

OLIGARIO SALAS, PETITIONER, V.S. ABOITIZ ONE, INC., AND SABIN ABOITIZ, RESPONDENTS.

G.R. No. 178236. June 27, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

Petitioner Oligario Salas (Salas) appeals by certiorari the January 31, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 93947 and CA- G.R. SP No. 94145, and its June 13, 2007 Resolution[2] denying his motion for reconsideration.

Salas was hired as assistant utility man by respondent Aboitiz One, Inc. (Aboitiz) on May 11, 1993, and was initially assigned at the Maintenance Department-Manila Office. He rose from the ranks and became material controller on February 22, 2000 under the Materials Management Operations Team. As material controller, Salas was tasked with monitoring and maintaining the availability and supply of Quickbox needed by Aboitiz in its day-to-day operations.

On June 4, 2003, Salas had run out of Large Quickbox, hampering Aboitiz's business operation. The following day, June 5, 2003, Aboitiz wrote Salas a memorandum requiring the latter to explain in writing within seventy-two (72) hours why he should not be disciplinarily dealt with for his (i) failure to monitor the stock level of Large Quickbox which led to inventory stock out; and (ii) failure to report to [his] immediate superior the Large Quickbox problem when the stock level was already critical, when the Large Quickbox level was near stock out, and the stock level had a stock out.[3]

On June 10, 2003, an administrative hearing was conducted to give Salas ample opportunity to explain his side. Salas' explanation, however, was not convincing because on July 2, 2003, Aboitiz sent him a decision notice[4] which reads:

Dear Mr. Salas:

In connection with the administrative investigation conducted on June 10, 2003 related to your alleged gross negligence of duties and responsibilities, the following are the findings during the said investigation:

- Although you repeatedly made follow-up to the [supplier], you failed to elevate the critical situation to the attention of your leaders resulting to the stock out of a critical stock;
- Your case was aggravated by your tampering of the Bin Card by changing the date of stock from May 31 to June 2, 2003 to cover up your negligence and mislead the investigating team;
- The stock out incident had a negative impact to the company in terms of revenue and goodwill to clients.

Your position as Warehouseman is vested with trust and confidence by the company for the reason that you are in-charge of safekeeping and monitoring of the company's operational supplies and ensuring that these are available anytime.

In consideration of the results of the investigation you are hereby terminated from the company for loss of trust and confidence effective July 15, 2003.

Accordingly, you are hereby directed to report to the Human Resource Office for your final clearance of money and property accountabilities, and obligations.

For your information and compliance.

Sincerely yours

(Signed) PAUL HAMOY
Team Leader, Purchasing
Aboitiz One, Inc.

Salas thereafter sent a letter to Mr. Hamoy requesting reconsideration of the management's decision stating:

Sir,

I would like to appeal for humanitarian reason on the decision of the management terminating me from service.

1. I would like to ask if I could avail of the early retirement plan since I was able to work for the company for 10 years, it is very hard for me that I be terminated after working for that long years in A1, the money I will get from retirement plan will be use[d] for my family expenses for at least a couple of months until I got a new job, pls. spare my family.

2. If you can't grant #1 appeal can you please allow me to tender my resignation instead of being terminated by the company;

3. If I can stay up to July 31, 2003, so I can have enough time to look for another job and I can earn enough money to support my family [for] at least another month in our everyday expenses.

thanks, ohlee salas.[5]

Mr. Hamoy replied via electronic mail (e-mail) denying Salas' request to avail himself of the retirement plan or tender his resignation. He reasoned that the company's table of discipline provides the penalty of dismissal for the offenses he committed. Salas was, however, granted an extension of one (1) month or until August 15, 2003 to work with the company, if he so desired.[6]

Claiming termination without cause, Salas filed with the Labor Arbiter a complaint against Aboitiz and its president Sabin Aboitiz for illegal dismissal with prayer for reinstatement, and for payment of full backwages, moral and exemplary damages, as well as attorney's fees.

Aboitiz responded that there was valid termination. It asserted that Salas was dismissed for just cause and with due process. It claimed Salas willfully breached his duty when Aboitiz ran out of Large Quickbox, justifying the termination of his employment.[7]

On February 19, 2004, the Labor Arbiter rendered a Decision[8] sustaining the validity of Salas' dismissal. The Arbiter agreed with Aboitiz that Salas had been remiss in his duty as material controller when he ran out of Large Quickbox on June 4, 2003. The Arbiter further declared that Aboitiz was justified in imposing the ultimate penalty of dismissal, considering Salas' previous infractions.

On appeal, the National Labor Relations Commission (NLRC) reversed the Labor Arbiter. But noting that Salas was not entirely faultless, the NLRC denied his prayer for backwages, and ordered the payment of separation pay instead of reinstatement. The NLRC ratiocinated, thus:

Under the Labor Code, gross negligence is a valid ground for an employer to terminate an employee. Gross negligence characterized by want of even slight care acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequence insofar as other persons may be affected (*Tres Reyes vs. Maxim's Tea House*, 398 SCRA 288). It is for this reason that We disagree with the finding of the Labor Arbiter that [Salas] is guilty of gross negligence because [Salas] did his duty to make proper requisition in advance. If there is anyone to blame for failure to deliver to the requisitioner [Salas], the requisitioned items, it should be the purchasing officer who should have made the corresponding explanation, and to bear the consequences if his explanation is implausible. If ever [Salas] failed to follow-up, it does not follow that he is remiss in his duty, as the duty to deliver the requisitioned items is already on the purchasing officer. Moreover, [Salas] explained during the hearing that he made follow-ups. What puzzles Us is, why did not the management require the Circle Team and the Purchasing Officer to explain. Such omission, to Our mind, indicates discrimination against [Salas].

Past infractions of the same nature can be used to evaluate the sufficiency of the last offense for termination of employment. Considering that We see no gross negligence on [Salas] for which his employment was terminated, consideration of past infractions become immaterial. Moreover, with his ten years of service in the company, he was charged twice, about the alleged sale of used eight units of air conditioner and refusal to assist in the loading at the fuel depot of refueler truck, for which he was penalized by suspension x x x. These past offenses are not of the same nature as the alleged gross negligence that prompted [Aboitiz] to dismiss [Salas] and, therefore, cannot be used as additional justification with the last offense.

However, We find [Salas] guilty of negligence, not because the quick box ran out of stock as of 02 June 2003 but because he failed to monitor and properly document, the stocks in his custody. As he admitted during the administrative hearing, there were those which are even missing. Worst, he tampered the records to show that the stock on 31 May 2003 is for 02 June 2003. While there is no intention to defraud the company, that indicates an act that deserve (sic) disciplinary sanction.

Dismissal is too harsh a penalty for his negligence and act of tampering. This is especially true because he readily admitted the same during the administrative hearing. Considering his length of service, and adhering to the compassionate justice observed in labor cases, deletion of backwages, but with reinstatement, is sufficient penalty. Nonetheless, it appears that strained relations has (sic) already set between the parties that precludes harmonious working relationship. In such case, jurisprudence has laid out the solution by ordering payment of separation pay at one (1) month for every year of service in lieu of reinstatement.

The alleged failure of [Salas] to account for alleged unused accountable forms in the amount of P57,850.00 cannot be used as justification for [Salas'] dismissal. This charge came out after Salas' dismissal for which [Salas] was not surely given an opportunity to be heard. Additionally, [no] substantial evidence was presented to establish such charge. by mere certification of Pablo Osit (sic). How Mr. Osit arrived at such figure is not even explained[.[9]]

Aboitiz filed a motion for reconsideration, while Salas sought partial reconsideration of the decision, both of which were denied by the NLRC on January 24, 2006.

Salas and Aboitiz thereupon filed their respective petitions for certiorari with the Court of Appeals (CA), docketed as CA-G.R. SP No. 93947 and CA-G.R. SP No. 94145, respectively. Salas questioned the denial of his prayer for backwages and other monetary benefits, and the order directing payment of separation pay instead of reinstatement. Upon the other hand, Aboitiz faulted the NLRC for not sustaining the validity of Salas' dismissal.

By decision of January 31, 2007, the CA, which priorly consolidated the petitions of both parties, sustained Salas' dismissal. Reversing the NLRC, it held that:

[t]hree valid grounds attended the dismissal of Salas: (1) Serious misconduct under Art. 282 (a), Labor Code, for

his tamper(ing) the records to show that the stock on 31 May 2003 is for 02 June 2003" even if he is to be considered as an ordinary employee; (2)

Gross and habitual neglect under Art. 282 (b), Labor Code, as the NLRC no less admits that "for the nth time" Salas repeatedly "demonstrated laxity in the performance of his duty"; and (3) willful breach by Salas of the trust reposed on him by Aboitiz, under Art. 282 (c) of the Labor Code, because as "warehouseman", and therefore a confidential employee, Salas concededly tampered company records to hide his gross and habitual neglect [of duty] and worse, unauthorizedly sold the company's eight units of used airconditioners. There, thus, is no basis here for an award of reinstatement and full backwages under Art. 279 of the Labor Code, nor of any financial assistance due to strained relation between the parties.[10]

The CA disposed, thus:

WHEREFORE, the petition of Aboitiz One, Inc. is GRANTED . The NLRC's decision dated September 21, 2005 and resolution dated January 24, 2006, are SET ASIDE and the complaint below is DISMISSED for being without merit.

SO ORDERED.[11]

Salas filed a motion for reconsideration, but the CA denied it on June 13, 2007.

Aggrieved by the resolutions of the CA, Salas comes to this Court positing that:

THE HON. COURT OF APPEALS SERIOUSLY ERRED IN LAW AND COMMITTED MISAPPREHENSION OF FACTS IN REVERSING THE NLRC DECISION INSTEAD OF MODIFYING IT TO INCLUDE BACKWAGES ON MERE GROUND OF A SINGLE AND SIMPLE NEGLIGENCE WHICH IS NOT A GROUND FOR DISMISSAL. SIMILARLY, THIS CANNOT BE THE BASIS OF DISMISSAL ON GROUND OF LOSS OF TRUST AND CONFIDENCE.[12]

The Court shall deal first with the procedural issue.

Commenting on the petition, Aboitiz argues that the petition suffers from procedural infirmities which warrant its dismissal. It asserts that no duplicate original or certified true copy of the assailed decision and resolution, and material portions of the record were appended to the petition. It also alleged that the petition did not indicate the material dates to show that it was filed on time. Finally, it argues that the certification of non-forum shopping is defective.

Contrary to Aboitiz's assertion, the petition substantially complies with the requirements set forth by the Rules of Court. Salas submitted a duplicate original of the assailed Decision[13] and Resolution[14] of the CA, as well as copies of the material portions of the record referred to in the petition.[15]

Likewise, he indicated in his petition the material dates showing that the petition was filed on time. He alleged that he received the assailed CA Decision on February 9, 2007 and filed a motion for reconsideration on February 19, 2007, which was denied by the CA in its June 13, 2007 Resolution. The Resolution denying his motion for reconsideration was received on June 15, 2007.[16]

There is also no dispute that Salas had complied with the requirement of the rules on the certification of non-forum shopping. Salas certifies that he did not commence any case based on similar cause of action before any Court, quasi-judicial body or tribunal. He also averred that:

[t]here is no pending case similar to this case before the Supreme Court, the Court of Appeals (or any of its Division) quasi-judicial bodies or any tribunal, and should I thereafter learn, that the same or similar action or claim has been filed or is pending, I shall report that fact within five (5) days therefrom to this Hon. Court of Appeals wherein this initiatory pleading has been filed pursuant to Section 5, Rule 7 paragraph (c) of the

Revised Rules of Court.[17]

Obviously, Salas committed a typographical error in stating "this Hon. Court of Appeals" instead of "this Honorable Court where this initiatory pleading (petition) has been filed." This innocuous oversight did not render the certification defective, and thus, would not warrant the outright dismissal of the petition.

Besides, it has been our consistent holding that the ends of justice are better served when cases are determined on the merits - after all, parties are given full opportunity to ventilate their causes and defenses - rather than on technicality or some procedural imperfections.[18] Aboitiz's plea for the outright dismissal of the petition cannot, therefore, be sustained.

Having resolved the procedural issue, we proceed to the merits of the case.

As stated in the decision notice,[19] Salas was terminated for neglect of duty and willful breach of trust. Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. To warrant removal from service, the negligence should not merely be gross, but also habitual.[20]

Undoubtedly, it was Salas' duty, as material controller, to monitor and maintain the availability and supply of Quickbox needed by Aboitiz in its day-to-day operations, and on June 4, 2003, Aboitiz had run out of Large Quickbox. However, records show that Salas made a requisition for Quickbox as early as May 21, 2003; that he made several follow-ups with Eric Saclamitao regarding the request; and that he even talked to the supplier to facilitate the immediate delivery of the Quickbox .[21] It cannot be gainsaid that Salas exerted efforts to avoid a stock out of Quickbox. Accordingly, he cannot be held liable for gross negligence.

If there is anything that Salas can be faulted for, it is his failure to promptly inform his immediate supervisor, Mr. Ed Dumago, of the non-delivery of the requisitioned items. Nevertheless, such failure did not amount to gross neglect of duty or to willful breach of trust, which would justify his dismissal from service.

The CA also justified Salas' dismissal on ground of willful breach of trust. It lent credence to Aboitiz's posture that Salas was a warehouseman holding a position of trust and confidence, and that he tampered with the bin card to cover up [his] negligence and [to] mislead the investigating team.

We disagree.

A position of trust and confidence was explained in *Panday v. NLRC*, [22] viz.:

The case of *Lepanto Consolidated Mining Co. v. Court of Appeals* 1 SCRA 1251 (1961), provides us with a definition of a "position of trust and confidence." It is one where a person is "entrusted with confidence on delicate matters," or with the custody, handling, or care and protection of the employer's property.

A few examples were given by the Court in the case of *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission* and *Imelda Salazar*, G.R. No. 82511, March 3, 1992, to illustrate the principle:

x x x where the employee is a Vice-President for Marketing and as such, enjoys the full trust and confidence of top management (*Asiaworld Publishing House, Inc. v. Ople*, 152 SCRA 219 [1987]); or is the Officer-In-Charge of the extension office of the bank where he works (*Citytrust Finance Corp. v. NLRC*, 157 SCRA 87 [1988]); or is an organizer of a union who was in a position to sabotage the union's efforts to organize the workers in commercial and industrial establishments (*Bautista v. Inciong*, 158 SCRA 665 [1988]); or is a warehouseman of a non-profit organization whose primary purpose is to facilitate and maximize voluntary gifts by foreign individuals and organizations to the Philippines (*Esmalin v. NLRC*, 177 SCRA 537 [1989]); or is a manager of its Energy Equipment Sales (*Maglutac v. NLRC*, 189 SCRA 767 [1990]).

In fact, the classification of a Credit and Collection Supervisor by management as managerial/supervisory was sustained by this Court in the case of *Tabacalera Insurance Co. v. National Labor Relations Commission*, 152 SCRA 667 [1987]. The reasons for a similar ruling apply to the position of branch accountant which the petitioner was then holding.

Evidently, Salas as material controller was tasked with monitoring and maintaining the availability and supply of Quickbox. There appears nothing to suggest that Salas' position was a highly or even primarily confidential position, so that he can be removed for loss of trust and confidence by the employer.

Notably, in *Manila Memorial Park Cemetery, Inc. v. Panado*,^[23] we held that:

[T]he term "trust and confidence" is restricted to managerial employees or those who are vested with powers or prerogatives to lay down and execute management policies and/or to hire transfer, suspend, lay-off, recall, discharge, assign or discipline employees or to effectively recommend such managerial actions.

Besides, as we review the records before us, we do not see any semblance of willful breach of trust on the part of Salas. It is true that there was erasure or alteration on the bin card. Aboitiz, however, failed to demonstrate that it was done to cover up Salas' alleged negligence. Other than the bin card and Aboitiz's barefaced assertion, no other evidence was offered to prove the alleged cover-up. Neither was there any showing that Salas attempted to mislead the investigating team. The CA, therefore, erred in adopting Aboitiz's unsubstantiated assertion to justify Salas' dismissal.

Indeed, an employer has the right, under the law, to dismiss an employee based on fraud or willful breach of the trust bestowed upon him by his employer or the latter's authorized representative. However, the loss of trust must be based not on ordinary breach but, in the language of Article 282(c) of the Labor Code, on willful breach. A 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. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify an earlier action taken in bad faith or a subterfuge for causes which are improper, illegal or unjustified. It has never been intended to afford an occasion for abuse because of its subjective nature. There must, therefore, be an actual breach of duty committed by the employee which must be established by substantial evidence.^[24] In this case, Aboitiz utterly failed to establish the requirements prescribed by law and jurisprudence for a valid dismissal on the ground of breach of trust and confidence.

Neither can Aboitiz validate Salas' dismissal on the ground of serious misconduct for his alleged failure to account for unused accountable forms amounting to P57,850.00.

As aptly found by the NLRC, the charge came only after Salas' dismissal. We also note that the subject accountable forms were issued to Salas in 2001. Inexplicably, this alleged infraction was never included as ground in the notice of termination. It was only on November 23, 2003 or three (3) months after the filing of the complaint for illegal dismissal that Aboitiz asserted that Salas failed to account for these unused accountable forms amounting to P57,850.00. It is clear that such assertion of serious misconduct was a mere afterthought to justify the illegal dismissal.

Similarly, before the Labor Arbiter, NLRC, and CA, Aboitiz's arguments zeroed in on Salas' alleged neglect of duty and breach of trust. It was, therefore, error for the CA to include serious misconduct, which had never been raised in the proceedings below, as ground to sustain the legality of Salas' dismissal.

The CA also cited another infraction allegedly committed by Salas as additional ground for his dismissal. It

declared that Salas unauthorizedly sold the company's eight units of used air-conditioners. Yet, we note that Salas had never been charged or suspended for this alleged unauthorized sale of used air-conditioners during his employment with Aboitiz. The infraction for which Salas had been penalized by suspension of five (5) days was his failure to meet the security requirements of the company. [25] Accordingly, there is no basis for the CA to include unauthorized sale of used air- conditioners as ground to sustain Salas' dismissal.

Aboitiz's reliance on the past offenses of Salas for his eventual dismissal is likewise unavailing. The correct rule has always been that such previous offenses may be used as valid justification for dismissal from work only if the infractions are related to the subsequent offense upon which the basis of termination is decreed.[26] While it is true that Salas had been suspended on June 1, 2000 for failure to meet the security requirements of the company,[27] and then on July 20, 2001 for his failure to assist in the loading at the fuel depot,[28] these offenses are not related to Salas' latest infraction, hence, cannot be used as added justification for the dismissal.

Furthermore, Salas had already suffered the corresponding penalties for these prior infractions. Thus, to consider these offenses as justification for his dismissal would be penalizing Salas twice for the same offense. As the Court ruled in *Pepsi-Cola Distributors of the Philippines, Inc. v. National Labor Relations Commission*,[29] and recently in *Coca-Cola Bottlers, Philippines, Inc. v. Kapisanan ng Malayang Manggagawa sa Coca Cola-FFW*: [30]

Moreover, private respondent was already penalized with suspensions in some of the infractions imputed to him in this case, like sleeping while on route rides, incomplete accomplishment of sales report and his failure to achieve sales commitments. He cannot again be penalized for those misconduct. The foregoing acts cannot be added to support the imposition of the ultimate penalty of dismissal which must be based on clear and not on ambiguous and ambivalent ground.

Undoubtedly, no just cause exists to warrant Salas' dismissal. Consequently, he is entitled to reinstatement to his former position without loss of seniority rights, and to payment of backwages.[31]

However, we limit the award of backwages because we find that Salas was not entirely faultless. As earlier adverted to, Salas failed to promptly inform his immediate superior of the non-delivery of the requisitioned items. Had Salas promptly informed Ed Dumago of the non-delivery, the incident complained of would have been avoided. Although such negligence would not justify Salas' termination from employment in view of the stringent condition imposed by the Labor Code on termination of employment due to gross and habitual neglect, the same cannot be condoned, much less tolerated.

In *PLDT v. National Labor Relations Commission*, [32] this Court sustained the award of backwages in favor of an employee who was found not to be entirely faultless, but only from the date of the NLRC's promulgation of the decision.

WHEREFORE, the petition is GRANTED. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 93947 and CA-G.R. SP No. 94145, are REVERSED and SET ASIDE . Aboitiz One, Inc. is ordered to REINSTATE Oligario Salas to his former position without loss of seniority rights, with payment of backwages computed from September 21, 2005, up to the time of reinstatement.

No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes., JJ., concur.

[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Juan Q. Enriquez, Jr. and Marlene

Gonzales-Sison, concurring; rollo, pp. 37-49.

[2] Id. at 52-53.

[3] Rollo, p. 80.

[4] Id. at 81.

[5] Id. at 123-124.

[6] Id. at 123.

[7] Id. at 84-98.

[8] Id. at 161-166.

[9] Id. at 58-60.

[10] Id. at 48-49.

[11] Id. at 49.

[12] Id. at 14.

[13] Id. at 37-49.

[14] Id. at 52-53.

[15] Id. at 54-216.

[16] Id. at 13.

[17] Id. at 32.

[18] *Torres v. Specialized Packaging Development Corporation*, G.R. No. 149634, July 6, 2004, 433 SCRA 455.

[19] Rollo, p. 81.

[20] *Phil. Aeolus Automotive United Corp. v. National Labor Relations Commission*, 387 Phil. 250, 263 (2000).

[21] Rollo, pp. 114-121.

[22] G.R. No. 67664, May 20, 1992, 209 SCRA 122, 125-126.

[23] G.R. No. 167118, June 15, 2006, 490 SCRA 751, 769.

[24] *Manila Memorial Park Cemetery, Inc. v. Panado*, id. at 767-768.

[25] Rollo, p. 109.

[26] *La Carlota Planters Association, Inc. v. National Labor Relations Commission*, 358 Phil. 732, 739 (1998).

[27] Rollo, p. 109.

[28] Id. at 112.

[29] 338 Phil. 773, 782 (1997).

[30] G.R. No. 148205, February 28, 2005, 452 SCRA 480, 503.

[31] Labor Code, Art. 279.

[32] 362 Phil. 352 (1999).

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