

KULAS IDEAS & CREATIONS, GIL FRANCIS MANINGO AND MA. RACHEL MANINGO, PETITIONERS, VS. JULIET ALCOSEBA AND FLORDELINDA ARAO-ARAO, RESPONDENTS.

G.R. No. 180123. February 18, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

In 1996, respondents Juliet Alcosoba (Juliet) and Flordelinda Arao-arao (Flordelinda) were employed as sales attendants of herein petitioner KULAS Ideas & Creations (KULAS), a gift boutique owned by petitioners Gil Francis Maningo and Ma. Rachel Maningo.

As part of their duties and responsibilities, Juliet and Flordelinda were tasked to sell KULAS's products, prepare weekly sales reports and assist the clerk in the monthly inventory of saleable goods.[1]

In February 2000, the Department of Labor and Employment (DOLE) inspected the outlet of KULAS in Ayala Center in Cebu where Juliet and Flordelinda were assigned and found that it violated several labor standards laws.[2] The DOLE later sent KULAS a Notice of Summary Investigation dated September 11, 2000 directing it to pay the salary differential of its employees from January to August 2000 amounting to P173,003.28.[3]

KULAS subsequently directed Juliet and Flordelinda, by Memorandum of November 23, 2000,[4] to explain and/or investigate an alleged inventory discrepancy which entailed the amount of P48,179.30. And it thereafter suspended Juliet and Flordelinda for seven days, by Memorandum of November 29, 2000,[5] starting December 1, 2000 for gross negligence of duties and responsibilities.

Both Juliet and Flordelinda thus filed a complaint for illegal suspension and withholding of salaries before the National Labor Relations Commission (NLRC) Regional Arbitration Branch No. VII on December 5, 2000.[6]

By Reconciliation Report of December 7, 2000[7] sent to Juliet and Flordelinda, KULAS advised them that discrepancies in its inventory were noted and that

Both of [them] were assigned at the Ayala Boutique to diligently monitor all stocks and to report any stock discrepancy to the office, if there were any, so that the proper action may be taken, [but] [t]here never was any report made regarding stock shortage.

KULAS accordingly directed them to explain the discrepancies.

After serving their suspension, Juliet and Flordelinda, by letter of December 11, 2000,[8] inquired with KULAS the status of their employment since they were told not to report for work until they were able to explain the discrepancies.

By Memorandum of December 13, 2000,[9] Kulas soon advised Juliet and Flordelinda as follows, quoted verbatim:

Upon further investigation, the following were noted:

- The Dec. 31, 1999 inventory reconciliation report reflected an overage of 3 pcs. Or an equivalent of P808.00 which was duly acknowledged by J. Alcoseba.
- A memo was issued last Feb. 2000 requesting both of you & Hermie Nemenzo to conduct a physical inventory. Based on your inventory, a reconciliation report was printed out and reflected an overage of 14 pcs.
- Based on the Feb. 2000 report, the Delivery Receipts, Sales & pull-out were posted until Nov. 23, 2000. The final print out reflects a shortage of 959 pcs. Or P185,544.50,

and advised them that:

Based on the said report you are given 3 days to settle in full the said shortage. After which, these matters will be forwarded to the lawyer for the proper filing of criminal charges. (emphasis and underscoring supplied)

Finally, KULAS, by separate Memorandum also dated December 13, 2000,[10] required Juliet and Flordelinda to explain within 48 hours why they should not be terminated for "gross neglect of duties and responsibilities resulting to huge economic loss incurred by the company" and "dishonesty."

Answering the charges, Juliet and Flordelinda, by Memorandum of December 14, 2000,[11] asserted that they were not responsible for the losses, thus:

- We were never given a copy of the actual stocks-on-hand when we started working in [KULAS] Boutique that we signed and acknowledged.
- We cannot be blamed for the said discrepancies that was [sic] pre-existing from the previous sales clerks assigned at [KULAS] Boutique and carried over to the current inventory.
- We were never dishonest as sales clerk[s]. All sales have been reported properly and accordingly. (underscoring supplied)

It appears that KULAS did not reply to the query of Juliet and Flordelinda about the status of their employment.

On December 19, 2000, KULAS charged Juliet and Flordelinda before the Cebu City Prosecutor's Office[12] for estafa. The complaint was later dismissed.[13]

Juliet and Flordelinda (hereafter respondents) thereupon amended to illegal dismissal[14] their complaint against KULAS and its owner-co-petitioners Gil Francis Maningo and Ma. Rachel Maningo at the NLRC.

In their Position Paper, respondents asserted that petitioners suspected them to have instigated the DOLE inspection on account of which they terminated their services.[15]

Finding for petitioners, Labor Arbiter Violeta Ortiz-Bantug, by Decision of September 26, 2001,[16] ruling that there was no illegal dismissal, disposed:

WHEREFORE, premises considered, judgment is hereby rendered declaring that there was no illegal dismissal. Necessarily[,] all the claims of complainants relative thereto must fail. However, respondents[-herein petitioners] are hereby ordered to pay complainants the amount of EIGHTEEN THOUSAND FIFTY-THREE PESOS and 75/100 in the concept of salary differentials, 13[th] month pay and attorney's fees.

The other claims are dismissed for lack of sufficient basis.

SO ORDERED.[17] (emphasis and underscoring supplied)

On appeal, the NLRC, by Decision of April 19, 2004,[18] likewise held that there was no illegal dismissal. It, however, set aside the monetary award for lack of jurisdiction.[19]

On herein respondents' motion for reconsideration, the NLRC, by Resolution of September 3, 2004,[20] "partially reconsidered" its Decision by holding that respondents were illegally dismissed. Thus it disposed:

WHEREFORE, we partially RECONSIDER in that [respondents] were considered illegally dismissed but as discussed, they are entitled to separation pay in the amount of P20,800.00 each but without backwages. Also, we grant them attorney's fees of ten percent (10%) of the above award, or the amount of P4,160.00.

Our questioned ruling on the money claims is RETAINED.

SO ORDERED. (emphasis and underscoring supplied)

Petitioners and respondents both moved for reconsideration of the NLRC September 3, 2004 Resolution. By Resolution of March 18, 2005,[21] the NLRC denied respondents' second motion for reconsideration for being a prohibited pleading but granted petitioners' motion for reconsideration. It accordingly reinstated its April 19, 2004 Decision which, it bears recalling, held that there was no illegal dismissal and set aside "the monetary award for lack of jurisdiction."

Respondents, via certiorari, elevated the case to the Court of Appeals which, by Decision of March 21, 2007,[22] reversed and set aside the NLRC Decision of April 19, 2004 and Resolution of March 18, 2005.

In reversing the NLRC ruling, the Court of Appeals observed:

. . . [I]t is evident that private respondents[-herein petitioners] did not comply with the last two procedural requirements provided by law. Specifically, the employer did not conduct a hearing or conference to afford the petitioners an opportunity to present evidence on their behalf, and it likewise did not send a written notice of termination to them. Their failure to promptly submit their written answer on the charge of gross neglect of duty at most gave the company the right to declare them to have waived the filing thereof, but their right to a hearing and to a written notice of termination persisted and should still be complied with. Thus, it is clear that petitioners were not given a real opportunity under the circumstances to answer the charges hurled against them. Their termination was quick, swift and sudden. This conclusion is bolstered by the fact that they were not allowed to report back to work after the last day of their suspension on December 7, 2000. In the language of the law, they were constructively terminated from employment... (emphasis and underscoring supplied)

Thus the appellate court disposed:

WHEREFORE, in view of the foregoing, the assailed Decision and Resolution of the National Labor Relations Commission, Fourth Division, Cebu City, dated April 19, 2004 and March 18, 2005 respectively are REVERSED and SET ASIDE. A new Decision is entered ORDERING private respondents to pay petitioners Juliet Alcosoba and Flordelinda Arao-arao separation pay equivalent to one (1) month pay for every year of service plus full backwages from the date of their illegal termination on December 8, 2000 up to the finality of this judgment without any deduction or qualification.[23]

By Resolution of September 14, 2007, the appellate court denied petitioners' motion for reconsideration,[24] hence, the present petition for review questioning the appellate court's

[I]

. . . REVERSING [OF] THE COMMON FINDINGS OF FACT OF BOTH THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION ON THE EXISTENCE OF INVENTORIES OF STOCKS AND THE OBSERVANCE OF DUE PROCESS IS IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THIS ...COURT.

[II]

... FINDING ... THAT THERE [WAS] NO SUBSTANTIAL EVIDENCE OF MISAPPROPRIATION OF COMPANY FUNDS TO JUSTIFY DISMISSAL OF RESPONDENTS FINDS SUPPORT IN APPLICABLE LAW AND JURISPRUDENCE AND THE EVIDENCE ON RECORD.

[III]

... DISMISSING OUTRIGHT [OF] THE MOTION FOR RECONSIDERATION FILED BY PETITIONERS ...[25]

Petitioners chiefly assert that the appellate court should have deferred to the findings of the Labor Arbiter and the NLRC that respondents misappropriated company merchandise to warrant their dismissal from employment, and that respondents were afforded due process when they were given an opportunity to explain the stock inventory discrepancy.[26]

Respondents, on the other hand, counter that the present petition is without merit as the termination of their services was devoid of any just cause, it being an offshoot of petitioners' suspicion that they (respondents) instigated the DOLE to inspect petitioners' premises.[27]

Respondents take this opportunity to ask for the modification of the appellate court's ruling to include the payment of salary differential, unpaid salaries, moral and exemplary damages and attorney's fees in their favor.[28]

The petition fails.

Article 282 (b) and (c) [29] of the Labor Code provide that an employer may terminate an employee for "gross and habitual neglect by the employee of his duties" and for "fraud." In both instances, substantial evidence is necessary for an employer to effectuate any dismissal. Uncorroborated assertions and accusations by the employer do not suffice, otherwise the constitutional guaranty of security of tenure of the employee[30] would be jeopardized.

Article 282 (b) imposes a stringent condition before an employer may terminate an employment due to gross and habitual neglect by the employee of his duties. To sustain a termination of employment based on this provision of law, the negligence must not only be gross but also habitual.[31]

Petitioners assert that respondents failed to regularly undertake a monthly physical inventory of the outlet's merchandise. The assertion fails to persuade. For the most part, inventory preparation and reporting did not fall on respondents' shoulders since they were to "assist the [stock] clerk" only.

The Court notes that after the December 31, 1999 inventory reconciliation, petitioners undertook only two inventories in February and November 2000. That there was no regular monthly inventory is evident from the fact that the only basis for the November inventory was the February inventory, as reflected in its Memorandum of December 13, 2000.

As did the appellate court, the Court notes that petitioners were themselves remiss in conducting a regular monthly stock inventory. Thus the appellate court noted.

A careful examination of the inventory sheets relied upon by [petitioners] readily shows the number of items or merchandise sold for a given period, the price per unit sold and the total amount of purchase for that given period. Notably absent is the list of merchandise received for sale and display by the sales clerks for a given period, or the stocks on hand, in order to coincide with the actual items sold as shown on the inventory sheet. Certainly, [petitioners] cannot continue raising a finger and insist that the sales proceeds were misappropriated when they could not show proof of the stocks on hand in the first place. To reiterate, it must not be an ordinary

list of the stocks on hand, but must contain a certification from the sales clerks that they indeed received such items for sale and display at the boutique branch where they were assigned. Worth mentioning at this point is the allegation of the [respondents] that upon their assumption at the Ayala Center branch, the management did not conduct an actual inventory as well as a proper turnover of stocks. This must therefore explain the lapse in the sales inventory conducted by [petitioners]. Verily, [petitioners] are guilty of contributory negligence for failure to conduct a proper turnover of stocks in the boutique upon [respondents'] assumption therein.[32] (emphasis and underscoring supplied)

Petitioners maintain in another vein that respondents were dismissed on the ground of fraud under Article 282 (c), relying heavily on the stock inventory and sales reports[33] to buttress it. But therein lies a marked paucity of proof-nexus to respondents' culpability behind the discrepancy in the inventory. The discrepancy, even if true, cannot just be attributed to respondents on the basis of their having access to the boutique's merchandise.

The undue haste in suspending respondents, even before a full and complete stock inventory and investigation on the sales discrepancy was yet to be undertaken, betrays petitioners' predisposition to hold respondents guilty.

Petitioners' position aside, there was no finding that respondents embezzled the sales proceeds. After all, respondents were neither cashiers nor clerks tasked with handling the daily sales proceeds of the outlet.

Finally, as did the appellate court, the Court finds that petitioners failed to comply with the procedural requirements for a valid dismissal.

In cases of termination of employees based on just causes, the law mandates the following requisites:

- (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
- (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him.
- (iii) 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.[34] (emphasis supplied)

Thus a first notice informing and bearing on the charge must be sent to the employee. *Maquiling v. Philippine Tuberculosis Society, Inc.*,[35] emphasizes that the first notice must inform outright the employee that an investigation will be conducted on the charges specified in such notice which, if proven, will result in the employee's dismissal.

This notice will afford the employee an opportunity to avail all defenses and exhaust all remedies to refute the allegations hurled against him for what is at stake is his very life and limb his employment. Otherwise, the employee may just disregard the notice as a warning without any disastrous consequence to be anticipated. Absent such statement, the first notice falls short of the requirement of due process. One's work is everything, thus, it is not too exacting to impose this strict requirement on the part of the employer before the dismissal process be validly effected. This is in consonance with the rule that all doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor.

In the present case, the only time petitioners apprised respondents of gross neglect of duties and dishonesty as grounds for the termination of the services was by Memorandum of December 13, 2000.

The memorandum did not inform outright respondents that an investigation would be conducted on the charges particularized therein which, if proven, would result to their dismissal. It likewise did not contain a plain

statement of the particular charges of malfeasance or misfeasance.

Even petitioners' earlier memoranda,[36] in which they required respondents to explain and to themselves investigate the alleged stock discrepancies as well as to reconstitute the monetary equivalent thereof, did not clearly intimate that respondents could be terminated from employment if their explanations were found unsatisfactory. In fine, intention to dismiss respondents can not be inferred from the general tenor of these memoranda.

Petitioners contend, however, that respondents were not actually dismissed from the service, which explains why there was no subsequent notice of dismissal; that they were still in the process of complying with the legal requirements of effecting termination; and that respondents forestalled their actions when they amended their complaints to illegal dismissal.

Petitioners' contentions are tenuous. If indeed petitioners still considered respondents to be their employees, why was there no instruction from them for respondents to report for work immediately after serving their seven-day suspension. For, if there was - and respondents failed to heed it, petitioners would certainly have faulted them for abandonment of work. The fact was, respondents even wrote the management that their suspension had ended and inquired on their employment status as they were barred from the work premises, but, as earlier stated, they received no reply. Respondents' claim of having been barred from the work premises merely merited a self-serving denial from petitioners.

More. Instead of formally notifying respondents that they were terminating their employment as a result of the investigation, petitioners filed a criminal complaint for estafa against them on December 19, 2000. That accounts why respondents had to amend their complaint at the NLRC on December 26, 2000 after realizing that they were no longer in the employ of petitioners.

Respondents' supplication for payment of salary differential, unpaid salaries,[37] moral and exemplary damages and attorney's fees must, however, be denied.

While as a general rule, a party who has not appealed is not entitled to any affirmative relief other than the one granted in the decision of the court below, the Court is imbued with sufficient authority and discretion to review matters not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case[38] [39] or to serve the interests of justice or to avoid dispensing piecemeal justice. The present case does not fall into any of the exceptions.

It bears noting that the DOLE had already assumed jurisdiction over the claims of underpayment of salaries of respondents while respondents' claim for nonpayment of salaries for the period of November 13-30, 2000 had already been paid.[40]

As for respondents' prayer for the award to them of damages and attorney's fees, no proof thereof is extant. As has been repeatedly stressed, broad allegations, bereft of proof, cannot sustain the award of moral and exemplary damages, as well as attorney's fees.[41]

WHEREFORE, the present petition for review is DENIED.

Let the records of this case be REMANDED to the Labor Arbiter for proper computation of respondents' backwages and separation pay.

Costs against petitioners.

SO ORDERED.

Puno, C.J., (Chairperson), Leonado-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] Records, p. 68.

[2] Id. at 370-372.

[3] Id. at 369.

[4] Id. at 39.

[5] Id. at 40.

[6] Id. at 1-4.

[7] Id. at 41.

[8] Id. at 42.

[9] Id. at 43.

[10] Id. at 44.

[11] Id. at 45.

[12] Id. at 128-131.

[13] Id. at 373; per Resolution of February 15, 2001.

[14] Id. at 11-12.

[15] Id. at 27.

[16] Id. at 313-334.

[17] Id. at 333.

[18] Id. at 436-443. Penned by Presiding Commissioner Gerardo C. Nograles with Commissioners Edgardo M. Enerlan and Oscar S. Uy concurring.

[19] Id. at 442.

[20] Id. at 485-489.

[21] Id. at 592-593.

[22] Rollo, pp. 35-44. Penned by Associate Justice Agustin S. Dizon with Associate Justices Arsenio J. Magpale and Francisco P. Acosta concurring.

[23] CA rollo, p. 578.

[24] Rollo, pp. 46-47.

[25] Id. at 17-18.

[26] Id. at 18-28.

[27] Id. at 61-62.

[28] Id. at 62-64.

[29] Article 282. An employer may terminate an employment for any of the following causes:

- a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- b. Gross and habitual neglect by the employee of his duties;
- c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- d. Commission of a crime or offense by the employee against the person of the employer or any immediate member of his family or his duly authorized representatives; and
- e. Other causes analogous to the foregoing.

[30] Northwest Tourism Corp. v. Court of Appeals, G.R. No. 150591, June 27, 2005, 461 SCRA 298.

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

[32] Rollo, pp. 40-41.

[33] Records, pp. 94-126.

[34] Section 2(d), Rule I of Book VI of the Omnibus Rules Implementing the Labor Code.

[35] G.R. No. 143384, February 4, 2005, 450 SCRA 465.

[36] Supra notes 4, 7 and 9.

[37] Vide: records, p. 32. Respondents' Position Paper claims unpaid salary for the period of November 13-30, 2000.

[38] Heirs of Ramon Durano, Sr. v. Uy, G.R. No. 136456, October 24, 2000, 344 SCRA 238.

[39] Servicewide Specialists, Inc. v. Court of Appeals, G.R. No. 117728, June 26, 1996, 257 SCRA 643, 653; Korean Airlines Co., Ltd. v. Court of Appeals, G.R. No. 114061, August 3, 1994, 234 SCRA 717, 725.

[40] Records, p. 790.

[41] Mora v. Avesco Marketing Corp., G.R. No. 177414, November 14, 2008, 571 SCRA 226, 228.

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