

NEW PUERTO COMMERCIAL AND RICHARD LIM, PETITIONERS, VS. RODEL LOPEZ AND FELIX GAVAN, RESPONDENTS.

G.R. No. 169999. July 26, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

In order to validly dismiss an employee, he must be accorded both substantive and procedural due process by the employer. Procedural due process requires that the employee be given a notice of the charge against him, an ample opportunity to be heard, and a notice of termination. Even if the aforesaid procedure is conducted after the filing of the illegal dismissal case, the legality of the dismissal, as to its procedural aspect, will be upheld provided that the employer is able to show that compliance with these requirements was not a mere afterthought.

This Petition for Review on Certiorari seeks to reverse and set aside the Court of Appeal's (CA's) June 2, 2005 Decision[1] in CA-G.R. SP. No. 83577, which affirmed with modification the October 28, 2003 Decision[2] of the National Labor Relations Commission (NLRC) in NCR CA No. 034421-03, and the September 23, 2005 Resolution[3] denying petitioners' motion for partial reconsideration.

Factual Antecedents

Petitioner New Puerto Commercial hired respondent Felix Gavan (Gavan) as a delivery panel driver on February 1, 1999 and respondent Rodel Lopez (Lopez) as roving salesman on October 12, 1999. Petitioner Richard Lim is the operations manager of New Puerto Commercial.

Under a rolling store scheme, petitioners assigned respondents to sell goods stocked in a van on cash or credit to the sari-sari stores of far-flung barangays and municipalities outside Puerto Princesa City, Palawan. Respondents were duty-bound to collect the accounts receivables and remit the same upon their return to petitioners' store on a weekly basis.

On November 3, 2000, respondents filed a Complaint[4] for illegal dismissal and non-payment of monetary benefits against petitioners with the Regional Office of the Department of Labor and Employment in Puerto Princesa City. On November 20, 2000, a conciliation conference was held but the parties failed to reach an amicable settlement. As a result, the complaint was endorsed for compulsory arbitration at the Regional Arbitration Branch of the NLRC on February 13, 2001.

Previously or on November 28, 2000, petitioners sent respondents notices to explain why they should not be dismissed for gross misconduct based on (1) the alleged misappropriation of their sales collections, and (2) their absence without leave for more than a month. The notice also required respondents to appear before petitioners' lawyer on December 2, 2000 to give their side with regard to the foregoing charges. Respondents refused to attend said hearing.

On December 6, 2000, petitioners filed a complaint for three counts of estafa before the prosecutor's office against respondents in connection with the alleged misappropriation of sales collections.

Thereafter, petitioners sent another set of notices to respondents on December 7, 2000 to attend a hearing on December 15, 2000 but respondents again refused to attend. On December 18, 2000, petitioners served notices of termination on respondents on the grounds of gross misconduct and absence without leave for more than one month.

On February 5, 2001, an information for the crime of estafa was filed by the city prosecutor against respondents with the Municipal Trial Court in Puerto Princesa City.

In due time, the parties submitted their respective position papers.

Labor Arbiter's Ruling

On August 29, 2002, Labor Arbiter Cresencio G. Ramos, Jr. rendered a Decision[5] dismissing the complaint for illegal dismissal but ordering petitioners to pay respondents' proportionate 13[th] month pay:

WHEREFORE, in the light of the foregoing premises, the above case for illegal dismissal is hereby DISMISSED for being devoid of legal merit. Respondents, however, are directed to pay herein complainants their proportionate 13[th] month pay for the year 2002[6] [sic] as follows:

- (1.) Rodel Lopez- P2,998.67
- (2.) Felix Gavan- P2,998.67

SO ORDERED.[7]

The Labor Arbiter ruled that there is substantial evidence tending to establish that respondents committed the misappropriation of their sales collections from the rolling store business. These acts constituted serious misconduct and formed sufficient bases for loss of confidence which are just causes for termination. The records also showed that respondents were given opportunities to explain their side. Both substantive and procedural due processes were complied with, hence, the dismissal is valid. Petitioners, however, failed to prove that they paid the proportionate amount of 13[th] month pay due to respondents at the time of their dismissal. Thus, the Labor Arbiter ordered petitioners to pay respondents the same.

National Labor Relations Commission's Ruling

On October 28, 2003, the NLRC rendered a Decision affirming the ruling of the Labor Arbiter, viz:

WHEREFORE, the appeal is DENIED. The Decision of the Labor Arbiter dated August 29, 2002 is AFFIRMED en toto.

SO ORDERED.[8]

The NLRC agreed with the Labor Arbiter that respondents' act of misappropriating company funds constitutes gross misconduct resulting in loss of confidence. It noted that respondents never denied that (1) they failed to surrender their collections to petitioners, and (2) they stopped reporting for work during the last week of October 2000. Further, respondents admitted misappropriating the subject collections before the hearing officer of the Palawan labor office during the

conciliation conference on November 20, 2000. The NLRC also observed that the investigation on the misappropriation of company funds was not a mere afterthought and complied with the twin-notice rule. Last, it ruled that damages cannot be awarded in favor of respondents because their dismissal was for just causes.

Court of Appeal's Ruling

The CA, in its June 2, 2005 Decision, affirmed with modification the ruling of the NLRC, viz:

WHEREFORE, in view of the foregoing, the Decision of the NLRC dated 29 August 2002[9] is hereby MODIFIED in that private respondents are ordered to pay petitioners nominal damages of P30,000.00 each. The decision is affirmed in all other respect.

SO ORDERED.[10]

The appellate court held that it was bound by the factual findings of the NLRC because a petition for certiorari is limited to issues of want or excess of jurisdiction, or grave abuse of discretion. Thus, the failure of respondents to report for work and their misappropriation of company funds have become settled. These acts constitute grave misconduct which is a valid cause for termination under Article 282 of the Labor Code.

While the dismissal was for just cause, the appellate court found, however, that respondents were denied procedural due process. It held that the formal investigation of respondents for misappropriation of company funds was a mere afterthought because it was conducted after petitioners had notice of the complaint filed before the labor office in Palawan. In consonance with the ruling in *Agabon v. National Labor Relations Commission*,[11] respondents are entitled to an award of

P30,000.00 each as nominal damages for failure of petitioners to comply with the twin requirements of notice and hearing before dismissing the respondents.

From this decision, only petitioners appealed.

Issues

Petitioners raise the following issues for our resolution:

- Whether x x x the Court of Appeals erred in construing that the investigation held by petitioners is an afterthought; and
- Whether x x x the Court of Appeals erred in awarding the sum of P30,000.00 each to the respondents as nominal damages.[12]

Petitioners' Arguments

Petitioners contend that the investigation of respondents was not an afterthought. They stress the following peculiar circumstances of this case: First, when the labor complaint was filed on November 3, 2000, respondents had not yet been dismissed by petitioners. Rather, it was respondents who were guilty of not reporting for work; Lopez starting on October 23, 2000 and Gavan on October 28, 2000. Second, at this time also, petitioners were still in the process of collecting evidence on the alleged misappropriation of company funds after they received reports of respondents' fraudulent acts. Considering the distance between the towns serviced by respondents and Puerto Princesa City, it took a couple of weeks for petitioners' representative, Armel Bagasala (Bagasala), to unearth the anomalies committed by respondents. Thus, it was only on November 18, 2000 when Bagasala finished the investigation and submitted to petitioners the evidence establishing that respondents indeed misappropriated company funds. Naturally, this was the only time when they could begin the formal investigation of respondents wherein they followed the twin-notice rule and which led to the termination of respondents on December 18, 2000 for gross misconduct and absence without leave for more than a month.

Petitioners lament that the filing of the labor complaint on November 3, 2000 was purposely sought by respondents to pre-empt the results of the then ongoing investigation after respondents got wind that petitioners were conducting said investigation because respondents were reassigned to a different sales area during the period of investigation.

Respondents' Arguments

Respondents counter that their abandonment of employment was a concocted story. No evidence was presented, like the daily time record, to establish this claim. Further, the filing of the illegal dismissal complaint negates abandonment. Assuming *arguendo* that respondents abandoned their work, no proof was presented that petitioners served a notice of abandonment at respondents' last known addresses as required by Section 2, Rule XVI, Book V of the Omnibus Rules Implementing the Labor Code. According to respondents, on November 3, 2000, petitioners verbally advised them to look for another job because the company was allegedly suffering from heavy losses. For this reason, they sought help from the Palawan labor office which recommended that they file a labor complaint.

Respondents also contest the finding that they misappropriated company funds. They claim that the evidence is insufficient to prove that they did not remit their sales collections to petitioners. Neither were the minutes of the proceedings before the labor officer presented to prove that they admitted misappropriating the company funds. Respondents add that they did not hold a position of trust and confidence. They claim that the criminal cases for *estafa* against respondents were belatedly filed in order to further justify their dismissal from employment and act as leverage relative to the subject labor case they filed against petitioners.

Our Ruling

The petition is meritorious.

When the requirements of procedural due process are satisfied, the award of nominal damages is improper.

At the outset, we note that respondents did not appeal from the decision of the CA which found that, as to the issue of substantive due process, the dismissal was valid because it was based on just causes (i.e., grave misconduct and loss of trust and confidence) due to respondents' misappropriation of their sales collections. Thus, the only proper issue for our determination, as raised in the instant petition, is whether respondents were denied procedural due process justifying the award of nominal damages in accordance with the ruling in *Agabon v. National Labor Relations Commission*.^[13]

In termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first appraises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.^[14] As we explained in *Perez v. Philippine Telegraph and Telephone Company*:^[15]

An employee's right to be heard in termination cases under Article 277 (b) as implemented by Section 2 (d), Rule I of the Implementing Rules of Book VI of the Labor Code should be interpreted in broad strokes. It is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof.

A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy. "To be heard" does not mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings. Therefore, while the phrase "ample opportunity to be heard" [in Article 277 of the Labor Code] may in fact include an actual hearing, it is not limited to a formal hearing only. In other words, the existence of an actual, formal "trial-type" hearing, although preferred, is not absolutely necessary to

satisfy the employee's right to be heard.[16]

In the instant case, the appellate court ruled that there are two conflicting versions of the events and that, in a petition for certiorari under Rule 65 of the Rules of Court, the courts are precluded from resolving factual issues. Consequently, the factual findings of the Labor Arbiter, as affirmed by the NLRC, that petitioners stopped reporting from work and misappropriated their sales collection are binding on the courts. However, the CA found that respondents were denied their right to procedural due process because the investigation held by petitioners was an afterthought considering that it was called after they had notice of the complaint filed before the labor office in Palawan.[17]

Indeed, appellate courts accord the factual findings of the Labor Arbiter and the NLRC not only respect but also finality when supported by substantial evidence.[18] The Court does not substitute its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible. It is not for the Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses nor substitute the findings of fact of an administrative tribunal which has gained expertise in its specialized field.[19]

However, while we agree with the CA that the labor tribunal's factual determinations can no longer be disturbed for failure of respondents to show grave abuse of discretion on the part of the Labor Arbiter and NLRC, as in fact respondents effectively accepted these findings by their failure to appeal from the decision of the CA, we find that the appellate court misapprehended the import of these factual findings. For if it was duly established, as affirmed by the appellate court itself, that respondents failed to report for work starting from October 22, 2000 for respondent Lopez and October 28, 2000 for respondent Gavan,[20] then at the time of the filing of the complaint with the labor office on November 3, 2000, respondents were not yet dismissed from employment. Prior to this point in time, there was, thus, no necessity to comply with the twin requirements of notice and hearing.

The mere fact that the notices were sent to respondents after the filing of the labor complaint does not, by itself, establish that the same was a mere afterthought. The surrounding circumstances of this case adequately explain why the requirements of procedural due process were satisfied only after the filing of the labor complaint. Sometime in the third week of October 2000, petitioners received information that respondents were not remitting their sales collections to the company. Thereafter, petitioners initiated an investigation by sending one of their trusted salesmen, Bagasala, in the route being serviced by respondents. To prevent a possible cover up, respondents were temporarily reassigned to a new route to service. Subsequently, respondents stopped reporting for work (i.e., starting from October 22, 2000 for respondent Lopez and October 28, 2000 for respondent Gavan) after they got wind of the fact that they were being investigated for misappropriation of their sales collection, and, on November 3, 2000, respondents filed the subject illegal dismissal case to pre-empt the outcome of the ongoing investigation. On November 18, 2000, Bagasala returned from his month-long investigation in the far-flung areas previously serviced by respondents and reported that respondents indeed failed to remit P2,257.03 in sales collections. As a result, on November 28, 2000, termination proceedings were commenced against respondents by sending notices to explain with a notice of hearing scheduled on December 2, 2000. As narrated earlier, respondents failed to give their side despite receipt of said notices. Petitioners sent another set of notices to respondents on December 7, 2000 to attend a hearing on December 15, 2000 but respondents again refused to attend. Thus, on December 18, 2000, petitioners served notices of termination on respondents for gross misconduct in misappropriating their sales collections and absence without leave for more than a month.

As can be seen, under the peculiar circumstances of this case, it cannot be concluded that the sending of the notices and setting of hearings were a mere afterthought because petitioners were still awaiting the report from Bagasala when respondents pre-empted the results of the ongoing investigation by filing the subject labor complaint. For this reason, there was sufficient compliance with the twin requirements of notice and hearing even

if the notices were sent and the hearing conducted after the filing of the labor complaint. Thus, the award of nominal damages by the appellate court is improper.

WHEREFORE, the petition is GRANTED. The June 2, 2005 Decision and September 23, 2005 Resolution in CA-G.R. SP. No. 83577 are REVERSED and SET ASIDE. The October 28, 2003 Decision of the National Labor Relations Commission in NCR CA No. 034421-03 is REINSTATED and AFFIRMED.

SO ORDERED.

Corona, C. J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

[1] Rollo, pp. 22-32; penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo.

[2] Id. at 47-54; penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioner Tito F. Genilo.

[3] Id. at 33.

[4] NLRC Records, p. 1.

[5] Rollo, pp. 34-46.

[6] Should be year 2000.

[7] Rollo, p. 46.

[8] Id. at 54.

[9] Should be October 28, 2003.

[10] Id. at 31-32.

[11] 485 Phil. 248 (2004).

[12] Rollo, p. 16.

[13] Supra note 10.

[14] Solid Development Corporation Workers Association (SDCWA-UWP) v. Solid Development Corporation, G.R. No. 165995, August 14, 2007, 530 SCRA 132, 140-141.

[15] G.R. No. 152048, April 7, 2009, 584 SCRA 110.

[16] Id. at 123-124.

[17] Rollo, pp. 29-30

[18] Secon Philippines, Ltd. v. National Labor Relations Commission, 377 Phil. 711, 717 (1999).

[19] Id.

[20] Rollo, pp. 27-28.

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