

ARLYN D. BAGO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND STANDARD INSURANCE CO. INC. AND/OR ERNESTO ECHAUS, RESPONDENTS.

G.R. NO. 170001. April 04, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

In a complaint filed on November 20, 2002[1] with the Human Resource Development Department (HRDD) of respondent Standard Insurance Company Incorporated (SICI), Celia P. Abordo (Celia), the Head of the Tuguegarao Branch of SICI, charged five employees including herein petitioner Arlyn Bago (Arlyn), an encoder, and Elsie Pagarigan (Elsie), an assistant underwriter, with "manipulating money out of the agents/zone managers and [Celia's] commissions." [2] She further charged Arlyn and two other employees with "spreading rumors to clients/agents/zone managers that [Celia] is having an "affair" with the claims assistant." [3]

On Celia's recommendation, the Internal Audit Department conducted a special audit from November 25-29, 2002 which disclosed as follows, quoted verbatim:

- Agents whose business coded under the Branch Head were not given commissions due to them. Likewise, commissions due to the Branch Head were not also given . . . to her. Commission slips were not signed by the corresponding recipient. This is done in the following ways, to wit;

- through Branch Head's commission drawn in the G&A Fund (Cashier encash the check and the Accountant computes commissions of sub-agent and other expenses to be deducted from the cash. Sub-agents will be given a commission lower than the amount that was reported to the Branch Head. Commissions due to sub-agents that was being reported to the Branch Head is written in a scratch paper by the Branch Accountant, thus commission will be given to sub-agent is concealed to their Branch Head as well as the agent. Cash due will then be given to the Branch Head by the Branch Cashier x x x

x x x x

- through cash collection. Branch Head did not receive the amount what is due to her, likewise discount given to client is also concealed (lower than what was computed in the commission slip.) They commonly used the word "discount" in the commission slip to mislead the Branch Head in approving it; x x x

x x x x

- The above dishonesty was admitted by the Branch Cashier and Branch Accountant as per statement submitted to the auditors x x x and discussions with them on November 27, 2002. However, their letters differ as to the details of the act. x x x

The above act of dishonesty was discussed with the Branch. It was admitted that there was a connivance between Branch Cashier, Accountant, Underwriter, and the Encoder during the meeting as evidenced by their signing on the auditors' report on November 27, 2002. They admitted that the amount they get from the act is divided equally among them. x x x

- During the verification of the auditors regarding the common fund record, the Branch Cashier provided xxx a photocopy of a portion of the common fund record. x x x As per record, the act started last quarter of 2001. The staff obtained loans from the fund except the Claims Assistant. x x x The running balance of the fund as of November 5, 2002 is P5, 039.09.

- A written statement from the Underwriter and the Encoder was also obtained. x x x They are blaming the Branch Accountant and the Branch Cashier for such an act of dishonesty. They are also denying that they are part of connivance and that they do not know that the money they received comes from such act of dishonesty. However, on the last part of their letter they are asking for an apology for being a part of the act they have committed.

x x x x[4] (Underscoring and emphasis partly in the original, partly supplied; italics supplied)

The audit also disclosed that the alleged rumor about Celia started when she requested the Claims Evaluator to drive for her and allowed him to bring home her car.[5]

On the request of the HRDD,[6] Celia submitted statements of three witnesses[7] to substantiate the charge of rumor-mongering.

The HRDD thus directed Arlyn and the two other concerned employees to explain within five days why appropriate sanction under SICI's Code of Conduct should not be imposed on them relative to the charge of spreading malicious rumors about Celia.[8] Complying, Arlyn and her two co-employees explained, by letter of December 3, 2002 addressed to the Assistant Vice President of SICI's legal department, as follows:

We, the concerned staff of Standard Insurance Co., Inc. Tuguegarao Branch, would like to appeal to your good end as we are asking apologies for all offenses and distractions committed by us against our Branch Head. We humbly acknowledge our faults. "Hindi nga po naming maubos maisip kung bakit at paano naming nagawa yun sa kabila ng lahat ng kabutihang nagawa sa amin ng aming boss." Ayon nga sa kasabihan, "Ang pagsisisi ay laging nasa huli". Lubos po kaming nagsisisi ngayon pero sana hindi pa huli ang lahat.

On some occasions, jealousy and anger have driven us towards our boss. Tao lang po kami na mahina at nagkakasala. Kungsabagay, sa pangyayaring ito marami kaming natutunan. Ngayon alam na namin na dapat naming protektahan at suportahan ang aming Branch Head. We have already personally asked forgiveness from Ma'am Cecil [sic], she readily forgave us naman. But then, we still seek for your further consideration and advice. PLEASE GIVE US ANOTHER CHANCE, SIR, to prove that we are sincere and to show how deeply sorry we are for all inconveniences we have done. Sana man lang, kahit ito na ang pamasko niyo sa amin.[9] (Emphasis and italics in the original; underscoring supplied)

Noting that Arlyn et al. had not responded to the charge of rumor-mongering, the HRDD gave them an extension of time to comply. They accordingly replied:

While it is true that we did not answer the first memo sent to us, we likewise deny that such act was an admission of the offense charged to us. Please be known that during the period of five (5) days given to us to explain our side, we approached Ma'am Cecil [sic] and earnestly talked to her begging forgiveness for all offenses we've done. The conversation we've had was very emotional and touchy. We cried deeply as we asked for another chance to show how sorry we were with deepest desires to work with her once again.

To this, Ma'am Cecil [sic] recognized our sincerity and she readily forgave us. It shocked us that she was able to get through with our faults despite our shortcomings. We really appreciate our boss who has a big soft heart. We then planned to start anew. Days passed and we noticed she forgot all about the issue. There's no sign of remorse in her anymore. She really has forgiven us we know. That's why, we decided not to answer the memo any longer since we have thought the problem is already over. Whether we failed to comply in your first memo, our apologies. x x x[10] (Underscoring supplied)

The HRDD likewise required Arlyn, along with her similarly charged co- employees, to explain within five days why appropriate sanction should not be imposed upon them for dishonesty, given their admission thereof during the conduct of the internal audit.[11] Arlyn's explanation reads:

My admission to my participation to the misdeed was deliberately made during the Auditors' visit to Tug. branch simply because I would like to put an end to that form of Dishonesty which we have gradually committed, for one would not put a blame on the person who initiated the proposal but I would consider the wrong doing a collective responsibility of the group. It is with much regret, however, because I have succumb [sic]/or gave in to such fraudulent move.

I love my work and the company I work with. I'm already on my 8 years working with the co. but I have not been involved on any act of dishonesty nor have been complained of administratively or otherwise. Moreover, the money pooled by us turned out to be a petty cash fund were [sic] we could borrow for emergency purposes. I'm willing to return whatever amount I have benefited. I acknowledge and deeply apologized for that said shortcomings. I know that with that misdeed, it has affected my integrity, which I have taken cared [sic] of a number of years. The complaint of the Branch Head was already discussed with the staff and the said problem has already been given a solution and the staff swore that they would never commit the same mistakes again. I'm also grateful to our Branch Head for having a big heart that despite the act we've done to her she still forgave us.

All I request for the company is to give me one more chance to make up for the things I have done and to proved [sic] that I'm still worthy to work in this company. Once again, I beg for the company's understanding and compassion.[12] (Underscoring supplied)

Arlyn et al. were soon informed about the conduct of a formal hearing of the charges on February 7, 2003 during which they could be assisted by counsel and present additional evidence.[13] The records show that on the scheduled hearing on February 7, 2003, SICI employees were interviewed. There is no showing, however, if Arlyn et al. attended the hearing.[14]

Arlyn et al. were later terminated effective March 31, 2003.[15]

Arlyn and Elsie subsequently filed separate complaints for illegal dismissal against respondent SICI and its President-co-respondent Ernesto T. Echaus. The complaints were consolidated. [16]

By Decision of October 27, 2003, Executive Labor Arbiter Salvador V. Reyes found that Arlyn and Elsie were illegally dismissed and accordingly ordered their reinstatement to their former positions, without loss of seniority rights,[17] and the award to them of full backwages and other benefits they normally enjoyed under existing company policy, moral damages, exemplary damages, and attorney's fees.[18]

SICI later manifested that it opted to adopt payroll reinstatement for Arlyn and Elsie pending appeal which the Labor Arbiter approved on December 10, 2003.[19]

On appeal[20] by respondents, the National Labor Relations Commission (NLRC), by Decision[21] dated September 27, 2004, reversed the Labor Arbiter's decision and declared valid the termination of Arlyn and Elsie's services on the grounds of loss of trust and confidence and dishonesty.[22] Arlyn and Elsie's Joint Motion for Reconsideration[23] having been denied[24] by the NLRC, Arlyn filed a Petition for Certiorari and Prohibition with the Court of Appeals which, by Decision[25] dated August 25, 2005, it denied.

Hence, Arlyn's present Petition for Review on Certiorari,[26] positing that the appellate court gravely erred

- . . . [IN] RUL[ING] THAT PETITIONER IS NOT AN ORDINARY RANK-AND-FILE EMPLOYEE [SO] THAT SHE COULD BE DISMISSED FOR LOSS OF TRUST AND CONFIDENCE.

- . . . IN METING THE PENALTY OF DISMISSAL TO HEREIN PETITIONER GIVEN THE FACT THAT THE ACTUAL AMOUNT OF MONEY ALLEGEDLY MISAPPROPRIATED WAS NEVER ESTABLISHED.[27] (Underscoring supplied)

Arlyn also raises in her present petition the lack of "further" investigation "despite [her] insistent denial of the charge,"[28] and the lack of opportunity to cross-examine the witnesses whose statements were submitted by Celia to prove her charge of rumor-mongering.[29]

Furthermore, Arlyn complains that after the NLRC reversed the Labor Arbiter's decision, respondents "unilaterally discontinued [her] reinstatement pending appeal contrary to prevailing laws and jurisprudence." [30] She thus prays that this Court "order respondent to pay the benefits due [her] from September 2004 [when after the NLRC declared her dismissal valid, respondents discontinued her reinstatement] up to [the] present pursuant to Art. 223 of the Labor Code and existing jurisprudence, pending resolution" of the present petition." [31]

The petition is bereft of merit.

Arlyn's claim that she is an ordinary rank-and-file employee, hence, she cannot be dismissed for loss of trust and confidence does not lie. The observation of the Court of Appeals that "[h]er work is of such nature as to require a substantial amount of trust and confidence on the part of x x x her employer" [32] is well-taken in light of her following functions, as enumerated by the NLRC:

- Batches, collates and encode[s] policies, endorsements and official receipts;
- Generates printed production, collection, statistical and receivable reports for submission to the Head Office;
- Reconciles and finalizes production and collection reports;
- Maintains the computer hardware and software; and
- Performs other related functions as may be assigned to her by her superior from time to time, [33]

which functions "required the use of judgment and discretion." [34]

Arlyn of course incorrectly assumes that mere rank-and-file employees cannot be dismissed on the ground of loss of confidence. Jurisprudence holds otherwise albeit it requires "a higher proof of involvement" in the questioned acts.

As a general rule, employers are allowed a wide latitude of discretion in terminating the employment of managerial personnel or those who, while not of similar rank, perform functions which by their nature require the employer's full trust and confidence. Proof beyond reasonable doubt is not required. It is sufficient that there is some basis for loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position. This must be distinguished from the case of ordinary rank-and-file employees, whose termination on the basis of these same grounds requires a higher proof of involvement in the events in question; mere uncorroborated assertions and accusations by the employer will not suffice. [35] (Emphasis and underscoring supplied)

Even assuming that Arlyn may be considered a rank and file employee, sufficient evidence of her involvement in the dishonest scheme of SICI's accountant and cashier who were also charged and found guilty exists. Not only was her participation established by the internal audit conducted; the cashier identified her as part of the scheme, [36] and she herself admitted her involvement. Her claim that she merely received money from the cashier and the accountant without knowledge of its illegal source [37] is contradicted by her subsequent statement of January 7, 2003 submitted to the HRDD owning up to having participated in the scheme. [38]

But even assuming further that Arlyn may not be dismissed for loss of confidence, she can, on the ground of fraud or betrayal of trust, following Article 282 of the Labor Code which provides that:

An employer may terminate an employee for any of the following causes:

x x x x

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

x x x x

(e) Other causes analogous to the foregoing.[39] (Emphasis supplied)

Arlyn's argument that "Even granting that there was withdrawal from the [Branch Head's] commissions, [SICI] was not even prejudiced financially [and] its income was not diminished [as the withdrawn amounts were not] diverted from its coffers"[40] fails. *Etcuban, Jr. v. Sulpicio Lines, Inc.*[41] instructs that:

"x x x Whether or not the respondent was financially prejudiced is immaterial. Also, what matters is not the amount involved, be it paltry or gargantuan; rather the fraudulent scheme in which the petitioner was involved, which constitutes a clear betrayal of trust and confidence." x x x[42] (Underscoring supplied)

As for Arlyn's claim that she was denied due process and her admission was improvidently obtained,[43] the records of the case show otherwise. In addition to the conduct of an internal audit during which she was heard, the requirements of twin-notice and hearing were complied with.

Respecting Arlyn's claim that she was denied a chance to cross-examine Celia's witnesses who executed statements substantiating the charge of rumor-mongering, Arlyn's joint statements which she and her co-employees executed admitting the truth of the said charge[44] rendered it unnecessary to cross-examine the witnesses.

As for the propriety of dismissal as a penalty in light of Arlyn's eight years of service during which, so she claims, she committed no infraction, the doctrines established in *Salvador v. Philippine Mining Service Corp.*,[45] to wit:

To be sure, length of service is taken into consideration in imposing the penalty to be meted an erring employee. However, the case at bar involves dishonesty and pilferage by petitioner which resulted in respondent's loss of confidence in him. Unlike other just causes for dismissal, trust in an employee, once lost is difficult, if not impossible, to regain.[46] (Underscoring supplied)

and in *Flores v. NLRC*,[47] to wit:

The fact that petitioner worked for private respondent for twenty-one (21) years, if it is to be considered at all, should be taken against him. The infraction that he committed, vis-à-vis his long years of service with the company, reflects a regrettable lack of loyalty. Loyalty that he should have strengthened instead of betrayed. If an employee's length of service is to be regarded as a justifying circumstance in moderating the penalty of dismissal, it will actually become a prize for disloyalty, perverting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of all undesirables.[48] (Emphasis and underscoring supplied)

apply.

Finally, on Arlyn's claim that respondents "unilaterally withheld [her] payroll reinstatement" after the NLRC reversed on September 27, 2004 the Labor Arbiter's decision, Article 223, paragraph 6 of the Labor Code provides that the decision of the NLRC on appeals from decisions of the Labor Arbiter "shall become final and

executory after ten (10) calendar days from receipt thereof by the parties." The 2002 New Rules of Procedure of the NLRC provided:

RULE VII

x x x x

SECTION 14. FINALITY OF DECISION OF THE COMMISSION AND ENTRY OF JUDGMENT. — (a) Finality of the Decisions, Resolutions or Orders of the Commission. Except as provided in Rule XI, Section 9, the decisions, resolutions or orders of the Commission/Division shall become executory after ten (10) calendar days from receipt of the same.

(b) Entry of Judgment. — Upon the expiration of the ten (10) calendar day period provided in paragraph (a) of this section, the decision/resolution/order shall, as far as practicable, be entered in a book of entries of judgment.

(c) Allowance for Delay of Mail in the Issuance of Entries of Judgment. — In issuing entries of judgment, the Executive Clerk of Court or the Deputy Executive Clerk, in the absence of a return card or certification from the post office concerned, shall determine the finality of the decision by making allowance for delay of mail, computed sixty (60) calendar days from the date of mailing of the decision, resolution or order.[49]

That the Court of Appeals may take cognizance of and resolve a petition for certiorari for the nullification of the decisions of the NLRC on jurisdictional and due process considerations does not affect the statutory finality of the NLRC Decision.[50] The 2002 New Rules of Procedure of the NLRC so provided:

RULE VIII

x x x x

SECTION 6. EFFECT OF FILING OF PETITION FOR CERTIORARI ON EXECUTION. — A petition for certiorari with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a temporary restraining order is issued by the Court of Appeals or the Supreme Court.[51]

In the case at bar, Arlyn received the September 27, 2004 NLRC decision on October 25, 2004,[52] and the January 31, 2005 NLRC Resolution denying her Motion for Reconsideration on February 23, 2005.[53] There is no showing that the Court of Appeals issued a temporary restraining order to enjoin the execution of the NLRC decision, as affirmed by its Resolution of January 31, 2005.

If above-quoted paragraph (a) of Section 14 of Rule VII of the 2002 NLRC New Rules of Procedure were followed, the decision of the NLRC would have become final and executory on March 7, 2005, ten (10) calendar days from February 25, 2005. The NLRC, however, issued on June 16, 2005 a Notice of Entry of Judgment[54] stating that the NLRC Resolution of January 31, 2005 became final and executory on April 16, 2005, apparently following the above-quoted last paragraph of Section 14 of Rule VII. No objection having been raised by any of the parties to the declaration in the Notice of Entry of Judgment of the date of finality of the NLRC January 31, 2005 Resolution, Arlyn's payroll reinstatement ended on April 16, 2005. It goes without saying that since this Court is sustaining the NLRC decision, no issue of payroll reinstatement may be considered at all after April 16, 2005.

WHEREFORE, the petition is, in light of the foregoing discussions, DENIED and the questioned decision of the court a quo is AFFIRMED with MODIFICATION in that respondent Standard Insurance Co., Inc. is ordered to pay the salaries due petitioner, Arlyn Bago, from the time her payroll reinstatement was withheld after the promulgation on September 27, 2004 of the decision of the National Labor Relations Commission until April 16, 2005 when it became final and executory.

Costs against petitioner.

SO ORDERED.

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

[1] NLRC records, Vol. I, pp. 41, 51.

[2] Id. at 51.

[3] Ibid.

[4] Id. at 102-104. Vide handwritten statements, id. at 117-119, 124-129.

[5] Id. at 134.

[6] Id. at 55.

[7] Id. at 56-60.

[8] Id. at 52-53, 71.

[9] Id. at 54.

[10] Id. at 67.

[11] Id. at 61, 71. Vide handwritten admissions, id. at 117-119, 124-129.

[12] Id. at 63.

[13] Id. at 68.

[14] Id. at 73.

[15] Id. at 75-76.

[16] Id. at 1, 15; NLRC records, Vol. II, pp. 1, 7.

[17] Id. at 158.

[18] Id. at 158-159.

[19] Id. at 315-316; rollo, pp. 521-523. Vide Labor Code, Article 223 (third paragraph):

x x x x

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

x x x x

[20] Id. at 171-188.

[21] Penned by Presiding Commissioner Raul T. Aquino, with the concurrences of Commissioners Victoriano R. Calaycay and Angelita A. Gacutan. Id. at 265-281.

[22] Id. at 278, 280-281.

[23] Id. at 283-295.

[24] Id. at 297-298.

[25] Penned by Associate Justice Eugenio S. Labitoria, with the concurrences of Eliezer R. Delos Santos and Arturo D. Brion. CA rollo, pp. 231-242.

[26] Rollo, pp. 12-24.

[27] Id. at 17.

[28] Id. at 19.

[29] Id. at 20-21.

[30] Id. at 530-531.

[31] Id. at 532.

[32] CA rollo, p. 239.

[33] NLRC records, Vol. I, p. 279.

[34] Id. at 280.

[35] *Gonzales v. NLRC*, G.R. No. 131653, March 26, 2001, 355 SCRA 195, 208.

[36] NLRC records, Vol. I, pp. 117-118.

[37] Id. at 127-129.

[38] Id. at 63.

[39] *Vide Ocean Terminal Services, Inc. v. NLRC*, 274 Phil. 779, 784-785 (1991); *Manila Electric Company v. NLRC*, G.R. No. 90030, June 25, 1990, 186 SCRA 763, 768; *Firestone Tire and Rubber Co. of the Philippines v. Lariosa*, G.R. No. L-70479, February 27, 1987, 148 SCRA 187, 192; *International Hardwood and Veneer Co. of the Philippines v. Hon. Leogardo*, 203 Phil. 324, 328-329 (1982).

[40] Rollo, p. 21.

[41] G.R. No. 148410, January 17, 2005, 448 SCRA 516.

[42] Id. at 532-533.

[43] Rollo, pp. 528-529.

[44] NLRC records, Vol. I, pp. 54, 67.

[45] 443 Phil. 878 (2003).

[46] Id. at 892.

[47] G.R. No. 96969, March 2, 1993, 219 SCRA 350.

[48] Id. at 355.

[49] The 2005 Revised Rules of Procedure of the NLRC which became effective on January 6, 2006 incorporated

substantially the same section:

RULE VII

x x x x

Section 14. Finality Of Decision Of The Commission And Entry Of Judgment. —

a) Finality of the Decisions, Resolutions or Orders of the Commission. — Except as provided in Section 9 of Rule X, the decisions, resolutions or orders of the Commission shall become final and executory after ten (10) calendar days from receipt thereof by the parties.

b) Entry of Judgment. — Upon the expiration of the ten (10) calendar day period provided in paragraph (a) of this Section, the decision, resolution, or order shall be entered in a book of entries of judgment.

The Executive Clerk or Deputy Executive Clerk shall consider the decision, resolution or order as final and executory after sixty (60) calendar days from date of mailing in the absence of return cards, certifications from the post office, or other proof of service to parties. (Emphasis and underscoring supplied)

[50] Vide *Molina v. Pacific Plans*, G.R. No. 165476, March 10, 2006, 484 SCRA 498, 516 citing *St. Martin Funeral Home v. NLRC*, 356 Phil. 811, 816 (1998).

On the first issue, we find and so hold that the decision of the NLRC had become final and executory when PPI filed its Petition for Certiorari in the CA. PPI received a copy of the NLRC Decision on July 11, 2003 and filed the Motion for Reconsideration thereof on July 18, 2003, which motion was denied on September 30, 2003. Under Rule VII [sic], Section 2 [sic] of the NLRC Omnibus Rules of Procedure [sic], the decision of the NLRC becomes final and executory after ten (10) calendar days from receipt of the same. PPI received a copy of the NLRC decision on November 30, 2003; hence, such decision became final and executory on December 3, 2003. Nonetheless, the Court ruled in *St. Martin Funeral Home v. NLRC* that, although the 10-day period for finality of the NLRC decision may have elapsed as contemplated in the last paragraph of Section 223 of the Labor Code, the CA may still take cognizance of and resolve a petition for certiorari for the nullification of the decision of the NLRC on jurisdictional and due process considerations.

[51] This rule has been substantially incorporated in the NLRC 2005 Revised Rules of Procedure which became effective on January 6, 2006, thus:

RULE XI

x x x x

Section 10. Effect of Petition for Certiorari on Execution. — A petition for certiorari with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a restraining order is issued by said courts.

[52] NLRC records, Vol. I, p. 302.

[53] *Id.* at 305.

[54] NLRC records, Vol. I, p. 306.

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