

## CAPITOL WIRELESS, INC. PETITIONER, VS. CARLOS ANTONIO BALAGOT, RESPONDENT.

*G.R. No. 169016. January 31, 2007*

Ponente: CARPIO MORALES, J.

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### CARPIO MORALES, J.:

Petitioner Capitol Wireless, Inc. (Capwire) hired respondent, Carlos Antonio Balagot (Balagot), as collector on September 16, 1987. As Balagot's duties required him to work outside of the office, Capwire assigned to him a motorcycle as a service vehicle, for which it shouldered expenses for gasoline and maintenance.

At around 3:35 p.m. of May 9, 2000, the director of Capwire's Human Resource Department (HRD) saw, to his surprise, Balagot at the Head Office at Paseo de Roxas, Makati of the China Banking Corporation (China Bank) with which Capwire had no business relations. It was thereupon discovered that Balagot had been rendering services to China Bank and that since 1992, Balagot had been concurrently employed with Contractual Concepts, Inc. (CCI), a local manpower company, which assigned him to render messengerial services to China Bank in the same year.

As Capwire HRD director recommended the immediate termination of the services of Balagot on the ground of grave misconduct and willful breach of trust and confidence,[1] the HRD sent on May 10, 2000 a memorandum to Balagot reading:

A report was received this morning from HRD for grave misconduct on your part. It was found out that you are employed with Contractual Concepts, Inc. as a motorized messenger serving their client, China Banking Corp. In view of this, explain within twenty four (24) hours why no disciplinary action should be taken against you for this matter.[2]

In an undated handwritten letter-reply, Balagot admitted the charge against him.[3]

An administrative hearing was thus conducted on May 18, 2000 during which Capwire presented 1) a certification of Balagot's employment with CCI, signed by its president and general manager, stating that Balagot had been assigned to China Bank since December 8, 1992;[4] 2) a cash voucher in favor of Balagot issued by CCI reflecting a loan amounting to P2,000;[5] and 3) Balagot's payslip from CCI for the period April 1-15, 2000.[6]

Balagot admitted that simultaneously with his employment as a collector for Capwire, he had been performing messengerial duties to China Bank on a "part time basis." [7]

On May 22, 2000, Capwire informed Balagot that he was found guilty of grave misconduct, resulting in the loss of trust and confidence in him, and that he was dismissed on even date.[8]

Balagot thereafter filed on August 4, 2000 a complaint for illegal dismissal against Capwire and its president Epifanio Marquez (Marquez) before the National Labor Relations Commission (NLRC).[9] The case, docketed as NLRC NCR (S) Case No. 30-08-03099-00, was raffled to Labor Arbiter Potenciano Cañizares.[10]

By Decision of March 7, 2001, Labor Arbiter Cañizares decided in favor of Balagot in this wise:

After careful deliberation, We are of the opinion that as far as the complainant's working in another company while being an employee of the respondent is not a just cause for dismissal under the Labor Code, especially that there is no positive showing that the complainant uses the company time of one employer in his service with another or that the two employers are in competing businesses. Indeed, an employee or worker has to resort to the proper use of all his time and skills in order to survive in our country at its economic crisis. Even in America this having-double-jobs on moonshining is an accepted – even encouraged – system. On the other hand, just as companies have to be innovative if they do not desire to die, the workers should apply his imagination and judgment wisely to augment his earnings for his family.

The respondents exclaimed that it is hard to believe that the complainant's employment with Contractual Concepts, Inc. does not interfere with his work with them. However, a scrutiny of the record does not show that the respondents has [sic] established a prima facie case against the complainant for using their company time in working with another. The respondents may indeed find it "hard to believe" that the complainant has not been cheating them of company time, but unless they can show us the evidence, We cannot affirm that belief.[11] (Underscoring supplied)

The Labor Arbiter thus ordered Capwire and Marquez to jointly and severally[12] reinstate Balagot without loss of seniority rights and other privileges;[13] and to pay Balagot full backwages and 10% of the monetary award as attorney's fees, and should Balagot opt for separation pay in lieu of reinstatement, to give him separation pay equivalent to one-half month pay for every year of service, a fraction of six months being considered one whole year.[14]

On Capwire's appeal, the NLRC reversed the Labor Arbiter's decision, holding as follows:

There is no denying that taking on double job [sic] per se is not illegal as extra income would go a long way for an ordinary worker like herein complainant. The only limitation is where one job overlaps with the other in terms of time and/or poses a clear case of conflict of interest as to the nature of business of complainant's two employers.

In the case at bar, the conflict of interest scenario is out of the question since respondent Capitol Wireless (Capwire) business is very different from Contractual Concepts Incorporated. The problem, however, is as to time and performance of duty. With respondent CAPWIRE complainant works as a collector from 8:00 A.M. to 5:00 P.M. On the other hand, his job at Contractual Concept is as a messenger assigned at China Bank. As a messenger, we do not believe that he'll be performing his task after 5:00 P.M. as by then all private offices are closed. In fact, Bank closes at 3:00 PM. This being so, it is highly improbable that in the exercise of a performance of his work with Contractual Concept, the same will not eat up or use part or portion of his official time as collector with herein respondents. So that while earning his salary with respondent from 8:00-5:00 PM as messenger, he was also being paid as messenger by the other company. In which cases, respondent company has all the right and reason to cry foul as this is a clear case of moonlighting and using the company's time, money and equipment to render service to another company. A classic case of wanting to have his cake and eat it too. A situation which we simply cannot countenance. Apropos from evidence on records it is clear that complainant was guilty of violating the company rules and regulations resulting into lost [sic] of trust and confidence. He was therefore lawfully and rightfully separated from service for cause and with due process.[15] (Emphasis and underscoring supplied)

The NLRC accordingly dismissed Balagot's complaint.

On Balagot's Petition for Certiorari, the Court of Appeals, by Decision[16] of May 31, 2005, holding that Capwire failed to prove that Balagot was dismissed for just cause, reversed the decision of the NLRC and reinstated that of the Labor Arbiter. The Court of Appeals absolved Capwire president Marquez of solidary

liability with Capwire, however.[17]

Its Motion for Partial Reconsideration[18] having been denied,[19] Capwire filed the instant Petition for Review on Certiorari, raising the issue of “whether or not the Honorable Court of Appeals committed manifest error in holding that respondent was illegally dismissed, thus, totally disregarding the evidence on record, in violation of the Labor Code as amended, and the revised rules of evidence.”[20]

In his Comment, [21] Balagot reiterates his argument that his job at CCI did not interfere with his job at Capwire, maintaining that he performed his tasks for CCI only after office hours. To bolster his argument, he asserts that his performance at Capwire was always satisfactory and never went below average.[22]

The petition is impressed with merit.

Capwire’s evidence, consisting of, among other things, its HRD director’s report that he saw Balagot at China Bank at 3:35 p.m. of May 9, 2000; Balagot’s above-stated handwritten admission; the December 8, 1992 certification of employment signed by CCI’s president and general manager; the cash voucher in favor of Balagot for a company loan from CCI; and Balagot’s payslip from CCI for the period April 1-15, 2000, unmistakably indicate that from December 8, 1992 to May 22, 2000, Balagot had been using Capwire time to perform service for another company.

Balagot’s claim that he performed his tasks for CCI only after his office hours with Capwire does not impress. As Capwire argues:

Under the Rules on Evidence, specifically Section 3, Rule 131, the presumptions: “that the ordinary course of business has been followed” and “that things happened according to the ordinary course of nature and the ordinary habits of life,” are disputable presumptions that can only be overcome by clear and preponderant evidence.

In this connection, it is of general knowledge that the banking industry follows the ordinary working hours of 8:00 AM to 5:00 PM. Accordingly, an employee of a bank is expected to work from eight in the morning to five in the afternoon. And, logically, since the banking industry deals with businesses which observe the same working hours, a bank has no use for an employee who can only be of service to it after 5:00 o’clock in the afternoon.

Now, since it is presumed, until contradicted that, “the ordinary course of business has been followed,” and “things happened according to the ordinary course of nature and the ordinary habits of life,” it logically follows that petitioner performed his duties with China Banking Corporation during office hours – that is from 8:00 am to 5:00 pm. This presumption can be overcome only by clear and preponderant evidence. However, the records of the case will clearly show that respondent failed to present any proof to contradict the same, hence, the presumption stands against him. Thus, it was a highly erroneous conclusion for the Court of Appeals to have found that there was no convincing evidence to prove that petitioner was using the company resources of petitioner in rendering messengerial services for China Banking Corporation x x x.

In the same manner, this Honorable Court can also take judicial notice of the fact that banks, or any business establishment for that matter, close its [sic] business transactions and operations at 5:00 in the afternoon because this fact is of public/common knowledge. Thus, it is respectfully submitted that there is no need to produce evidence that indeed banks close its [sic] operations after 5:00 P.M.

Besides, respondent admitted in his petition, that his job with petitioner was to be carried out from 9:00 a.m. to 5:00 p.m., Monday through Friday. [Underscoring in the original] And, it has also been established that banks carried its [sic] business operations simultaneous with the petitioner. Undeniably, respondent’s work schedule with China Banking Corporation conflicts with his work schedule with petitioner. Verily, as offices customarily close at 5:00 P.M., it would be impossible for respondent to have rendered his services to China

Banking Corporation only “after office hours”. . .[23]

x x x x

Moreover, if respondent’s allegation is true that indeed he was only rendering services to China Banking Corporation after 5:00 P.M., then why was he sighted by private respondent’s HR director within the premises of the said bank at 3:35 pm in the afternoon?[24] (*Italics in original; emphasis and underscoring supplied*).

Furthermore, the minutes of the administrative hearing conducted by Capwire on May 18, 2000 reflect the observations of Balagot’s superiors about his shortcomings in the conduct of his duties as collector, to wit: failure to submit a detailed report of all collections, incomplete collections, and delayed collections.[25] These observations, which were not refuted, detract from Balagot’s claim that his job with CCI did not interfere with his duties at Capwire.

Capwire having established, through substantial evidence, a prima facie case of just cause to dismiss Balagot, the burden of evidence shifted to Balagot.[26] Balagot failed, however, to controvert the same. This Court is thus constrained to uphold his dismissal.

Verily, jurisprudence recognizes as a valid ground for dismissal of an employee unauthorized use of company time, as *Pepsi-Cola Distributors of the Philippines, Inc. v. NLRC*[27] holds:

[An employee] cannot serve himself and [his employer] at the same time all at the expense of the latter. It would be unfair to compensate private respondent who does not devote his time and effort to his employer. The primary duty of the employee is to carry out his employer’s policies. . . .[28] (*Underscoring supplied*),

and of company vehicle, as *Soco v. Mercantile Corporation of Davao*[29] holds:

. . . Petitioner avers that the damage inflicted on MERCO by his activities due to his misuse of the company vehicle during working hours did not hamper the smooth business operations of MERCO.

However, what should not be overlooked is the prerogative of an employer company to prescribe reasonable rules and regulations necessary or proper for the conduct of its business and to provide certain disciplinary measures in order to implement said rules and to assure that the same would be complied with. A rule prohibiting employees from using company vehicles for private purpose without authority from management is, from our viewpoint, a reasonable one. This regulation cannot be faulted by petitioner because this is proper and necessary even if only for an orderly conduct of MERCO’s business. From the evidence presented, petitioner twice used the company vehicle in pursuing his own personal interests, on company time and deviating from his authorized route, all without permission. x x x Certainly, to condone petitioner’s own conduct will erode the discipline that an employer should uniformly apply so that it can expect compliance to the same rules and regulations by its other employees. Otherwise, the rules necessary and proper for the operation of its business, would be gradually rendered ineffectual, ignored, and eventually become meaningless.[30] (*Underscoring supplied*)

WHEREFORE, the petition is GRANTED. The appealed decision of the Court of Appeals is REVERSED and SET ASIDE, and the September 23, 2002 decision of the National Labor Relations Commission is REINSTATED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

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[1] NLRC records, p. 27.

[2] Id. at 28.

[3] Id. at 29.

[4] Id. at 31.

[5] Id. at 32.

[6] Id. at 33.

[7] Id. at 37.

[8] Id. at 44.

[9] Id. at 2-3.

[10] Id. at 1; Rollo, p. 15.

[11] Rollo, p. 80.

[12] Id. at 81.

[13] Ibid.

[14] Id. at 81-92.

[15] Supra note 1 at 228-230.

[16] Penned by Court of Appeals Associate Justice Salvador Valdez, with the concurrence of Associate Justices Mariano C. Del Castillo and Magdangal M. de Leon. CA rollo, pp. 143-153.

[17] Id. at 153.

[18] Id. at 154-164.

[19] Id. at 169-170.

[20] Supra note 11 at 17.

[21] Id. at 129-134.

[22] Id. at 132.

[23] Supra note 11 at 18-20.

[24] Id. at 21.

[25] Supra note 1 at 36.

[26] Vide *Bautista v. Sarmiento*, G.R.No. L-45137, September 23, 1985, 138 SCRA 587, 593 (the burden of evidence shifts from party to party depending upon the exigencies of the case in the course of the trial.).

[27] 358 Phil. 773 (1997).

[28] Id. at 782.

[29] G.R. Nos. L-53364-65, March 16, 1987, 148 SCRA 526.

[30] Id. at 532.

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