

**ROMEO N. VENTURA, PETITIONER, VS. COURT OF APPEALS,
NATIONAL LABOR RELATIONS COMMISSION, GENUINO ICE CO.,
INC., AND HECTOR GENUINO, RESPONDENTS.**

G.R. No. 182570. January 27, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Petitioner Romeo N. Ventura (petitioner) was hired by Genuino Ice Co., Inc., (company) as Field Auditor sometime in April 1987 and continuously up to December 20, 2004, or for a period of more than seventeen (17) years.

Sometime in August 2004, one Glicerio Alido (Alido), an employee of the company, informed petitioner that he heard from a certain Zaldy, a contractor of ice-tube generators, that one Lilio Lejos (Lejos), petitioner's nephew and also an employee of the company, was involved in the theft of the company's properties. Lejos eventually resigned on September 24, 2004.[1]

On November 4, 2004, petitioner submitted to the company the Sinumpaang Salaysay[2] of Lejos dated October 28, 2004, stating therein that some of his co-employees were involved in the theft. On the same date, petitioner submitted to the management his Partial Audit Report[3] which pertinently provides that on October 28, 2004, Lejos came to petitioner's house and revealed the theft of company properties that was committed, and the identities of the employees involved.

On November 22, 2004, petitioner was served with a Notice of Preventive Suspension[4] for his failure to report the theft, despite his prior knowledge of the criminal activities. Petitioner was charged with suppression of evidence and of withholding information to cover up for the crime committed. The company considered it a serious violation of company rules and regulations, particularly Art. XII, par. (i) thereof, and a breach of the trust and confidence reposed in petitioner. The company directed petitioner to submit his written explanation within two (2) days from receipt of the said notice why he should not be terminated from employment. Moreover, as the incident posed a serious and imminent threat to the property and lives of the company and its employees, respectively, petitioner was placed under preventive suspension for thirty (30) days effective November 22, 2004.

On November 23, 2004, petitioner submitted his Sagot na Sinumpaang Salaysay,[5] denying that he violated Art. XII, par. (i) of the company rules and regulations, and alleging that when Alido informed him that Lejos was involved, he immediately reported the matter to Alejandro Barrera (Barrera), immediate superior of petitioner and Chief Auditor of the company; that he did not want to join in the investigation as Lejos is his nephew, hence, petitioner might be suspected of covering up for Lejos; that petitioner personally brought Lejos to SM North Edsa, Quezon City on November 4, 2004 so that Edgar Carriaga (Carriaga), Personnel Manager of the company, may talk to Lejos; that petitioner was the one who submitted Lejos' affidavit to the company; that the preventive suspension was a harsh penalty, considering that he did not participate in stealing company properties; and that petitioner executed the said affidavit, as the company required him to answer and explain why he should not be

terminated from employment.

In his Counter-Affidavit,[6] Barrera denied that petitioner reported the matter to him; otherwise, he would have ordered a surveillance and/or spot monitor to detect the illegal activities. Barrera also pointed out that the Partial Audit Report prepared by petitioner was without his knowledge, as the same did not bear his signature.

Thus, on December 20, 2004, petitioner was served with a Notice of Termination[7] effective on the same date, for concealing the information regarding the criminal activities in the company, particularly those committed by Lejos, thus, constituting a willful breach of trust. The company also informed petitioner that a case had already been filed with the Prosecutor's office, impleading petitioner as an accessory to the crime of theft.

On January 12, 2005, petitioner filed with the Labor Arbiter (LA) a case against the company and its president, Hector S. Genuino, for Illegal Dismissal with monetary claims for payment of separation pay, 13[th] month pay, damages and attorney's fees.[8] On April 17, 2006, the LA rendered a Decision[9] in favor of petitioner, declaring him to have been illegally dismissed and ordering his reinstatement with payment of full backwages.

Private respondents appealed to the National Labor Relations Commission (NLRC). On March 30, 2007, the NLRC reversed and set aside the ruling of the LA. However, the NLRC directed the private respondents to pay petitioner his 13[th] month pay in the amount of P6,926.66.[10] Petitioner filed his Motion for Reconsideration which was denied by the NLRC in its Resolution dated June 28, 2007.

Aggrieved, petitioner went to the Court of Appeals (CA) via Certiorari under Rule 65 of the Rules of Civil Procedure. On January 28, 2008, the CA held that, having been terminated from employment for a valid cause and with observance of due process, petitioner's complaint for Illegal Dismissal must be dismissed. The CA affirmed the NLRC's ruling.[11] On February 21, 2008, petitioner filed his Motion for Reconsideration which was denied by the CA in its Resolution[12] dated April 11, 2008.

Hence, this Petition[13] raising the following grounds:

1)

The CA erred when it ruled that the petitioner was dismissed for a cause;

2)

The NLRC erred when it ruled that the dismissal of the petitioner was with the observance of due process;

3)

The CA erred when it upheld the ruling of the NLRC which failed to consider petitioner's length of service to the company; and

4)

The petitioner is entitled to reinstatement with full backwages or in lieu thereof, separation pay, with payment for moral and exemplary damages.

Petitioner argues that private respondents failed to discharge the burden of proving that, indeed, a just cause exists, tantamount to loss of trust and confidence, as to warrant petitioner's dismissal. He posits that he disclosed the illegal activities when he submitted an Audit Report to the company. Petitioner points out that, on the other hand, private respondents presented no evidence that petitioner indeed had knowledge of and participation in the subject theft. Petitioner adds that the NLRC and the CA accorded more weight to the self-serving denial made by Barrera over the categorical and honest claims of the petitioner. Thus, where the basis for the loss of trust and

confidence is unclear, the penalty of dismissal is not warranted, because the breach of trust must be willful and must be founded on clearly established facts. Petitioner also submits that the two notices furnished by the company to petitioner are not the two notices that would satisfy the requirements of due process, as contemplated by law. The first notice was a mere Notice of Preventive Suspension. No hearing was conducted before the petitioner was dismissed. Lastly, the penalty of dismissal was imposed on petitioner without considering what appears to be his first offense, and his length of service to the company.

On the other hand, private respondents contend that petitioner was indeed terminated for a just cause, i.e., loss of trust and confidence. The private respondents heavily relied on the factual findings of the NLRC duly affirmed by the CA that the allegation of petitioner that he reported the subject theft to Barrera in August 2004 after receiving information from Alido was a mere afterthought. The NLRC opined that this was evident in petitioner's Partial Audit Report dated November 2, 2004 in which he never mentioned that he prepared the same upon instruction from Barrera, that Alido furnished him such information as early as August 2004, that Lejos was implicated in said Audit Report. Petitioner only disclosed these matters when he was required to explain per the company's directive on first notice, including the meeting with Carriaga at SM North Edsa in Quezon City. Moreover, private respondents argue that petitioner was accorded his right to due process because he was furnished with a first notice and petitioner, accordingly, submitted his answer thereto. They aver that when petitioner went to the office of Carriaga to submit his answer, petitioner manifested that he had no more evidence to submit. Private respondents also aver that this issue on due process is belatedly raised, as petitioner never raised the same in his pleadings before the LA and the NLRC. Lastly, petitioner's length of service to the company cannot justify his exemption from the law.

In sum, the two ultimate issues in this case are:

- 1) Whether petitioner was terminated for a just cause; and
- 2) Whether petitioner was accorded due process.

The petition is bereft of merit.

On the first issue, we rule in the affirmative.

Under Article 282(c) of the Labor Code, loss of trust and confidence is one of the just causes for dismissing an employee, where the employee is entrusted with duties of confidence on delicate matters, such as care and protection, and handling or custody of the employer's property.[14] In this case, an Auditor would be one such employee.[15]

Petitioner, in his Position Paper filed before the LA and in his Sagot na Sinumpaang Salaysay, averred that sometime in August 2004, Alido informed him of the illegal activities in the company premises. But this fact was not reflected in his Partial Audit Report; instead, petitioner made it appear therein that it was upon the initiative of Lejos that he discovered the illegal activities only on October 28, 2004, after Lejos already resigned from the company. The basis for terminating the employment of petitioner actually came from petitioner himself due to the substantial and irreconcilable inconsistencies in the narration of facts in his Audit Report and his Sagot na Sinumpaang Salaysay filed before the company, and his pleadings before the lower tribunals and before this Court. In sum, it cannot be denied that he withheld this information from his immediate supervisor and from the company - a clear breach of the trust and confidence the company had reposed in him as one of its Auditors.

On the second issue, we likewise rule in the affirmative.

Before the services of an employee can be validly terminated, the employer must furnish him two written notices:

(a) a written notice served on the employee specifying the ground or grounds for termination, and giving the employee reasonable opportunity to explain his side; and (b) 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.[16]

It is well settled that the basic requirement of notice and hearing in termination cases is for the employer to inform the employee of the specific charges against him and to hear his side and defenses. This does not, however, mean a full adversarial proceeding. The parties may be heard through pleadings, written explanations, position papers, memorandum or oral argument. In all of these instances, the employer plays an active role by providing the employee with the opportunity to present his side and answer the charges in substantial compliance with due process.[17]

In this case, private respondents complied with these requirements. On November 22, 2004, petitioner was served with a Notice of Preventive Suspension, apprising him of the particular acts or omissions constituting the alleged infraction and requiring him to explain within two (2) days. The following day, petitioner submitted his written explanation as evidenced by his Sagot na Sinumpaang Salaysay. Subsequently, private respondents furnished petitioner with a notice of termination informing him of the basis of his dismissal.

Lastly, in its assailed decision, the CA affirmed the ruling of the NLRC and adopted as its own the latter's factual findings. Long-established is the doctrine that findings of fact of quasi-judicial bodies like the NLRC are accorded respect, even finality, if supported by substantial evidence. When passed upon and upheld by the CA, they are binding and conclusive upon the Supreme Court and will not normally be disturbed. Though this doctrine is not without exceptions, the Court finds that none are applicable to the present case.[18]

All told, we find no reversible error to disturb, much less, reverse the assailed CA Decision.

WHEREFORE, the petition is DENIED. No costs.

SO ORDERED.

Austria-Martinez, (Acting Chairperson), Tinga,[*] Chico-Nazario, and Leonardo-De Castro,**] JJ., concur.

* Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 556 dated January 15, 2009.

** Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 560 dated January 16, 2009.

[1] Rollo, p. 49.

[2] Id. at 50-51.

[3] Id. at 52.

[4] Id. at 53.

[5] Id. at 54-55.

[6] Id. at 227.

[7] Id. at 56.

[8] Id. at 57.

[9] Id. at 69-83.

[10] Id. at 110-126.

[11] Id. at 33-45.

[12] Id. at 47-48.

[13] Petitioner initially filed a Petition for Certiorari under Rule 65, impleading therein the CA as respondent. However, per Resolution of this Court dated June 16, 2008, the instant Petition was treated as a Petition for Review on Certiorari filed under Rule 45 of the Rules of Civil Procedure; id. at 175.

[14] *Tirazona v. Court of Appeals*, G.R. No. 169712, March 14, 2008, 548 SCRA 560, 579.

[15] *Rolando V. Aromin v. National Labor Relations Commission*, G.R. No. 164824, April 30, 2008.

[16] *e Pacific Global Contact Center, Inc. v. Cabansay*, G.R. No. 167345, November 23, 2007, 538 SCRA 498, 517, citing *Pastor Austria v. National Labor Relations Commission*, 371 Phil. 340, 356-357 (1999).

[17] *Cruz, Jr. v. Court of Appeals*, G.R. No. 148544, July 12, 2006, 494 SCRA 643, 658-659.

[18] *San Juan De Dios Educational Foundation Employees Union-Alliance of Filipino Workers v. San Juan De Dios Educational Foundation, Inc.*, G.R. No. 143341, May 28, 2004, 430 SCRA 193, 205-206.

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