

ADAM B. GARCIA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), LEGAZPI OIL COMPANY, INC., ROMEO F. MERCADO AND GUS ZULUAGA, RESPONDENTS.

G.R. No. 172854. April 16, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review are the Decision[1] dated February 27, 2006 and the Resolution[2] dated May 16, 2006, of the Court of Appeals in CA-G.R. SP No. 51307. The appellate court had affirmed the Decision[3] dated April 29, 1998, of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 0101471-96, which had earlier reversed the Decision[4] dated January 24, 1996, of the Labor Arbiter in RAB V Case No. 02-00018-95.

The pertinent facts[5] are as follows:

Petitioner Adam B. Garcia was employed as Production Maintenance Foreman by respondent Legazpi Oil Company, Inc. (Legazpi Oil) from April 15, 1991 to February 10, 1995.

In December 1992, respondent Romeo F. Mercado, the Plant Operations Manager, instructed Garcia to look for a road grader to clear and level the plant road network in preparation for the arrival of certain plant visitors. Garcia failed to secure one because no road grader was available then.

A week later, Mercado reminded Garcia about the road grader. Garcia went to the Area Equipment Services of the Department of Public Works and Highways (DPWH) in Albay. He was able to talk to Engineer Antonio S. Abo, the Fleet-in-Charge, who advised him to come back as there was no available unit yet.

Mercado further pressed Garcia to follow up the request with the DPWH. This time, Regional Equipment Engineer Bienvenido Bogayong allowed the use of the newly-rehabilitated road grader by way of operational test provided that Legazpi Oil would shoulder fuel consumption and repairs as may be necessary, including materials, equipment and labor cost, as well as the wages of the operator and the helper.

Oscar A. de la Torre, a DPWH employee, hired Jesus T. Torregoza, a retired DPWH employee, to drive the road grader to Legazpi Oil. Upon their arrival, Garcia and Mercado met them. Engr. Abo then informed Mercado of the aforesaid condition to which Mercado agreed. Thereafter, Mercado orally instructed Garcia to extend the necessary assistance to the DPWH personnel and the needs of the road grader.

In the course of its operation, the road grader broke down several times. Garcia instructed Roly B. Balanta, Legazpi Oil's Production Maintenance Crew, to make the repairs using spare parts brought by the DPWH personnel except for one bolt piece taken from Legazpi Oil's stockroom.

Since Engr. Abo and de la Torre were not authorized to rent out government property for private use, they agreed with Mercado to make it appear to Legazpi Oil that it was Torregoza who rented out the road grader. Thereafter, billings for the use of the road grader were prepared and approved by Mercado. Legazpi Oil then issued a check

amounting to P37,373.32 in the name of Torregoza. Torregoza endorsed the check to Garcia, who, encashed it. Garcia gave the full amount to Engr. Abo who, in turn, gave him P1,300.00 to pay the accumulated food consumption of the DPWH personnel at the canteen.

Later, Legazpi Oil used the road grader again. It issued another check amounting to P5,541.45 in the name of Torregoza. Again, Torregoza endorsed the check to Garcia, who, encashed it. De la Torre gave Torregoza P2,000.00. Engr. Abo gave the balance of both checks to Engr. Bogayong as payment for the steering booster used in repairing the road grader.

On November 25, 1994, Torregoza filed a complaint-affidavit against Garcia with Legazpi Oil. He claimed that Garcia made him endorse the P37,373.32 check and gave him only P2,000.00. He further averred that when he tried to claim the P5,541.45 check, Legazpi Oil's cashier refused to give it to him unless Garcia was around, upon the latter's instruction.

In a Memorandum[6] dated December 7, 1994, Mercado required Garcia to explain within 24 hours why he should not be penalized for the following alleged infractions:

a.) CATEGORY NO. 4, Item No. 8

Offering or accepting directly/indirectly anything of value in exchange for a job, business transactions or any favor in connection with the work, for personal gain or profit.

b.) CATEGORY NO. 4, Item No. 19, Letter (e) Breach of Trust and Confidence

Any act of dishonesty with the intention to defraud company.

Garcia admitted encashing the checks. However, he claimed that he did so only upon Torregoza's request, and that he gave the proceeds thereof to Engr. Abo, less the amount of P1,300.00 which he paid to the canteen. He insisted that since it was against the policy of the Bureau of Equipment of the DPWH to engage in private business, Engr. Abo designated Torregoza, a retired DPWH employee, to sign the necessary papers in his behalf and to collect the amounts due for the use of the road grader and the wages of the workers. He claimed that Mercado had agreed to the arrangement. Garcia insisted that he did not retain a single centavo from the proceeds of the checks. He then requested Mercado to invite all persons involved for an investigation.[7]

On December 28, 1994, Mercado placed Garcia under preventive suspension for 30 working days without pay effective December 29, 1994. In the meantime, Mercado submitted to the Personnel and Administrative Manager his findings and recommendation on Garcia's alleged infractions.

In a Letter[8] dated February 3, 1995, Garcia was required to explain within 48 hours his alleged unauthorized use of company personnel, equipment, and materials in the repair of the road grader. He was also placed on forced leave with pay for five working days beginning February 4, 1995. The letter reads in part:

In the course of our investigation on the case of the Road Grader that was leased to us, it was disclosed that when the Grader broke down you caused the same to be repaired using company personnel, equipment and materials without prior approval by the management. This is a violation of our rules and your act, favored our contractor without the corresponding payment to the company for manpower, equipment, and materials used for the said repair. Attached is a copy of the affidavit of our employee pertaining to that incident.

x x x x

Garcia explained that he did not seek Mercado's permission before making the repairs because of the latter's instruction to assist the DPWH personnel in the course of their work. He maintained that Mercado knew about the repairs because he was aware of the condition of the road grader and even saw Balanta doing the repairs. He then

reiterated his request to invite the DPWH personnel to clear up everything.[9]

In a Memorandum[10] dated February 10, 1995, Garcia was dismissed due to dishonesty and loss of trust and confidence.

Garcia filed a complaint for illegal suspension, illegal dismissal, and other labor standard violations against Legazpi Oil, Mercado, and Gus Zuluaga.

On January 24, 1996, the Labor Arbiter ruled in favor of Garcia. The Labor Arbiter gave credence and full probative weight to the affidavits and testimonies of Garcia,[11] Engr. Abo,[12] and de la Torre.[13] He declared that Garcia was dismissed without just cause and due process. The Labor Arbiter also pronounced that in encashing the two checks, Garcia merely accommodated Torregoza and did not profit from him. Moreover, Torregoza admitted that he received P2,000.00 from de la Torre and not from Garcia. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding respondent Legazpi Oil Co./Romeo Mercado, manager, guilty of illegal dismissal and thereby directing said respondent to reinstate complainant to his former position without loss of seniority rights plus all other benefits, privileges and emoluments he may have been entitled to at the time of his termination from his employment and to pay him full backwages subject to deduction of his earnings elsewhere, reckoned with from the time his compensation was withheld on December 29, 1994 up to the time of actual reinstatement which to date amounted [to] P127,710.88 together with the certificate to the effect that complainant was actually reinstated.

Respondent is further ordered to pay complainant moral and exemplary damages in the total amount of P10,000.00 plus 10% attorney's fees of the [total] award.

That the aggregate amount of P151,481.97 together with the certificate to the effect that complainant was actually reinstated be coursed thru this Branch within ten (10) days from receipt hereof for proper disposition.

Other claims and charges are hereby dismissed for lack of merit.

SO ORDERED.[14]

On appeal, the NLRC set aside the decision of the Labor Arbiter and dismissed the complaint for lack of merit. It did not give credence to Garcia's claims, as well as the affidavits and testimonies of Engr. Abo and de la Torre. The NLRC ruled that Garcia's claim that he gave the proceeds of the checks to Engr. Abo was belied by Engr. Abo who averred that it was Engr. Bogayong who received the said proceeds. It added that Engr. Abo's affidavit and testimony were not worthy of belief because while he alleged in his affidavit that Garcia talked to him about the road grader in December 1992, he claimed during cross-examination that Garcia conferred with him in January 1992.

However, while the NLRC found that Garcia was dismissed for just cause, it ruled that:

[W]e cannot subscribe to the manner the dismissal was effected. While the Complainant was given the chance to submit his explanation regarding his alleged violation of company rules, we are not ready to concede to the respondent's position that his right of due process was accorded to him to its fullest. Hence, in this regard, by virtue of this violation, complainant should be awarded an indemnity pay equivalent to his one (1) month salary in accordance with existing jurisprudence. [Citations omitted.][15]

Garcia filed a petition for certiorari before this Court. Pursuant to A.M. No. 99-2-01-SC[16] dated February 9, 1999, we remanded the case to the Court of Appeals. The appellate court dismissed the petition on the ground that it only raised questions of fact. It also denied Garcia's motion for reconsideration.

On appeal, we remanded the case again to the Court of Appeals for further proceedings.[17]

On February 27, 2006, the appellate court denied the petition. It found Garcia's encashment of the checks in favor of Torregoza dubious. There was no need for Torregoza to endorse the checks to Garcia for encashment and for Garcia to turn over the proceeds to Engr. Abo since Torregoza could have simply endorsed the checks to any of the DPWH personnel with whom he had transacted. Garcia held a position of trust and confidence and his encashment of the checks resulted in Legazpi Oil's loss of confidence in him. The appellate court also ruled that Garcia was afforded due process prior to his dismissal. He was apprised of his infractions and given the opportunity to answer the charges against him through the submission of his written explanations. The fact that no further investigation was conducted is of no moment since due process does not require a trial-type proceeding similar to those in the courts. Thus, the appellate court ordered:

WHEREFORE, finding that public respondent NLRC did not act with grave abuse of discretion, the instant petition is hereby DENIED and is accordingly DISMISSED.

SO ORDERED.[18]

Reconsideration having been denied, petitioner now comes before us, alleging that the appellate court erred:

I.

... IN DISMISSING THE PETITION AND IN NOT REINSTATING THE DECISION DATED JANUARY 24, 1996 RENDERED BY THE EXECUTIVE LABOR ARBITER [THERE BEING] LACK OF DUE PROCESS IN THE TERMINATION OF EMPLOYMENT OF PETITIONER.[19]

II.

... IN DISMISSING THE PETITION AND IN NOT REINSTATING THE DECISION DATED JANUARY 24, 1996 RENDERED BY THE [EXECUTIVE] LABOR ARBITER [THERE BEING] NO JUST CAUSE FOR THE TERMINATION OF EMPLOYMENT OF PETITIONER.[20]

The issues for resolution are: (1) Was the petitioner validly dismissed due to dishonesty and loss of trust and confidence? and (2) Was petitioner afforded due process?

The petition is meritorious.

Records show that Legazpi Oil dismissed petitioner on the ground of dishonesty and loss of trust and confidence due to the following alleged infractions: (1) encashment of two checks in the name of Torregoza; and (2) unauthorized use of company personnel, equipment, and materials in the repair of the road grader.

On the first ground, it appears that petitioner merely accommodated Torregoza's request. While we see no reason why Torregoza would rather have petitioner encash the checks, it has been duly proven that petitioner turned over the proceeds thereof to Engr. Abo. From the first check of P37,373.32, Engr. Abo gave petitioner only P1,300.00 to pay the accumulated food consumption of the DPWH personnel at the canteen.[21] From the second check of P5,541.45, de la Torre gave Torregoza P2,000.00.[22] Engr. Abo gave the balance of both checks to Engr. Bogayong as payment for the steering booster used in repairing the road grader.[23]

Contrary to Torregoza's claim, it was actually de la Torre and not petitioner who gave him P2,000.00.[24] Moreover, his allegation that petitioner instructed the cashier to withhold the release of the second check to him unless petitioner was around, remained unsubstantiated. The cashier was never called to testify during the company investigation or the clarificatory hearings by the Labor Arbiter. Likewise, contrary to what Legazpi Oil has insinuated, petitioner never profited from the encashment of the checks since its full amount has been completely accounted for. Indeed, petitioner merely followed Mercado's oral instruction to extend the necessary

assistance to the DPWH personnel.[25]

On the second ground, it seems that Mercado knew that the use of the road grader was subject to the condition that Legazpi Oil would shoulder fuel consumption and repairs as may be necessary, including materials, equipment and labor cost, as well as the wages of the operator and the helper. Mercado admitted that he met Engr. Abo when the road grader was delivered to Legazpi Oil and that Engr. Abo informed him of the condition, to which he agreed.[26]

It is also clear that Mercado was aware when the road grader broke down since he saw Balanta doing the repairs.[27] Had he found petitioner's omission to seek his permission before making the repairs against company policy, he could have called petitioner's attention right there and then. It could only be concluded that petitioner was duly authorized to make use of company personnel, equipment, and materials as a result of Mercado's prior oral instruction to petitioner to extend the necessary assistance to the needs of the road grader.[28] No less noteworthy, it was Manager Mercado who goaded Garcia to find a road grader for the use of the company, even to the extent of requesting DPWH, which admittedly is prohibited from renting out government property for private use. Garcia had no option but to follow Mercado's orders.

Loss of trust and confidence, as a valid ground for dismissal, must be based on willful breach of the trust reposed in the employee by his employer. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[29] Elsewise stated, it must be based on substantial evidence and not on the employer's whims or caprices or suspicions; otherwise, the employee would eternally remain at the mercy of the employer.[30] A condemnation of dishonesty and disloyalty cannot arise from suspicion spawned by speculative inferences.[31]

Loss of confidence must not be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary. Loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility or trust and confidence. He must be invested with confidence on delicate matters, such as custody handling or care and protection of the property and assets of the employer. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue to work for the employer.[32]

In this case, we do not find the evidence sufficient to hold that petitioner's actuations amounted to a willful breach of trust. Petitioner acted only based on Manager Mercado's oral instruction and we do not see how it could be construed as a breach of trust.

It is also significant to note that in the memorandum of termination, the other ground for petitioner's dismissal was dishonesty. Again, there is no evidence establishing the basis for this ground. The specific acts which constitute this ground were not even alleged by Legazpi Oil. On the contrary, petitioner has been candid in admitting that he indeed encashed the checks and allowed the repairs of the road grader.

All told, the circumstances surrounding the case all militate against the validity of petitioner's dismissal. We need not discuss further the matter of due process.

WHEREFORE, the instant petition is GRANTED. The Decision dated February 27, 2006 and the Resolution dated May 16, 2006 of the Court of Appeals in CA-G.R. SP No. 51307 are REVERSED.

Let this case be remanded to the Labor Arbiter for the proper computation of petitioner's monetary benefits in accordance with Article 279[33] of the Labor Code of the Philippines.

Costs against private respondent company.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, pp. 35-54. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa concurring.

[2] Id. at 59A. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Rosmari D. Carandang and Aurora Santiago-Lagman concurring.

[3] Records, Vol. 3, pp. 596-623.

[4] Records, Vol. 2, pp. 418-440.

[5] See *Garcia v. National Labor Relations Commission*, G.R. No. 147427, February 7, 2005, 450 SCRA 535.

[6] Records, Vol. 1, p. 16.

[7] Id. at 17-18.

[8] Id. at 22.

[9] Id. at 24.

[10] Rollo, p. 14.

[11] Records, Vol. 1, pp. 33-35; 92-108.

[12] Id. at 47-48; 119-127.

[13] Id. at 43-44; 133-148.

[14] Records, Vol. 2, pp. 439-440.

[15] Records, Vol. 3, pp. 621-622.

[16] *In Re: Dismissal of Special Civil Actions in NLRC Cases*.

[17] *Garcia v. National Labor Relations Commission*, *supra* note 5, at 549.

[18] Rollo, p. 54.

[19] Id. at 19-20.

[20] Id. at 24.

[21] Records, Vol. 1, pp. 47-48.

[22] Id. at 43; Records, Vol. 2, p. 429.

[23] Id. at 47-48.

[24] Id. at 43; Records, Vol. 2, pp. 429.

[25] Records, Vol. 2, pp. 430-431.

[26] Id. at 427.

[27] Records, Vol. 1, p. 24.

[28] Records, Vol. 2, pp. 430-431.

[29] Cruz, Jr. v. Court of Appeals, G.R. No. 148544, July 12, 2006, 494 SCRA 643, 654-655; Surigao del Norte Electric Cooperative v. NLRC, G.R. No. 125212, June 28, 1999, 309 SCRA 233, 248.

[30] Cruz, Jr. v. Court of Appeals, supra at 655; P.J. Lhuillier, Inc. v. National Labor Relations Commission, G.R. No. 158758, April 29, 2005, 457 SCRA 784, 798-799; Surigao del Norte Electric Cooperative v. NLRC, supra at 248-249.

[31] Metro Eye Security, Inc. v. Salsona, G.R. No. 167637, September 28, 2007, 534 SCRA 375, 388.

[32] Sulpicio Lines, Inc. v. Gulde, G.R. No. 149930, February 22, 2002, 377 SCRA 525, 529.

[33] ART. 279. Security of Tenure. $\frac{3}{4}$ In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

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