

**WILFREDO M. BARON, BARRY ANTHONY BARON, RAMIL CAYAGO,
DOMINADOR GEMINO, ARISTEO PUZON, BERNARD MANGSAT,
MARIFE BALLESCA, CYNTHIA JUNATAS, LOURDES RABAGO,
JEFFERSON DELA ROSA AND...**

G.R. No. 182299. February 22, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

The present petition for review on certiorari seeks to annul the Decision [1] dated August 31, 2007, as well as the Resolution [2] dated March 6, 2008, of the Court of Appeals in CA-G.R. SP No. 78925, which affirmed the Decision [3] of the National Labor Relations Commission (NLRC) in NLRC-NCR CA No. 028180-01.

Respondent Magic Sales, Inc. (MSI) is a domestic corporation engaged in the business of trading consumer goods such as soap, biscuits, candy, coffee, and juice drinks, among other things, [4] while respondent Jose Y. Sy is the company's President and General Manager. [5] On the other hand, petitioners claim to be employees of MSI. [6]

It appears that on January 18, 2000, Sy ordered an inventory of the company's stock after noticing a steady increase in the company's payables and a decline in its investments. Mr. Jovencio A. Daroya, a Certified Public Accountant and the Corporate Finance Manager of MSI, was tasked to conduct a thorough audit of the company's business. Sy then informed petitioner Wilfredo Baron that he had to be temporarily relieved of some of his duties as Operations Manager to allow the audit process to take its course for reconciliation of documents.

In a memorandum dated February 18, 2000, the employees were instructed (1) to give all the support needed by the audit team; (2) to surrender all keys and documents; (3) not to bring out anything belonging to management; and (4) to undergo a search before leaving the office. [7] Petitioners, however, refused to cooperate in the audit process, and thereafter, refrained from reporting for work. [8] Nonetheless, the audit was completed, and an Internal Audit Report [9] was submitted on April 29, 2000.

According to the audit team, there were several irregularities in the operations of MSI. The accounting system designed by Baron was generally weak and compliance to procedures was not strictly implemented. The team was also convinced that Baron abused his authority and took advantage of the laxity of the system he designed. It likewise believed that Baron's subordinates were not honest enough to report the anomalies to the management; otherwise, the irregularities could have been limited. The audit team further concluded that there was collusion between Baron and his subordinates and that they benefited from the irregularities. [10]

Consequently, management informed petitioners of the charges against them, to wit: (1) serious misconduct and willful disobedience to the company's lawful orders; (2) fraud or willful breach of trust reposed by the employer; and (3) abandonment or absence without official leave. Although petitioners were required to explain and refute the charges, they neither rebutted the same nor attended the investigation. Hence, MSI decided to terminate their services. [11]

Petitioners forthwith filed complaints [12] with the NLRC Arbitration Branch against MSI and Sy for illegal dismissal, 13th month pay, service incentive leave pay, moral and exemplary damages and attorney's fees. [13] In their Joint Position Paper, [14] petitioners principally argued that they were dismissed whimsically and capriciously in a very oppressive manner, without valid cause and without due process of law. They prayed that respondents be declared guilty of illegal dismissal and that they be reinstated to their respective former positions without loss of seniority rights, with full back wages and payment of damages. They also prayed for payment of their monetary claims.

For its part, MSI countered in its Consolidated Position Paper [15] that the petitioners are not entitled to the reliefs prayed for because they were validly dismissed. MSI insisted that Baron orchestrated the massive irregularities and grand scale fraud. With the help of the other petitioners, they were able to misappropriate company funds and goods. When petitioners sensed that their offenses would be discovered during the audit, they suddenly abandoned their work. Furthermore, MSI insisted that petitioners are guilty of insubordination by refusing to cooperate with the company and subject themselves to audit to clear themselves. Worse, petitioners attempted to sabotage the audit by locking their drawers and refusing to surrender the keys, stealing files and destroying documents and other papers.

On January 22, 2001, Labor Arbiter Jose G. De Vera rendered judgment [16] ordering respondents to reinstate petitioners Aristeo Puzon, Dominador Gemino, Bernard Mangsat, Ramil Cayago, Barry Anthony Baron, Cynthia Junatas, Marife Balleca and Lourdes Rabago to their former positions with all the rights, privileges, and benefits appurtenant thereto, plus full back wages from the date of dismissal until finally reinstated. Respondents were further ordered to pay money claims and attorney's fees to petitioners. However, the complaints of Wilfredo Baron, Jefferson dela Rosa and Jomar dela Rosa were dismissed for lack of merit.

Separate appeals to the NLRC were filed by both parties. [17] Petitioners argued that the decision is not in accord with law and jurisprudence and that they are appealing partially for the denial of their claim for damages. On the other hand, respondents claimed that the Labor Arbiter erred in holding that: (1) petitioners Gemino, Puzon, Barry Baron and Cayago were employees of MSI and that they were illegally dismissed; (2) petitioners Balleca, Junatas and Rabago were dismissed without just and valid cause; and (3) respondent Sy is solidarily liable with MSI. Respondents also argued that the Labor Arbiter erred in granting petitioners' money claims.

On December 27, 2002, the NLRC rendered a Decision [18] as follows:

WHEREFORE, judgment is hereby rendered:

- Treating the appeal of complainants Jomar de la Rosa and Jefferson dela Rosa as withdrawn;
- Dismissing the appeal of Wilfredo Baron for being without merit; and
- Dismissing the complaints of Aristeo Puzon, Dominador Gemino, Bernard [Mangsat], Ramil Cayago, Barry Anthony [Baron], Cynthia Junatas, Marife Balleca and Lourdes Rabago for being also without merit.

SO ORDERED.

According to the NLRC, there was enough evidence to show that there was conspiracy among the employees of MSI. It found that massive irregularities were committed in the company and one (1) of those involved was the operations manager himself. The audit revealed that it was Wilfredo Baron who orchestrated the massive irregularities and grand scale fraud which, however, could no longer be documented because of the theft of company files and deletion of computer files which he and the other petitioners had access to. The NLRC found that petitioners anticipated that the audit would eventually lead to their dismissal and prosecution in court. Hence, they abandoned their work and filed cases at the start of the audit. [19] The NLRC held that the acts of

abandoning their jobs without prior leave and of not surrendering all the keys and documents in their possession so that management could thoroughly conduct its audit are enough reasons to justify their termination pursuant to Article 282 of the Labor Code, as amended.

Petitioners filed a Motion for Reconsideration. [20] The NLRC, however, was not persuaded, and resolved to deny the motion in its Order dated May 7, 2003. [21]

Contending that the NLRC acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in rendering its Decision and Order, petitioners filed a Petition for Certiorari [22] with the Court of Appeals.

On August 31, 2007, the appellate court rendered a Decision, [23] the dispositive portion of which reads:

WHEREFORE, for lack of merit, the petition is DENIED due course and, accordingly, DISMISSED. Consequently, the assailed decision of the National Labor Relations Commission is AFFIRMED.

SO ORDERED.

Later, the Court of Appeals denied petitioners' motion for reconsideration [24] in its Resolution [25] dated March 6, 2008.

Hence, the present petition.

The core issues in this controversy are: (1) Were petitioners validly dismissed on the grounds of grave misconduct and loss of confidence? and (2) Were petitioners denied of their right to due process when they were terminated from their employment?

At the outset, it must be stressed that the issues raise questions of fact which are not proper subjects of a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended. It is axiomatic that in an appeal by certiorari, only questions of law may be reviewed. [26] Furthermore, factual findings of administrative agencies, when affirmed by the Court of Appeals, are conclusive on the parties and not reviewable by this Court. This is so because of the special knowledge and expertise gained by these quasi-judicial agencies from presiding over matters falling within their jurisdiction, which is confined to specific matters. So long as these factual findings are supported by substantial evidence, this Court will not disturb the same. [27]

In this case, the Labor Arbiter found that petitioners Aristeo Puzon, Dominador Gemino, Bernard Mangsat, Ramil Cayago, Barry Anthony Baron, Cynthia Junatas, Marife Balleca and Lourdes Rabago were illegally dismissed. The NLRC disagreed with the Labor Arbiter and reversed the latter's findings. On appeal, the appellate court concurred with the findings of the NLRC. In view of the discordance between the findings of the Labor Arbiter, on one hand, and the NLRC and the Court of Appeals, on the other, there is a need for the Court to review the factual findings and the conclusions based on the said findings. As this Court held in *Diamond Motors Corporation v. Court of Appeals*: [28]

A disharmony between the factual findings of the Labor Arbiter and the National Labor Relations Commission opens the door to a review thereof by this Court. Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness. Moreover, when the findings of the National Labor Relations Commission contradict those of the labor arbiter, this Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.

The Constitution, statutes and jurisprudence uniformly mandate that no worker shall be dismissed except for a just or valid cause provided by law, and only after due process is properly observed. In a recent decision, [29] this Court said that dismissals have two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and, second, the legality of the manner of dismissal, which constitutes procedural due process.

The just causes for termination of employment are enumerated in Article 282 of the Labor Code, as amended, viz.:

ART. 282. Termination by employer. - 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 his employer or any immediate member of his family or his duly authorized representative; and
- (e) Other causes analogous to the foregoing.

In the present case, respondents terminated petitioners from their employment based on the following grounds: (1) serious misconduct and willful disobedience to the company's lawful orders; (2) fraud or willful breach of trust reposed by the employer; and (3) abandonment or absence without official leave.

Misconduct has been 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. The misconduct to be serious must be of such grave and aggravated character and not merely trivial and unimportant. Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation. [30]

To our mind, respondents were able to prove substantially the existence of serious misconduct committed by petitioners to justify their termination from employment. Daroya submitted a report [31] dated February 19, 2000 stating that in spite of management's memorandum, the keys to the office and filing cabinets were not surrendered. It was likewise stated in the report that Wilfredo Baron pulled out some records without allowing a representative from the audit team to inspect them. He noticed Wilfredo Baron deleting some files from the computer which could no longer be retrieved. Moreover, Armida Que, a member of the audit team, saw petitioner Cynthia Junatas carrying some documents, including a Daily Collection Report. When asked to present the documents for inspection, Junatas refused and tore the document.

In addition, the audit team discovered that MSI incurred an inventory shortage of One Million Thirty Thousand Two Hundred Fifty-Eight Pesos and Twenty-One Centavos (P1,030,258.21). It found that Wilfredo Baron, the operations manager, in conspiracy with the other petitioners, orchestrated massive irregularities and grand scale fraud, which could no longer be documented because of theft of company documents and deletion of computer files. Unmistakably, the unauthorized taking of company documents and files, failure to pay unremitted collections, failure to surrender keys to the filing cabinets despite earlier instructions, concealment of shortages, and failure to record inventory transactions pursuant to a fraudulent scheme are acts of grave misconduct, which are sufficient causes for petitioners' dismissal from employment.

They are also grounds for loss of trust and confidence under Article 282 of the Labor Code, as amended. For there to be a valid dismissal based on loss of trust and confidence, the breach of trust must be willful, meaning it must be done intentionally, knowingly, and purposely, without justifiable excuse. [32] The basic premise for dismissal on the ground of loss of confidence is that the employees concerned hold a position of trust and confidence. It is

the breach of this trust that results in the employer's loss of confidence in the employee. In the instant case, we note that petitioners were holding the following positions: Wilfredo Baron - operations manager, Jomar dela Rosa and Jefferson dela Rosa - sales representatives, Cynthia Junatas and Marife Ballesca - accounting clerks, and Lourdes Rabago - warehouse checker. Clearly, petitioners were holding positions imbued with trust and confidence, which are deemed to have been reposed on them by virtue of the nature of their work.

All given, we affirm the conclusion of the NLRC and appellate court that petitioners Wilfredo Baron, Jomar dela Rosa, Jefferson dela Rosa, Cynthia Junatas, Marife Ballesca and Lourdes Rabago were dismissed for just causes. Meanwhile, petitioners Aristeo Puzon, Dominador Gemino, Bernard Mangsat, Barry Anthony Baron and Ramil Cayago failed to prove by substantial evidence the existence of an employer-employee relationship between them and MSI. In fact, they admitted that they were probationary employees of Superb Trading and Services, Inc. (STSI), and not of MSI. It must also be stressed that the connection between MSI and STSI was not proven. Thus, having no cause of action against MSI, the Court of Appeals correctly upheld the NLRC in dismissing their complaints.

On the procedural aspect, petitioners claim that they were denied due process. We disagree.

In the dismissal of employees, it has been consistently held that the twin requirements of notice and hearing are essential elements of due process. The employer must furnish the worker with two written notices before termination of employment can be legally effected: (1) a notice apprising the employee of the particular acts or omissions for which his dismissal is sought, and (2) a subsequent notice informing the employee of the employer's decision to dismiss him. With regard to the requirement of a hearing, the essence of due process lies simply in an opportunity to be heard, and not that an actual hearing should always and indispensably be held. [33]

Likewise, there is no requirement that the notices of dismissal themselves be couched in the form and language of judicial or quasi-judicial decisions. What is required is that the employer conduct a formal investigation process, with notices duly served on the employees informing them of the fact of investigation, and subsequently, if warranted, a separate notice of dismissal. [34] Through the formal investigatory process, the employee must be accorded the right to present his or her side, which must be considered and weighed by the employer. The employee must be sufficiently apprised of the nature of the charge, so as to be able to intelligently defend himself or herself against the charges.

In this case, records show that respondents complied with the two-notice rule prescribed in Article 277(b) of the Labor Code, as amended. Petitioners were given all avenues to present their side and disprove the allegations of respondents. Thus, we agree with the Court of Appeals when it held:

On various dates, two [2] separate notices were given the employees. In the first notice, the acts imputed against them were enumerated with a call for an investigation, while the second notice contained MSI's decision terminating them after they failed to respond to the first notice. Thus, the employees' inaction is attributable to them. Due process is not violated where a person is given the opportunity to be heard but chooses not to give his side of the case (*Caurdanetaan Piece Workers Union vs. Laguesma*, 286 SCRA 401). [35]

Evidence shows that petitioners were properly notified of the charges against them. They received letters [36] signed by Jose Y. Sy instructing them to explain within seventy-two (72) hours from receipt why they should not be dismissed for their offenses. They were likewise warned that failure to reply would mean that they were waiving their right to present evidence in their favor. Furthermore, petitioners were afforded the chance to defend themselves during the scheduled investigation on April 12, 2000. Given the foregoing, it is clear that the required procedural due process for their termination was strictly complied with. When parties have been given an

opportunity to be heard and to present their case, there is no denial of due process. [37]

WHEREFORE, the petition is DENIED. The Decision dated August 31, 2007 and the Resolution dated March 6, 2008 of the Court of Appeals in CA-G.R. SP No. 78925 are AFFIRMED and UPHELD.

With costs against the petitioners.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio Morales, Nachura[*], and Bersamin, JJ., concur.

[*] Designated additional member per Special Order No. 821, in view of the official leave of absence of Associate Justice Teresita J. Leonardo-De Castro.

[1] Rollo, pp. 61-75. Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Fernanda Lampas Peralta and Normandie B. Pizarro concurring.

[2] Id. at 77.

[3] CA rollo, pp. 47-84.

[4] NLRC records, p. 15.

[5] Id. at 16.

[6] Id. at 159.

[7] Id. at 44.

[8] Rollo, p. 203.

[9] NLRC records, pp. 64-71.

[10] Id. at 71.

[11] Id. at 123, 142-144.

[12] Docketed as NLRC Case Nos. SUB-RAB-I-7-3-0051-2000 D.C. and SUB-RAB-I-7-4-0069-2000 D.C.

[13] NLRC records, pp. 1-4.

[14] Id. at 159-193.

[15] Id. at 14-38.

[16] Id. at 218-242.

[17] CA rollo, pp. 205-223, 506-537.

[18] Id. at 47-84.

[19] Id. at 77.

[20] Id. at 224-255.

[21] Id. at 87-90.

[22] Id. at 1-B-44.

[23] Rollo, pp. 61-75.

[24] CA rollo, pp. 587-615.

[25] Rollo, p. 77.

[26] *Morales v. Skills International Company*, G.R. No. 149285, August 30, 2006, 500 SCRA 186, 194; *JMM Promotions and Management, Inc. v. Court of Appeals*, G.R. No. 139401, October 2, 2002, 390 SCRA 223, 229.

[27] *Morales v. Skills International Company*, *supra* at 195; *Cosmos Bottling Corporation v. National Labor Relations Commission*, G.R. No. 146397, July 1, 2003, 405 SCRA 258, 262-263.

[28] G.R. No. 151981, December 1, 2003, 417 SCRA 46, 50.

[29] *Tirazona v. Court of Appeals*, G.R. No. 169712, March 14, 2008, 548 SCRA 560, 579, citing *Shoemart, Inc. v. National Labor Relations Commission*, G.R. No. 74229, August 11, 1989, 176 SCRA 385, 390.

[30] *Samson v. National Labor Relations Commission*, 386 Phil. 669, 682 (2000).

[31] NLRC records, p. 49.

[32] *Philippine National Construction Corporation v. Matias*, G.R. No. 156283, May 6, 2005, 458 SCRA 148, 159, citing *Gonzales v. National Labor Relations Commission*, G.R. No. 131653, March 26, 2001, 355 SCRA 195, 207; *P.J. Lhuillier, Inc. v. National Labor Relations Commission*, G.R. No. 158758, April 29, 2005, 457 SCRA 784, 798, citing *Tiu v. National Labor Relations Commission*, G.R. No. 83433, November 12, 1992, 215 SCRA 540, 547; *Felix v. National Labor Relations Commission*, G.R. No. 148256, November 17, 2004, 442 SCRA 465, 485, citing *Dela Cruz v. National Labor Relations Commission*, G.R. No. 119536, February 17, 1997, 268 SCRA 458, 470.

[33] *Paguio Transport Corporation v. NLRC*, 356 Phil. 158, 170 (1998); *Conti v. National Labor Relations Commission*, 337 Phil. 560, 565-566 (1997), citing *Roces v. Aportadera*, Adm. Case No. 2936, March 31, 1995, 243 SCRA 108, 114 and *Pamantasan ng Lungsod ng Maynila v. Civil Service Commission*, G.R. No. 107590, February 21, 1995, 241 SCRA 506, 516.

[34] See ARTICLE 277, LABOR CODE, as amended.

[35] Rollo, p. 73.

[36] NLRC records, pp. 83-85, 87, 122, 131, 137-138, 140-141.

[37] *J.D. Legaspi Construction v. National Labor Relations Commission*, G.R. No. 143161, October 2, 2002, 390 SCRA 233, 238.

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