

AMADEO FISHING CORPORATION AND/OR EDUARDO AMADEO, GERRY ODANGO (GENERAL MANAGER), AND ANITA YMBONG (PERSONNEL MANAGER), PETITIONERS, VS. ROMEO NIERRA, RAUL NACES ALBERTO OJAYAS ...

G.R. NO. 163099. October 04, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari with prayer for temporary restraining order and/or preliminary injunction assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 63656, as well as the Resolution denying the motion for reconsideration thereof.

Petitioner Amadeo Fishing Corporation is a domestic corporation engaged principally in deep sea fishing in the high seas. Private respondents Romeo Nierra, Raul Naces and Alberto Ojayas were reserved crew members of the petitioner's fishing boat, the F/B Eduardo 08 which was conducting fishing operations in Indonesia. Nierra was hired on February 5, 1997, and both Ojayas and Naces were hired on February 14, 1997.

The issuance of the gate pass for all fish taken out of the company premises, as allowances, purchases or donations, is made at the weighing shed near the wharf, about 500 meters away from the main gate. Only fish brokers weighed the fish. Security guards are also posted within the vicinity to look after the fish, and the movements of the buyers and laborers.[2]

At about 6:45 p.m. on March 9, 1998, the private respondents were about to exit the company premises at the main gate. Ciriaco Radores, the guard on duty, would not let them pass; the private respondents had fish in their possession - about seven kilos of Skipjack Tuna (Sambagon) and Yellow Fin (Carao-carao) - which required a gate pass. The private respondents insisted that a gate pass was no longer necessary, as they personally caught the fish. Radores then confiscated the fish and stored it in the company canteen.[3]

Personnel Manager Anita B. Ymbong immediately issued the following Spot Report[4] to the private respondents:

You are hereby advised to submit your written explanation within 24 hours from receipt why you should not be terminated for the following charges against you:

1) Violation of company policy

-prohibition of "COBIT"

-bringing items outside the company premises without proper gatepass

2) Misconduct

-challenge the Blue Guards in reporting the offense to top management

For your compliance.[5]

The private respondents, however, refused to accept the memorandum, as it was in English, a language they could not understand.[6] They insisted that it was their fish allowance, but later claimed that they personally caught the fish (cobit or bira-bira).

General Manager Gerry Odango then arrived, and Ymbong briefed him about what happened. Odango remarked that their actuations constituted theft, and respondent Nierra retorted, "Kamo gud, himu-a ninyo ang inyong gusting buhaton" (You can do what you want for all I care), in an arrogant and defiant manner. Odango then gave a verbal order for the personnel department to institute criminal charges against the private respondents, and, if the circumstances warranted, terminate their employment for gross insubordination, disrespect and arrogance towards their employer and immediate superior.[7]

Thereafter, the private respondents' employment were terminated in a Memorandum dated March 11, 1998, worded as follows:

FROM: AFC MANAGEMENT

TO: ROMEO NIERRA, RAUL NACES, ALBERTO OJAYAS

On March 10, 1998, at about 6:45 p.m., the Company guard on duty confiscated from three of you each Skipjack Tuna (Sambagon) weighing 7 kilos without gatepass presented to the Guard. You even [went] to the extent of challenging the said Guard to report to the AFC Management the incident [that] happened.

In this regard, you were issued a Memorandum, thru the Personnel Officer, dated March 10, 1998, with a view to explain your side within 24 hours from receipt thereof ... so that you may answer the charges against you and you are given ample time or the opportunity to be heard[,] the basis of due process, but you refused to receive the said memo.

During a personal dialogue with the company General Manager, you even challenged by saying "kamo gud kon unsa ang inyong gusto!" meaning it's up to you if [that's] what you want ...

Upon a careful perusal of your case, with due consideration you were found to be in violation of Company Rules and Regulations regarding thereto "company property". So the company has come to a conclusion to sever[e] your [employment] effective immediately upon receipt of this memo.

You may see our Accounting Department to clear yourselves of any accountabilities, if there is any, for the issuance of your clearance.

For your information.[8]

The petitioners filed criminal charges of qualified theft against the private respondents. For their part, the latter filed a Counter-Charge and Counter-Affidavit[9] accusing their employer of withholding their seaman's books, and praying that the case against them be dismissed for lack of merit. The said affidavit, likewise, contained the following allegations:

4. That on March 4, 1998 at about 10:00 a.m., we arrived at Calumpang, General Santos City, the fishing boat has a fish load of about 16 tons of fish which was unloaded on that day; and a gate pass for the 7 kilos was issued to me (Romeo Nierra);

5. That since we have no residence at General Santos City [we] [had] to stay at the fishing boat until March 9, 1998 when we asked permission and got permitted to go home to Tagum;
6. That since we are going home to our family, the fish we had caught and preserved as our allowance weighing about 7 kilos was brought out so that we [could] share it with our family, without the gate pass which was placed by Romeo Nierra in his pocket was damaged because the [pants] where he placed it was washed including the gate pass;
7. That we asked the guard if we could bring the fish out explaining to him the fact of the loss of the gate pass, we were told that it cannot be allowed, although we explained that this is part of our allowance but he did not listen to us, so we just leave it at the gate;
8. That it is not true that it was March 10, 1998 that the fish allowance we have was to be brought out because it was a day before; and we were not able to go home because we were held by the guards and on the following day we were told to report to the office of the manager Gerry T. Odango;
9. That when we arrived at his office, I, Romeo Nierra was immediately faced by him and was told "Kawat nang inyong gibuhat" which I answered "Naghangyo mo Sir nga amo untang dalhon para sa pamilya, kay kadto ang among allowance nga wala namo gikaon kay among [gisreserba] para sa pamilya";
10. That he got angry and stood up and walk[ed] towards my back and without any warning boxed me at my nape twice and kicked me hard on my leg which resulted to my physical injuries as shown by the Medical Certificate hereto attached as ANNEX "A" showing that it would probably heal in 15 days;
11. That after mauling me, he shouted at me, "Demanda bisag asa, kay ang inyong gibuhat sayop ni";
12. That we went out of his office after I, Romeo Nierra, was mauled and went to the doctor for check-up.[10]

Finding probable cause for the commission of the crime, the City Prosecutor filed the corresponding Information for qualified theft before the Regional Trial Court, General Santos City, Branch 33. However, the City Prosecutor found that the private respondents' charge against petitioner Odango for physical injuries was a mere afterthought. The City Prosecutor, likewise, held that the seaman's books of the private respondents were properly withheld for clearance purposes, and since one of them had already received such document, such charge had been rendered moot and academic.

However, the trial court dismissed the criminal case in an Order[11] dated September 23, 1998 due to insufficiency of evidence.

On August 18, 1998, the private respondents filed a Complaint for Illegal Dismissal before the Regional Arbitration Branch No. XI in Davao City, docketed as Case No. RAB-11-03-00404-98, against Amadeo Fishing Corporation, its owner Eduardo Amadeo, General Manager Gerry Odango, and Personnel Manager Anita Ymbong.

In their complaint, the private respondents claimed that the basis for the termination of their employment was unfounded since they personally caught the fish, which also formed part of their "fish allowance." In fact, it was even short of the nine kilos usually given to them. They further maintained that they were not served with notices requiring their explanation on the incident; petitioner Gerry Odango instead castigated them and even mauled respondent Nierra on March 10, 1998.

The petitioners, on the other hand, insisted that the dismissal of the private respondents was legal. They insisted that the private respondents knew that the bringing of fish outside the company premises must be accompanied with a gate pass, and that they were made aware of the strict instructions to the guards to implement the said order. Contrary to their contentions that they were paid only P40.00 a day, the private respondents were paid a

daily wage of P50.00 and were entitled to three square meals a day when they did not have work to do. They were also given the following benefits:

" [A] share in the net earnings of the mother boat from whence they got their cargo fish. They, likewise, earn extra share when the purse seiner takes fish from a floatsam of "batang" inasmuch as they do not have to give a big share to a "payao" or fish shelter. Aside from these, they were also allowed to dry fish at a maximum of 5 kgs. per personnel, and a fresh fish allowance of 3 kgs. if the purse seiner has a sufficient catch of, say, more than 15 tons per setting. And if their fish load came from their mother boat and arrived at the Respondent's Wharf and during the unloading of fish it was found to be of high quality depending upon the classification of fish that they loaded and tended carefully, they are entitled to extra income as an incentive as part of their total income; "[12]

In his Affidavit dated March 13, 1998, petitioner Odango alleged that before he signed the termination order, he first verified from the records if it was true that the private respondents caught the fish by hook and line (Cobit), including the Attendance Report submitted by the master fisherman; the records, however, contradicted the allegations of the private respondents. Moreover, while the value of the fish is insignificant, the effect of their actuations on the company was long term, which may give rise to "gargantuan losses if unabated and if others follow suit."

On June 30, 1999, Labor Arbiter Amado M. Solamo dismissed the complaint for illegal dismissal for lack of merit.[13] Citing *BLTB Co. v. NLRC*,[14] the Labor Arbiter held that the City Prosecutor's finding of a prima facie case for qualified theft and the recommendation of the filing of an Information before a court of competent jurisdiction constituted "substantial evidence that warranted a finding of the existence of a just cause for the termination of the complainants on the ground of loss of trust and confidence." [15] For purposes of establishing the culpability of an employee sought to be dismissed, only substantial evidence is required, and not proof beyond reasonable doubt. Moreover, an acquittal in criminal prosecution does not have the effect of extinguishing liability for dismissal on the ground of breach of trust and confidence.[16] As regards the money claims of the private respondents, the Labor Arbiter held that as shown in the petitioners' payroll[17] from March 1997 to December 1997, they were paid over and above the requirements of the law.

On appeal, the National Labor Relations Commission (NLRC) affirmed with modification the Labor Arbiter's ruling. The dispositive portion reads:

WHEREFORE, foregoing considered, the decision on appeal is hereby Modified directing respondents to indemnify each of the complainants the sum of P10,000.00.

SO ORDERED.[18]

Citing *Sea-Land Service, Inc. v. NLRC*[19] and *MGG Marine Services, Inc. v. NLRC*,[20] the NLRC ruled that an employee's acquittal in the criminal case does not preclude a finding that he has been guilty of acts inimical to the employer's interest. The labor tribunal further pointed out that the private respondents were charged with violating the company policy of prohibiting cobit, bringing of items outside the company premises without the proper gate pass, and misconduct for challenging the blue guards in reporting their offense to the management. Considering that the private respondents did not deny the existence of such company policy and that they had no gate pass for the fish, it does not matter whether they caught it while at sea, or that such fish were chargeable to their allowance.

However, the NLRC also ruled that the petitioners failed to comply with the procedural requirements of dismissal, namely, notice and hearing. According to the labor tribunal, this was evident in Odango's declaration that in the morning of March 10, 1998, he ordered the preparation of the private respondents' walking papers after they

manifested disrespect, arrogance and insolence when made to explain their alleged stealing and attempt to take fish out from the company compound as reported by the security guard. The NLRC further held that this is "anathema to the principle of due process, that which hears before it condemns, and in disregard to the purpose and reason of respondents" Memorandum dated March 10, 1998 requiring complainants to explain the incident within 24 hours from receipt."^[21] The NLRC concluded that any excuse, defense, or justification by the private respondents would not matter, as their dismissal from employment was already a foregone conclusion.

The private respondents filed a motion for reconsideration, which the NLRC denied on December 4, 2000.^[22]

Unsatisfied, the private respondents elevated the case before the CA, arguing that the NLRC committed grave error in affirming the decision of the Labor Arbiter in not finding the petitioners guilty of illegal dismissal. They insisted that they were entitled to wage differentials, 13^[th] month pay and backwages. They claimed that dismissal was too harsh a penalty considering that (a) it was only the first time they committed qualified theft; (b) the cost of the seven kilos of fish valued at P350.00 is negligible; (c) since the fish were left at the gate, no damage was sustained; and (d) they were unjustly charged with qualified theft, aside from being deprived of their livelihood.

The CA partially granted the petition, ordering the petitioners to pay the private respondents full backwages, inclusive of wage differentials and 13^[th] month pay, from the time their employment was terminated on March 10, 1998 up to the finality of the decision. It, likewise, ordered the remand of the case to the Labor Arbiter for the computation of such backwages.^[23]

According to the appellate court, the private respondents' attempt to steal fish was proven in the proceedings below. Moreover, the Labor Arbiter's finding of misconduct against the private respondents was sufficiently supported by substantial evidence. It further held that the factual findings of the NLRC should be accorded respect, if not finality.

In upholding the dismissal of the private respondents for just cause, the appellate court cited *Concorde Hotel v. Court of Appeals*^[24] where the Court ruled that loss of confidence applies not only in cases involving employees who occupy positions of trust and confidence, but also to those situations where the employee is charged with the care and custody of the employer's money or property. Furthermore, the conviction of an employee in a criminal case is not indispensable to warrant his dismissal since the trial court's dismissal of the case due to insufficiency of evidence is not binding and conclusive on the Labor Arbiter.

The appellate court nevertheless agreed with the NLRC, holding that in dismissing the private respondents' employment, the petitioners failed to observe the two-notice rule, to wit:

However, petitioner's dismissal, albeit for a valid and just cause, failed to adhere to the two-notice rule which requires a previous notice to the employee of the act or omission for which his dismissal is sought requiring him to explain his side within a reasonable period and a subsequent notice to the employee of the employer's decision to dismiss him. Without the required notice, the dismissal even for just cause under Article 282 of the Labor Code, is considered ineffectual, and, consistent with the doctrine laid down in *Serrano v. NLRC*, petitioners could not be considered terminated from employment until final determination of the legality of their dismissal for cause. They should then be paid their salaries for the period when they were not considered effectively terminated.

The sanction for the non-compliance of respondent Amadeo Fishing Corporation with the two-notice rule is the payment of full backwages, including allowances and other benefits, to the employee computed from the time period of dismissal up to the time of the final determination of this case. Thus, the NLRC committed error in awarding P10,000.00 to each of the dismissed employees, herein petitioners, instead of the full backwages prayed for.^[25]

The petitioners filed a motion for reconsideration of the said ruling, which the appellate court denied, hence, this petition.

The petitioners claim that -

THE COURT OF APPEALS ERRED IN FINDING THAT THE TWO-NOTICE RULE REQUIRED BEFORE AN EMPLOYEE'S DISMISSAL ON VALID AND LEGAL GROUNDS COULD BE EFFECTUAL, WAS NOT OBSERVED BY PETITIONERS.[26]

The petitioners maintain that contrary to the ruling of the CA, they adhered to the two-notice rule in dismissing the private respondents. As found by the Labor Arbiter, petitioner Ymbong as Personnel Manager issued a Memorandum dated March 10, 1998 for the private respondents to explain in writing, or in person, why no drastic disciplinary action should be meted against them for such a grave offense as reported by the guard. They insist that an immediate confrontation between the parties took place, with the respondents explaining that the "fish were their fish allowance," and later on stating that the fish was personally caught by them (Cobit or Bira-bira). Moreover, the private respondents refused to receive the memorandum. According to the petitioners, these opportunities given to the private respondents were enough to explain their side; after all, the essence of due process in administrative proceedings is simply an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of. Moreover, with the private respondents' stern defiance of company rules and continued refusal to receive the Memorandum of March 10, 1998, no amount of assistance the petitioner company offered would be acceptable to them. They assert that petitioner Ymbong even suggested that they could secure the help of a literate friend who could explain to them the implications of the memorandum, but the private respondents insisted in refusing to receive the same. Considering further that respondent Naces was twice cited for drunkenness immediately prior to the vessel's departure, and once for leaving the vessel without proper permission, petitioners had no other recourse but to terminate their services. In so doing, the security of the business and the safety of the petitioners' fishing boat and crew members in the open seas were safeguarded and a possible "take-over" of the boats in the high seas was averted.

The private respondents, on the other hand, assert that the CA correctly held that they were denied due process. They refused to accept the Memorandum dated March 10, 1998 issued by respondent Ymbong because they could not comprehend the same as it was written in the English language. They allege that the 24 hours within which to explain and answer the charges was most unreasonable, as they still had to look for someone to interpret the memorandum for them.

The private respondents further insist that no investigation was ever conducted by the petitioners to substantiate their claim that the private respondents were stealing fish. Although they did not have the necessary gate pass at the time they were about to bring the fish outside the company premises, it does not necessarily follow that they stole the same and that they deliberately violated the company policy against "cobit." They insist that they were able to adequately explain to the guard on duty, as well as to the personnel manager, that they previously had a gate pass for the said fish, but it was severely soaked and damaged when private respondent Nierra accidentally washed it in his working pants with the gate pass in it. They insist that the least the petitioners could have done was to conduct an investigation to determine the veracity of the private respondents' statements. They further allege that the petitioners could have easily ascertained from the officer in charge of the issuance of the gate pass as to whether the private respondents were, indeed, previously given one for the fish. Instead, the petitioners arbitrarily dismissed the private respondents, and worse, petitioner Odango even mauled respondent Nierra.

The private respondents further allege that the petitioners' excuse for the outright dismissal was based on the ground that they had been charged with theft, but they could have easily been preventively suspended pending the

investigation of the case. They stress that they were illegally dismissed, and that they were entitled to either reinstatement or separation pay, or, if reinstatement is no longer viable, that they be paid backwages.

The only issue in this case is whether the private respondents were illegally dismissed from employment.

It is settled that this Court is not a trier of facts, a rule which applies with greater force in labor cases, where the findings of fact of the NLRC are accorded respect and even finality, as long as supported by substantial evidence from which an independent evaluation of the facts may be made.[27] In this case, the Labor Arbiter, the NLRC, and the CA were unanimous in ruling that the private respondents were dismissed for cause, and the Court finds no reason to reverse such findings.

In general, management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations.[28] In this case, there is no dispute that the private respondents were aware of the company policy requiring a gate pass for all fish that would be taken out of the premises. If, indeed, it were true that respondent Nierra previously had a gate pass, which he claimed was destroyed, he could have just as easily gotten a new one. Moreover, there was no mention of this allegation in the Spot Report prepared by the guard on duty; the private respondents insisted that the fish was part of their fish allowance. As found by the NLRC:

" The policy was clear that anything to be brought outside needed a gatepass and the reasons advanced by the complainants that these were their fishcatch [sic] as part of their food allowance did not convincingly exempt them from complying with respondents' standing regulation. The wisdom of said policy is not challenged, as it is clearly for the protection of the interest of the respondents and there has not been any argument offered that it has been formulated to harass anyone, complainants included. It is clearly within respondents' prerogative to enforce reasonable rules and regulations such as its rule at bar. The right to enforce this policy, and the concomitant right to impose sanction to the violators thereof is respected. This right is distinct from the criminal liability that attaches to a finding of guilt or insufficiency of evidence to warrant conviction of qualified theft then in the regular courts of law. Complainants violated a reasonable company rule and regulation, and were meted the consequence of dismissal.[29]

As borne out by the records, respondent Naces had already twice been reprimanded: once for taking 15 kilos of fish without permission and selling the same to an outsider;[30] and again for being under the influence of liquor and leaving the vessel without proper permission from the supervisor.[31] Considering these previous infractions and the fact that one of the private respondents was on liquor, petitioner Odango had the right to be concerned about the actuations of the private respondents. Loss of confidence can be a ground for dismissing an employee when there is basis for the same or when the employer has reasonable ground to believe, if not entertain, the moral conviction that the employee is responsible for the misconduct and that the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.[32]

Article 282[33] of the Labor Code of the Philippines provides that an employer may terminate an employee based on fraud or willful breach of the trust reposed in him by his employer or duly-authorized representative. This is premised on the fact that an employee concerned holds a position of trust and confidence. This situation holds where an employee or official of the company is entrusted with responsibility involving delicate matters, such as the custody, handling or care of the employer's property. In the case of company personnel occupying such positions of responsibility, the Court has repeatedly held that loss of trust and confidence justifies termination.[34] Indeed, an employee's acquittal in a criminal case does not automatically preclude a determination that he has been guilty of acts inimical to the employer's interest resulting in loss of trust and confidence.[35]

While the private respondents were dismissed for cause, the CA correctly held that the petitioners failed to observe the two-notice rule under Article 277(b)[36] of the Labor Code in dismissing them from employment.

In *Pastor Austria v. NLRC*,^[37] the Court explained the purposes of the two notices to be given to the respondent employee:

The first notice, which may be considered as the proper charge, serves to apprise the employee of the particular acts or omissions for which his dismissal is sought. The second notice on the other hand seeks to inform the employee of the employer's decision to dismiss him. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge and ample opportunity to be heard and defend himself with the assistance of a representative if he so desires. This is in consonance with the express provision of the law on the protection to labor and the broader dictates of procedural due process. Non-compliance therewith is fatal because these requirements are conditions sine qua non before dismissal may be validly effected.^[38]

Thus, the petitioners' claim that the private respondents were properly notified of their termination is unavailing. The employer's compliance with the second requirement (the notice of termination) does not cure the initial defect of the absence of the proper written charge required by law.^[39]

When the dismissal is not motivated by bad faith, or where the petitioners-officers have not acted in wanton, oppressive or malevolent manner, there can be no judgment against them for moral or exemplary damages. In the same vein, the individual petitioners may not be held solidarily liable with the petitioner corporation, since there is no showing that petitioners Odango and Ymbong had a direct hand in the dismissal of the private respondents, enough to attribute to them (petitioners) a patently unlawful act while acting for the corporation.^[40]

The Serrano doctrine,^[41] which awarded full backwages to "ineffectual dismissal cases" where an employee dismissed for cause was denied due process, has been abandoned by the Court's ruling in *Agabon v. National Labor Relations Commission*.^[42] In that case, the Court held that a violation of an employee's statutory right to two notices prior to the termination of employment for just cause entitles such dismissed employee to nominal damages, absent sufficient evidence to support an award for actual or moral damages.^[43] The Court, likewise, stated in *Agabon* that it was abandoning the doctrine laid down in *Serrano*, in this wise:

After carefully analyzing the consequences of the divergent doctrines in the law on employment termination, we believe that, in cases involving dismissal for cause but without observance of the twin requirements of notice and hearing, the better rule is to abandon the Serrano doctrine and to follow *Wenphil* by holding that the dismissal was for just cause but imposing sanctions on the employer. Such sanctions, however, must be stiffer than that imposed in *Wenphil*. By doing so, this Court would be able to achieve a fair result by dispensing justice not just to employees, but to employers as well.^[44]

Considering the foregoing, the Court holds that each of the private respondents are entitled to P30,000.00 as nominal damages.

WHEREFORE, the petition is DENIED. The Decision and Resolution of the Court of Appeals are AFFIRMED WITH MODIFICATION. Petitioner Amadeo Fishing Corporation is ORDERED to pay each of private respondents Romeo Nierra, Raul P. Naces, and Alberto Ojayas Thirty Thousand Pesos (P30,000.00) as nominal damages.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associated Justice Rosmari D. Carandang, with Associate Justices Delilah Vidallon-Magtolis and Mercedes Gozo-Dadole, concurring; Rollo, pp. 26-32.

[2] CA Rollo, p. 118.

[3] Id. at 53.

[4] Id. at 55.

[5] CA Rollo, p. 55.

[6] Id. at 43.

[7] Id.

[8] CA Rollo, p. 38.

[9] Id. at 39-40.

[10] CA Rollo, pp. 39-40.

[11] The Order reads in part:

Respondents claimed that the seven (7) kilos of fish was caught by them with hook, line and sinker while aboard the fishing boat of private complainant in the waters of Indonesia. This practice was allowed by their employer, the Amadeo Fishing Corporation. Their catch was charged to their food allowance. They were able to save and preserve some of the fish from their food allowance. Since they were not residents of General Santos City but they were from Tagum City, they intended to bring home the fish to their families. One of them, Romeo Nierra, was able to get a gate pass at the gate for the fish but because they did not leave the compound until a few days later, the gate pass was destroyed when his pants were washed. Still, they brought out the fish and asked the security guard's permission to allow them to go home with the fish. But they were refused permission by the guard who instead told them they were violating company rules. So, they just left the fish at the gate. But they engaged the guard in a hot discussion. The next day, they were told to report to the manager, Gerry Odango, who told them they were stealing fish. Despite their explanation, Mr. Odango got angry and he boxed and kicked Romeo Nierra. A case of physical injuries was filed by Nierra against Odango. Respondents also complained about their wages with the NLRC.

Private complainant did not deny the claim of respondents that the seven kilos of fish came from what they saved from their daily food allowance at sea which they themselves caught with the permission of their employer. This is a vital evidence in favor of respondents and the lack of denial by private complainant leads this Court to believe that it is true.

This case appears to be an offshoot of a misunderstanding between the parties regarding the wages or share of respondents. Also, the fact that Romeo Nierra filed a case of physical injuries against the Manager reinforces the belief of the Court that this case was just filed to counter-act the criminal charge against the manager.

To the mind of the Court, the case is not consummated theft because the respondents, while still at the gate, were asking permission of the security guard to allow them to bring out the fish. When the permission was refused, they left the fish at the gate. How could respondents be charged even with attempted theft when they were asking permission to bring home the fish? It is, indeed, very illogical.

WHEREFORE, PREMISES CONSIDERED, this case is hereby ordered DISMISSED.

SO ORDERED. (CA Rollo, pp. 113-114.)

[12] CA Rollo, p. 46. (Petitioners' Position Paper in the NLRC)

[13] CA Rollo, pp. 131-136.

[14] G.R. No. L-69875, 28 October 1988, 166 SCRA 721.

[15] CA Rollo, p. 135.

[16] Id. at 136.

[17] Id. at 70-108.

[18] CA Rollo, pp. 164-165.

[19] G.R. No. L-68212, 24 May 1985, 136 SCRA 544.

[20] G.R. No. 114313, 29 July 1996, 259 SCRA 664.

[21] CA Rollo, p. 164.

[22] Id. at 171.

[23] Rollo, p. 31. The full text of the dispositive portion reads:

WHEREFORE, the instant petition is PARTIALLY GRANTED. Respondent Amadeo Fishing Corporation is ordered to pay Romeo Nierra, Raul Naces and Alberto Ojayas FULL BACKWAGES, inclusive of wage differentials and 13th Month Pay, from the time their employment was terminated on March 10, 1998 up to the time the decision herein becomes final. For this purpose, this case is REMANDED to the Labor Arbiter for computation of the backwages of the petitioners.

[24] G.R. No. 144089, 9 August 2001, 362 SCRA 583.

[25] Rollo, p. 31.

[26] Id. at 16.

[27] Ropali Trading Corporation v. National Labor Relations Commission, G.R. No. 122409, 25 September 1998, 296 SCRA 309.

[28] Deles, Jr. v. NLRC, 384 Phil. 271 (2000).

[29] CA Rollo, p. 163.

[30] Id. at 69.

[31] Id. at 66-68.

[32] Cañete Jr. v. National Labor Relations Commission, 374 Phil. 272 (1999), citing Hernandez v. NLRC, 176 SCRA 269 (1989); Villadolid v. Inciong, 121 SCRA 205 (1983); see also De Asis v National Labor Relations Commission, 177 SCRA 340 (1989).

[33] Article 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.

[34] Deles, Jr. v. NLRC, supra, citing Caoile v. NLRC, 299 SCRA 76, 82, (1998).

[35] Vergara v. National Labor Relations Commission, G.R. No. 117196, 5 December 1997, 282 SCRA 486.

[36] Art. 277. MISCELLANEOUS PROVISIONS. - ...

(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 a written notice containing a statement of the causes of 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.

[37] 371 Phil. 340 (1999).

[38] Id. at 357.

[39] Id. at 358.

[40] Equitable Banking Corporation v. NLRC, G.R. No. 102467, 13 June 1997, 273 SCRA 352, citing Santos v. NLRC, 254 SCRA 673.

[41] Serrano v. National Labor Relations Commission, G.R. No. 117040, 27 January 2000, 323 SCRA 445.

[42] G.R. No. 158693, 17 November 2004, 442 SCRA 573.

[43] See Chua v. National Labor Relations Commission, G.R. No. 146780, 11 March 2005, 453 SCRA 244.

[44] Agabon v. National Labor Relations Commission, supra, pp. 613-614.

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