

**BACOLOD-TALISAY REALTY AND DEVELOPMENT CORPORATION,
MR. MARIO GONZAGA IN HIS CAPACITY AS PRESIDENT OF
BACOLOD REALTY AND DEVELOPMENT CORPORATION, AND MR.
ERNESTO ALLEN LACSON, J...**

G.R. No. 179563. April 30, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

From 1980 up to 1997, Romeo de la Cruz was employed at the Hacienda Gloria, a farm owned and managed by petitioner Bacolod-Talisay Realty and Development Corporation (BTRD). He was dismissed on July 3, 1997 at which time he was holding the position of overseer, in charge of the work of the laborers, checking their attendance, reporting the number of hours worked by each laborer for payroll purposes, checking in-coming and out-going cargo, and selling and receiving payments for seedpieces and canepoints. He was also entrusted with farm equipment and other farm property.

He was dismissed on charges of payroll padding, selling canepoints without the knowledge and consent of management and misappropriating the proceeds thereof, and renting out BTRD's tractor for use in another farm and misappropriating the proceeds thereof.

Respondent thus filed on July 10, 1997 a complaint for illegal suspension and illegal dismissal before the National Labor Relations Commission (NLRC)[1] against petitioners BTRD et al.

In his Position Paper,[2] respondent claimed that on June 4, 1997, he received a June 3, 1997 letter informing him that he was being suspended for the next 30 days due to the abovementioned charges and that there was an ongoing investigation thereof; and after 30 days his wife received a letter dated July 3, 1997 stating that he was terminated from the service on account of the charges.

In their Position Paper, petitioners claimed that as a result of the investigation of respondent's questioned acts, it was discovered that there were farm workers whose names were entered in the payroll even if they did not render services and the corresponding wages were not received by them; and while respondent committed to return the money intended for wages of those workers who rendered no services, he did not return them.

Petitioners further claimed that a company tractor was used in another farm, rental fees of which were not remitted to BTRD, and when confronted, respondent admitted his wrongdoings and asked for forgiveness; and while a confrontation about the matter was held before the barangay council, no settlement was reached.[3]

The Labor Arbiter dismissed respondent's complaint for lack of merit.[4] And the NLRC dismissed respondent's appeal for not being verified.[5]

By Decision[6] of April 13, 2007, the Court of Appeals, brushing aside the lack of verification of respondent's appeal before the NLRC, found that petitioners "did not comply with the x x x guidelines for the dismissal of [the]

employee"[7] and accordingly reversed the NLRC decision, disposing as follows:

WHEREFORE, the petition is GRANTED. Accordingly, the subject resolutions of the National Labor Relations Commission are REVERSED and SET ASIDE. Petitioner is entitled to reinstatement without loss of seniority rights and benefits and to payment of backwages which shall not exceed three (3) years.[8] (Emphasis in the original; underscoring supplied)

Hence, the present petition,[9] petitioners faulting the Court of Appeals

I

x x x IN NOT DECIDING THAT PETITIONER SHOULD ONLY BE HELD LIABLE FOR NOMINAL DAMAGES PURSUANT TO THE AGABON DOCTRINE AND OTHER SUBSEQUENT CASES BUT THE DISMISSAL OF THE RESPONDENT SHOULD BE HELD AS VALID, THE CASE BEING ATTENDED BY JUST CAUSE FOR TERMINATION OF EMPLOYMENT.

II

x x x BY RULING THAT AN APPEAL CAN BE HAD WITH THE NLRC EVEN THOUGH NO VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING WAS ATTACHED TO THE APPEAL, AND EVEN THOUGH NO REASONS OR EXCUSE WAS ADVANCED BY THE RESPONDENT FOR THE NON-SUBMISSION OF THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING.

III

x x x IN REVERSING THE DECISION OF THE NLRC AND THE LABOR ARBITER A QUO ON THE BASIS OF MERE SPECULATION, CONJECTURE AND MERE SELF-SERVING STATEMENTS OF THE RESPONDENT.[10] (Underscoring supplied)

That the Court of Appeals went on to give due course to respondent's petition despite the lack of verification in respondent's appeal before the NLRC is not erroneous. Lack of verification is not a fatal defect. Verification is only a formal, not a jurisdictional requirement.[11] It could easily be corrected by directing compliance therewith,[12] its purpose being simply to secure an assurance that the allegations of the petition (or complaint) have been made in good faith, or are true and correct, not merely speculative.[13]

The Court of Appeals, in finding for respondent, noted that the proper procedure in dismissing him was not observed; ergo, it ordered his "reinstatement . . ." Oddly, the appellate court did not determine whether there was just cause for respondent's dismissal. For it is only when an employee's dismissal is not justified that reinstatement is, among other things, if still feasible, in order. This brings the Court to pass on the merits of the case.

This Court finds that petitioners were able to establish with substantial evidence that just cause existed for the termination of respondent's employment. Consider the following documentary evidence they presented:

- Excerpt from the official log book of the barangay council of Barangay Concepcion, Talisay, Negros Occidental dated May 30, 1997 documenting the statements of Federico Serie and Jonathan Quilla during a confrontation before the barangay counsel;[14]
- Petitioner Lacson's affidavit;[15]
- Joint Affidavit of petitioner Mario Gonzaga and the vice-president and secretary of BTRD;[16]
- Joint affidavit of Federico Serie, Jr. (Serie), Jonathan Quilla (Quilla), Eddie Sausa (Sausa), and Roberto Tortogo (Tortogo) claiming that they refused to sign the payroll which respondent prepared because it indicated that they

received P256 although they received only P71;[17]

- Copies of payrolls for June 3-8, 1996 and June 10-15, 1996, with respondent's signature beside the name of Federico Serie who refused to sign;[18]

- Affidavit of John Trasmonte (Transmonte), in charge of keeping the payroll records and cash disbursement of workers' wages for June 1996, claiming that he prepared the payroll based on respondent's report and that he did not receive any return of excess wages for the cash disbursement from the said payroll;[19]

- Affidavit of Jose Racel Magbanua (Magbanua) stating that he saw respondent allowing the use of the hacienda's tractor in another farm and receiving rent therefrom;[20]

- Affidavit of Rodolfo Cañeso (Cañeso) stating that he saw respondent selling pieces of patdan and drammy;[21] and

- Affidavit of Ma. Leonisa Gonzaga claiming shortfalls in the proceeds of the sale of drammy and patdan as reported and remitted by respondent.[22]

The above-listed documentary evidence of petitioner indubitably establishes that respondent committed payroll padding, sold canepoints without the knowledge and consent of management and misappropriated the proceeds thereof, and rented tractor to another farm and misappropriated the rental payments therefor. These acts constitute willful breach by the employee of the trust reposed in him by his employer – a ground for termination of employment.[23]

In his appeal before the NLRC, respondent noted[24] that affiants Sausa and Tortogo challenged their Joint Affidavit listed above, claiming that they did not understand its contents as they were not translated to the dialect they understand.[25] To respondent, this should have placed the Labor Arbiter on notice that there was something irregular that should have called for him to order, but he did not, the conduct of clarificatory hearings.[26]

Respondent's position does not persuade. Sausa's and Tortogo's challenge to their Joint Affidavit does not affect the totality of petitioners' evidence, as affiants Serie and Quilla attested to the same matter-subject of Sausa and Tortogo's questioned Joint Affidavit. Besides, as reflected above, other affidavits and pieces of documentary evidence in support of petitioners' position were presented. Respondent had been furnished petitioners' Position Paper to which copies of these affidavits and other documentary evidence against him were attached.[27] Thus, respondent had the opportunity to file a counter-position paper and refute the evidence against him, but he did not.

The Court of Appeals correctly held though that petitioners did not comply with the proper procedure in dismissing respondent. In other words, petitioners failed to afford respondent due process by failing to comply with the twin notice requirement in dismissing him, viz: 1) a first notice to apprise him of his fault, and 2) a second notice to him that his employment is being terminated.

The letter dated June 3, 1997 sent to respondent was a letter of suspension. It did not comply with the required first notice,[28] the purpose of which is to apprise the employee of the cause for termination and to give him reasonable opportunity to explain his side.[29]

The confrontation before the barangay council did not constitute the first notice – to give the employee ample opportunity to be heard with the assistance of counsel, if he so desires.[30] Hearings before the barangay council do not afford the employee ample opportunity to be represented by counsel if he so desires because Section 415 of the Local Government Code mandates that "[i]n all katarungang pambarangay proceedings, the parties must appear in person without the assistance of counsel or his representatives, except for minors and incompetents who may be assisted by their next-of-kin who are not lawyers."

The requirement of giving respondent the first notice not having been complied with, discussions of whether the second notice was complied with is rendered unnecessary.

In fine, while the dismissal of respondent was for a just cause, the procedure in effecting the same was not observed.

WHEREFORE, the assailed Decision of the appellate court is VACATED and another is rendered ORDERING petitioners to, in light of the foregoing discussions, PAY respondent the sum of P30,000 as nominal damages.

SO ORDERED.

Tinga, Velasco, Jr., Leonardo-De Castro*, and Brion, JJ., concur.

* Additional member in lieu of Justice Leonardo A. Quisumbing who is on official leave.

[1] NLRC records, p. 1.

[2] Id. at 13-22.

[3] Id. at 91-92.

[4] Id. at 124.

[5] Id. at 173-174.

[6] Penned by Court of Appeals Associate Justice Agustin S. Dizon, with the concurrence of Associate Justices Arsenio J. Magpale and Francisco P. Acosta. CA rollo, pp. 174-179.

[7] CA rollo, p. 178.

[8] Id. at 178-179.

[9] Rollo, pp. 44-73.

[10] Id. at 55-56.

[11] Vide *Iglesia ni Cristo v. Ponferrada*, G.R. No. 168943, Oct. 27, 2006, 505 SCRA 828, 840.

[12] Vide *Gaerlan, Sr. v. National Labor Relations Commission*, G.R. No. L-66526, September 28, 1984, 132 SCRA 402, 408.

[13] *Supra* note 11.

[14] NLRC records, p. 91.

[15] Id. at 88-90;

[16] Id. at 94.

[17] Id. at 96.

[18] Id. at 98-102.

[19] Id. at 103.

[20] Id. at 104.

[21] Id. at 105.

[22] Id. at 106.

[23] Labor Code, Article 282 (c).

[24] Vide NLRC records, p. 149.

[25] Id. at 116.

[26] Id. at 149.

[27] NLRC records, p. 71.

[28] Vide *R.B. Michael Press v. Galit*, G.R. No. 153510, February 13, 2008, 545 SCRA 23, 37; *Tanala v. National Labor Relations Commission*, G.R. No. 116588, January 24, 1996, 252 SCRA 314, 321.

[29] Vide *Tanala v. National Labor Relations Commission*, G.R. No. 116588, January 24, 1996, 252 SCRA 314, 321.

[30] Vide *Omnibus Rules Implementing the Labor Code, Rules Implementing Book VI, Rule I, Section 2(d)(ii); Metro Eye Security, Inc. v. Salsona*, G.R. No. 167637, September 28, 2007, 534 SCRA 375, 391.

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