NAGKAKAISANG LAKAS NG MANGGAGAWA SA KEIHIN (NLMK-OLALIA-KMU) AND HELEN VALENZUELA, PETITIONERS, VS. KEIHIN PHILIPPINES CORPORATION, RESPONDENT.

G.R. No. 171115. August 09, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

This Petition for Review on Certiorari[1] assails the November 2, 2005 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 91718 dismissing outright the petition for certiorari filed by the petitioners, as well as its January 6, 2006 Resolution[3] denying petitioners' Motion for Reconsideration.

Factual Antecedents

Petitioner Helen Valenzuela (Helen) was a production associate in respondent Keihin Philippines Corporation (Keihin), a company engaged in the production of intake manifold and throttle body used in motor vehicles manufactured by Honda.

It is a standard operating procedure of Keihin to subject all its employees to reasonable search before they leave the company premises.[4] On September 5, 2003, while Helen was about to leave the company premises, she saw a packing tape near her work area and placed it inside her bag because it would be useful in her transfer of residence. When the lady guard on duty inspected Helen's bag, she found the packing tape inside her bag. The guard confiscated it and submitted an incident report[5] dated September 5, 2003 to the Guard-in-Charge, who, in turn, submitted a memorandum[6] regarding the incident to the Human Resources and Administration Department on the same date.

The following day, or on September 6, 2003, respondent company issued a show cause notice[7] to Helen accusing her of violating F.2 of the company's Code of Conduct, which says, "Any act constituting theft or robbery, or any attempt to commit theft or robbery, of any company property or other associate's property. Penalty: D (dismissal)."[8] Paul Cupon, Helen's supervisor, called her to his office and directed her to explain in writing why no disciplinary action should be taken against her.

Helen, in her explanation,[9] admitted the offense and even manifested that she would accept whatever penalty would be imposed upon her. She, however, did not reckon that respondent company would terminate her services for her admitted offense.[10]

On September 26, 2003, Helen received a notice[11] of disciplinary action informing her that Keihin has decided to terminate her services.

On October 15, 2003, petitioners filed a complaint[12] against respondent for illegal dismissal, non-payment of 13[th] month pay, with a prayer for reinstatement and payment of full backwages, as well as moral and exemplary damages. Petitioners alleged that Helen's act of taking the packing tape did not constitute serious misconduct, because the same was done with no malicious intent.[13] They believed that the tape was not of great value and of

no further use to respondent company since it was already half used. Although Helen admitted that she took the packing tape, petitioners claimed that her punishment was disproportionate to her infraction.

Keihin, on the other hand, maintained that Helen was guilty of serious misconduct because there was a deliberate act of stealing from the company. Respondent company also claimed that motive and value of the thing stolen are irrelevant in this case.

Ruling of the Labor Arbiter

On July 30, 2004, the Labor Arbiter[14] rendered his Decision[15] dismissing the complaint of illegal dismissal. He brushed aside petitioners' argument that the penalty imposed on Helen was disproportionate to the offense committed,[16] and held that she indeed committed a serious violation of the company's policies amounting to serious misconduct,[17] a just cause for terminating an employee under Article 282 of the Labor Code. The Labor Arbiter likewise upheld the right of the company to terminate Helen on the ground of loss of confidence or breach of trust.[18]

The Labor Arbiter further held that Keihin observed the requirements of procedural due process in implementing the dismissal of Helen.[19] He ruled that the following circumstances showed that the company observed the requirements of procedural due process: a) there was a show cause letter informing Helen of the charge of theft and requiring her to submit an explanation; b) there was an administrative hearing giving her an opportunity to be heard; and c) the respondent company furnished her with notice of termination stating the facts of her dismissal, the offense for which she was found guilty, and the grounds for her dismissal.[20]

Ruling of the National Labor Relations Commission (NLRC)

On appeal, the NLRC dismissed the appeal of the petitioners and affirmed in toto the Decision of the Labor Arbiter. It held that petitioners admitted in their Position Paper that Helen took the packing tape strewn on the floor near her production line within the company premises.[21] By the strength of petitioners' admission, the NLRC held that theft is a valid reason for Helen's dismissal.[22]

As to the issue of due process, the pertinent portion of the Decision[23] of the NLRC reads:

> Complainant's dismissal too, was with due process. Procedural due process only requires employers to furnish their errant employees written notices stating the particular acts or omissions constituting the grounds for their dismissal and to hear their side of the story (Mendoza vs. NLRC, 310 SCRA 846 [1999]). Complainant's claim that the show-cause letter did not pass the stringent requirement of the law is belied by her admission in her position paper that Mr. Cupon furnished her a "form," simultaneously asking her why she did such an act and x x x that Mr. Cupon directed her to submit a written explanation on the matter, which she complied with. By Complainant's own admission then, it is clear that she was furnished a written notice informing her of the particular act constituting the ground for her dismissal and that x x x her side of the story [was heard]. Evidently then, Complainant was afforded due process prior to her dismissal.

The dispositive portion of the Decision of the NLRC reads:

> WHEREFORE, premises considered, Complainant's appeal is DISMISSED for lack of merit. The Labor Arbiter's assailed Decision in the above-entitled case is hereby AFFIRMED in toto.
>
> SO ORDERED.[24]

Ruling of the Court of Appeals

After having their Motion for Reconsideration[25] denied[26] by the NLRC, the petitioner union, the Nagkakaisang Lakas ng Manggagawa sa Keihin, filed a Petition for Certiorari with the CA praying that the

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Decision of the NLRC be set aside. However, in a Resolution[27] dated November 2, 2005, the CA dismissed the petition outright for not having been filed by an indispensable party in interest under Section 2, Rule 3 of the Rules of Court.

> SEC 2. Parties in interest. - A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

Petitioners filed a Motion for Reconsideration[28] but it was denied by the CA in its Resolution[29] of January 6, 2006.

Hence, petitioners filed the present petition for review on certiorari under Rule 45, asking the Court to reverse the Resolutions of the CA and enter a new one declaring Helen's dismissal unjustified. They anchor their petition on the following grounds:

> I.
>
> THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN HOLDING THAT THE PETITION FOR CERTIORARI FILED BY THE UNION AND MS. HELEN VALENZUELA WAS NOT FILED BY AN INDISPENSABLE PARTY.
>
> II.
>
> THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN FAILING TO DECIDE THE CASE ON THE MERITS DESPITE SHOWING THAT THE PETITION FOR CERTIORARI WAS VERIFIED BY THE UNION PRESIDENT AND MS. HELEN VALENZUELA.
>
> III.
>
> THE COURT OF APPEALS ERRED IN FAILING TO APPRECIATE THAT SERIOUS MISCONDUCT UNDER EXISTING LAW AND JURISPRUDENCE CANNOT BE ATTRIBUTED TO HEREIN PETITIONER HELEN VALENZUELA BECAUSE THE DECISION OF THE NLRC IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.[30]

Our Ruling

We affirm the ruling of the CA.

It is clear that petitioners failed to include the name of the dismissed employee Helen Valenzuela in the caption of their petition for certiorari filed with the CA as well as in the body of the said petition. Instead, they only indicated the name of the labor union Nagkakaisang Lakas ng Manggagawa sa Keihin (NLMK-OLALIA) as the party acting on behalf of Helen. As a result, the CA rightly dismissed the petition based on a formal defect.

Under Section 7, Rule 3 of the Rules of Court, "parties in interest without whom no final determination can be had of an action shall be joined as plaintiffs or defendants." If there is a failure to implead an indispensable party, any judgment rendered would have no effectiveness.[31] It is "precisely `when an indispensable party is not before the court (that) an action should be dismissed.' The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even to those present."[32] The purpose of the rules on joinder of indispensable parties is a complete determination of all issues not only between the parties themselves, but also as regards other persons who may be affected by the judgment. A decision valid on its face cannot attain real finality where there is want of indispensable parties.

At any rate, we are aware that it is the policy of courts to encourage full adjudication of the merits of an appeal.

Dismissal of appeals purely on technical grounds, especially an appeal by a worker who was terminated and whose livelihood depends on the speedy disposition of her case, is frowned upon. Thus, while we affirm the CA's dismissal of the petition for certiorari, we shall still discuss the substantive aspect of the case and go into the merits.

The petitioners argue that serious misconduct under existing law and jurisprudence could not be attributed to Helen because she was not motivated by malicious intent. According to petitioners, during the routine inspection and even before the guard opened Helen's bag, she readily admitted that the bag contained a packing tape. Petitioners claim that the mental attitude of Helen negates depravity, willful or wrongful intent and, thus, she cannot be held guilty of serious misconduct. Rather, it was a mere error of judgment on the part of Helen. Furthermore, it was Helen's honest belief that the tape she took was of no use or value and that she did not hide the same.

Thus, the issue boils down to whether, in taking the packing tape for her own personal use, Helen committed serious misconduct, which is a just cause for her dismissal from service.

Article 282 of the Labor Code enumerates the just causes for termination. It provides:

> ARTICLE 282. Termination by employer. - An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> (b) Gross and habitual neglect by the employee of his duties;
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
>
> (e) Other causes analogous to the foregoing.

Misconduct is defined as "the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment."[33] For serious misconduct to justify dismissal under the law, "(a) it must be serious, (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer."[34]

In the case at bar, Helen took the packing tape with the thought that she could use it for her own personal purposes. When Helen was asked to explain in writing why she took the tape, she stated, "Kumuha po ako ng isang packing tape na gagamitin ko sa paglilipat ng gamit ko sa bago kong lilipatang bahay."[35] In other words, by her own admission, there was intent on her part to benefit herself when she attempted to bring home the packing tape in question.

It is noteworthy that prior to this incident, there had been several cases of theft and vandalism involving both respondent company's property and personal belongings of other employees. In order to address this issue of losses, respondent company issued two memoranda implementing an intensive inspection procedure and reminding all employees that those who will be caught stealing and performing acts of vandalism will be dealt with in accordance with the company's Code of Conduct. Despite these reminders, Helen took the packing tape and was caught during the routine inspection. All these circumstances point to the conclusion that it was not just

an error of judgment on the part of Helen, but a deliberate act of theft of company property.

In the case of Firestone Tire and Rubber Company of the Philippines v. Lariosa[36] involving an employee who was caught by the security guards of the company during a routine inspection with possession of company property, we held that:

> There is no gainsaying that theft committed by an employee constitutes a valid reason for his dismissal by the employer. Although as a rule this Court leans over backwards to help workers and employees continue with their employment or to mitigate the penalties imposed on them, acts of dishonesty in the handling of company property are a different matter.[37]

We hold that Helen is guilty of serious misconduct in her act of taking the packing tape.

The petitioners also argue that the penalty of dismissal is too harsh and disproportionate to the offense committed since the value of the thing taken is very minimal. Petitioners cite the case of Caltex Refinery Employees Association v. National Labor Relations Commission[38] where Arnelio M. Clarete (Clarete) was found to have willfully breached the trust and confidence reposed in him by taking a bottle of lighter fluid. In said case, we refrained from imposing the supreme penalty of dismissal since the employee had no violations "in his eight years of service and the value of the lighter fluid x x x is very minimal compared to his salary x x x."[39]

After a closer study of both cases, we are convinced that the case of Caltex is different from the case at hand. Although both Clarete and Helen had no prior violations, the former had a clean record of eight years with his employer. On the other hand, Helen was not even on her second year of service with Keihin when the incident of theft occurred. And what further distinguishes the instant case from Caltex is that respondent company was dealing with several cases of theft, vandalism, and loss of company and employees' property when the incident involving Helen transpired.

Regarding the requirement of procedural due process in dismissal of employees, petitioners argue that the first notice failed to explain the charge being leveled against Helen. According to the petitioners, the notice was vague and lacked sufficient definitiveness.

The show-cause notice states:

> Please explain in writing within 48 hours upon receipt hereof, why you have committed an offense against company property specifically F.2 of the company's Code of Conduct: "Any act constituting theft or robbery, or any attempt to commit theft or robbery, of any company property or other associate's property."[40]

We reject petitioners' claim that respondent company failed to observe the requirements of procedural due process. "In the dismissal of employees, it has been consistently held that the twin requirements of notice and hearing are essential elements of due process. The employer must furnish the employee with two written notices before termination of employment can be legally effected: (a) a notice apprising the employee of the particular acts or omissions for which his dismissal is sought, and (b) a subsequent notice informing the employee of the employer's decision to dismiss him."[41]

In this case, respondent company furnished Helen a show-cause notice dated September 6, 2003 accusing her of violating F.2 of the company's Code of Conduct which says, "Any act constituting theft or robbery, or any attempt to commit theft or robbery, of any company property or other associate's property."[42] We find that such notice sufficiently informed Helen of the charge of theft of company property against her. We are convinced that such notice satisfies the due process requirement to apprise the employee of the particular acts or omissions for which dismissal is sought.

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With regard to the requirement of a hearing, the essence of due process lies in an opportunity to be heard. Such opportunity was afforded the petitioner when she was asked to explain her side of the story. In Metropolitan Bank and Trust Company v. Barrientos,[43] we held that, "the essence of due process lies simply in an opportunity to be heard, and not that an actual hearing should always and indispensably be held." Similarly in Philippine Pasay Chung Hua Academy v. Edpan,[44] we held that, "[e]ven if no hearing or conference was conducted, the requirement of due process had been met since he was accorded a chance to explain his side of the controversy."

WHEREFORE, the Petition is DENIED. The Resolutions dated November 2, 2005 and January 6, 2006 of the Court of Appeals in CA-G.R. SP No. 91718 are AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin,[*] and Perez, JJ., concur.

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[*] In lieu of Associate Justice Presbitero J. Velasco, Jr. per Special Order No. 876 dated August 2, 2010.

[1] Rollo, pp. 4-43.

[2] CA rollo, p. 191; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Juan Q. Enriquez, Jr.

[3] Id. at 236-237.

[4] Id. at 85.

[5] Id. at 86.

[6] Id. at 87.

[7] Id. at 88.

[8] Id. at 91.

[9] Id. at 88.

[10] Id. at 43.

[11] Id. at 91.

[12] Id. at 55-56.

[13] Id. at 88.

[14] Enrico Angelo C. Portillo.

[15] CA rollo, 122-126.

[16] Id. at 124.

[17] Id.

[18] Id. at 124-125.

[19] Id. at 125.

[20] Id.

[21] Id. at 163.

[22] Id. at 164.

[23] Id. at 158-167; penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

[24] Id. at 167.

[25] Id. at 168-186.

[26] Id. at 188-189.

[27] Id. at 191.

[28] Id. at 192-234.

[29] Id. at 236-237.

[30] Rollo, pp. 14-15.

[31] Aracelona v. Court of Appeals, 345 Phil. 250, 267 (1997).

[32] Id.

[33] Austria v. National Labor Relations Commission, 371 Phil. 340, 360 (1999).

[34] Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission, 387 Phil. 250, 261 (2000).

[35] Rollo, p. 130.

[36] 232 Phil. 201 (1987).

[37] Id. at 206.

[38] 316 Phil. 335 (1995).

[39] Id. at 344.

[40] CA rollo, p. 88.

[41] Metropolitan Bank and Trust Company v. Barrientos, G.R. No. 157028, January 31, 2006, 481 SCRA 311, 321-322.

[42] CA rollo, p. 88.

[43] Supra note 41 at 322.

[44] G.R. No. 168876, February 10, 2009, 578 SCRA 262, 271.

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