

MIGUEL RUBIA, PETITIONER, VS. NATIONAL RELATIONS COMMISSION, FOURTH DIVISION, CEBU CITY, COMMUNITY WATER AND SANITATION COOPERATIVE AND THE BOARD OF DIRECTORS, RESPONDENTS,

G.R. No. 178621. July 26, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

In this petition for review on certiorari, petitioner Miguel Rubia seeks to reverse the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP. No. 00165, which affirmed the ruling[3] of the National Labor Relations Commission (NLRC) declaring petitioner's dismissal as valid.

Petitioner served as member of the Board of Community Water and Sanitation Cooperative (COWASSCO), a cooperative primarily engaged in water and sanitation service for the municipality of Argao in Cebu, before he was appointed its General Manager in 1 October 1994.[4]

On 28 August 2000, COWASSCO, through its Chairman of the Board, issued Memorandum No. 001-2000 charging petitioner with mismanagement of operation relating to the non-monitoring and non-compliance on the application of the correct dosage of chlorine to the water system and requesting an explanation from him. The Memorandum reads:

Please be informed that during the Special Meeting of the Board of Directors, held last August 26, 2000, which was presided over by the outgoing Chairman, Engr. Jovencio S. Egos, it deliberated the issue of MISMANAGEMENT IN YOUR OPERATION - the non-monitoring/non-compliance on the application of the correct dosage of Chlorine to the system. Not only this month, August, that the Sangguniang Bayan called our attention to explain in writing, but we were also called last year, when there was an outbreak in dysentery wherein you made promises to them, that this will not happen again, and this time, the issue is purely mismanagement.

To this effect, you are hereby requested to submit your Letter [of] Explanation to the Board within forty-eight (48) hours after the receipt of this Memorandum. Failure to the satisfaction of the Board of Directors of your explanation and much so, if you will not submit it, the Board will take a drastic action against you and this shall be dealt with accordingly.[5]

Petitioner submitted his letter-explanation and claimed that he complied with all the recommendations of the Sangguniang Bayan. He shifted the blame to the Chlorinator and the Master Plumber who were directly responsible over the chlorination. He likewise asserted that the Board of Directors was equally culpable and accountable to the lapses committed by the Chlorinator and Master Plumber.[6]

On 18 September 2000, the Board adopted Resolution No. 9 terminating the services of petitioner for loss of trust and confidence. The Resolution reads:

Resolution No. 09

Series of 2000

A RESOLUTION TERMINATING THE SERVICES OF MR. MIGUEL S. RUBIA AS GENERAL MANAGER OF THE COMMUNITY WATER AND SANITATION SERVICE COOPERATIVE (COWASSCO)

WHEREAS, the Community Water and Sanitation Service Cooperative (COWASSCO) has started its operation as cooperative effective January 18, "1994, after it was registered as a cooperative under Registration No. CBU-1117;

WHEREAS, Mr. Miguel S. Rubia was appointed as General Manager by the Board of Directors on October 1, 1994, until present;

WHEREAS, as General Manager, he was tasked the general operation of the cooperative;

WHEREAS, on February 14, 1998, the Board of Directors passed Resolution No. 02, Series of 1998 providing for the retirement of employees of the cooperative who reached the compulsory age of sixty give (65) but was declared illegal by Hon. Judge Efipanio Llanos, Regional Trial Court, Region VII, Branch XXVI, Argao, Cebu;

WHEREAS, in October 1998, his attention was called by the Sangguniang Bayan of Argao for no supply of water in the Poblacion area, Lamacan and Canbanua during the eve of the town fiesta, on September 28,1998;

WHEREAS, in 1999, he was invited by the Sangguniang Bayan on its Regular Session, to explain why the water of the cooperative was contaminated resulting in The typhoid fever epidemic in most barangays covered by COWASSCO, but he did not appear in the investigation;

WHEREAS, on July 26, 2000, the Rural Health Officer (RHO), Argao, Cebu reported the contamination of the water of COWASSCO, which might lead to another epidemic;

WHEREAS, Mr. Miguel S. Rubia was again invited by the Sangguniang Bayan in its regular session on August 21, 2000 to explain on the contamination of the water of the cooperative, but again he failed to attend;

WHEREAS, in that meeting, the members of the Sangguniang Bayan had recommended for the resignation or termination of Mr. Rubia for his mismanagement of the water system;

WHEREAS, in its Memorandum No. 01-2000, dated August 28, 2000, the Board of Directors of the Cooperative, through the Chairman, requested the General Manager to explain, why no disciplinary action be taken against him for mismanagement of the operation of the water system;

WHEREAS, finding the answer of the General Manager unsatisfactory, the Board of Directors decided to create an Investigation Committee tasked to investigate the performance of the General Manager in performing his duties;

WHEREAS, during the investigation, it was found out, that Mr. Rubia has not properly safeguarded the safety of the water consumers as gleaned by the following:

- The water of COWASSCO was contaminated in 1999 resulting in the typhoid fever epidemic.
- It was again contaminated as per report of the Municipal Health Officer dated July 26, 2000;
- He failed to fully implement a Board Resolution directing him to fence and put open launders to all the spring boxes in Sua so that flood water cannot penetrate inside the boxes;
- He failed to implement a Board Resolution to install a water gauge in Sua reservoir;

- 5. He failed to implement the recommendation of the Sangguniang Bayan in 1999 to provide a logbook for recording of daily chlorine reading and other activities of the cooperative;
- He relied on "bula-bula" system in the application of chlorine in Sua reservoir;
- Submission of a fictitious daily chlorine reading report to the Board of Directors; and
- Shows no concern to the water users when he reacted, "Wala pa man kaha'y namatay" after being informed of the report of Dr. Mamac, Municipal Health Officer.

WHEREAS, he has not implemented a Board Resolution providing for a Code of Ethical Standard to employees of the cooperative which include the following violations:

- That vehicles of the cooperative are continuously used by employees and him even after office hours without memorandums and trip ticket;
- Has not called the attention of employees who frequently loaf during office hours and comes late to work; and
- While there were dialogues and investigations, no documentation were made.

WHEREAS, in his response to the memorandum of the BOD, Mr. Miguel S. Rubia, did not assume responsibility of the mistakes committed, instead, he passed the buck to his men and accuse the BOD as equally culpable of the lapse of his men;

WHEREAS, the Board of Directors of COWASSCO, has totally lost its trust and confidence with the General Manager, Mr. Miguel S. Rubia;

WHEREFORE, on the mass motion of all the Directors present, duly seconded by the same;

BE IT RESOLVED, AS IT HEREBY RESOLVED, that the Board of Directors in the course of their investigation of the case of Mr. Miguel S. Rubio, General Manager of the cooperative found him guilty of mismanagement of the cooperative and is hereby terminated with cause as General Manager of the cooperative effective Monday, October 16, 2000;

RESOLVED FURTHER, that Mr. Miguel S. Rubia is directed to cease and desist from reporting to duty, effective upon receipt of a Memorandum together with this Resolution;

RESOLVED FURTHER, that he is also directed turn over all records of the cooperative to the Chairman, Board of Directors;

RESOLVED FURTHERMORE, to furnish a copy of this Resolution to Mr.. Miguel S. Rubia, General Manager of COWASSCO, Argao, Cebu. for his information and guidance;

RESOLVED FINALLY, to furnish copies of the Resolution to the Municipal Mayor, Argao, Cebu, the members of the Sangguniang Bayan, Argao, Cebu, the Cooperative Development Authority Officer, Cebu City Office, the Manager, Development Bank of the Philippines (DBF) Cebu City, the Manager, Rural Bank of Cebu South, Argao, Cebu and die Manager Cooperative Bank, Cebu City for their information.[7]

On 4 April 2002, petitioner filed a complaint for illegal dismissal and prayed for reinstatement, payment of backwages, moral and exemplary damages and attorney's fees.[8]

Failing to reach an amicable settlement, the parties were ordered to file their position papers.

Petitioner claimed that respondents wanted to oust him from his position as early as in 1998 when he received a notice from COWASSCO advising him that he was deemed retired effective 1 April 1998. [9]Petitioner averred

that his dismissal was illegal as there was no clear showing of a clear, valid and legal cause. Petitioner added that the Master Plumber and the Chlorinator, who both admitted their lapses, were not even summoned and investigated.[10]

Respondents COWASSCO and its Board justified petitioner's dismissal as valid on the ground of loss of trust and confidence after finding; him guilty of mismanagement. Respondent also claimed to have observed due process in terminating petitioner's employment.[11]

The labor arbiter'[12] found petitioner's dismissal as illegal. The dispositive portion of the labor arbiter's decision reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered declaring that complainant was illegally dismissed thereby ordering respondents COMMUNITY WATER & SANITATION COOPERATIVE and the BOARD OF DIRECTORS to pay complainant the amount of THREE HUNDRED EIGHTY THOUSAND ONE HUNDRED SIXTY PESOS (P380,160.00) in the concept of separation pay, backwages and attorney's fees.[13]

The labor arbiter ruled that respondents failed to prove that there was mismanagement of operations on the part of petitioner to support the ground of loss of trust and confidence in dismissing the latter's employment. Moreover, the labor arbiter observed that petitioner was not accorded due process when only one incident of mismanagement was mentioned in the show-cause notice but petitioner was dismissed on the ground of several other incidents.[14]

Aggrieved, respondents appealed to the NLRC. In a Decision dated 25 June 2004, the NLRC reversed and set aside the labor arbiter's decision. It upheld petitioner's dismissal as valid on the ground of loss of trust and confidence. The dispositive portion provides:

WHEREFORE, premises considered, the Decision of the Labor Arbiter is hereby REVERSED, SET ASIDE and VACATED and a new-one entered DISMISSING the case of illegal dismissal. Respondent COWASSCO is however ordered to pay complainant the sum of P14,400.00 by way of financial assistance. [15]

Notably, the NLRC was mum on the issue of due process.

Petitioner moved for reconsideration but it was denied in a Resolution dated 17 November 2004.[16]

Petitioner filed a petition for certiorari before the Court of Appeals. Finding no grave abuse of discretion on the part of the NLRC, the Court of Appeals dismissed the petition on 21 November 2006. The appellate court held that petitioner was remiss in his duties and responsibilities as general manager of COWASSCO in failing to see to it that the correct dosage of chlorine was added to the water resource thus resulting in its contamination with coliform organisms. Hence, according to the appellate court, petitioner was rightfully dismissed on the ground of loss of trust and confidence.[17] However, the appellate court ordered respondents to pay nominal damages to petitioner amounting to P30,000.00 for failure to observe the due process requirement in the termination of an employee.[18]

Petitioner filed a motion for reconsideration of the Court of Appeals' decision. Its denial prompted petitioner to elevate the case to this Court via petition for review on certiorari.

Petitioner insists that respondents failed to prove that there was mismanagement on the part of petitioner resulting from the alleged non-monitoring/non-compliance on the application of the correct dosage of chlorine in the water system. Thus, petitioner argues that it was not a sufficient basis for loss of trust and confidence, which is a cause for his termination.[19]

Moreover, petitioner maintains that he was denied due process because the first notice requirement for dismissing

an employee was not faithfully observed by respondents. Petitioner elucidates that the show-cause notice mentioned only of one incident, which respondents considered as constituting mismanagement, but in the resolution terminating petitioner, there were other incidents cited which petitioner was not previously informed. [20]

In fine, petitioner seeks to reinstate the labor arbiter's decision. Respondents allege that petitioner was validly dismissed for his numerous infractions, which were all mentioned in the letter dated 21 August 2000 sent to respondents by the Sangguniang Bayan.[21]

Respondents reiterate that petitioner was afforded due process. Respondents explain that they sent a memorandum to petitioner requiring him to explain why no disciplinary action should be taken against him. Unsatisfied with this explanation, respondents conducted a formal investigation wherein petitioner was given the full opportunity to defend himself. [22]

Respondents assert that petitioner is not entitled to his money claims because he was not illegally dismissed from service.[23]

The core issues to be resolved are: (1) whether petitioner was validly dismissed on the ground of loss of trust and confidence; and (2) whether the due process requirement for termination was observed.

The issues raised by petitioner are evidently factual in nature. By giving due course to his petition, this Court is not departing from the well-settled rule that questions of facts are not reviewable.[24] The discordant findings between the Labor Arbiter and the NLR.C however open the door for review.[25]

Respondents invoked loss of trust and confidence as a just cause for terminating petitioner from employment. Article 282(c) of the Labor Code allows an employer to terminate the services of an employee for fraud or willful breach by the employee of the trust reposed in him by his employer or his duly authorized representative.

For there to be a valid dismissal based on loss of trust and confidence, the employee concerned must be holding a position of trust and confidence and there must be an act that would justify the loss of trust and confidence.[26]

Petitioner held the position of General Manager of COWASSCO prior to his termination. As General Manager, he was tasked the general operation of the cooperative.[27] Undoubtedly, petitioner held a position of trust and confidence. As correctly pointed out by the Court of Appeals, "the nature of petitioner's work as manager requires a substantial amount of trust and confidence reposed on him by his employer. He occupies a highly sensitive and critical position which involves a high degree of responsibility." [28]

Having established that petitioner is a managerial employee, we shall proceed to determine whether the guidelines for the application of loss of trust and confidence as a just cause for dismissal of an employee from the service were complied with, i.e., 1) loss of confidence should not be simulated; 2) it should not be used as 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 earlier action taken in bad faith.[29]

The notice of termination stated that petitioner was terminated for loss of confidence premised on his alleged mismanagement resulting in the contamination of the water system in the municipality of Argao, Cebu. Records reveal that based on the laboratory tests conducted, the water provided by COWASSCO was contaminated. It appears that, there were indeed previous incidents relating to the water supply which petitioner failed to act upon. In 28 September 1998, there was no water supply. In 1999, there was an outbreak of typhoid fever, which was traceable to the water supply of COWASSCO. And finally, the Sangguniang Bayan summoned petitioner to

explain the finding that the water supplied by COWASSCO is positive of coliform organisms. Despite numerous invitations on petitioner to appear before the Sangguniang Bayan to explain these lapses, petitioner failed to do so.

As the general manager, petitioner is tasked to perform key functions such as the monitoring of COWASSCO's day-to-day operation. Therefore, any lapse brought to the company's attention must be directly addressed by the manager. The NLRC aptly observed;

xxx That complainant holds a very sensitive position cannot be over-emphasized. As General Manager, lie is tasked with the duty of delivering safe, clean and potable water to the consumers. In his hands therefore lies the health and even lives of the people of the Municipality of Argao. Even the slightest case of water contamination, (in this case, the presence of coliform organisms) if not treated immediately could result in an epidemic of epic proportions thus putting at risk the lives of thousands of innocent consumers. He cannot simply ignore the case with the wry remark "Wa pa man kahay namatay" (Nobody has died yet). He cannot also exculpate himself by saying that he already implemented the recommendations of the SB and the Board of Directors, nor can he wash his hands by saying that it was the fault of the Chlorinator/Reservoir Tender and Master Plumber. As earlier pointed out, the job of General Manager of a water service cooperative calls for a hands-on leader not a swivel chair executive who contents himself with issuing memos and office orders. He has to make himself visible in the field to keep the men working under him on their toes guarding against seepage of contaminated water. This is the kind of General Manager that respondents want, not the herein complainant who was quick to pass the buck to the Board of Directors under the principle of command responsibility.[30]

For breach of trust to constitute a valid cause for dismissal, it must be willful, meaning it must be done intentionally, knowingly, and purposely, without justifiable excuse.[31]

Petitioner did not deny that lie was remiss in his duties, particularly in monitoring the application of the correct dosage of chlorine in the water system. What he did was to shift the blame to his subordinates -- the Chlorinator and Master Plumber. During the investigation however, it appears that petitioner did not even bother to impose disciplinary action against these erring employees. As manager, petitioner should have paid close attention to the persistent problem of chlorination given the fact that the Sangguniang Bayan had repeatedly called his attention on the matter.

Petitioner's failure to closely monitor the contamination of water supply, his repeated failure to appear before the Sangguniang Bayan to explain his lapses, and his overall indifference in performing the task assigned to him as general manager clearly demonstrate a willful breach of trust.

Aside from dismissal for a just cause, the other part of the two-tiered rule for a valid dismissal is the observance of due process.

Article 277(b) of the Labor Code provides:

ART. 277. Miscellaneous provisions. - x x x (b) Subject to the constitutional right of workers to security of tenure and their right-to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment x x x.

In addition, Section 2, Rule XXIII, Book V of the Rules Implementing the Labor Code, requires the employer to furnish the employee with two written notices. These are: (1) a written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to

explain his side; and (2) a written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

The twin requirements of notice and hearing constitute the elements of due process in cases of employee's dismissal. The requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss and the reason for the proposed dismissal. Upon the other hand the requirement of hearing affords the employee an opportunity to answer his employer's charges against him and accordingly to defend himself therefrom before dismissal is effected.[32] On these essentials of due process, we modify the findings of the Court of Appeals.

The Court of Appeals observed that petitioner was not afforded a hearing or conference before the termination was effected. [33] This is however belied by the evidence presented by respondents. Petitioner was in fact given the opportunity to defend himself in an investigation conducted by the Board of Directors on 12 September 2000. In the presence of the Board of Directors, petitioner insisted that he and the Board of Directors are equally culpable.[34] Petitioner however failed to squarely address the issue of his mismanagement.

Petitioner also harps on the inclusion of several other incidents in the notice of termination which were not mentioned in the show cause notice. The simple fact that petitioner failed to closely monitor the application of chlorine, resulting in the contamination of the water system in Argao; Cebu, is a sufficient and valid ground for respondents to lose their trust and confidence on the management skills of petitioner. The invocation of an additional ground in the resolution terminating the services of petitioner, i.e., the failure to implement a Board Resolution providing for a Code of Ethical Standard to employees of COWASSCO, does not by itself constitute denial of due process. Petitioner was informed in the first memorandum regarding the incorrect application of chlorine, which was the more important ground by which his dismissal was premised. Petitioner did not make a categorical denial of this allegation against him. Instead of assuming responsibility over the lapses he committed, petitioner resorted to finger pointing, blaming the Master Plumber and Chlorinator for the incorrect dosage of chlorine. In the second notice, the issue of incorrect chlorination was also discussed in detail. The Board of Directors cited instances showing that petitioner had not properly safeguarded the well-being of the water consumers.[35] Hence, it cannot be concluded that there was denial of due process.

The essence of due process is simply an opportunity to be heard; it is the denial of this opportunity that constitutes violation of due process of law[36]. As long as petitioner was given an opportunity to explain his side, the requirements of due process have been substantially complied with. WHEREFORE, the petition is DENIED. The Decision dated 21 November 2006 and the Resolution dated 28 May 2007 of the Court of Appeals in CA-G.R. SP. No. 00165 are AFFIRMED insofar as its findings of loss of trust and confidence are concerned, but it is REVERSED on its findings of lack of due process. The award of nominal damages in the amount of P30,000.00 is, accordingly, DELETED.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Del Castillo, JJ., concur.

[1] Penned by Associate Justice Antonio L. Villamor with Associate Justices Arsenio J. Magpale and Marlene Gonzales-Sison, concurring. Rollo, pp. 18-29

[2] Id. at 36-37.

[3] Penned by Commissioner Oscar S. Uy with Commissioners Edgardo M. Enerlan and Gerardo C. Nograles

concurring. Records, pp. 162-176.

[4] Id. at 12.

[5] Id. at 26.

[6] Id. at 27-28.

[7] Id. at 33-35.

[8] Id. at 1-2.

[9] Said notice was the effect of a resolution adopted by the Board providing for policies for the retirement of COWASSCO employees who had reached 65 years of age. Petitioner disregarded the notice. Another resolution was adopted directing petitioner to cease and desist from reporting for official duties. Petitioner in fact filed an action for injunction before the Regional Trial Court (RTC) to enjoin respondent from enforcing the assailed resolutions. The trial court granted the prayer of petitioner. Respondents sought relief from the Court of Appeals and Supreme Court, respectively. Finally, the Supreme Court dismissed with finality respondents' petition and the resolution of the trial court enjoining and prohibiting respondents from enforcing and implementing COWASSCO's resolutions became Final and executory. Id at 13-14

[10] Id. at 17.

[11] CA rollo, p. 63.

[12] Violeta Ortiz-Bantug, Regional Arbitration Branch No. VII, Cebu City. Records pp 47-58

[13] Id. at 57.

[14] Id. at 56-57.

[15] Id. at 175.

[16] Id. at 209-210.

[17] CA rollo, pp. 181-182.

[18] Id. at 183-185.

[19] Rollo, p. 11.

[20] Id.at 12.

[21] Id at 139440.

[22] Id. at 142.

[23] Id. at 144.

[24] Yokohama Tire Philippines, inc. v. Yokohama Employees Union, G.R. No. 163532. 10 March 2010.

[25] Molina v. Pacific Plans, G.R. No. 165476, 10 March 2006 citing Diamond Motors Corporation v. Court of Appeals, 462 Phil. 452, 458 (2003).

[26] Benjamin v. Amellar Corporation, G.R. No. 183383, 5 April 2010.

[27] Records, p. 33.

[28] Rollo, p. 22.

[29] Bibiana Farms and Mills v. Lado, G.R. No. 157861, 2 February 2010; Ancheta v. Destiny financial Plans, G.R. No. 179702, 16 February 2010 citing Midas Touch Food Corp. v. National Labor Relations Commission, G.R. No.111639; 29 July 1996, 259 SCRA 652, 659-660.

[30] CA rollo, p. 30.

[31] Baron v. National Labor Relations Commission, G.R. No. 182299, 22 February 2010; St. Lukes Medical Center v. Fadrigio, G.R. No. 185933, 25 November 2009; Norsk Hydro Inc. v. Rosales, Jr., G.R. No. 162871, 31 January 2007, 513 SCRA 583, 590; Echeverria v. Venutek Medika, Inc. G.R. No. 169231, 15 February 2007, 516 SCRA 72, 80.

[32] Maquilling v. Philippine Tuberculosis Society, Inc., G.R. No. 143384, 4 February 2005, 450 SCRA 465, 477 citing Century Textile Mills, Inc. v. National Labor Relations Commission, G.R. No. L- 77859, 25 May 1988, 161 SCRA 528, 535.

[33] Rollo, p. 25.

[34] CA rollo, pp. 145-147.

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