

**BLAZER CAR MARKETING, INC., AND FREDDIE CHUA, PETITIONERS,
VS. SPOUSES TOMAS T. BULAUAN AND ANALYN A. BRIONES,
RESPONDENTS.**

G.R. No. 181483. March 09, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

Dismissal is the severest penalty that can be imposed upon an erring employee; hence, its imposition should not be upheld unless the grounds therefor are supported by substantial evidence. Further, the penalty must be commensurate to the gravity of the infraction committed.

Assailed in this petition are the Court of Appeals (CA) Decision[1] dated August 17, 2007 and Resolution[2] dated January 22, 2008, in CA-G.R. SP No. 93094, which reversed the decision of the National Labor Relations Commission (NLRC).

Respondents, spouses Tomas Bulauan and Analyn Briones, were employees of petitioner Blazer Car Marketing, Inc., which is owned and managed by petitioner Freddie Chua. Briones was hired on April 29, 1998 as secretary/warehouse clerk with a daily compensation of P270.00 plus P30.00 emergency cost of living allowance (ECOLA). Bulauan, on the other hand, worked as a driver from December 4, 1999 to May 4, 2002, and was rehired on March 24, 2003. He was receiving a daily wage of P280.00 (inclusive of ECOLA).

On November 18, 2003, respondent Briones filed against petitioners a complaint for illegal dismissal, non-payment of 13th month pay, and payment of separation pay and attorney's fees. On December 15, 2003, respondent Bulauan filed a similar complaint against petitioners. Upon motion of respondents, the two complaints were consolidated.

In their consolidated position paper, respondent Briones alleged that, on November 16, 2003, she reminded petitioner Chua to remit to the Social Security System (SSS) their premium contributions for 30 months and to issue her an employee's identification (ID) card, because she had not yet been issued one since she was first employed in 1998. She averred that she told Chua she needed an ID card so that she could apply for a loan from the SSS and the Pag-ibig Fund and so that she could show it to customers when they asked for it. Briones recounted that when Chua affixed his signature to her ID card, she commented, "Sir, napapansin ko iba ang pirma mo sa certification na ibinigay mo sa asawa ko." She was referring to the certificate of employment that Chua previously issued to respondent Bulauan. Petitioner Chua allegedly reacted wildly, became furious, and shouted at the top of his voice, "Hoy, wala ka na doon, wala kang pakialam." Briones claimed that when she reported for work the following day, she was barred by Chua, who told her, "Pa SSS ka pa diyan. Hoy, tanggal ka sa trabaho." [3]

For his part, respondent Bulauan recalled that, in the evening of November 17, 2003, after making deliveries, he was instructed to proceed to Chua's residence. There, Chua, who was then holding a golf club, angrily told him, "Hoy, hiwalayan mo ang asawa mo kung gusto mo tanggapin kita sa trabaho." The following day, he was barred

from reporting for work by Chua, who told him, "Hoy, tanggal ka na rin sa trabaho." [4]

According to respondents, the company was raided by the National Bureau of Investigation (NBI) in 2001, based on a charge that Chua was engaged in the illegal manufacture and sale of car parts. Respondents posited that their dismissal was the result of Chua's suspicion that they were the ones who reported his illegal activities to the NBI.

Petitioners had a different version of what transpired on November 17, 2003. Chua claimed that Briones was caught making company ID cards without management authority. He said that they immediately conducted an investigation, and some of the employees attested that Briones had, indeed, made ID cards for them, for a price. Petitioner Chua maintained that Briones was not dismissed from employment, as in fact, during the mandatory conciliation conference, Briones was told that she had not been dismissed and that she could report back to work. However, Briones manifested that she no longer wished to work for petitioners. [5] Petitioner Chua posited that Briones voluntarily stopped going to work to avoid being investigated, to cover up for her malfeasance, and to avoid being penalized. He claimed that Briones preempted further action on the matter when she no longer reported for work and filed her complaint the following day. As for respondent Bulauan, Chua explained that the former suddenly failed to report for work after learning that his wife was being investigated.

In reply, respondents insisted that they were dismissed by petitioners; they did not voluntarily stop working. They averred that the charge that Briones issued unauthorized or fake ID cards was fabricated, the truth being that all the ID cards were made upon the directive of Chua. [6]

On November 30, 2004, the Labor Arbiter rendered a decision dismissing the complaint, but ordering petitioners to pay prorated 13[th] month pay, thus:

WHEREFORE, premises considered, we have no recourse but to dismiss the present complaint against respondents for illegal dismissal, however, respondents are liable to pay Analyn Briones and Tomas Bulauan their pro rata 13[th] month pay in the sum of SIX THOUSAND FOUR HUNDRED THIRTY-FIVE PESOS (P6,435.00) and FOUR THOUSAND EIGHT HUNDRED FIFTY-THREE PESOS (P4,853.00), respectively.

All other claims are dismissed for lack of merit.

SO ORDERED. [7]

On appeal, the NLRC affirmed the Labor Arbiter's decision. [8] It also denied respondents' motion for reconsideration. [9]

Respondents elevated the case to the CA through a petition for certiorari. This time, they were able to obtain a favorable ruling. The CA Decision dated August 17, 2007 granted the petition and awarded backwages and separation pay, in lieu of reinstatement, to respondents, thus:

WHEREFORE, the petition is GRANTED. The assailed decision of the public respondent NLRC dated July 26, 2005 and the subsequent Resolution dated November 29, 2005 denying petitioners' Motion for Reconsideration are hereby REVERSED and SET ASIDE. The Court hereby renders judgment declaring petitioners Tomas Bulauan and Analyn Briones to have been illegally dismissed, and thus, entitled to full backwages and other privileges, and separation pay in lieu of reinstatement at the rate of one month's salary for every year of service with a fraction of at least six months of service considered as one year. Let the records of this case be REMANDED to the National Labor Relations Commission for determination of the backwages and other benefits and separation pay due the petitioners.

SO ORDERED. [10]

Petitioners moved for reconsideration of the decision, but the motion was denied for lack of merit, in the CA Resolution dated January 22, 2008. [11] Thus, this petition.

Petitioners remain adamant that respondents were not dismissed from their employment, but that they voluntarily left their jobs after respondent Briones was discovered making ID cards, without management authority, for the other employees of the company.

We are not persuaded.

We sustain the CA's finding that respondents were dismissed from employment, and that such dismissal was without just cause. In a number of cases, we have ruled that an employer's claim that an employee was not dismissed but voluntarily left his employment is effectively belied by the filing of a complaint for illegal dismissal. It is settled, after all, that the filing of a complaint for illegal dismissal is inconsistent with the charge of abandonment, for an employee who takes steps to protest his dismissal cannot, by logic, be said to have abandoned his work.[12] It then becomes imperative that the employer affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.[13]

The contention that respondent Briones was being investigated for making ID cards for the other employees, without authority, impresses us merely as a contrived excuse resorted to, simply to justify the unlawful dismissal. Its truthfulness is highly suspect. We are more inclined to agree with the CA's observations on this point, viz.:

First, although private respondents were able to produce affidavits of two employees that Analyn was manufacturing unauthorized IDs, these affidavits can only be given scant consideration. As gleaned from the imprint of the ID card reproduced in one of the affidavits submitted, the ID card bears the signature of respondent Chua. If the IDs were indeed unauthorized, respondent Chua would simply have refused to sign the same or disowned his signature therein, which he never did. Perusing the allegations of private respondents, it was never claimed that Analyn forged or tried to forge respondent Chua's signature on the IDs made by her. Thus, Analyn's version of the facts that she merely took the initiative to make IDs for herself and her co-employees is more consonant with logic than the version of private respondents.

Second, it does not appear that private respondents pursued the investigation against Analyn. If Analyn was not really dismissed on November 17, 2003, then private respondents should have sent her a notice to explain why she suddenly stopped reporting for work starting November 18, 2003 following his alleged confrontation with her on November 17, 2003.[14]

In addition, we note that, in their affidavits, the witnesses did not mention that the ID cards were made by respondent Briones without petitioners' consent or authority. On the contrary, there were references to the ID cards being made within company premises, then submitted to petitioner Chua for his signature. What is evident from the affidavits is that the ID cards were made primarily at the initiative of respondent Briones and at the expense of the employees. The affidavits, per se, cannot be taken as proof that the ID cards were made without petitioners' authority.

Petitioners emphasize the fact that respondent Briones did not give them the chance to evaluate her side of the controversy, because she immediately filed her complaint the day after she was supposedly caught making the ID cards. However, the filing of the complaint should not have prevented petitioners from proceeding with the investigation against Briones and imposing the appropriate penalty upon her, if found guilty. As pointed out by the CA, petitioners should have done so, if, indeed, they had not dismissed Briones.

But even if it were true that respondent Briones made ID cards for petitioners' employees without authority, the act would not amount to serious misconduct as to justify dismissal.

Misconduct is defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment.[15] For misconduct to be a just cause for dismissal, (a) it must be serious; (b) it must relate to

the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.[16] To be serious within the meaning and intendment of the law, the misconduct must be of such grave and aggravated character and not merely trivial and unimportant.[17] It requires a wrongful intent,[18] which is apparently absent in respondent Briones' case.

In this light, particular attention is given to the fact that petitioners' employees have not been issued company ID cards, and so they could not apply for a loan from the SSS. This was the compelling reason that prompted respondent Briones to make the ID cards for her co-employees. She simply assumed a responsibility that was petitioners' to begin with. Besides, no resultant material damage or prejudice was caused to petitioners as a consequence of respondent's act. The amount of P20.00, presumably charged by Briones for her services, is so minimal to be of any real significance, particularly since she was, in fact, doing extra service for her co-employees.

In any case, the penalty of dismissal was not commensurate to the degree of the infraction purportedly committed. The Court is wont to reiterate that, while an employer has its own interest to protect, and pursuant thereto, it may terminate an employee for a just cause, such prerogative to dismiss an employee must be exercised without abuse of discretion. It should be tempered with compassion and understanding.[19] An employer should bear in mind that, in the exercise of such right, what is at stake is not the employee's position but her livelihood as well.[20] Where a penalty less punitive would suffice, whatever missteps may have been committed by an employee ought not to be visited with a consequence so severe such as dismissal from employment.[21]

WHEREFORE, premises considered, the petition is DENIED. The Court of Appeals Decision dated August 17, 2007 and Resolution dated January 22, 2008 are AFFIRMED.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Peralta, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Remedios A. Salazar-Fernando and Enrico A. Lanzanas, concurring; rollo, pp. 43-52.

[2] Id. at 54-56.

[3] Rollo, pp. 106-107.

[4] Id. at 107.

[5] Id. at 116.

[6] Id. at 126.

[7] Id. at 158-159.

[8] Id. at 168.

[9] Id. at 169.

[10] Id. at 51-52.

[11] Id. at 56.

[12] *Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506, 515 (2003).

[13] *Marival Trading, Inc. v. National Labor Relations Commission*, G.R. No. 169600, June 26, 2007, 525 SCRA 708, 731.

[14] *Rollo*, pp. 49-50.

[15] *Lopez v. National Labor Relations Commission*, G.R. No. 167385, December 13, 2005, 477 SCRA 596, 601.

[16] *Id.*

[17] *Kephilco Malaya Employees Union v. Kepco Philippines Corporation*, G.R. No. 171927, June 29, 2007, 526 SCRA 205, 210.

[18] *McDonald's (Katipunan Branch) v. Alba*, G.R. No. 156382, December 18, 2008, 574 SCRA 427, 435.

[19] *Marival Trading, Inc. v. National Labor Relations Commission*, *supra* note 13, at 730.

[20] *Brew Master International, Inc. v. National Federation of Labor Unions*, 337 Phil. 728, 735-736 (1997).

[21] *Kephilco Malaya Employees Union v. Kepco Philippines Corporation*, *supra* note 17, at 213.

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