

RENITA DEL ROSARIO, TERESITA EISMA, ROSARIO TEAÑO, ELSIE JAVINEZ, EDERLINDA YCONG AND MERCEDES MASANGKAY, PETITIONERS, VS. MAKATI CINEMA SQUARE CORPORATION, RESPONDENT.

G.R. No. 170014. July 03, 2009

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review on certiorari[1] of the March 4, 2004 decision[2] and October 7, 2005 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 64271.

Petitioners Renita del Rosario, Teresita Eisma, Rosario Teaño, Elsie Javinez, Ederlinda Ycong and Mercedes Masangkay were all regular employees of respondent Makati Cinema Square Corporation as ticket sellers or portresses, and were also officers and members of the Makati Cinema Square Employees Union-FFW Chapter (union).[4]

Respondent was a domestic corporation engaged in the business of exhibiting cinematographic films to the public for a fee.[5]

On January 20, 1995, respondent requested the National Bureau of Investigation[6] (NBI) to investigate an alleged systematic fraud involving the recycling of admission tickets being perpetrated at the respondent's movie houses. On March 12, 1995, at around 6:15 p.m., the NBI agents[7] arrested Victoria Diaz and Thelma Tesoro.[8] The agents executed an affidavit wherein they stated that they conducted a series of covert operations at the cinemas and found out that sold theater tickets presented to the portress by the moviegoers upon admission were not mutilated (torn) or dropped into the box of used tickets. Instead, the portress, with the connivance of the production checker, kept some of the tickets. After a while, the portress gave them back to the ticket seller for resale for their own personal benefit and gain.[9]

It appears that there was a collective bargaining agreement (CBA) between the respondent and the union which took effect on May 1, 1992 and should remain in full force and effect for the period of five years or until April 30, 1997.[10] As the third year of the CBA had expired on May 22, 1995, the union informed respondent of its intention to renegotiate the economic provisions for the remaining two years of the CBA. On May 26, 1995, respondent informed the union that the proposed amendments to the CBA were being considered by a committee whose recommendations would be forthcoming by July 9, 1995. On June 19, 1995, respondent requested clarification on the proposed amendments. Thus, the parties met on June 23, 1995.[11]

However, on July 7, 1995, respondent filed a criminal complaint[12] for qualified theft against petitioners.[13] On the same date, Anthony Gimena, respondent's ticket auditor, executed an affidavit detailing petitioners' participation in the ticket-recycling scheme covering the period January 6, 1995 to March 12, 1995. He specified the date and time, names of the ticket sellers and portresses who handed to him his share of their modus operandi

and the corresponding amounts each of them gave him. He tendered these amounts to respondent's vice president for administration.[14] Respondent's other witnesses were William Welsh and Erlinda Derupe, assistant floor manager and portress respectively.[15]

On July 8, 1995, the board of directors of respondent agreed to cease its theater operations and lease the same to third parties.[16]

On July 10, 1995, respondent served a notice of cessation of operations on the union and its members. At the same time, petitioners were placed under preventive suspension and administrative hearings were conducted in relation to the alleged scheme of recycling of tickets.[17]

Meanwhile, on July 11, 1995, the union filed a complaint for unfair labor practice (ULP) stating that respondent refused to negotiate the terms of the CBA.[18]

On July 28, 1995, respondent entered into a contract of lease with Victor Villegas over the movie theaters of the former.[19]

On August 1, 1995, the union's members were not allowed to report for work anymore and were told that they would be paid only until August 10, 1995.[20]

On August 10, 1995, petitioners were dismissed by respondent.[21]

On November 25, 1995, petitioners filed another complaint for ULP alleging union-busting, discrimination, coercion, illegal suspension and illegal dismissal.[22] This was consolidated with the first case filed by the union.[23]

The employees who were affected by the cessation of the operation of respondent received their separation pay on October 17, 1995.[24]

The charge of qualified theft against petitioners was dismissed for insufficiency of evidence on October 23, 1995.[25] This was reversed on reconsideration in a resolution dated April 26, 1999.[26] Consequently, an information was filed in the Regional Trial Court (RTC), Makati City, Branch 133. Petitioners were acquitted by the RTC on September 4, 2002 as the prosecution failed to prove their guilt beyond reasonable doubt.[27]

In the meantime, on August 31, 1998, labor arbiter Manuel P. Asuncion (LA) rendered a decision dismissing the ULP charge but declared respondent guilty of illegal suspension and illegal dismissal.[28] He found that there was no basis for the dismissal of petitioners because there was no showing in the NBI agents' affidavit of their involvement in the ticket recycling scheme.[29]

On appeal, the National Labor Relations Commission (NLRC) initially affirmed the LA's decision in a resolution dated June 21, 1999 but reversed itself upon reconsideration on June 23, 2000. It ruled that petitioners were validly dismissed on the ground of loss of trust and confidence. It declared that aside from the findings of the NBI, respondent conducted its own investigation and the statements of its witnesses were replete with details of the involvement of petitioners in the fraudulent scheme.[30]

Aggrieved, petitioners filed a motion for reconsideration, which was denied by the NLRC in a resolution dated January 4, 2001.[31] Petitioners filed a petition for certiorari in the CA which was denied in a decision dated March 4, 2004. Reconsideration was likewise denied in a resolution dated October 7, 2005. According to the CA, the NLRC did not commit grave abuse of discretion in ruling that petitioners were validly dismissed. Hence, this petition.

The main issue for our resolution is whether petitioners were validly dismissed on the ground of loss of trust and

confidence.

At the outset, we note that this petition was filed under Rule 45 of the Rules of Court. However, petitioners allege that the CA acted with grave abuse of discretion amounting to a lack or excess of jurisdiction.[32] Therefore, the petition ought to be dismissed outright for being procedurally infirm. A petition for review under Rule 45 must present questions of law, not questions of jurisdiction.

Nevertheless, even on the merits, the petition must fail. Under Article 282 of the Labor Code, an employer may terminate the services of an employee for loss of trust and confidence:

ARTICLE 282. Termination by employer. -- An employer may terminate an employment for any of the following causes:

xxx xxx xxx

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

xxx xxx xxx

Loss of confidence applies only to cases involving employees who occupy positions of trust and confidence, or to those situations where the employee is routinely charged with the care and custody of the employer's money or property. To be a valid ground for an employee's dismissal, loss of trust and confidence must be based on a willful breach.[33] A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse.[34]

In dismissing an employee on the ground of loss of confidence, it is sufficient that the employer has a reasonable ground to believe, based on clearly established facts, that the employee is responsible for the misconduct and the nature of his participation renders him unworthy of the trust and confidence demanded by his position.[35] If the employer has ample reason to distrust the employee, the labor tribunal cannot justly deny the former the authority to dismiss the latter.[36]

Petitioners argue that there was no proof that they were involved in the alleged ticket recycling scheme which was the basis of the respondent's loss of trust and confidence in them. They insist that the NBI agents' affidavit did not point to any participation on their part.[37]

We disagree.

It may be true that the NBI agents' affidavit did not directly implicate petitioners in the scheme. However, their co-employees Gimena, Welsh and Derupe, who had personal knowledge of petitioners' activities, narrated in their affidavits the nature, dates and time of their (petitioners') participation.[38] Petitioners did not refute these sworn statements. Neither did they explain why their former colleagues would unjustly and falsely testify against them even if they had the opportunity to defend themselves during the administrative investigations conducted by respondent. These pieces of evidence, when taken together, constituted substantial evidence to prove petitioners' culpability.[39] It is of no moment that they were acquitted in the criminal case. Petitioners' infractions were willful and serious, thus their dismissal was proper under the circumstances.

Petitioners maintain that the ground of loss of trust and confidence was simulated, a subterfuge or a mere afterthought of respondent as shown by the following circumstances: (1) respondent suspended and dismissed them when the union was renegotiating the economic terms of the CBA; (2) respondent would not have offered them a hefty separation package of 35 days for every year of service if respondent believed they were guilty of the charge against them and (3) respondent was already planning to cease operations and lease out the cinemas.[40]

Again, we disagree.

Petitioners never substantiated their allegations. In a similar case, Schering Employees Labor Union (SELU) et al. v. Schering Plough Corporation,[41] petitioner Sereneo, the president of SELU, charged respondent with ULP and illegal dismissal because she was in the process of renegotiating the CBA with respondent when she was dismissed on the ground of loss of trust and confidence. We said:

Petitioners' accusation of union busting is bereft of any proof. We scanned the records very carefully and failed to discern any evidence to sustain such charge.

In Tiu vs. NLRC, we held:

. . . . It is the union, therefore, who had the burden of proof to present substantial evidence to support its allegations (of unfair labor practices committed by management).

xxx xxx xxx.

. . . , but in the case at bar the facts and the evidence did not establish even at least a rational basis why the union would wield a strike based on alleged unfair labor practices it did not even bother to substantiate during the conciliation proceedings. It is not enough that the union believed that the employer committed acts of unfair labor practice when the circumstances clearly negate even a prima facie showing to warrant such a belief.

The same is true here. Petitioners failed to prove their accusations. In contrast, respondent was able to prove the guilt of petitioners.

WHEREFORE, the petition is hereby DENIED.

Costs against petitioners.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Under Rule 45 of the Rules of Court. Rollo, p. 3.

[2] Penned by Associate Justice Marina L. Buzon (retired) and concurred in by Associate Justices Sergio L. Pestaño (retired) and Aurora Santiago-Lagman (retired) of the Fourteenth Division of the Court of Appeals. Id., pp. 49-62.

[3] Associate Justice Pestaño was replaced by Associate Justice Monina Arevalo-Zenarosa. Id., pp. 86-87.

[4] Id., p. 50.

[5] Id.

[6] Through then Director Epimaco Velasco.

[7] Ferdinand M. Lavin, Cynthia L. Mariano and Sixto D. Espenesin, Jr.

[8] The former was a ticket seller and the latter, a portress. Also arrested were the production outfit's checkers, Marcos Mariano and Joy Ong.

[9] Rollo, pp. 50-51.

[10] In accordance with the provisions of the Labor Code.

[11] Rollo, p. 51.

[12] In the Office of the Prosecutor of Makati and docketed as I.S. No. 95-1662.

[13] Rollo, pp. 51-52.

[14] Id., pp. 513-520.

[15] Id., p. 175.

[16] Id., p. 52.

[17] Id.

[18] Docketed as NLRC-NCR-Case No. 07-04806-95. On the same date, the union filed a preventive mediation case before the National Conciliation and Mediation Board for the alleged illegal suspension of petitioners.

[19] Rollo, p. 52.

[20] Id.

[21] Id.

[22] Docketed as NLRC-NCR Case No. 11-07522-95. Id., p. 135.

[23] Id., pp. 135-136.

[24] Id., p. 53.

[25] Id., p. 173.

[26] Id., pp. 174-177.

[27] Decision was penned by Judge Napoleon E. Inoturan. Id., pp. 333-336, 433.

[28] The dispositive portion read:

"WHEREFORE, judgment is hereby rendered as follows:

- Dismissing the complaint for unfair labor practice being the subject involved in NLRC-NCR Case No. 06-04013-95 now for review by the Commission;

- Declaring the respondents as guilty of illegal suspension and illegal dismissal. The respondents are ordered to immediately reinstate individual complainants to their respective positions without loss of seniority rights, privileges and with full backwages which to this date has reached P174,956.40 for each. However, if reinstatement is not possible, to pay individual complainants their respective separation pay computed at one (1) month latest salary for every year of service in addition to the backwages awarded;

- Ordering respondents to pay individual complainant attorney's fees in the amount of P17,495.64 equivalent to ten percent (10%) of the total benefits awarded. All other charges and claims of complainants are hereby ordered dismissed for lack of merit.

SO ORDERED." (Id., pp. 144-145.)

[29] Id., p. 143.

[30] Id., p. 173.

[31] Id., p. 183.

[32] *Id.*, pp. 3-4, 27, 36, 39.

[33] *Easycall Communications Phils., Inc. v. King*, G.R. No. 145901, 15 December 2005, 478 SCRA 102, 111, citing *Asia Pacific Chartering (Phils.), Inc. v. Farolan*, 441 Phil. 776 (2002) and *National Bookstore, Inc. v. Court of Appeals*, 428 Phil. 235 (2002).

[34] *National Bookstore, Inc. v. Court of Appeals*, *id.*, p. 246.

[35] *Cañeda v. Philippine Airlines, Inc.*, G.R. No. 152232, 26 February 2007, 516 SCRA 668, 671.

[36] *Id.*, pp. 671-672, citing *Reynolds Philippines Corporation v. Eslava*, G.R. No. L-48814, 27 June 1985, 137 SCRA 259.

[37] *Rollo*, pp. 430-433.

[38] The affidavit of Gimena stated:

"1.

I am a Ticket Auditor of Makati Cinema Square (MCS) since May 16, 1994 whose duty and responsibility it is to make an hourly round of the four (4) cinemas and conduct an audit of the ticket boxes by counting the number of tickets found therein and list them in the MCS Ticket Used Count Forms.

2.

In one such round, I saw a portress hold onto some tickets instead of tearing it and putting the torn portions inside the ticket boxes except that when the said portress saw me she immediately tore the said tickets.

3.

On January 6, 1995, I was approached by Teresita Eisma, Mercedes Masangkay and Thelma Tesoro, in order to include me in their ticket recycling operations since, they said, I knew of the activity.

4.

I told them not to include me even as I issued a warning against my catching them engaging in this illicit activity.

5.

Later, at around 5:30 PM, I received P110.00 from Eisma which amount I turned over to Mr. Ros Rufino, who kept them inside an MCSC envelope as evidence.

6.

On January 7, 1995, I received the following amounts from the following persons at around the following time:

2:00 PM P225.00

from Eisma

2:45 PM 110.00 from Masangkay

5:05 PM 277.00 from Eisma

7:30 PM 110.00 from Eisma

P722.00

=====

7. I turned over the money to Mr. Ros Rufino who kept it inside a separate MCSC envelope.

8. On January 8, 1995, I received the following amounts from the following persons at around the following time:

3:00 PM P110.00 from Eisma

5:30 PM 257.00 from Masangkay (told me P57 from Elsie P100 from Thelma, & P100 from Masangkay.)

6:20 PM 100.00 from Masangkay (told me from Del Rosario)

8:45 PM 115.00 from Teano

P582.00

=====

9. I turned over the money to Mr. Ros Rufino, who kept it inside a separate MCSC envelope.

10.

On January 9, 1995, I received the following amounts from the following persons at around the following time:

6:00 PM P100.00 from Masangkay (told me from Tesoro)

9:00 PM 115.00 from Teano

9:00 PM 57.00 from Javines

P262.00

=====

11. I turned over the money to Mr. Ros Rufino, who kept in inside a separate envelope.

xxx xxx xxx

21.

On January 17, 1995, I received the following amounts from the following persons at around the following time:

8:00 PM 100.00 from Ycong (C-4) xxxx" (Id., pp. 513-515.)

[39] See *John Hancock Life Insurance Corporation v. Davis*, G.R. No. 169549, 3 September 2008.

[40] *Rollo*, pp. 45, 437, 443.

[41] G.R. No. 142506, 17 February 2005, 451 SCRA 689, 695, citing *Tiu v. NLRC*, G.R. No. 123276, 18 August 1997, 277 SCRA 680, 687.

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