

VILLAMOR GOLF CLUB, BRIGADIER GENERAL FILAMER J. ARTAJO, AFP (RET.), COLONEL RUBEN C. ESTEPA, LIEUTENANT COLONEL JULIUS A. MAGNO, AND LIEUTENANT MILAGROS A. AGUILLON, JOINTLY RE...

G.R. NO. 166152. October 04, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 77654 reversing the decision of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. CA-031296-02 and affirming the Labor Arbiter's decision.

On September 20, 1975, Rodolfo F. Pehid was employed by the Villamor Golf Club (VGC) as an attendant in the men's locker room, and, thereafter, he became the Supervisor-in-Charge. His subordinates included Juanito Superal, Jr., Patricio Parilla, Ricardo Mendoza, Cesar Velasquez, Vicente Casabon, Pepito Buenaventura and Carlito Modelo.

On May 1, 1998, the afore-named employees agreed to establish a common fund from the tips they received from the customers, guests and members of the club for their mutual needs and benefits. Each member was to contribute the amount of P100.00 daily. By October 31, 1998, the contributions of the employees had reached the aggregate amount of P17,990.00 based on the logbook maintained in the locker room. This agreement, however, was not known to the VGC management.

An audit of the Locker Room Section of the golf club was conducted on February 7, 1999. On February 19, 1999, an additional Audit Report[2] was submitted by Ludy Capuyan, the audit clerk, to the Administrative Department of the club stating, among others, that based on the information relayed to her, there was an undeclared and unrecorded aggregate amount of P17,990.00 for the fund during the period of May 1998 to October 1998. Further, not one in the said section admitted custody of such amount and there was no record that the money had been distributed among those employed in the locker room. In said report, Capuyan recommended that an investigation be conducted to determine the whereabouts of said amount and who was accountable therefor.

In the meantime, an administrative complaint was filed by Juanito Superal, Jr., Patricio Parilla, Ricardo Mendoza, Cesar Velasquez, and Vicente Casabon charging Pehid with misappropriating the P17,990.00.

An investigation of the matter was conducted by the Head of the Security Department, who then submitted a Report dated May 10, 1999 with the following recommendations:

10. Mr. Rodolfo Pehid should produce the common fund amounting allegedly to P17,990.00.
11. If unable to produce the money, a case of Swindling (ESTAFA) be filed against him by the locker room employees.

12. Separation from the service if found guilty of the charge by an administrative body convened by the VGC.[3]

The Legal Officer of the VGC made a similar recommendation. In a Letter[4] dated May 19, 1999, Col. Ruben Estepa, the Head of the Administrative Department, directed Pehid to submit his explanation on the said complaint and the reason why he should not be dismissed from the club for violation of VGC Rules of Conduct No. IV-E(d).

On May 31, 1999, a certain Mil Raymundo, a VGC member, filed a letter-complaint against Pehid for misappropriating P3,000.00 from the common fund. On the same day, Pehid submitted his verified Explanation[5] to Col. Estepa denying the charges against him and alleging that it was Pepito Buenaventura who had custody of the fund. He also alleged that the charges filed against him stemmed from his strict management of the men's locker room and that his co-employees wanted to install Carlito Modelo as the person-in-charge in his stead. Pehid demanded that a formal investigation of the matter be conducted.

After the requisite formal investigation by the Administrative Board of Inquiry, Pehid received Office Order No. 11-99 from the General Manager of the club informing him that his employment was terminated effective July 1, 1999. Based on its findings, Pehid committed gross misconduct in the performance of his duties in violation of Paragraph IV-E(d) of the VGC Rules and Regulations.[6] He was also informed that he committed acts of dishonesty which caused and tend to cause prejudice to the club for misappropriating the common fund of P17,990.00 for his personal benefit.[7]

Pehid filed a complaint for illegal dismissal, unfair labor practice, separation pay/retirement benefits, damages and attorney's fees against petitioners VGC and/or Brig. Gen. Filamer Artajo (Ret. AFP), Col. Ruben Estepa, Lt. Milagros Aguillon, and the VGC Administrative Board of Inquiry.

Pehid averred that he was dismissed without just cause and due process of law; that there was no basis or evidence to show that he had custody of the common fund which was used for his own benefit; that he incurred the ire of his superiors for testifying in support of Asterio Tansiongco, a former Director of Personnel who was dismissed by VGC; and that one of Tansiongco's accusers was Dario Velasquez, the brother of Cesar Velasquez, one of the locker boys who complained against him.

In their Position Paper,[8] the petitioners alleged that when confronted with the letter-complaint against him, Pehid admitted that his accountability arose from the proceeds of the sale of the golf club and golf shares entrusted to him, which he used for his personal needs without the knowledge of the persons concerned.

On February 28, 2002, the Labor Arbiter rendered judgment in favor of Pehid.[9] The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered finding the dismissal of the complainant from his employment as illegal and concomitantly respondent[s] are ordered to pay complainant full backwages and separation pay in lieu of reinstatement in the amounts of P299,000.00 and P239,200.00, respectively.

Respondents are further ordered to pay complainant 10% attorney's fees based on the total judgment award.

The complaint for moral and exemplary damages are hereby dismissed for lack of merit.

SO ORDERED.[10]

The Labor Arbiter ruled that Pehid was dismissed from his employment without any just cause. He declared that there was no formal official publication among the members of the locker room personnel designating Pehid as the custodian of the fund. Worse, the witnesses who testified against Pehid failed to prove that he was the

custodian of the said mutual fund since they only concluded the same by the mere fact that he was the officer-in-charge of the locker room. Moreover, the Labor Arbiter declared that the acts attributed to Pehid were not committed in connection with his work as officer-in-charge of the locker room.[11]

The petitioners appealed the decision to the NLRC. They averred that there was substantial evidence on record that the complainant was the custodian of the fund. The matter of keeping in custody the token tips necessarily involved trust and confidence among the personnel of the locker room. Pehid's custody of the fund was intertwined with his duties as the officer-in-charge; hence, there was justification for his dismissal from employment for loss of confidence.

On December 6, 2002, the NLRC set aside and reversed the decision of the Labor Arbiter.[12] The NLRC declared that Pehid was lawfully dismissed from his employment for loss of trust and confidence on account of his misappropriation of the funds in his custody. The NLRC ruled that such misappropriation constituted serious misconduct meriting dismissal from his employment.[13] Pehid filed a motion for the reconsideration of the decision, which the NLRC denied on April 2, 2003.[14]

Pehid then filed with the CA a petition for certiorari under Rule 65 of the Rules of Civil Procedure, assailing the decision and resolution of the NLRC. The respondent maintained that no evidence was adduced to prove that he was the custodian of the fund. He insisted that the fund subject matter of the complaint came from the voluntary contributions of the locker room personnel to be used for their own benefit in times of need, and had no connection whatsoever with his work as personnel in the locker room. If there was any misappropriation of the said fund, the same could not in any way prejudice the club.

On February 11, 2004, the CA rendered a Decision[15] granting the petition. It reversed and set aside the decision of the NLRC and reinstated the decision of the Labor Arbiter. The CA declared that Paragraph IV-E(a) and (d) of the VGC Rules expressly provide that the funds referred to therein are funds of the club and that the P17,990.00 did not form part of such fund but belonged to the locker room personnel. The CA also declared that the management of the VGC had no personal knowledge about the funds and, in fact, had not sanctioned its existence. Moreover, VGC was not prejudiced by the loss of the fund.

The petitioners filed a motion for reconsideration of the decision but the CA denied the same on November 22, 2004,[16] hence, the present petition.

The petitioners raise the following issues:

- Whether or not the process/proceeding undertaken by the Villamor Golf Club and the VGC [Administrative] Board of Inquiry is legally and factually sustainable?
- Whether or not the Decision of the Honorable Court of Appeals is contrary to law and jurisprudence and therefore reversible?
- Whether or not the incident of the case shall, likewise, fall within the provision of Article 282 paragraph (e) of the Labor Code?[17]

The petitioners insist that there is substantial evidence on record that the respondent was the custodian of fund belonging to the members of the locker room and that his misappropriation of the same constituted gross misconduct. They insist that it is an act of manifest dishonesty within the context of Paragraph IV-E(d) of the Rules of Conduct of the club, in relation to Article 282(e)[18] of the Labor Code of the Philippines, tending to prejudice the VGC. The petitioners further insist that, based on the substantial evidence on record, the respondent misappropriated the fund as his co-employees in the locker room even positively identified him as the custodian thereof.

The petitioners aver that the respondent's failure to account for and distribute the common fund which the locker personnel had established for their mutual aid and benefit is a manifest dishonesty falling within the scope of the proviso "(d.) All other acts of dishonesty which cause or tend to cause prejudice to Villamor Golf Club." The petitioners claim that this conduct caused prejudice to VGC's smooth operation and performance of services to its clientele.

According to the petitioners, the bare fact that the membership in the club is exclusive makes such members the employers of VGC employees, including the respondent. Personnel who manage the daily affairs and activities of the club, like the respondent, are imbued with a high level of trust and confidence. Moreover, the respondent was expected to observe the diligence required in the maintenance of order, camaraderie, trust and confidence within the confines of his assignment. Hence, the termination of his employment for failure to deliver the cash entrusted to him as the head of the club's locker room personnel and the custodian of the collective tips was a valid cause.

The petition is denied for lack of merit.

Paragraph IV-E(a) and (d) of the VGC Rules and Regulation cited by the petitioners reads:

E. Dishonesty

1. The following shall constitute violation of this section.

a) Misappropriation or malversation of Club funds.

...

d) All other acts of dishonesty which cause or tend to cause prejudice to Villamor Golf Club.[19]

The CA ruled that the petitioners cannot rely on the afore-quoted rule, thus:

Suffice it to state, that public respondent NLRC had overlooked and misapplied certain facts and circumstances of substance, which, if properly appreciated, would affect the disposition of the case. Foremost, contrary to the finding of respondent NLRC, VGC does not only cater its golf services to its club members who are purely officers of the Armed Forces of the Philippines.

This is belied by no less than the allegations contained in the respondents' REPLY TO THE POSITION PAPER OF THE COMPLAINANT xxx, the membership of VGC is categorized as follows: a) Service member; b) Special members; c) Associate member; and d) Honorary member. It is noteworthy to emphasize that under the categories of special member, honorary member and partly an associate member, they are not officers of the Armed Forces of the Philippines. In fact, even golfers who are not within the category of the memberships specified above, could make use of the course and the facilities of the club as long as they pay the necessary fees. Secondly, the golfers, be they members of the respondent VGC or simply walk-in paying golfers are not the employers of the personnel of respondent VGC; and lastly, in no uncertain terms that the personnel of respondent VGC are members of the Club.

Prescinding therefrom, there is no doubt in our minds that the funds alleged to have been embezzled by the petitioner, belonged to the personnel of respondent VGC and not to respondent VGC. In fact, the latter had not sanctioned the purpose upon which the said funds were established. Along this line, We adhere to the Labor Arbiter's disquisition ratiocinated in this wise:

xxx xxx xxx.

In the case at bench, the voluntary contribution by the locker personnel amongst themselves to a mutual fund for their own personal benefit in times of need is not in any way connected with the work of the locker boys and the complainant. If ever there was misappropriation or loss of the said mutual fund, the respondent will not and cannot be in any way "tend or cause to prejudice the club." Such mutual fund is a separate transaction

among the employees and is not in any way connected with the employee's work. Thus, if a co-employee "A" owes employee "B" P100,000.00 and the former absconds with the money, the employer cannot terminate the employment of employee "A" for dishonesty and/or serious misconduct since the same was not committed in connection with the employee's work.[20]

The ruling of the CA is correct. Under the afore-quoted VGC rule, the dishonesty of an employee to be a valid cause for dismissal must relate to or involve the misappropriation or malversation of the club funds, or cause or tend to cause prejudice to VGC. The substantial evidence on record indicates that the P17,990.00, which was accumulated from a portion of the tips given by the golfers from May 1998 to October 1998 and was allegedly misappropriated by the respondent as the purported custodian thereof, did not belong to VGC but to the forced savings of its locker room personnel. The truth is, the separate affidavits of Pepito Buenaventura,[21] Juanito Superal, Jr.,[22] Ricardo Mendoza,[23] Cesar Velasquez,[24] and Vicente Casabon,[25] as well as the allegations in the petitioners' Position Paper,[26] show that even the VGC management did not know about the mutual fund or sanctioned its existence. Hence, the claim that the petitioners' interest was prejudiced has no factual basis.

Company policies and regulations are, unless shown to be grossly oppressive or contrary to law, generally valid and binding and must be complied with by the parties unless finally revised or amended, unilaterally or preferably through negotiation.[27] However, while an employee may be validly dismissed for violation of a reasonable rule or regulation adopted for the conduct of the company's business,[28] an act allegedly in breach thereof must clearly and convincingly fall within the express intendment of such order.

Neither may the petitioners rely on Article 282 of the Labor Code. As the CA succinctly ruled:

Clearly, based on the grounds of termination provided under Article 282 of the Labor Code and the VGC Rules and Regulations, the common denominator thereof to constitute gross misconduct as a ground for a valid termination of the employee, is that - it is committed in connection with the latter's work or employment. In the instant case, as previously pointed out, the alleged petitioner's misappropriation or malversation was committed, assuming it to be true, against the common funds of the Locker Room personnel, which did not belong nor sanctioned by respondent VGC. A fortiori, respondent VGC was not prejudiced or damaged by the loss or misappropriation thereof. Undoubtedly, the parties who were prejudiced or damaged by the alleged embezzlement, were locker room personnel, who may ventilate any proper civil or criminal action to whomsoever responsible therefor. Applying the principle in statutory construction of ejusdem generis, i.e., "where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned" (United Residents of Dominican Hill, Inc. vs. Commission on Settlement of Land Problems, 352 SCRA 782). Elementary is the rule that when laws or rules are clear, it is incumbent upon the judge to apply them regardless of personal belief or predilections - when the law is unambiguous and unequivocal, application not interpretation thereof is imperative (De Guzman vs. Sison, 355 SCRA 69).

"Serious misconduct" as a valid cause for the dismissal of an employee is defined as improper or wrong conduct; 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 in judgment. To be serious within the meaning and intendment of the law, the misconduct must be of such grave and aggravated character and not merely trivial or unimportant.[29] However serious such misconduct, it must, nevertheless, be in connection with the employee's work to constitute just cause for his separation. The act complained of must be related to the performance of the employee's duties such as would show him to be unfit to continue working for the employer.[30]

IN LIGHT OF ALL THE FOREGOING, the instant petition is DENIED for lack of merit. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 77654 are AFFIRMED. Costs against the petitioners.

SO ORDERED.

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

[1] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Conrado M. Vasquez, Jr. and Arsenio J. Magpale, concurring; Rollo, pp. 40-52.

[2] Exhibit "3."

[3] CA Rollo, p. 80.

[4] Id. at 41.

[5] Id. at 37-38.

[6] CA Rollo, p. 40.

[7] Id. at 39.

[8] CA Rollo, pp. 47-93.

[9] Id. at 109-116.

[10] Id. at 116.

[11] CA Rollo, pp. 109-116.

[12] Id. at 132-140.

[13] Id. at 139.

[14] Id. at 152-153.

[15] CA Rollo, pp. 205-217.

[16] Rollo, pp. 54-55.

[17] Rollo, p. 13.

[18] 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.

[19] Rollo, p. 8. (Emphasis supplied.)

[20] Rollo, pp. 49-50.

[21] Rollo, pp. 126-128.

[22] Id. at 129.

[23] Id. at 130.

[24] Id. at 131.

[25] Id. at 132.

[26] Id. at 104.

[27] Cosep v. NLRC, G.R. No. 124966, 16 June 1998, 290 SCRA 704.

[28] Autobus Workers' Union (AWU) v. NLRC, G.R. No. 117453, 26 June 1998, 291 SCRA 219.

[29] Autobus Workers' Union (AWU) v. NLRC, *supra* and Cosep v. NLRC, *supra*.

[30] Samson v. NLRC, G.R. No. 121035, 12 April 2000, 330 SCRA 460; Edge Apparel, Inc. v. NLRC, G.R. No. 121314, 12 February 1998, 286 SCRA 302; Molato v. NLRC, G.R. No. 113085, 02 January 1997, 266 SCRA 42; Aris Philippines, Inc. v. NLRC, G.R. No. 97817, 10 November 1994, 238 SCRA 59; and Cosep v. NLRC, *supra*.

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