SOLID DEVELOPMENT CORPORATION WORKERS ASSOCIATION (SDCWA-UWP) AND EDGAR VILLENA, PETITIONERS, VS. SOLID DEVELOPMENT CORPORATION, DOMINGO GAW, JR., OWNER/PRESIDENT, AND NATIONAL ...

G.R. NO. 165995. August 14, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Petitioners seek the reversal of the Decision[1] dated January 16, 2004 of the Court of Appeals in CA-G.R. SP No. 65762, dismissing their petition for certiorari against the National Labor Relations Commission (NLRC), as well as the Resolution[2] dated October 29, 2004, denying their motion for reconsideration.

Petitioners Edgar Villena and Jerry[*] G. Colcol were employed as Roving Doffer and Trouble Shooter Mechanic, respectively, by private respondent Solid Development Corporation.

On March 29, 1999, private respondent Domingo P. Gaw, Jr., owner and president of the company, caught Villena loafing during office hours. When he called Villena's attention, the latter retorted, "Bakit mo ako sinisita porke mahirap lang kaming mga trabahador ninyo eh. Kayo talagang mga intsek." Antonio Senador, Villena's supervisor, overheard this remark and reminded Villena to respect Gaw. However, Villena replied, "Ikaw, masyado kang sipsip sa baboy na intsik."

Due to this incident, Gaw called a meeting of all roving doffers. He reminded them to devote their time to their work and cited his experience with Villena. At this point, Villena approached Gaw and told him, "Bakit ako pa ang nasilip mo! Nagtatrabaho naman ako ah! Kayo talagang mga intsik! Letseng buhay ito!"

On the same date, Villena was served an infraction report[3] where he was charged with disrespect to a superior officer and/or impolite/discourteous manner. He was also required to submit a written explanation within 12 hours from receipt of the report. In addition, the report also mentioned that Villena frequently violated company rules, incurred absences without official leave and slept while on duty. On May 3, 1999, he was dismissed for serious misconduct, loss of confidence and gross habitual neglect of duty.[4]

Meanwhile, on August 6, 1998, Tessie Gaw, Colcol's supervisor, ordered the latter to operate the carding or rolyohan machine. Colcol refused and explained that he did not know how to operate the machine. As a result, Colcol was served an infraction report[5] where he was charged with insubordination and poor work performance. He was also required to submit a written explanation within 12 hours from receipt of the report. Colcol was eventually dismissed for insubordination and poor work performance.

Petitioners filed separate complaints for illegal dismissal with prayer for reinstatement and monetary claims. They claimed that they were dismissed without just cause and without due process. On January 31, 2000, the Labor Arbiter rendered a decision in their favor.

With respect to Colcol, the Labor Arbiter ruled that the infraction report failed to specify the acts or omissions he made. It did not also bear his signature which would indicate his receipt thereof. Further, the Labor Arbiter found that Colcol had a justifiable excuse for refusing to operate the carding or rolyohan machine. With respect to Villena, the Labor Arbiter noted that the 12-hour period given to him was too short. Villena should have also been subjected to a confrontational investigation with the assistance of counsel since there were witnesses against him. Finally, the Labor Arbiter found it unlikely for Villena to challenge Gaw inside the company premises. The decretal portion of the Labor Arbiter's decision reads:

> WHEREFORE, respondents are hereby ordered to reinstate complainants to their former position without loss of seniority rights and other privileges appurtenant thereto with full backwages until reinstated, which to date is computed in the amount of P85,025.46 for complainant Jerry Colcol and P40,573.50 for complainant Edgar Villena.
>
> The claim for moral and exemplary damages are hereby dismissed for lack of merit.
>
> SO ORDERED.[6]

Private respondents appealed to the NLRC which reversed the decision of the Labor Arbiter.[7] The NLRC gave more credence to private respondents' assertion that Colcol received the infraction report but simply ignored it. It also rejected Colcol's excuse in refusing to operate the carding or rolyohan machine since he was an all-around mechanic and the machine has been used by the company for many years. On the other hand, the NLRC found that the Sama-Samang Salaysay of Villena's co-workers sufficiently established that he insulted Gaw. In fact, Villena did not refute that he insulted Gaw, but he simply contended that the Sama-Samang Salaysay had no evidentiary value for want of confrontation. The NLRC also ruled that a formal trial-type hearing was unnecessary since Villena was given the opportunity to explain his side.

Petitioners elevated the case to the Court of Appeals which affirmed with modification the NLRC decision. Thus:

> WHEREFORE, the assailed Decision of the NLRC is hereby AFFIRMED, with the MODIFICATION that petitioner JERRY G. COLCOL is adjudged entitled to and should be paid separation pay equivalent to half month salary for every year of service.
>
> SO ORDERED.[8]

Reconsideration having been denied, petitioners now come before us with a petition alleging that the appellate court erred:

> I
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> .. IN AFFIRMING THE DISMISSAL OF PETITIONERS, AND LIKEWISE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN FINDING THAT:
>
> A) PETITIONER GERRY COLCOL'S TERMINATION IS VALID ON THE GROUND OF INSUBORDINATION OR REFUSAL TO OBEY LAWFUL ORDER IN RELATION TO WORK AND HAVING POOR PERFORMANCE OF WORK.
>
> II
>
> B) PETITIONER EDGAR VILLENA'S TERMINATION IS VALID ON THE GROUND OF MISCONDUCT, LOSS OF CONFIDENCE AND GROSS HABITUAL NEGLECT OF DUTY.[9]

The instant petition, in our view, mainly involves factual issues, i.e., whether there is evidence on record to support the findings of the NLRC and of the Court of Appeals that petitioners Edgar Villena and Jerry G. Colcol were dismissed for cause and with due process.

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At the outset, it bears stressing that the Supreme Court is not a trier of facts except in certain instances. One of these is when there is a conflict between the findings of fact of the Labor Arbiter, on one hand, and the NLRC, on the other, which is the situation here. Thus, we are constrained to review the facts of the present case on the basis of the records.[10]

It is settled that to constitute a valid dismissal from employment, two requisites must concur: (1) the dismissal must be for any of the causes provided for in Article 282 of the Labor Code; and (2) the employee must be afforded an opportunity to be heard and to defend himself. This means that an employer can terminate the services of an employee for just and valid causes, which must be supported by clear and convincing evidence. It also means that, procedurally, the employee must be given notice, with adequate opportunity to be heard, before he is notified of his actual dismissal for cause.[11]

After a painstaking study of the records of this case, we rule that petitioners were dismissed for cause.

The Sama-Samang Salaysay[12] of Villena's co-workers described with particularity when, where and how Villena insulted Gaw. While Villena presented another Sama-Samang Pahayag at Pagpapa-Walang Bisa[13] where his co-workers retracted their earlier statements, we cannot accord it any weight. First, we note that this document was never mentioned or considered in the proceedings before the Labor Arbiter and the NLRC. Villena anchored his claim on this document only in his petition before the Court of Appeals. As such, we find the same dubious, if not spurious. Second, the document was signed by only four of the nine affiants who signed the first Sama-Samang Salaysay. Thus, the statements therein cannot possibly bind those who did not sign it. Third, we have often looked at retractions with disfavor.[14] Just because one has executed an affidavit of retraction does not imply that what has been previously said is false or that the latter is true.[15] For these reasons, the Sama-Samang Salaysay stands and the truth of the statements therein binds Villena who did nothing but deny the same.

It is settled that for serious misconduct to be a just cause for dismissal, it must (1) be serious; (2) relate to the performance of the employee's duties; and (3) show that the employee has become unfit to continue working for the employer.[16] Villena's act of insulting Gaw, the company's owner and president, may be considered, from a layman's perspective, as a serious misconduct. Moreover, it was done in relation to the performance of his duties as would show him to be unfit to continue working for the company.

Similarly, Colcol's excuse in refusing to operate the carding or rolyohan machine was properly rejected. First, as troubleshooter or all-around mechanic, he was tasked to maintain and repair all of the company's equipment including the carding or rolyohan machine. Second, the machine has been used by the company for many years. Because of these, Colcol could not have been ignorant of its proper operation.

Willful disobedience of the employer's lawful orders, as a just cause for dismissal of an employee, envisages the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[17]

In this case, the willfulness of Colcol's disobedience was shown by his continued refusal to operate the carding or rolyohan machine. He merely ignored the infraction report requiring him to submit a written explanation. If he honestly believed that he did not have sufficient knowledge to operate the machine, then he should have informed private respondents at that opportune time.

Likewise, there was nothing unreasonable in the order. It is the employer's prerogative, based on its assessment and perception of its employee's qualifications, aptitudes and competence, to move the employee around in the

various areas of its business operations in order to ascertain where he will function with utmost efficiency and maximum productivity or benefit to the company. An employee's right to security of tenure does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where he will be most useful.[18] In this case, it is presumed that private respondents have carefully evaluated Colcol's competence as troubleshooter mechanic to require him to operate the carding or rolyohan machine.

Finally, on the matter of due process, well-settled is the dictum that the twin requirements of notice and hearing constitute the essential elements of due process in the dismissal of employees. It is a cardinal rule in our jurisdiction that the employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing, on the other hand, is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.[19]

In separate infraction reports, petitioners were both apprised of the particular acts or omissions constituting the charges against them. They were also required to submit their written explanation within 12 hours from receipt of the reports. Yet, neither of them complied. Had they found the 12-hour period too short, they should have requested for an extension of time. Further, notices of termination were also sent to them informing them of the basis of their dismissal. In fine, petitioners were given due process before they were dismissed. Even if no hearing was conducted, the requirement of due process had been met since they were accorded a chance to explain their side of the controversy.[20]

In sum, we find that the dismissal of petitioners from the service was in accordance with the law.

WHEREFORE, the instant petition is DENIED. The Decision dated January 16, 2004, as well as the Resolution dated October 29, 2004, of the Court of Appeals in CA-G.R. SP No. 65762 is AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

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

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[1] Rollo, pp. 189-202. Penned by Associate Justice Ruben T. Reyes, with Associate Justices Edgardo P. Cruz and Arsenio J. Magpale concurring.

[2] Id. at 218-220.

[*] Gerry in some parts of the records.

[3]CA rollo, p. 94.

[4] Id. at 63.

[5]Id. at 62.

[6] Id. at 53-54.

[7] Id. at 38-47.

[8]Rollo, p. 202.

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[9]Id. at 10-11.

[10] Stanley Garments Specialist v. Gomez, G.R. No. 154818, August 11, 2005, 466 SCRA 535, 540; See Cajucom VII v. TPI Philippines Cement Corporation, G.R. No. 149090, February 11, 2005, 451 SCRA 70, 78.

[11] Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals, G.R. No. 158232, March 31, 2005, 454 SCRA 737, 759.

[12]CA rollo, pp. 90-91.

[13]Id. at 92-93.

[14] Alonte v. Savellano, Jr., G.R. Nos. 131652 & 131728, March 9, 1998, 287 SCRA 245, 264.

[15] Naval v. Panday, A.M. No. RTJ-95-1283, July 21, 1997, 275 SCRA 654, 682.

[16]Philippine Aeolus Automotive United Corporation v. NLRC, G.R. No. 124617, April 28, 2000, 331 SCRA 237, 245-246.

[17] Bascon v. Court of Appeals, G.R. No. 144899, February 5, 2004, 422 SCRA 122, 131.

[18] Westin Philippine Plaza Hotel v. NLRC, G.R. No. 121621, May 3, 1999, 306 SCRA 631, 637.

[19]Maneja v. National Labor Relations Commission, G.R. No. 124013, June 5, 1998, 290 SCRA 603, 623-624.

[20] Midas Touch Food Corp. v. NLRC, G.R. No. 111639, July 29, 1996, 259 SCRA 652, 658-659; Philippine National Bank v. Cabansag, G.R. No. 157010, June 21, 2005, 460 SCRA 514, 531.

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