LIGAYA R. MACHICA, ROSSINI D. LOSABE, ANALYN V. BASAS, HARRY G. FLORES, CESAR M. LERO, NILO S. VILLARMENTE, ANNABELLA E. FLORES AND RALPH O. TAPADO, PETITIONERS, VS. ROOSEVELT S...

G.R. NO. 168664. May 04, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Assailed in the Petition for Review on Certiorari is the Court of Appeals (CA) Decision[1] in CA-G.R. SP No. 88259 which dismissed herein petitioners' Petition for Certiorari under Rule 65 of the Rules of Court.

The controversy arose from the following antecedents:

The Roosevelt Service Center, Inc. (RSCI) employed thirty (30) persons at its gasoline station, including Ligaya Machica, Rossini Losabe, Analyn Basas, Harry Flores, Cesar Lero, Nilo Villarmente, Annabella Flores and Ralph Tapado.[2] RSCI sold gasoline and other oil products to its customers, one of whom was the San Francisco Mirror Corporation (SFMC).

Sometime in April 1999, RSCI received a complaint from Hebron, one of its customers, that in its withdrawal slips, it was made to appear that gasoline and other oil products from RSCI was more than it actually purchased. This prompted RSCI to issue a Memorandum dated April 17, 1999 to its employees, informing them of the anomalies Hebron discovered and that, henceforth, withdrawal slips issued to Hebron had to be shown to management employees before gasoline and other oil products were loaded on his vehicles.[3]

In the meantime, SFMC received statements of crude and gasoline purchased from RSCI from October 16 to October 30, 2000 in the total amount of P47,991.15, along with a request to pay the amount.[4] SFMC found the billings exorbitant and conducted an investigation of its personnel. In the process, some SFMC personnel admitted in writing to having conspired with some RSCI employees in inflating the purchases of SFMC.

In a Letter[5] addressed to RSCI, dated December 21, 2000, SFMC declared that it could not act favorably on its billings considering that the "dishonest act could have been easily prevented if [RSCI] personnel had refused to [accede to it]."

RSCI required SFMC to conduct its analysis on the alleged irregularities and submit its findings thereon. SFMC complied and transmitted its analysis of the situation to RSCI on January 11, 2001, thus:

> - There was a very large discrepancy in consumption of gasoline per comparison with previous gasoline station retained. Based on the comparative Gasoline Consumption Analysis (Exh. 1), the increase is 1,279.63 liters or 46% while there is a decrease in the number of trips average per month. The basis of comparison is on the same number of trucks and truck type and plate number.
>
> - Based on the Consumption analysis per truck on a per transaction basis, there were several inconsistencies on unit cost/per liter used purchased on the same date by different trucks (Exh. B).

- A major difference in unit cost purchased on the same day of 10/19 is on TTG-299 having P/13.9335/liter whereas the other averages P/14.3420, WGG-442 purchased 59.09 liters in the total amount of P/860.30 with unit cost of P/14.5591, while other purchased on the same date (10/18) averages unit cost of P/14.3413 (Exh. B--**).

- As compared with the gasoline consumption in November 2000 with the previously retained gasoline (Petron), majority of the trucks have lower consumption as compared with the June to October consumption. (see Exh. A).

- There appeared to be an excess in the fuel tank capacity as loaded against the number of liters loaded in the station (see Exh. C).[6]

In view of the findings of SFMC, RSCI confronted its employees who denied any involvement in the anomalies unearthed by SFMC. RSCI was impelled to give a 50% discount to SFMC. Thus, SFMC paid only P23,995.58 of the total billing.

On March 23, 2001, RSCI issued the following Memorandum to all its employees:

To:
ALL PERSONNEL CONCERNED

Subject:
San Francisco Mirror Corp.

#43 De Vera St., SFDM, Quezon City

Ang dating customer na ito ay hindi na bumibili ng mga fuels (Diesel at Gasolina) mula pa noong OCTOBER 2000. Ang dahilan ay nagkaroon ng PANDARAYA sa mga transactions. (Tingnan at basahin ang nakalakip na letter ng San Francisco Mirror Corp.) Ang PANDARAYA at SABWATAN ay pinatunayan ng San Francisco Mirror Corp. sa mga sulat na pag-amin ng kanilang empleyado.

Dahil sa nangyaring ito, ang naging resulta ay ang mga sumusunod:

1)

Umalis ang San Francisco sa atin, nawalan ng "good customer" ang istasyon

2)

Inalis/tinanggal ang mga empleyadong kasama sa pandaraya at sabwatan

3)

Sinabihan ang ibang customers tungkol sa sabwatan sa pandaraya at nasira ang "Goodwill" ng istasyon

4)

Ang utang nila P47,991.15 naiwan noong October 2000 pa ay nitong March 20, 2001 lang binayaran (or after SIX MONTHS) at kalahati lang o P23,995.58 ang ibinayad

5)

Dahil sa wala namang aamin sa pandarayang ito, ang mga may kaugnayan o nakakaalam sa nangyari ay mag-share sa hindi binayaran ng customer

Sana ay huwag nang gagawin uli ito sa ibang customers at tigilan na ang ganitong masamang gawain. Siguradong hindi mabuti ang mangyayari sa mga gawaing ito!

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Roosevelt Servicenter Inc.

March 23, 2001[7]

Nabasa ko at naintindihan ang memo tungkol sa SAN FRANCISCO MIRROR CORP. na kasama sa pahina 1.[8]

However, Ligaya Machica, Rossini Losabe, Analyn Basas, Harry Flores, Cesar Lero, Nilo Villarmente, Annabella Flores and Ralph Tapado refused to sign the Memorandum. Instead, they wrote "ayaw" on the spaces where they were supposed to acknowledge having read and understood the same.[9]

On March 26, 2001, the following Monday, Ligaya Machica filed a Complaint[10] for illegal dismissal, underpayment of salaries, holiday pay, service incentive leave, 13th month pay, separation pay and attorney's fees against RSCI and its President, Odilon Dizon. It was docketed as NLRC-NCR-Case No. 00-03-01864-2001. On March 28, 2001, Rossini Losabe, Analyn V. Basas, Harry G. Flores, Cesar M. Lero, Nilo S. Villarmente, Annabella E. Flores and Ralph O. Tapado, likewise, filed their complaint for illegal dismissal with a plea for monetary benefits. [11] It was docketed as NLRC-NCR-Case No. 00-03-01942-2001. The two complaints were later consolidated.

When the RSCI employees later received their pay for March, there was already a P500.00 deduction.

In the Joint Affidavit which was appended to their Position Paper,[12] complainants alleged that, because of their refusal to sign the Memorandum, their employment was terminated and they were told not to report for work anymore. The complainants claimed that their dismissal was without just or valid cause; worse, they were deprived of their right to due process. They prayed, thus:

WHEREFORE, premises considered, it is most respectfully prayed that judgment be rendered declaring that complainants were illegally dismissed, and ordering respondents to solidarily pay complainants full backwages, underpayment, illegally deducted amounts, service incentive leave pay, 13th month pay, moral and exemplary damages, and attorney's fees as discussed above.

Other reliefs just and equitable are likewise prayed for.[13]

For their part, RSCI and Dizon asserted that the complainants were not dismissed from their employment, but were merely told to take three to seven days off to decide whether to agree to share in the loss sustained by RSCI. They investigated the reported anomalous transactions and confirmed that, indeed, employees of SFMC and the complainants had, for six months, conspired to commit the acts complained of.[14] They even sought the help of the Barangay Lupon so that the contents of the Memorandum could be explained to the complainants, but the scheduled conference had to be cancelled due to the filing of the complaints for illegal dismissal. They claimed that the complainants were never dismissed but stopped reporting for work and had, thus, abandoned their posts.[15]

On October 10, 2002, the Labor Arbiter (LA) rendered judgment[16] in favor of the complainants. He declared that given the factual backdrop, it is more in consonance with logic and ordinary human experience that complainants were indeed dismissed by respondent Dizon, and that the latter's claim that complainants were only given three to seven days to study the Memorandum was a mere afterthought. Respondent Dizon had suspected that the complainants were in cahoots with SFMC's employees when they refused to sign the Memorandum. It was not unlikely for Dizon to terminate complainants immediately. The decretal portion of the Decision[17] reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring that complainants were illegally dismissed, and ordering respondents to reinstate complainants to their former positions, and to pay them (for purposes of appeal, backwages is tentatively computed):

a. LIGAYA MACHICA:

1.

Backwages from March 23, 2001 to August 23, 2001 (P218.00 x 26 days x 17 mos) P96,356.00

2.

13th month pay (96,356/12 mos.) 8,029.66

3.

Illegal deduction 500.00

4.

Moral damages 10,000.00

5.

Exemplary damages 5,000.00

b. Rossini Losabe, Analyn V. BasaR, Harry G. Flores, CeAsar M. Lero, Nilo S. Villarmente, Annabella E. Flores and Ralph Q. Tapado, (For each of them):

1. Backwages from March 26, 2001 to
August 26, 2001
(P218.00 x 26 days x 17 mos. x complainants)..... P674,492.00

2. 13th month pay (P8,029.66 x 7 complainants)..... 56,207.62

3. Illegal deduction (P500.00 x 7 complainants)..... 3,500.00

4. Moral Damages (P10,000 x 7 complainants)..... 70,000.00

5. Exemplary damages (P5,000.00 x complainants).. 35,000.00

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P959,085.28

plus ten percent (10%) of the total award as attorney's fees.

SO ORDERED.[18]

On appeal to the National Labor Relations Commission (NLRC) by the respondents, the NLRC issued a Resolution dated August 31, 2004, reversing the decision of the LA. The NLRC declared that respondent Dizon issued his Memorandum in good faith; it was a declaration of amnesty and forgiveness; it did not name names but only asked employees to share the loss from the discovered anomalous transactions; and the issuance of said Memorandum indicated a "positive business direction." The NLRC ruled

that the complainants were not dismissed but were merely given a period of three to seven days within which to decide whether they would agree to share in the loss incurred by RSCI. It also declared that complainants did not abandon their employment, and that they misinterpreted Dizon's Memorandum as well as the events surrounding its issuance. The fallo of its Resolution reads:

> WHEREFORE, the foregoing premises considered, the finding of illegal dismissal by the Labor Arbiter is SET ASIDE.
>
> The complainants are hereby ordered to report back for work within ten (10) days from receipt of this resolution otherwise they shall be deemed to have forfeited their jobs; and the respondents are also ordered to accept them to their former or substantially equal positions, but without backwages.
>
> The awards for moral and exemplary damages are DELETED for lack of factual and legal bases.
>
> However, the awards for the complainants-appellees' propertionate (sic) 13[th] month pay for the period of 01 January 2001 up to 24 March 2001, and for the refund of the PhP500.00 deduction made from their March 2001 salary, are AFFIRMED.
>
> SO ORDERED.[19]

The complainants filed a Motion for Reconsideration which the NLRC denied for lack of merit.[20]

The employees assailed the ruling in the CA, asserting that they were dismissed from their employment on account of their refusal to share in the P23,997.58 loss of RSCI. Petitioners averred that respondents' claim that they were merely given three to seven days within which to decide whether to agree to share in the loss of RSCI, had no factual basis. Rather than agree to a conference with respondents before the Lupon, they resolved to file their complaints for illegal dismissal.

On June 27, 2005, the CA rendered judgment affirming the Resolutions of the NLRC. The appellate court ruled that the complainants failed to prove that they were dismissed from their employment.[21]

The employees then filed a Motion for Reconsideration which the appellate court denied; hence, the instant petition.

Petitioners allege that the CA erred in ruling that they were not dismissed from employment following their refusal to agree to share in the loss of respondent corporation and in not affirming the decision of the LA.

The petition has no merit.

In ruling for the respondents, the CA declared:

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> Nonetheless, despite petitioners' refusal to sign said memorandum, Odilon Dizon gave petitioners ample time to study the memorandum and if necessary to take a 3 to 7 days leave and thereafter to inform said Odilon Dizon of their reservations or their need for further clarification regarding the memorandum.
>
> Said memorandum was issued on 23 March 2001 (Friday). However, petitioner Ligaya R. Machica and petitioners Rossini D. Losabe, et al., precipitately filed their Complaint with the NLRC on 26 March 2001 (Monday) and 28 March 2001 (Wednesday). In fact, while the petitioners were still studying the memorandum in question, private respondents requested the Lupon ng Tagapamayapa of Barangay San Francisco del Monte to explain said memorandum to petitioners so that they could be enlightened by a disinterested party. However, on the date set for the conference, petitioners informed the Barangay Lupon that they have already filed a complaint with the NLRC resulting in the cancellation of said conference.
>
> Considering the foregoing circumstances, Labor Arbiter Nambi erred in making the unfounded conclusion, not supported by substantial evidence, that "it is more in consonance with logic and ordinary human experience to accept complainants" claim that they were dismissed by Dizon." We are not convinced by the bare claim of petitioners that they were illegally dismissed by Odilon Dizon for not signing the memorandum. We take serious note that this is not the first time that a customer of private respondent RSCI was cheated by the latter's employees. In a handwritten memorandum of management dated 17 April 1999, addressed to all its personnel, it appears that Hebron, another customer of private respondent RSCI, complained that it was also victimized by the dishonest acts of RCSI's employees (the liters of gasoline indicated in the withdrawal slips were altered), which set off the issuance of a similar memorandum from management to protect the customers, as well as its business interests. Said earlier memorandum was signed by the employees, including six (6) of the petitioners, as patunay na naintindihan ang memong ito." If said memorandum dated 17 April 1999 which is more or less similar in tenor as the questioned memorandum of 23 March 2001 was meant to terminate the employees who signed the same for being an admission of guilt, how come the said six (6) petitioners continued to be employed despite having signed the same in 1999?
>
> It is undisputed that the matter was brought to the attention of the Lupon ng Tagapamayapa of Barangay San Francisco del Monte to defuse the situation. The proceedings before the Lupon are non-adversarial in nature. If indeed private respondents were bent on terminating the petitioners from their jobs for not signing the questioned memorandum or constructively dismissing petitioners by asking them to take a short leave, there would have been no necessity for private respondent to refer the matter to a disinterested party to help explain the memorandum to petitioners. It appears from the record that it was petitioners' immediate filing of their complaints with the NLRC which cancelled the conference before the Lupon.[22]

Petitioners, however, maintain that, as ruled by the Labor Arbiter -

> x x x [I]t is not true, contrary to records, that petitioners were studying the memorandum when respondents went to the Barangay, for, as petitioners repeatedly stressed, they were dismissed, not just asked to take a leave and study the memorandum; and b) there is no proof that the purpose of respondents in going to the Barangay is to explain the memorandum. That is mere assertion without proof. There is really no sense for respondents to go to the Barangay only for the purpose of securing the Barangay official's services to clarify or explain the memorandum to petitioners, for the memorandum is self-explanatory.
>
> In any event, such Barangay conference cannot be used as an evidence that petitioners were not dismissed. On the other hand, the fact that petitioners immediately filed complaints for illegal dismissal with NLRC only shows that they were indeed dismissed, not just asked to take a leave and study the memorandum. Along this line, the Labor Arbiter's disposition has to be sustained, being in harmony with reason.[23]

The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment.[24] It must be stressed that the evidence to prove this fact must be clear, positive and convincing.[25] The rule that the employer bears the burden of proof in

illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners.

We have reviewed the Memorandum of respondent Dizon and find nothing therein to indicate that any of the employees of respondent corporation, including the petitioners, would be considered terminated from employment if they refused to share in the P23,997.58 loss. Petitioners and other employees of respondent corporation were merely required to affix their signatures in the Memorandum on the space opposite their respective names, to confirm that they had read and understood the same. As elucidated by the NLRC in the assailed Resolution:

> Read in its entirety, the Memorandum reflects the GOOD FAITH of the employer in resolving a discovered anomaly. First, it is a declaration of AMNESTY and FORGIVENESS; it did not name names; it did not state that the guilty ones will be pursued and punished. Second, it asked for SHARING among the employees for the loss due to the discovered anomaly. Third, it indicated a POSITIVE BUSINESS DIRECTION as it exhorted the employees from participating in similar anomalies henceforward.
>
> Thus, given the true import of the subject Memorandum, it is easy to uphold the respondents position that there is no illegal dismissal.
>
> We fully agree with their argument, thus:
>
> xxxx
>
> 4.03 The key to the Labor Arbiter's ruling of illegal dismissal appears to stem from the memorandum issued by appellants dated March 23, 2001. xxx
>
> 4.04 On closer examination, there is nothing in said memorandum to support the Labor Arbiter's findings and ruling of illegal dismissal.
>
> 4.04.01 The first paragraph is simply a prefatory statement stating facts and summarizing the contents of the December 21, 2000 letter of SFMC to appellants. xxx
>
> 4.04.02 The second paragraph likewise gives certain facts. Subparagraphs 1 to 4 merely states facts. Subparagraph 5 merely states that those who are involved or who knew about the anomaly will share in the portion of the billing unpaid by the customer.
>
> 4.04.03 Finally, the third paragraph merely requests the employees in general not to repeat the anomaly to other customers, and to stop the anomalous acts. It closes with a reminder that the anomalous acts would do no good. The SFMC reaction stated in the memorandum is a case in point.
>
> 4.05 There is nothing in the memorandum from which a conclusion of termination may be inferred. There is also nothing in the memorandum that determines guilt in anybody. In fact, the memorandum is addressed to all employees in general.
>
> 4.06 Contrary to the Labor Arbiter's finding about the supposed oral dismissal, indications of the facts of the case point to the truth that there was no such oral dismissal, and the claim is just a ruse of the complainant-appellees to prop a cause of action against appellants.
>
> 4.07 There is no reason why appellants should have issued the memorandum if it intended to orally dismiss appellees. In fact, none of those who signed the memorandum were dismissed by appellants.
>
> 4.08 The words of the memorandum clearly point to the fact that there will be no termination of services, as the memorandum even requests that the anomalous transactions be discontinued.
>
> 4.09 The suggestion of a leave of absence which in no case was imposed upon any of the employees, and which fact the Labor Arbiter adverts in his decision, also shows that there is no termination. There is no reason why appellants will even suggest a leave when appellants had supposedly 'orally dismissed' appellees.

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> 4.10 Finally, the recourse to the Lupon is a further attempt by appellants to come to an understanding with the employees regarding the memorandum. There is no reason why appellants had to request the intervention of the Lupon when it had supposedly "orally dismissed" appellees.
>
> 4.11 Taking al of these in stride, it is clear that contrary to the Labor Arbiter's finding that there was a supposed oral dismissal, there was none. The existence of the memorandum, the nature of its contents, the continuation of the employment of all those who signed the memorandum, the suggestion of a leave of absence, and the recourse to the Lupon, all indicate that there was no intention of appellants to dismiss appellees.
>
> 4.12 On the contrary, it is now clear that the claim of an oral dismissal by appellees is a ruse to excuse the fact that they jumped the gun on appellants. Fearing, maybe out of guilt, that an investigation may be forthcoming to determine who were involved, but only for the purpose of sharing the unpaid portion of the bill AND NOT A TERMINATION, the appellees posthaste ran to the NLRC and because they outran the law, lied [or] fabricated a story that appellants had supposedly "orally dismissed" them.[26]

The NLRC can hardly be faulted for grave abuse of discretion amounting to excess or lack of jurisdiction in its analysis of the Memorandum of respondent Dizon, and in concluding that, indeed, petitioners were not dismissed from their employment. After all, grave abuse of discretion implies a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion of positive duty enjoined or to act at all in contemplation of law. It is not sufficient that a tribunal, or quasi-judicial agency of the government, in the exercise of its power, abused its discretion; such abuse must be grave.[27]

In sum, the NLRC and the CA were correct in finding that petitioners were not dismissed from employment; there was no intent on the part of respondents, as employers, to dismiss petitioners; and there was, likewise, no intention on the part of petitioners to abandon their work.

Under these circumstances, it is but fair to state that each party must bear his or her own loss, thus placing them on equal footing.[28]

IN LIGHT OF ALL THE FOREGOING, premises considered, the present petition is hereby DENIED. The Court of Appeals Decision dated June 27, 2005 in CA-G.R. SP No. 88259 is AFFIRMED. No costs.

SO ORDERED.

Panganiban, C. J. (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Penned by Justice Celia C. Librea-Leagogo, with Justices Amelita G. Tolentino (Acting Chairman) and Lucas P. Bersamin, concurring; rollo, pp. 32-58.

[2] Rollo, p. 120.

[3] Id. at 116.

[4] Id. at 125.

[5] Id. at 124.

[6] Id. at 123.

[7] Id. at 119.

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[8] Id. at 120.

[9] See Affidavit, rollo, p. 106.

[10] Rollo, p. 179.

[11] Id. at 181-183.

[12] Id. at 99, 105.

[13] Id. at 102.

[14] Id. at 110, 111.

[15] Id. at 113.

[16] Penned by Labor Arbiter Salimathar V. Nambi.

[17] Rollo, p. 139.

[18] Id. at 146-147.

[19] Id. at 95-96.

[20] Id. at 97.

[21] Id. at 32-56.

[22] Id. at 53-54.

[23] Id. at 20.

[24] Salvador v. Court of Appeals, G.R. No. 124899, March 30, 2004, 426 SCRA 433, 446 citing Luxuria Homes, Inc. v. Court of Appeals, 361 Phil. 991 (1999).

[25] Asia Traders Insurance Corporation v. Court of Appeals, G.R. No. 152537, February 16, 2004, 423 SCRA 114, 120 citing R.F. Navarro & Co. v. Vailoces, 361 SCRA 139 (2001).

[26] Rollo, pp. 92-94.

[27] Punzalan v. De la Peña, G.R. No. 158543, July 21, 2004, 434 SCRA 601, 609.

[28] Chong Guan Trading v. National Labor Relations Commission, G.R. No. 81471, April 26, 1989, 172 SCRA 831, 844, citing Pan American World Airways, Inc. v. Court of Industrial Relations, et al., G. R No. L-20434, July 30, 1986, 17 SCRA 813 and SSS v. SSS Supervisors' Union -CUGCO, G. R No. L-31832, October 23, 1982, 117 SCRA 746.

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