing was not violated. The records clearly show that the company set an administrative hearing to give Rosales an opportunity to explain his side and to call for witnesses and present his evidence.

In sum, we are in agreement with the findings of the NLRC and the Labor Arbiter that there was sufficient evidence to justify the termination of Rosales's employment for a just cause, namely, for loss of trust and confidence by the company on its managerial officer.

WHEREFORE, the petition is GRANTED. The Decision dated July 31, 2003 and the Resolution dated March 18, 2004 of the Court of Appeals in CA-G.R. SP No. 69721 are hereby REVERSED. The decisions of the Labor Arbiter and the NLRC are REINSTATED. No pronouncement as to costs.

SO ORDERED.

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

[1] Rollo, pp. 49-59. Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Ruben T. Reyes (now Presiding Justice) and Lucas P. Bersamin concurring.

[2] Id. at 60-64.

[3] CA rollo, pp. 17-37.

[4] Supra note 3.

[5] Rollo, p. 58.

[6] Id. at 23.

[7] R & E Transport, Inc. v. Latag, G.R. No. 155214, February 13, 2004, 422 SCRA 698, 704.

[8] Philippine Military Veterans Security and Investigation Agency v. Court of Appeals, G.R. No. 139159, January 31, 2006, 481 SCRA 177, 183.

[9] Etcuban, Jr. v. Sulpicio Lines, Inc., G.R. No. 148410, January 17, 2005, 448 SCRA 516, 528-529.

[10] Id. at 529.

[11] P.J. Lhuillier, Inc. v. National Labor Relations Commission, G.R. No. 158758, April 29, 2005, 457 SCRA 784, 798.

[12] Philippine National Construction Corporation v. Matias, G.R. No. 156283, May 6, 2005, 458 SCRA 148, 159.

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