

JESUS B. LOPEZ, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC) SECOND DIVISION, HON. COMMISSIONERS ANGELITA GACUTAN, VICTORIANO CALAYCAY, RAUL AQUINO, MAYNILAD WATER...

G.R. NO. 167385. December 13, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court, seeks the reversal of the January 5, 2005 Decision[1] of the Court of Appeals in CA-G.R. SP No. 81543, and its March 4, 2005 Resolution[2] denying the petitioner's motion for reconsideration.

The antecedent facts show that on April 21, 1998, Regina M. Gopez wrote a letter[3] to respondent Maynilad Water Services, Inc. (Maynilad) alleging that she entered into an agreement with petitioner Jesus B. Lopez, Maynilad's Senior Engineering Assistant assigned in the Sampaloc area, to repair her water meter for a fee. Despite payment of P500, petitioner allegedly never returned to fix the defective meter.

On April 22, 1998, Maynilad's Head of Technical Operations-Sampaloc Sector issued a memorandum requiring petitioner to answer the allegations.[4]

Petitioner denied the charges against him. He claimed that he never received any amount from Gopez and even advised her to file a proper job order for her meter concerns.[5]

Maynilad also formed an Ad-Hoc Investigation Panel which recommended petitioner's dismissal from the service based on its findings that petitioner committed serious misconduct in contracting an unauthorized work for a fee.[6] Thus, on September 10, 1998, petitioner was served a notice of termination.[7]

Aggrieved, petitioner filed a complaint for illegal dismissal claiming that he was dismissed without just cause.

On January 30, 2002, the labor arbiter[8] rendered a Decision[9] holding that Lopez was illegally dismissed as there was no proof that he promised to work on the waterline of Gopez, much less that he received money from the latter. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered declaring the dismissal of the complainant as illegal and ordering respondent company to immediately reinstate him to his former position without loss of seniority rights and to pay complainant full backwages and attorney's fees, as follows:

- P537,030.00 representing backwages as of the date of this decision until complainant is actually reinstated in the service; and,
- 10% of the total judgment award in this case representing attorney's fees.

The complaint for moral and exemplary damages are hereby disallowed for want of merit.

SO ORDERED.[10]

On appeal, the National Labor Relations Commission (NLRC) set aside the decision of the labor arbiter. The dispositive portion of the Resolution[11] reads:

WHEREFORE, the assailed Decision of the Labor Arbiter ordering the reinstatement of complainant with backwages and payment of attorney's fees is ordered SET ASIDE. A new one is hereby entered declaring the dismissal of complainant legal. However, as a measure of compassionate justice, respondent is ordered to pay complainant the sum of P13,260.00 by way of financial assistance.

SO ORDERED.[12]

The NLRC found that petitioner entered into a contractual agreement with Gopez and that he received money from the latter through Carreon, his conduit. However, the NLRC also held that petitioner's infraction was not tantamount to serious misconduct as Maynilad did not suffer any pecuniary loss. If at all, petitioner violated Maynilad's policy on conflict of interest which is a ground for dismissal based on loss of trust and confidence.

Petitioner's motion for reconsideration was denied,[13] hence he filed a petition for certiorari under Rule 65 of the Rules of Court before the Court of Appeals.

On January 5, 2005, the Court of Appeals rendered a Decision[14] dismissing the petition and affirming the resolution of the NLRC. According to the appellate court:

Petitioner entered in a contract to work for a fee with a customer (Mrs. Gopez) contrary to company policy. Such dishonesty is tantamount to serious misconduct on the part of the employee, a breach of trust reposed upon him by his employer. Loss of confidence can be a ground for dismissing an employee when there is basis for the same as it is in this case, 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.

Maynilad expected petitioner to project a credible and professional image to the public being the head of a service team. However, contrary to expectations, petitioner committed a misconduct by entering into a prohibited contract with a customer. Thus, Maynilad could not be faulted in losing its trust and confidence in petitioner and in dismissing him under the circumstances.[15]

Petitioner sought reconsideration of the appellate court's decision but the same was denied.[16]

The principal issue for our resolution is the validity of petitioner's termination.

Misconduct has been defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment.[17] The misconduct to be serious must be of such grave and aggravated character. Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation.[18] Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) must relate to the performance of the employee's duties; and, (c) must show that the employee has become unfit to continue working for the employer.[19]

Factual findings of the NLRC and the Court of Appeals that petitioner contracted unauthorized work and accepted money from Gopez for the repair of the water meter deserves respect and even finality. Settled is the rule that only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court.

When petitioner contracted with Gopez, he in effect engaged in a business that competed with Maynilad's and thus came in conflict of interest with the latter. He cannot serve himself and his employer at the same time all at

the expense of the latter.[20]

As a measure of self-preservation against acts inimical to its interests, an employer has the right to dismiss an employee found committing acts of dishonesty and disloyalty. The employer may not be compelled to continue to employ such a person whose continuance in the service would patently be inimical to his employer's interest.[21] The law, in protecting the rights of workers, authorizes neither oppression nor self-destruction of the employer.[22] Thus, in *Philippine Long Distance Telephone Company v. National Labor Relations Commission*,[23] a junior telephone installer was dismissed from service for just cause when he willfully committed a serious act of misconduct by demanding money for the repair of a telephone that was officially part of his job.

In the instant case, we find the penalty of dismissal from service reasonable and appropriate and a valid exercise of management prerogative. Maynilad specifically prescribes that, should any employee begin or continue to engage in conflict of interest activities despite management pronouncement or disapproval, the appropriate disciplinary sanctions shall be imposed on him.[24] Appropriate disciplinary sanction, such as termination, is within the purview of management imposition.

That Maynilad suffered no damage resulting from the acts of petitioner is inconsequential. In *Glaxo Wellcome Philippines, Inc. v. Nagkakaisang Empleyado ng Wellcome-DFA (NEW-DFA)*,[25] we held that deliberate disregard or disobedience of company rules could not be countenanced, and any justification that the disobedient employee might put forth would be deemed inconsequential. The lack of resulting damage was unimportant, because "the heart of the charge is the crooked and anarchic attitude of the employee towards his employer. Damage aggravates the charge but its absence does not mitigate nor negate the employee's liability." [26] What is abhorrent and punishable is the act of contracting unauthorized work for a fee, regardless of whether the act caused damage to the company. Thus, we hold that Maynilad validly terminated the services of petitioner on the ground of serious misconduct which resulted to the loss of trust of Maynilad upon petitioner because his credibility in doing his job as a team leader of a repair crew has already been eroded.

As regards the amount of P13,260 awarded to petitioner by way of financial assistance, the same must be deleted for lack of basis. Financial assistance may be given as a measure of social justice in exceptional circumstances and as an equitable concession. It is allowed only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character.[27]

WHEREFORE, the petition is DENIED. The January 5, 2005 Decision and the March 4, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 81543, are AFFIRMED with MODIFICATION. The award of P13,260 by way of financial assistance in favor of petitioner is DELETED for lack of basis.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 25-33. Penned by Associate Justice Eliezer R. De Los Santos and concurred in by Associate Justices Delilah Vidallon-Magtolis and Monina Arevalo Zenarosa.

[2] Id. at 35.

[3] Id. at 86-87.

[4] Id. at 88.

[5] Id. at 89-91.

[6] Id. at 100-103.

[7] Id. at 74.

[8] Pablo C. Espiritu, Jr.

[9] Rollo, pp. 36-51.

[10] Id. at 50-51.

[11] Id. at 52-57. Penned by Commissioner Victoriano R. Calaycay and concurred in by Commissioners Raul T. Aquino and Angelita A. Gacutan.

[12] Id. at 57.

[13] Id. at 29.

[14] Id. at 25-33.

[15] Id. at 31-32.

[16] Id. at 35.

[17] Surigao del Norte Electric Cooperative v. NLRC, G.R. No. 125212, June 28, 1999, 309 SCRA 233, 247.

[18] Samson v. National Labor Relations Commission, 386 Phil. 669, 682 (2000).

[19] Phil. Aeolus Automotive United Corp. v. NLRC, 387 Phil. 250, 261 (2000).

[20] Pepsi-Cola Distributors of the Philippines, Inc. v. NLRC, 338 Phil. 773, 781-782 (1997).

[21] GT Printers v. National Labor Relations Commission, G.R. No. 100749, April 24, 1992, 208 SCRA 321, 324-325 (1992).

[22] Bondoc v. NLRC, 342 Phil. 250, 262 (1997).

[23] Philippine Long Distance Telephone Company v. National Labor Relations Commission, G.R. No. L-74562, July 31, 1987, 152 SCRA 702.

[24] Rollo, p. 142.

[25] G.R. No. 149349, March 11, 2005, 453 SCRA 256.

[26] Id. at 271.

[27] Zenco Sales, Inc. v. National Labor Relations Commission, G.R. No. 111110, August 2, 1994, 234 SCRA 689, 697-698.

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