

ELMER LOPEZ, PETITIONER, VS. KEPPEL BANK PHILIPPINES, INC., MANUEL BOSANO III AND STEFAN TONG WAI MUN, RESPONDENTS.

G.R. No. 176800. September 05, 2011

Ponente: BRION, J.

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BRION, J.:

We resolve the present petition for review on certiorari[1] seeking the nullification of the decision[2] and the resolution[3] of the Court of Appeals (CA), dated December 19, 2006 and February 7, 2007, respectively, rendered in CA-G.R. CEB-SP. No. 01754.

The Antecedents

The facts, as set out in the assailed CA decision, are summarized below.

Petitioner Elmer Lopez was the Branch Manager of the respondent Keppel Bank Philippines, Inc. (bank) in Iloilo City. Allegedly, through his efforts, Hertz Exclusive Cars, Inc. (Hertz) became a client of the bank.

By notice dated August 12, 2003,[4] the bank asked Lopez to explain in writing why he should not be disciplined for issuing, without authority, two purchase orders (POs) for the Hertz account amounting to a total of P6,493,000.00, representing the purchase price of 13 Suzuki Bravo and two Nissan Exalta vehicles.

Lopez submitted his written explanation on the same day,[5] but the bank refused to give it credit. Through respondents Manuel Bosano III (Vice-President and Head of Retail Banking Division/Consumer Banking Division) and Stefan Tong Wai Mun (Vice-President/Comptroller), the bank terminated Lopez's employment effective immediately.[6]

Lopez asked the bank for reconsideration.[7] In response, the bank, through the respondent officers, met with Lopez at its headquarters in Cubao, Quezon City on September 25, 2003. Lopez came with his lawyer (Atty. Edmundo V. Buensuceso) and a military man (one Col. Flordeliza). After the meeting, the bank found no reason to reconsider and reiterated its decision to dismiss Lopez.[8]

Lopez filed a complaint for illegal dismissal and money claims against the bank, Bosano and Tong.

The Compulsory Arbitration Proceedings

Lopez alleged before the labor arbiter that he issued the POs as part of his strategy to enhance the bank's business, in line with his duty as branch manager to promote the growth of the bank. He claimed that the bank honored the first PO for P1.8M from which the bank derived an income of P142,000.00. He added that the second PO did not materialize because Mr. James Puyat Concepcion, a Hertz incorporator and director who opened the Hertz account, stopped depositing with the bank because of the negative credit rating he received from the bank's credit committee. Allegedly, the committee discovered that James Puyat Concepcion had several pending court cases.

For its part, the bank denied approving the first PO, arguing that Lopez did not have the authority to issue the POs

for the Hertz account as there was a standing advice that no Hertz loan application was to be approved. It stressed that Lopez committed a serious violation of company rules when he issued the POs.

In a decision dated April 28, 2004,[9] Labor Arbiter Cesar D. Sideño ruled that Lopez was illegally dismissed. Accordingly, the labor arbiter ordered Lopez's immediate reinstatement, and awarded him backwages of P392,000.00, moral and exemplary damages of P8M, and P550,000.00 -- the purchase price of a Toyota Revo which Lopez allegedly brought over from his stint with Global Bank (now Metrobank). The labor arbiter found that contrary to the bank's claim, the evidence showed that Lopez had been issuing POs which the bank had paid, including the first of the two POs that led to his dismissal.[10]

On appeal by the bank, the National Labor Relations Commission (NLRC) rendered a decision on October 11, 2005[11] reversing the labor arbiter's ruling. It dismissed the complaint for lack of merit. The NLRC found merit in the bank's submission that by issuing the questioned POs without authority and against the bank's express orders, Lopez thereby committed a willful disobedience against his superiors -- a sufficient basis for the bank to lose its trust and confidence in him as branch manager. It thus found that Lopez had been dismissed for cause after the observance of due process. Lopez moved for reconsideration, but the NLRC denied the motion in its resolution of January 25, 2006.[12] Lopez sought relief from the CA through a petition for certiorari, charging the NLRC with grave abuse of discretion for setting aside the labor arbiter's decision.

The CA Decision

On December 19, 2006, the CA rendered its now assailed decision,[13] denying the petition and affirming the October 11, 2005 decision of the NLRC. It fully agreed with the NLRC finding that Lopez had not been illegally dismissed.

Lopez moved for, but failed to obtain, a reconsideration of the CA decision. The CA denied the motion on February 7, 2007.[14]

The Case for Lopez

Through the present petition,[15] the reply to the bank's comment dated February 11, 2008,[16] and the memorandum dated September 22, 2008,[17] Lopez entreats the Court to nullify the CA decision, contending that the CA erred in: (1) not ruling that the bank's appeal with the NLRC should have been dismissed on the ground of non-perfection; and (2) affirming the decision of the NLRC that he was dismissed for a just cause (loss of trust and confidence) and that he was afforded due process.

Lopez argues, with respect to the first assignment of error, that the bank failed to comply with Sections 4 and 6, Rule VI, of the 2002 Rules of Procedure of the NLRC.[18] He points out that the bank did not file a notice of appeal together with its memorandum of appeal, which in turn was not supported by a certificate of non-forum shopping; and neither did the bank furnish him, as appellee, a certified copy of the appeal bond.

On the substantive aspect of the case, Lopez posits that the bank failed to justify his dismissal on the ground of loss of trust and confidence. He insists that, as branch manager, he had the authority to issue POs as in fact he issued several of them in the past, which POs were honored and paid by the bank. The labor arbiter properly relied on the past transactions in his decision. These included, he reiterates, the first PO for the Hertz account which was paid by the bank on July 18, 2003, a transaction where the bank even earned a substantial income (P142,000.00). He maintains that the bank failed to substantiate its position that he was not authorized to issue the POs. He adds that the bank's claim that his issuance of the POs exposed the bank to financial loss is a lame excuse to justify the termination of his employment.

Lopez argues that his dismissal was a mere afterthought on the part of the bank management, particularly Bosano, to cover up its embarrassment when he (Lopez) made inquiries and discovered that Hertz's James Puyat Concepcion had no pending court cases and was therefore credit worthy. He adds that assuming that he did not have the authority to issue POs, still, he cannot be held guilty of willful disobedience; even if he had been guilty, dismissal was a very harsh penalty.

Finally, Lopez submits that the bank failed to accord him due process because the bank did not give him the opportunity to prepare for his defense. He points out that his written explanation (dated August 12, 2003)[19] preceded the bank's letter (of the same date)[20] that required him to explain why he issued the POs in question. Lopez contends in this regard that on August 12, 2003, he went to Bosano's office in Quezon City all the way from Iloilo City and there, he was cornered by Bosano who verbally instructed him to immediately write down his explanation even before he was served with the bank's August 12, 2003 letter. He maintains that Bosano's preemptive move deprived him of the opportunity to secure the services of a counsel.

While Lopez believes his dismissal to be illegal, he does not seek reinstatement due to the antagonism that has developed between him, and the bank and its officers, due to the present case. He only asks for separation pay of one month pay for every year of service, full backwages, allowances and other benefits. Additionally, he prays for moral and exemplary damages, as well as attorney's fees, to compensate him for a dismissal that was attended by bad faith and effected in a wanton, oppressive and malevolent manner.

The Case for the Bank and its Officers,

Through its comment to the petition[21] and memorandum,[22] the bank submits that the CA committed no reversible error in denying Lopez's petition for certiorari, and in affirming the ruling of the NLRC that Lopez was dismissed for a just cause and after due process.

The bank is puzzled why Lopez is standing firm on his position that he did nothing wrong when he issued the questioned POs despite the express directive not to proceed with the Hertz loan application unless its adverse credit investigation report is explained to the bank's credit committee. It posits that no bank would gamble to maintain as branch manager a person who dares to supplant a major decision of the bank's top leadership with his personal decision. It argues that in this situation, the law (Labor Code) provides protection to the employer through its management prerogative rights and the right to dismiss employees on just and valid grounds.

The bank refutes Lopez's contention that there was no willful disobedience that warranted his dismissal. It points out that there was an order for him not to proceed with the Hertz loan application. The order was very reasonable as it is the standard policy of every bank to conduct an investigation on the credit worthiness of any loan applicant. Since it appeared from the investigation of its credit committee that James Puyat Concepcion of Hertz had various court cases, it was only proper for the bank to put on hold the loan application of Hertz until the adverse finding could be cleared. It insists that Lopez willfully and knowingly disobeyed this order.

Further, the bank questions Lopez's submission, through a supplemental addendum to his position paper, of evidence that it honored and paid POs issued by Lopez in the past. It maintains that it was not furnished a copy of this submission; hence, it was unable to controvert this evidence.

On the procedural due process issue, the bank denies Lopez's allegation that he was not given the opportunity to defend himself. It points out that both the NLRC and the CA confirmed that Lopez was not deprived the opportunity to be heard; the opportunity commenced with: (1) the notice for him to explain his side regarding his unauthorized issuance of POs; (2) the notice of his termination from employment; and (3) the hearing called in response to his motion for reconsideration where he was assisted by his lawyer and his soldier friend.

The Court's Ruling

The procedural issue

Lopez faults the CA for not ruling that the bank's appeal to the NLRC should have been dismissed for non-perfection. He argues that no notice of appeal accompanied the memorandum of appeal; neither was there a certificate of non-forum shopping nor any copy furnished to him of the certified true copy of the appeal bond.

The procedural question is a non-issue. Lopez did not raise it before the CA; in fact, he challenged the NLRC decision of October 11, 2005[23] on its merits and not on its form. We, therefore, see no need to further discuss this argument.

The merits of the case

On the substantive aspect of the case, we note that Lopez was dismissed from the service by reason of loss of trust and confidence, a just cause for an employee's dismissal under the law.[24] Lopez insists though that the act which triggered the dismissal action does not justify his separation from the service.

Is Lopez liable for loss of trust and confidence for issuing the two disputed POs?

The right of an employer to freely select or discharge his employee is a recognized prerogative of management; an employer cannot be compelled to continue employing one who has been guilty of acts inimical to its interests. When this happens, the employer can dismiss the employee for loss of confidence.[25]

At the same time, loss of confidence as a just cause of dismissal was never intended to provide employers with a blank check for terminating employment. Loss of confidence should ideally apply only (1) to cases involving employees occupying positions of trust and confidence, or (2) to situations where the employee is routinely charged with the care and custody of the employer's money or property. To the first class belong managerial employees, i.e., those vested with the powers and prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or effectively recommend such managerial actions. To the second class belong cashiers, auditors, property custodians, or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[26]

As branch manager, Lopez clearly occupies a "position of trust." His hold on his position and his stay in the service depend on the employer's trust and confidence in him and on his managerial services.[27] According to the bank, Lopez betrayed this trust and confidence when he issued the subject POs without authority and despite the express directive to put the client's application on hold. In response, Lopez insists that he had sufficient authority to act as he did, as this authority is inherent in his position as bank manager. He points to his record in the past when he issued POs which were honored and paid by the bank and which constituted the arbiter's "overwhelming evidence"[28] in support of the finding that "complainant's dismissal from work was without just cause, hence, illegal." [29]

We disagree with Lopez's contention. Despite evidence of his past exercise of authority (as found by the labor arbiter), we cannot disregard evidence showing that in August 2003, the bank specifically instructed Lopez not to proceed with the Hertz loan application because of the negative credit rating issued by the bank's credit committee. We find it undisputed that Lopez processed the loan despite the adverse credit rating. In fact, he admitted that he overlooked the "control aspects" of the transaction as far as the bank was concerned because of his eagerness to get a bigger share of the market.[30]

Lopez's good intentions, assuming them to be true, are beside the point for, ultimately, what comes out is his defiance of a direct order of the bank on a matter of business judgment. He went over the heads of the bank

officers, including the credit committee, when, based on inquiries he made on his own regarding the credit worthiness of James Puyat Concepcion, he simply proceeded to act on the basis of his own judgment. Evident in his written explanation[31] was his failure to inform the credit committee of his own efforts to check on the committee's adverse findings against Hertz and his independent action based solely on his own authority.

As a bank official, the petitioner must have been aware that it is basic in every sound management that people under one's supervision and direction are bound to follow instructions or to inform their superior of what is going on in their respective areas of concern, especially regarding matters of vital interest to the enterprise. Under these facts, we find it undisputed that Lopez disobeyed the bank's directive to put the Hertz loan application on hold, and did not wait until its negative credit rating was cleared before proceeding to act. That he might have been proven right is immaterial. Neither does the submission that the bank honored and paid the first PO and even realized a profit from the transaction, mitigate the gravity of Lopez's defiance of the directive of higher authority on a business judgment. What appears clear is that the bank cannot in the future trust the petitioner as a manager who would follow directives from higher authorities on business policy and directions. The bank can be placed at risk if this kind of managerial attitude will be repeated, especially if it becomes an accepted rule among lower managers.

In *Nokom v. NLRC*, [32] we reiterated the guidelines for the application of loss of confidence as follows: (1) loss of confidence, should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal or unjustified; (3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify an earlier action taken in bad faith.

Under the circumstances of this case, we are convinced that the bank was justified in terminating Lopez's employment by reason of loss of trust and confidence. He admitted issuing the two POs, claiming merely that he had the requisite authority. He could not present any proof in this regard, however, except to say that it was part of his inherent duty as bank manager. He also claimed that the bank acquiesced to the issuance of the POs as it paid the first PO and the POs he issued in the past. This submission flies in the face of the bank's directive for him not to proceed unless matters are cleared with the bank's credit committee. The bank had a genuine concern over the issue as it found through its credit committee that Hertz was a credit risk. Whether the credit committee was correct or not is immaterial as the bank's direct order left Lopez without any authority to clear the loan application on his own. After this defiance, we cannot blame the bank for losing its confidence in Lopez and in separating him from the service.

The due process issue

As the NLRC and the CA did, we find Lopez to have been afforded due process when he was dismissed. He was given the required notices. More importantly, he was actually given the opportunity to be heard; when he moved for reconsideration of the bank's decision to terminate his employment, it scheduled a hearing where he appeared together with his lawyer and a military man. This was an opportunity to be heard that the law recognizes.

In fine, we find no merit in the petition.

WHEREFORE, premises considered, we hereby DENY the petition for lack of merit. The assailed decision and resolution of the Court of Appeals are AFFIRMED. Costs against petitioner Elmer Lopez.

SO ORDERED.

Carpio, (Chairperson), Perez, Mendoza,[*] and Sereno, JJ., concur.

[*] Designated as additional Member vice Associate Justice Bienvenido L. Reyes per Special Order No. 1066 dated August 23, 2011.

[1] Rollo, pp. 9-35; filed pursuant to Rule 45 of the Rules of Court.

[2] Id. at 38-46; penned by Associate Justice Isaias P. Dicdican, and concurred in by Associate Justices Romeo F. Barza and Priscilla Baltazar-Padilla.

[3] Id. at 47-48.

[4] Id. at 63; Petition, Annex "E."

[5] Id. at 61-62; Petition, Annex "D."

[6] Id. at 64; Notice of Termination dated August 27, 2003; Petition, Annex "F."

[7] Id. at 65-68; Petition, Annex "G."

[8] Id. at 72-73; Letter signed by Tong, dated October 3, 2003; Petition, Annex "H."

[9] Id. at 118-135; Petition, Annex "K."

[10] Id. at 186-192.

[11] Ibid.

[12] Id. at 197-198.

[13] Supra note 2.

[14] Supra note 3.

[15] Supra note 1.

[16] Rollo, pp. 263-266.

[17] Id. at 276-310.

[18] Now 2005 Revised Rules of Procedure of the NLRC.

[19] Supra note 5.

[20] Supra note 4.

[21] Rollo, pp. 205-228.

[22] Id. at 317-352.

[23] Supra note 10.

[24] LABOR CODE, Article 282(c).

[25] Cesario Alverio Azucena, Jr., The Labor Code with Comments and Cases, Volume II, Sixth Edition (2007), p. 752 citing Tabacalera Insurance Co. v. NLRC, 236 Phil. 714 (1987).

[26] Mabeza v. NLRC, 338 Phil. 386 (1997).

[27] International Harvester Macleod, Inc. v. Intermediate Appellate Court, 233 Phil. 655 (1987).

[28] Supra note 10.

[29] Id. at 132.

[30] Supra note 5.

[31] Ibid.

[32] 390 Phil. 1228 (2000).

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