

## **EDUARDO M. TOMADA, SR., PETITIONER, VS. RFM CORPORATION-BAKERY FLOUR DIVISION AND JOSE MARIA CONCEPCION III, RESPONDENTS.**

*G.R. No. 163270. September 11, 2009*

Ponente: CARPIO, J.

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### **CARPIO, J.:**

#### The Case

This is a petition for review[1] assailing the Decision[2] promulgated on 23 December 2003 as well as the Resolution[3] promulgated on 19 April 2004 of the Court of Appeals (appellate court) in CA-G.R. SP Nos. 69901 and 70069. The appellate court dismissed the petition filed by Eduardo M. Tomada, Sr. (Tomada) and partially granted the petition filed by RFM Corporation-Bakery Flour Division and Jose Maria Concepcion III (respondents). The appellate court affirmed the decision of the National Labor Relations Commission (NLRC) with the modification that RFM Corporation should pay Tomada P127,660 as separation pay.

#### The Facts

The appellate court narrated the facts as follows:

On February 24, 1998, [Tomada] filed a complaint for illegal dismissal against RFM Corporation Bakery Flour Division and Jose Ma. Concepcion, Jr.

The case was subsequently assigned to Labor Arbiter Daniel C. Cueto who required both parties to submit their respective position papers. In his position paper, [Tomada] alleged:

"x x x x x x x x

2. That I have worked with the said company since March 9, 1979 and my latest salary therein is P491.00 per day;
3. That the company dismissed me from work because I was allegedly sleeping on my job during my working time and in the process, I failed to detect the fire which was taking place inside my work area;
4. That I was not sleeping however and was never negligent in my job;
5. That on November 22, 1997, there was no certified operator manning the third floor of the flour mill. What was present there was only a trainee;
6. Since there was no certified operator in the third floor, I was forced to go up to the said area whenever there was trouble even if my assigned area was only at the second floor where I was head spoutman;
7. At about 9:00 in the evening of November 22, 1997, the B3A Plan Sifter at the 3[rd] Floor choked up. I was therefore forced to go up to the said area to assist the trainee (Fernando Filarea) to attend to the said trouble;
8. After attending to the choke-up, I went up to the Fourth Floor to inspect the cyclone if it had trouble also;

9. After seeing that the cyclone was in good condition, I went down to the second floor but felt the call of nature so I entered the screen room from where I could proceed to the comfort room;
10. That at the screen room, I tried to fight the urge to relieve myself and it was at this point in time when Ver Ignacio, the duty shift miller arrived and told me that there was a fire at the bran grinder;
11. That I assisted in putting out said fire but Ver Ignacio eventually charged me with sleeping on my job which resulted to my dismissal on January 26, 1998;
12. That as I have explained earlier, I was not sleeping on my job. I was not also negligent. If ever I was not at the vicinity of the bran grinder at the time of the fire, it was because I attended to a trouble at the 3<sup>rd</sup> floor and inspected the 4<sup>th</sup> floor due to the lack of available personnel therein;
13. That under the circumstances, it is clear that my dismissal was illegal."

For their part, RFM and Jose Ma. Concepcion made the following allegations in their position paper:

1. The complainant was a former employee of the respondent, assigned to the position headspoutman of the Flour Milling Department at the time of his termination;
2. As headspoutman of the Flour Milling Department, the complainant was assigned at the second floor and is in-charge of the bran grinding machine on the same floor;
3. Sometime on November 22, 1997, at about 9:00 in the evening, Aries Lazaro, a contractual employee assigned at the Semolina Tipping, noticed the thick smoke coming from the bran;
4. That when he made an investigation, the said employee noticed that smoke was coming from the bran grinding machine and the bran being grounded inside the machine was already smoldering;
5. That immediately, Aries Lazaro went down to the ground floor to seek assistance and found Heronico Mancilla;
6. Together, they went back upstairs to the second floor to try to contain the fire;
7. It was then that Heronico Mancilla instructed Aries Lazaro to go down and call Virgilio F. Ignacio, the Shift Miller on duty;
8. That Virgilio F. Ignacio hurriedly ran upstairs and found that the fire was already growing rapidly;
9. That immediately, Virgilio F. Ignacio went down to the ground floor panel board to shut down mills II and IA;
10. That when Virgilio F. Ignacio returned to the bran grinding machine at the second floor, he found Heronico Mancilla, Fernando Felarca and a number of flour packers were already trying to stop the fire with the use of fire extinguishers;
11. Realizing that the packing area and the screen room were still operating, Virgilio F. Ignacio ran to the panel board of the packing area to shut down the machine and then to the screen room, likewise with the intention of shutting off the screen room machine;
12. That it was in the screen room, an air-conditioned room, where Virgilio F. Ignacio found the complainant [Tomada] who was supposed to be at the second floor watching and monitoring the machine thereat, soundly asleep on top of two (2) units of automatic voltage regulators (AVR);
13. That it was only after Virgilio F. Ignacio woke the complainant up did the latter proceed to the bran grinding machine room on the second floor;

14. The following day, November 23, 1997, Virgilio F. Ignacio submitted a memorandum report of the incident, a copy of which is hereto attached as Annex `1';

15. That same day, a memorandum was likewise issued to the complainant, requiring him to explain within 48 hours why no disciplinary action should be taken against him for violating company rules and regulations, a copy of the memorandum is hereto attached as Annex `2';

16. In compliance [with] the aforesaid memorandum, the complainant submitted his written explanation dated November 27, 1997, a copy of which is hereto attached as Annex `3';

17. In a memorandum dated December 4, 1997, the complainant was served notice that his case was set for administrative investigation on December 6, 1997 and that he was directed to attend the said investigation, a copy of the memorandum is hereto attached as Annex `4';

18. The investigation and hearings were set three (3) times where the complainant was apprised of the nature and the cause of the charges against him; afforded the opportunity of confronting the witness against him; and full opportunity to present his side duly assisted by a representative of his own choice;

19. After hearing, investigation and evaluation of complainant's case, management found him guilty of violating company rules and regulations #32, that of sleeping on company time outside of work area with adverse effect or damage, and his services were terminated. A copy of the Memorandum dated February 21, 1998 is hereto attached as Annex `5.'

Both parties filed their respective Reply to the Position Papers and Rejoinder to Reply. Thereafter, the case was submitted for decision.[4]

#### The Labor Arbiter's Ruling

In his Decision dated 4 May 2000, the Labor Arbiter dismissed Tomada's case for lack of merit. The Labor Arbiter found that Tomada was grossly remiss in performing his assigned duties and his separation from work was justified. The Labor Arbiter further stated that:

Precisely, personnel rules and regulations are promulgated as a vital component in sound personnel administration and for as long as the rules and regulations are reasonable in character and in application, this Office should not interfere in the matter of its exercise. Such is part and parcel of the duly recognized prerogatives of management in instilling discipline to its employees that should not be interfered [sic] into by this Tribunal.

In the case at bar, since the rules and regulations upon which [Tomada's] dismissal was based are reasonable in application and it appearing that [Tomada] by his conduct shown violated the rules against sleeping on company time that caused damage and/or adverse effect to the respondent's operation his conduct is considered serious and thus cannot be taken lightly by this Office considering the unfavorable and serious impact on respondent's business which also deserves legal protection against erring personnel like in the case of [Tomada].

[Tomada's] act amounted to dereliction of duty and gross negligence which is a legal ground to dismiss him for cause.

[Tomada], it appears, was given the opportunity to explain his side but sadly, it was not convincing to us based on the factual milieu of the case.

WHEREFORE, instant case is dismissed for lack of merit.

SO ORDERED.[5]

### The Ruling of the NLRC

Tomada filed an appeal before the NLRC. In its Decision promulgated on 22 October 2001, the NLRC also dismissed Tomada's appeal for lack of merit. The NLRC reiterated the Labor Arbiter's findings that Tomada was not only absent from his area of responsibility at the time the fire started in the second floor, but Tomada was also sleeping in the screen room. The NLRC, however, modified the Labor Arbiter's decision when it decreed that Tomada should receive separation pay, equivalent to one-half month's pay for every year of service with a fraction of six months considered as one whole year, since the cause of Tomada's dismissal was not reflective of his moral character.

On 12 December 2001, the NLRC resolved to deny Tomada's Motion for Reconsideration for lack of merit.[6]

### The Decision of the Appellate Court

Tomada, as well as respondents, assailed the NLRC's decision and resolution before the appellate court. Tomada imputed grave abuse of discretion upon the NLRC in sustaining the validity of his dismissal from employment. On the other hand, respondents questioned the NLRC's grant of separation pay to Tomada, as well as Jose Maria Concepcion III's joint liability with RFM Corporation.

The appellate court ruled that Tomada's dismissal from employment was valid. RFM Corporation entrusted Tomada with the responsibility involving a delicate matter, that of the care, custody and operation of the bran grinding machine for the duration of his duty. The nature of Tomada's infraction, leaving his post and sleeping while on duty, rendered Tomada unworthy of the trust and confidence demanded by his position. The appellate court agreed with the NLRC's award of separation pay to Tomada. The appellate court considered Tomada's service to RFM Corporation for 20 years, as well as his commission of only one, yet very serious, violation of company rules. However, the appellate court modified the NLRC's ruling regarding Jose Maria Concepcion III's liability. The award of separation pay may only be enforced against RFM Corporation because of the corporation's separate juridical personality. A stockholder or an officer of a corporation cannot be made personally liable for corporate liabilities in the absence of malice or bad faith. The dispositive portion of the appellate court's decision reads as follows:

WHEREFORE, the petition filed by Eduardo Tomada, Sr. is hereby DISMISSED and the petition filed by petitioners RFM and Jose Ma. Concepcion is PARTIALLY GRANTED. Accordingly, the assailed decision of public respondent dated October 22, 2001 is hereby AFFIRMED with modification that petitioner RFM Corporation - Bakery, Flour Division is hereby ordered to pay Eduardo M. Tomada, Sr. his separation pay in the amount of P127,660.00

SO ORDERED.[7]

The appellate court denied both parties' respective motions for reconsideration in a Resolution promulgated on 19 April 2004.[8]

All parties filed their respective petitions for review before this Court. On 13 March 2006, we issued a Resolution denying respondents' petition, docketed as G.R. Nos. 163263-64, for failure to file the required reply. Respondents, however, filed the requisite comment to the present petition. On 23 June 2008, this Court resolved to deconsolidate the present petition from G.R. Nos. 163263-64 in view of our 13 March 2006 Resolution.

### The Issues

Tomada raises the following grounds for allowance of his petition:

- The appellate court committed a serious error of law in imposing the penalty of dismissal upon Tomada

despite the fact that respondents did not sustain any damage on account of Tomada's supposed negligence.

- The appellate court's ruling that Tomada was negligent in his job is a patent nullity and should be reversed.[9]

### The Ruling of the Court

The petition has no merit. We see no reason to overturn the factual findings of the Labor Arbiter, which were subsequently approved by the NLRC and the appellate court. The present case adheres to the rule that factual findings of quasi-judicial and administrative bodies are accorded great respect and even finality by the courts. Tomada failed to show that the factual findings were arbitrarily made and disregarded evidence on record.

Serious Misconduct  
as a Just Cause for Dismissal

Tomada's acts constitute serious misconduct, one of the five enumerated causes for termination by employer in Article 282 of the Labor Code.

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;

x x x x

By sleeping on the job and leaving his work area without prior authorization, Tomada did not merely disregard company rules. Tomada, in effect, issued an open invitation for others to violate those same company rules. Indeed, considering the presence of trainees in the building and Tomada's acts, Tomada failed to live up to his company's reasonable expectations. Tomada's offenses cannot be excused upon a plea of being a "first offense," or have not resulted in prejudice to the company in any way. No employer may rationally be expected to continue in employment a person whose lack of morals, respect and loyalty to his employer, regard for his employer's rules, and appreciation of the dignity and responsibility of his office, has so plainly and completely been bared.[10]

Misconduct is improper or wrong conduct. It is the 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 of judgment. The misconduct to be serious must be of grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation. Thus, for misconduct or improper behavior to be a just cause for dismissal, (1) it must be serious; (2) it must relate to the performance of the employee's duties; and (3) it must show that the employee has become unfit to continue working for the employer. Indeed, an employer may not be compelled to continue to employ such person whose continuance in the service would be patently inimical to his employer's interest.[11]

The present case fulfills the requisites mentioned above. The Labor Arbiter established the following facts:

1. That the fire incident occurred in the second floor of the building which is specifically within the area of jurisdiction of [Tomada].
2. That at the time of the occurrence of the fire, [Tomada] was on duty but he was not in his area of work/jurisdiction and that his absence in his area was without any approval of the supervisory authorities and/or incurred for an urgent nature which are official in character. It is not shown that [Tomada] is authorized to trouble shoot or conduct inspection beyond his area of jurisdiction.
3. That [Tomada] no less admitted that he entered the screenroom on November 22, 1997, the night when the

incident occurred. The screenroom does not appear to be within the area of work jurisdiction of [Tomada]. It is the place where [Tomada] was located by supervisor Ver Ignacio when the fire was already taking place.

4. The official fire incident (Annex 1, respondent's position paper) of supervisor Ignacio that he saw [Tomada] "soundly sleeping atop two (2) units of AVR at screenroom," was not effectively rebutted by [Tomada] other than his bare denial. The fact however remains undisputed that it was at the screenroom where [Tomada] was caught by Supervisor Ver Ignacio at the very time when the fire broke out in [Tomada's] actual area of work wherein he was supposed to be working during the time of the incident. There is no showing that Supervisor Ignacio's report was motivated by personal ill-will or motive as to create a suspicion or belief that his report was personally motivated to oust [Tomada] from his job.

5. [Tomada's] allegation that he was attending to some trouble shooting works at the third and fourth floors was not established by concrete and convincing evidence. On the contrary, the logbook entries presented by the respondent (Annex "2," Reply (respondent)), do not indicate any trouble shooting work to be undertaken in the said sections of the third and fourth floors.[12]

It has been shown that Tomada, in the normal and routine exercise of his functions, was directly responsible for a significant portion of respondents' property. By his acts, Tomada is guilty of serious misconduct, such that he is not entitled to financial assistance or separation pay. Indeed, the Labor Arbiter even categorized Tomada's acts under "dereliction of duty and gross negligence."

Although his nearly two decades of service might generally be considered for some form of financial assistance to shield him from the effects of his termination, Tomada's acts reflect a regrettable lack of concern for his employer. If length of service justifies the mitigation of the penalty of dismissal, then this Court would be awarding disloyalty, distorting in the process the meaning of social justice and undermining the efforts of labor to cleanse its ranks of undesirables.[13]

WHEREFORE, we DENY the petition. We AFFIRM the Decision promulgated on 23 December 2003 as well as the Resolution promulgated on 19 April 2004 of the Court of Appeals in CA-G.R. SP Nos. 69901 and 70069 with the MODIFICATION that the grant of separation pay to Eduardo M. Tomada, Sr. is DISALLOWED.

### **SO ORDERED.**

Carpio, (Chairperson), Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

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

[2] Rollo, pp. 21-34. Penned by Associate Justice Mariano C. Del Castillo with Associate Justices Rodrigo V. Cosico and Rosalinda Asuncion-Vicente, concurring.

[3] Id. at 35-36.

[4] Id. at 22-26.

[5] Id. at 82.

[6] Id. at 26.

[7] Id. at 33.

[8] Id. at 35-36.

[9] Id. at 13.

[10] See *Stanford Microsystems, Inc. v. NLRC*, 241 Phil. 426 (1988).

[11] See *Fujitsu Computer Products Corp. of the Phils. v. Court of Appeals*, 494 Phil. 697 (2005).

[12] *Rollo*, pp. 80-81.

[13] See *Aromin v. National Labor Relations Commission*, G.R. No. 164824, 30 April 2008, 553 SCRA 273.

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