

MARIBAGO BLUEWATER BEACH RESORT, INC. PETITIONER, VS. NITO DUAL, RESPONDENT.

G.R. No. 180660. July 20, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

Before this Court is the petition for review on certiorari under Rule 45 of the Rules of Court assailing the Decision[1] dated 7 March 2007 and Resolution[2] dated 30 July 2007 of the Court of Appeals in CA-G.R. SP No. 02062. The Decision ordered petitioner Maribago Bluewater Beach Resort, Inc. (Maribago for brevity) to pay respondent Nito Dual (Dual for brevity) full backwages and separation pay for his illegal dismissal. It is a reversal of the National Labor Relations Commission (NLRC for brevity) decision vacating the decision of the Labor Arbiter.

The undisputed facts of the case are as follows:

Petitioner Maribago is a corporation operating a resort hotel and restaurant in Barangay Maribago, Lapu-Lapu City. On 18 October 1995[3], it hired respondent Dual as waiter and promoted him later as outlet cashier of its Poolbar/Allegro Restaurant.[4]

On 9 January 2005, around 6:30 p.m., a group of Japanese guests and their companions dined at Allegro.[5] Captain waiter Alvin Hiyas (Hiyas for brevity) took their dinner orders comprising of six (6) sets of lamb and six (6) sets of fish. As per company procedure, Hiyas forwarded one copy of the order slip to the kitchen and another copy to respondent.[6] Pursuant to the order slip, fourteen (14) sets of dinner were prepared by the chef. Hiyas and waiter Genaro Mission, Jr. (Mission for brevity) served twelve (12) set dinners to the guests, and another two (2) sets to their guides[7] free of charge (total of 14 sets of dinner).

After dinner, at around 9:00 p.m., the guests asked for their bill. Since Hiyas was attending to other guests, he gave a signal to Mission to give the bill. Mission asked respondent Dual for the sales transaction receipt and presented this to the guests. The guests paid the amount indicated on the receipt and thereafter left in a hurry.[8]

The receipt printed at 10:40 p.m. shows that only P3,036.00 was remitted by cashier Dual corresponding to six (6) sets of dinner. The receipt reads:

X X X X

NITO 01/09/2005

22:40

xxx

1

3 SET LAMB

1,560.00

1

3 SET FISH

1,200.00

10% Service Charge

276.00

NET TOTAL

3,036.00

CASH/CHEQUE TENDER

3,036.00

CHANGE

0.00

x x x x[9]

In view of the discrepancy between the order slip and the receipt issued, petitioner Maribago, through its Human Resource Development (HRD) manager, issued memoranda, all dated 12 January 2005, requiring respondent Dual, Alvin Hiyas, Ernesto Avenido and Basilio Alcoseba to explain why they should not be penalized for violating House Rule 4.1 (dishonesty in any nature). [10]

On 14 January 2005, the concerned employees were requested to attend a clarificatory hearing to be conducted on 15 January 2005. The hearing was attended by respondent Dual, Human Resource Manager Ignacio Hermias, Jr., Chief Security Officer Roland Cubillan, Captain Waiter Hiyas, Chef Arman, Bartender Avenido, Room Service Waiter Alcoseba, Butcher Ryan Alegrado, John Marollana, and union officials. This was followed by another clarificatory hearing conducted on 16 January 2005. It was in the 16 January 2005 hearing that waiter Mission gave his testimony.

During the clarificatory hearing, butcher Alegrado testified that waiter Alcoseba went to the butchery looking for the order slip for table no. 113. At around 9:45 p.m., waiter Alcoseba caused the alteration of the order slip to

reflect that six (6) orders were cancelled. Alegrado allegedly asked Alcosoba if the cook was already aware of the cancellation, to which the latter answered "oo, kahibaw na" (yes, he is already aware).

In his written explanation, Alcosoba stated that he was not privy to the cancellation of orders since he was busy attending to his room service duty. He claims that he saw the cancelled food orders at the waiter's station but insists that he did not have any part in the alteration of the order slip. During the clarificatory hearing, however, he admitted that he altered the order slip by cancelling six (6) set dinners.

After the investigation, respondent Dual was found guilty of dishonesty for his fabricated statements and for asking one of the waiters (Mission) to corroborate his allegations. He was terminated per memorandum dated 22 January 2005. Alcosoba was also terminated for dishonesty based on his admission that he altered the order slip.[11]

CASE FOR RESPONDENT

Respondent Dual confirms that the orders were for six (6) sets of lamb dinner and six (6) sets of fish dinner. He, however, alleges that four (4) sets were cancelled and two (2) sets were given to the guides for free. He was able to confirm the cancellation with Alcosoba and Hiyas. Hence, he received the payment for the six (6) sets only.[12]

He avers that when he noticed the alteration in the order slip, he verified this with Mission. The latter allegedly told him that the order slip was handed by Alcosoba. Respondent further avers that he went to see Alcosoba who, in turn, told him that some orders were cancelled because some of the companions of the Japanese guests did not take their dinner. Upon verification from chief waiter Hiyas, he was allegedly told that the sets of dinner were indeed cancelled and placed in the utensil station. According to respondent, he checked the utensil station and found the dinner sets there. Satisfied, he issued the transaction receipt corresponding to the order slip.

Respondent argues that when Mission received the printed receipt in the amount of P3,036.00 for six (6) sets of dinner, the latter did not complain that the entry was incorrect, particularly, the amount reflected in the computer printed receipt.

He alleges that Mission presented the receipt to the guests and came back with the payment in the amount of P3,100.00. Dual admits that he accepted the payment and gave Mission a change of P64.00. He claims that he thereafter issued the corresponding official receipt.

CASE FOR THE PETITIONER

Petitioner Maribago submits that the transaction receipt handed to Mission by respondent Dual amounted to P10,100.00 (more or less). The guests allegedly gave Mission P10,500.00 with the instruction to return only P200.00. The rest can be kept by the waiter as tip.

Mission then handed Dual the P10,500.00 and relayed the guests' instruction. Dual handed Mission the P200.00 which the latter gave to the guests.

It was discovered later that only P3,036.00 was entered by Dual in the cash register. The rest of the payment was missing. The original transaction receipt for P10,100.00 was likewise missing and in its place, only a transaction receipt for P3,036.00 was registered. Upon verification, it was also found out that the order slip was tampered by Alcosoba to make it appear that only six (6) set dinners were ordered.

According to petitioner, on 14 January 2005, Dual and Alcosoba tried to convince Mission to say that he altered the order slip from twelve (12) sets of dinner to six (6) sets.[13] Mission did not report for work and did not attend the 15 January 2005 clarificatory hearing since he could not "in conscience" tell a lie.[14] At past 11:00 p.m. of 15

January 2005, Dual met Mission and tried again to convince him to say that only six (6) sets of dinner were ordered.[15] Mission reported on 16 January 2005 and attended the hearing that day. Dual was not present.[16]

RULING OF THE LABOR ARBITER/NLRC/CA

On 3 February 2005, Dual filed a complaint[17] for unfair labor practice, illegal dismissal, non-payment of 13[th] month and separation pay, and damages before the NLRC, Regional Arbitration Branch No. VII, Cebu City.

The Labor Arbiter found that respondent's termination was without valid cause and ruled that respondent is entitled to separation pay, to wit:

WHEREFORE, VIEWED FROM THE FOREGOING, judgment is hereby rendered declaring the absence of valid cause in the termination of complainant from the service. Complainant is thus, entitled to reinstatement but without backwages considering that respondents are in good faith. However, since reinstatement is no longer feasible, respondents MARIBAGO BLUE WATER BEACH RESORT/ARCADIO ALEGRADO are hereby ordered to pay jointly and severally, complainant NITO DUAL the total amount of THIRTY-FIVE THOUSAND PESOS (P35,000.00), Philippine currency, representing Separation Pay, within ten (10) days from receipt hereof, through the Cashier of this Arbitration Branch.

Other claims are DISMISSED for lack of merit.[18]

The NLRC set aside the Labor Arbiter's decision and dismissed the complaint, to wit:

WHEREFORE, premises considered, the decision of the Labor Arbiter dated 03 August 2005 is VACATED and SET ASIDE and the complainant's complaint is DISMISSED for lack of merit.[19]

The NLRC also denied respondent's motion for reconsideration.[20]

It ruled that complainant's act of depriving respondent of its lawful revenue is tantamount to fraud against the company which warrants dismissal from the service.[21] Falsification of commercial documents as a means to malverse company funds constitutes fraud against the company.[22]

The Court of Appeals reversed the decision and resolution of the NLRC. Finding no sufficient valid cause to justify respondent's dismissal, the Court of Appeals ordered petitioner to pay respondent full backwages and separation pay, as follows:

WHEREFORE, the instant petition is GRANTED. The Decision, dated March 31, 2006, and Resolution, dated June 28, 2006, of the NLRC, in NLRC Case No. V-000590-2005 are REVERSED. A new judgment is hereby rendered, directing private respondent [herein petitioner Maribago Bluewater Beach Resort, Inc.] to pay petitioner [herein respondent Nito Dual] full backwages from the time he was illegally dismissed, up to the finality of this decision and a separation pay of one month salary for every year of service.[23]

The Court of Appeals denied petitioner's motion for reconsideration.

OUR RULING

The petition before this Court prays for the resolution of a sole issue:

WHETHER OR NOT THE COURT OF APPEALS COMMITTED A GRAVE AND REVERSIBLE ERROR IN REVERSING THE NATIONAL LABOR RELATIONS COMMISSION AND DIRECTING PETITIONER TO PAY RESPONDENT FULL BACKWAGES FROM THE TIME HE WAS ILLEGALLY DISMISSED, UP TO THE FINALITY OF [ITS] DECISION AND SEPARATION PAY OF ONE MONTH SALARY FOR EVERY YEAR OF SERVICE.[24]

In essence, the issue is whether the Court of Appeals erred in ruling that respondent was illegally dismissed.

Petitioner places the crux of the controversy on the proven tampering of the transaction receipt which happened in respondent's workstation. Thus, petitioner seeks a review of the findings of the Court of Appeals for being speculative^[25] and prays that its decision and resolution be reversed.^[26] Petitioner submits that while this Court is not a trier of facts and its jurisdiction under Rule 45 of the Rules of Court is confined to a review of questions of law, the contradictory findings of the NLRC and Court of Appeals provide sufficient justification for the review of the facts.^[27]

Respondent, on the other hand, reiterates his story that the order slip was already altered when Mission gave it to him; that he was able to confirm the cancellation of some orders from Alcoseba and Hiyas; that the receipt he printed was based on the order slip for six (6) sets of dinner; that Mission gave him P3,100.00 as payment and he returned P64.00 as change.^[28] Respondent also contends that a review of the findings of fact of the Court of Appeals is not proper in a petition for review on certiorari. The findings of the Court of Appeals were supported by the evidence on record and consistent with the findings of the Labor Arbiter. Hence, the decision of the Court of Appeals is conclusive and must be accorded finality.^[29]

As a rule, a petition for review under Rule 45^[30] of the Rules of Court must raise only questions of law. However, the rule has exceptions such as when the findings of the Labor Arbiter, NLRC and Court of Appeals vary,^[31] as in this case.

After a full review of the case, we are constrained to reverse the Court of Appeals.

The law requires that an employer shall not terminate the services of an employee except for a just or authorized cause. Otherwise, an employee unjustly dismissed from work is entitled to reinstatement and full backwages.^[32] The law also requires the employer to observe due process in termination cases.^[33] In *Agabon v. National Labor Relations Commission*,^[34] we ruled that violation of the employee's statutory right to due process makes the employer liable to pay indemnity in the form of nominal damages. The law further requires that the burden of proving the cause for termination rests with the employer.^[35]

In this case, we are in agreement that petitioner's evidence proved that respondent is guilty of dishonesty and of stealing money entrusted to him as cashier. Instead of reporting P10,100.00 as payment by the guests for their dinner, respondent cashier only reported P3,036.00 as shown by the receipt which he admitted to have issued. The receipt which bears his name "NITO" was printed at "22:40" (10:40 p.m.) or 1 hour and 40 minutes after the guests had left at 9:00 p.m. Two other receipts were issued for the same amount at "22:39:55" and "22:40:01". Moreover, respondent's claim that he received P3,100.00 only and gave Mission P64.00 as change is not shown by the receipt that he issued. The issued receipt does not show that change was given. In addition, the amount indicated in the receipt does not coincide with Dual's contention that only four (4) dishes were cancelled and two (2) dishes were given free of charge. If such were the case, then the amount charged to the guests should have been for eight (8) sets of dinner and not six (6) sets. As established during the clarificatory hearing, twelve (12) sets of dinner were served to guests and two (2) dinner sets were given to the tour guides free of charge. It is clearly indicated in the altered order slip that six (6) out of the twelve (12) sets of dinner were cancelled.

The allegation of Dual that six (6) dinner sets were indeed cancelled as evidenced by the dishes he allegedly saw in the utensil station is negated by the testimonies of the kitchen staff (Chef Armand Galica, Butcher Alegrado and Dessert-in-charge John Marollano) that twelve (12) set meals were served and consumed. These testimonies coincide with the claim of waiters Hiyas and Mission that fourteen (14) sets of dinner were served. The serving of food eliminates the argument of cancellation.

The alibi of cancellation has no leg to stand on. The standard operating procedure of Maribago dictates that in cases of cancellation, the order slip has to be countersigned by the attending waiter (which in this case should have been Chief Waiter Hiyas) but such was not so in this case.

The foregoing facts explain why Dual and Alcosoba tried twice to convince Mission to cover up their crime. They even asked Mission to take the fall by asking him to admit that he altered the order slip from twelve (12) sets of dinner to six (6) sets.

In fine, what is damning to the cause of Dual is the receipt which he admittedly issued. The receipt was issued long after the guests had left (9:00 p.m.) and after the alteration of the order slip (9:45 p.m.) was done. Such fact led us to the conclusion that he consented to and participated in the anomaly.

Respondent's acts constitute serious misconduct which is a just cause for termination under the law.[36] Theft committed by an employee is a valid reason for his dismissal by the employer. Although as a rule this Court leans over backwards to help workers and employees continue with their employment or to mitigate the penalties imposed on them, acts of dishonesty in the handling of company property, petitioner's income in this case, are a different matter.[37]

Withal, the law, in protecting the rights of the laborers, authorizes neither oppression nor self-destruction of the employer. While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. The management also has its own rights, as such, are entitled to respect and enforcement in the interest of simple fair play. Out of its concern for those with less privileges in life, the Supreme Court has inclined more often than not toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.[38]

Regarding the due process requirement, petitioner had complied with it as clearly shown by the facts.

WHEREFORE, the petition is GRANTED. The assailed Decision and Resolution dated 7 March 2007 and 30 July 2007, respectively, of the Court of Appeals in CA-G.R. SP No. 02062 are REVERSED and SET ASIDE. The complaint of respondent Nito Dual is DISMISSED.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J., (Chairperson), Brion,[*] Del Castillo,**] and Abad, [***] JJ., concur.

[*] Designated as an additional member in lieu of Associate Justice Teresita J. Leonardo-De Castro per Special Order No. 856 dated 1 July 2010.

[**] Designated as Acting Working Chairperson in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 853 dated 1 July 2010.

[***] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Special Order No. 869 dated 5 July 2010.

[1] Penned by Associate Justice Pampio A. Abarintos with Associate Justices Priscilla Baltazar-Padilla and Stephen C. Cruz, concurring. Rollo, pp. 29-37.

[2] Id. at 39-40.

[3] Id. at 101.

[4] Id. at 69, 101.

[5] Id. at 69-70.

[6] Id. at 139,144.

[7] Id.

[8] Id. at 91.

[9] Id. at 126.

[10] Id. at 82-85.

[11] Id. at 92-93.

[12] Id. at 86.

[13] Id. at 96.

[14] Id. at 99.

[15] Id. at 96, 99.

[16] Id. at 97, 99.

[17] Id. at 65. Named as respondents in the complaint were the petitioner and Arcadio Alegredo. In the Court of Appeals, however, the private respondent impleaded is only the petitioner herein (Id. at 29).

[18] Id. at 63.

[19] Id. at 52.

[20] Id. at 55.

[21] Philippine Airlines, Inc. v. NLRC, G.R. No. 126805, 16 March, 2000.

[22] Pepsi Cola Bottling Company of the Philippines v. Guanson, G.R. No. 81162, 19 April 1989, 172 SCRA 571.

[23] Rollo, pp 36-37.

[24] Id. at 211.

[25] Id. at 216-217.

[26] Id. at 218.

[27] Id. at 212-213.

[28] Id. at 190-191.

[29] Id. at 202.

[30] RULE 45**APPEAL TO THE SUPREME COURT**

SECTION 1. Filing of petition with Supreme Court -- A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (see also A.M. No. 07-7-12-SC, took effect on 27 December 2007.)

[31] Suldao v. Cimech System Construction, Inc., G.R. No. 171392, 30 October 2006, 506 SCRA 256, 260.

[32] LABOR CODE, ART. 279.

[33] LABOR CODE, art. 277(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. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. x x x x

[34] G.R. No. 158693, 17 November 2004, 442 SCRA 573, 617.

[35] labor code, ART. 277(b)

[36] Labor Code, Art. 282(a).

[37] Firestone Tire and Rubber Co. of the Phils. v. Lariosa, 232 Phil. 201, 206 (1987).

[38] Mercury Drug Corporation v. National Labor Relations Commission, G.R. No. 75662, 15 September 1989, 177 SCRA 580, 587.

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