CABALEN MANAGEMENT CO., INC., MA. ESTELA O. NIEVERA, IAN TIONGSON, ADJI TIONGSON, ESTER O. NIEVERA AND ANASTACIA NAVAL, ADRIANO JR. CORPORATION, LEDA A. PANGILINAN, EVA S. CANDE...

G.R. NO. 169494. July 24, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

From this Court's Decision[1] of March 14, 2007, petitioners seek reconsideration.

In their petition for review on certiorari before this Court, petitioners sought to set aside the April 29, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 85159, which reversed the earlier rulings of the Labor Arbiter and the National Labor Relations Commission (NLRC); and its Resolution of August 25, 2005,[3] which denied their motion for reconsideration.

The assailed CA Decision held that except for respondents Vizier Inocencio and Vincent Edward Mapa whose petitions were dismissed pursuant to Section 5, Rule 7 of the Rules of Court and Section 4 (a) of the Rules of Procedure of the NLRC, herein respondents were illegally dismissed from their employment.

This Court, by Decision of March 14, 2007, affirmed the CA Decision, hence, petitioners' Motion for Reconsideration now subject of the present Resolution. To the Motion, respondents filed their Opposition.

In pleading a reconsideration of the Decision, petitioners invite attention to the fact that not one, but two administrative bodies possessing specialized knowledge and expertise in their respective fields, i.e, the office of the Labor Arbiter and the NLRC, had previously ruled that the dismissal of respondents from work was legal.

Petitioners claim that contrary to the CA's and this Court's holdings, the affidavits of their witnesses, Henry dela Vega Balen (Balen) and Roderick Malana (Malana), as well as the audit report dated September 19, 2001, are admissible and of rational probative value.

With respect to the statements executed by Balen and Malana, petitioners manifest that the originals thereof were submitted to the Labor Arbiter during the preliminary conference of the case; and even respondents have not objected to the submission of the statements, either on the ground that they were photocopies or that they were altered or were not presented to them at all.

Further, petitioners contend that respondents did not contest the findings of the audit report that the cancelled Order Slips (OS) and receipts, and the incidents of swapping dining OS with bar OS were beyond the course of ordinary business. Such finding should thus be accorded credit, they urge, given the observations of the Labor Arbiter about a "wholly credible scenario" of tip pocketing by respondents and the alleged admission of respondent Jesus Quiambao in his Sinumpaang Salaysay dated March 14, 2002, of the existence of the anomalous activity.

Petitioners furthermore maintain that the CA should have dismissed the petition with respect to respondents Geraldine Palermo, Rochelle De Leon, and William Lacson. For, so petitioners contend, respondents failed to sign the verification of their appeal to the NLRC to thus render the decision of the Labor Arbiter final as to them.

Finally, petitioners posit that the Decision of this Court should not have passed upon the legality of the dismissal of Quiambao because the same is subject of another case, NLRC NCR Case No. 00-05-06210-2003, which is still pending consideration by Labor Arbiter Ramon Valentin Reyes.

It bears stressing that this Court thoroughly considered the rulings made by the Labor Arbiter and the NLRC, which were pleaded by petitioners both in their petition for certiorari before the CA and in their petition for review before this Court. Then, as now, this Court appreciates no error in the reversal by the CA of the findings of the Labor Arbiter and the NLRC.

With respect to the statements of Balen and Malana and the audit report, petitioners need only to be reminded that evidence, even if not objected to, may still carry no probative value. For admissibility, should not be equated with weight, of evidence.[4]

Moreover, as respondents correctly point out in their Opposition, they have vehemently objected to the statements of petitioners' witnesses in their Reply[5] for being self-serving, undated, wanting in material particulars and not executed under oath. The same Reply bears out the fact that respondents objected to the audit report for being self-serving.[6]

Even assuming that the originals of the statements of Balen and Malana were submitted to the Labor Arbiter, still the copies extant in the records are lacking in material particulars, specifically the dates of execution and the persons before whom they were executed.

Notably, these particulars are determinative of whether the statements as well as the audit report had indeed precipitated the investigation of respondents as petitioners had claimed; or were presented only after the cases for illegal dismissal were filed as respondents had contended.

It may not be amiss to reiterate that it is the employer's burden to prove a valid dismissal. The case of the employer must stand or fall on its own merits and not on the weakness of the employee/s' defense.[7]

In discharging this bounden duty, it is not enough that petitioners showed that Quiambao had confirmed the occurrence of incidents of tip pocketing; they also had to prove that he and the rest of the respondents were responsible for it. This duty is all the more pressing in the case of Quiambao considering that it was he who called the management's attention to the incidents of tip pocketing among some of his co-employees, only to be charged with the offense he had asked to be investigated.[8] Not only that. Petitioners also had to prove that due process was observed in terminating the employment of respondents. As previously traversed in the Decision under reconsideration, petitioners unfortunately failed in all respects.

As to the alleged error of the CA in relaxing the verification requirement with respect to petitioners Palermo, De Leon and Lacson, it bears noting that petitioners had failed to raise this as an issue in its motion for reconsideration of the CA Decision,[9] thus precluding the appellate court from addressing the same. In fact, it is only now that the issue is presented before this Court.

Finally, regarding this Court's judgment on the legality of Quiambao's dismissal, respondents' Opposition affirms that his case for illegal dismissal due to business losses, which is docketed as NLRC NCR Case No. 00-05-06210-2003, is still unresolved before Labor Arbiter Ramon Valentin Reyes. On this score, this Court sets aside the judgment concerning the dismissal of respondent Quiambao.

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WHEREFORE, the Motion for Reconsideration is PARTLY GRANTED. The judgment pertaining to respondent Jesus P. Quiambao is VACATED and SET ASIDE. Petitioners Motion for Reconsideration is, in all other respects, DENIED for lack of merit, and the DENIAL is FINAL.

SO ORDERED.

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

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[1] Rollo, pp. 566-580.

[2] Id. at 37-51.

[3] Id. at 53-56.

[4] Rizal Workers Union v. Ferrer-Calleja, G.R. No. 82759, June 8, 1990, 186 SCRA 431, 437; Cu Bie v. Intermediate Appellate Court, G.R. No. L-63855, October 9, 1987, 154 SCRA 599, 607. See also People v. Turco, Jr. G.R. No. 137757, August 14, 2000, 337 SCRA 714, 730-731, which discussed the distinction between admissibility of evidence and the probative value thereof.

[5] CA rollo, pp. 247-248; Annex J to Annex 1 of Respondents' certioriari petition before the CA.

[6] Ibid.

[7] PCL Shipping Philippines, Inc. v. NLRC, G.R. No. 153031, December 14, 2006, citing Philippine Long Distance Telecommunication, Inc. v. Tiamson, G.R. Nos. 164684-85, November 11, 2005, 474 SCRA 761, 771.

[8] Sinumpaang Salaysay of Quiambao dated March 14, 2002, rollo, pp. 273-275.

[9] CA rollo, pp. 487-494.

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