

NORKIS DISTRIBUTORS, INC. AND ALEX D. BUAT, PETITIONERS, VS. DELFIN S. DESCALLAR, RESPONDENT.

G.R. No. 185255. March 14, 2012

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before us is a petition for review on certiorari assailing the March 31, 2008 Decision[1] and October 24, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 00363. The CA had set aside the Resolution[3] of the National Labor Relations Commission (NLRC) and reinstated the decision of the Labor Arbiter holding petitioners liable for illegally dismissing respondent.

The facts are as follows.

On April 26, 1993, respondent Delfin S. Descallar was assigned at the Iligan City Branch of petitioner Norkis Distributors, Inc., a distributor of Yamaha motorcycles. He became a regular employee on February 1, 1994 and was promoted as Branch Manager on June 30, 1997. He acted as branch administrator and had supervision and control of all the employees. Respondent was also responsible for sales and collection.

In a memorandum dated June 20, 2002, petitioners required respondent to explain in writing within forty-eight (48) hours why he should not be penalized or terminated for being absent without official leave (AWOL) or rendering under-time service on certain dates from April 3, 2002 to June 11, 2002.[4] On June 21, 2002, respondent submitted his written explanation wherein he stated that he reported to the office on those dates, but he either went to the bank or followed-up on prospects. As he was still within city limits, he did not file any official leave or travel record. He added that on June 11, 2002, he was at the pier pulling out ten units of MC stocks.[5]

On July 5, 2002, Norkis conducted an investigation through Mr. Edmund Y. Pingkian. Finding that respondent was not able to prove that he was really in the branch or on official travel, petitioners suspended him for fifteen (15) days without pay beginning July 8, 2002. According to petitioners, respondent admitted during the investigation that he used company time for his personal affairs, but only for a few hours and not the whole day.[6]

While respondent was still serving his suspension, the Internal Auditor of the company made a random operational review and audit of the Iligan City Branch. Several findings against respondent were noted by the auditor, to wit:

- Refusal to accept redemption payment from customer Gamboa on their deposited motorcycle unit and unauthorized use of said deposited motorcycle unit;
- Requiring customer Amy Pastor to pay an amount in excess of her account balance;
- Disbursement of sales commissions to unauthorized persons;
- Application of sales commission on the down payments of several walk-in customers.[7]

On July 20, 2002, petitioners asked respondent to explain the findings against him within four (4) hours from receipt of notice. Respondent found the time given to be cruel but nevertheless submitted his written explanation on the same day.[8]

Later, respondent and Branch Control Officer Rosanna Lanzador received a memorandum dated July 23, 2002, informing them that during a cash count conducted on July 12, 2002, a shortage of P800 in the company's TNT fund was discovered. Likewise, an irregularity was found in the disbursement of sales commissions amounting to P1,700. These amounts were charged equally to the accounts of respondent and Lanzador.[9]

Thereafter, in another memorandum dated July 25, 2002, respondent was placed under preventive suspension for fifteen (15) working days without pay.[10]

On August 12, 2002, petitioners issued a "Notice to Show Cause" to respondent. The notice reads:

x x x x

It has been reported that during the audit of your branch last July 2002, serious adverse findings were noted against you as follows:

- a) Refusal to accept redemption payment made by customer Gamboa on their deposited motorcycle unit which was traced later sold to one Marvin Joseph Gealon allegedly your nephew;
- b) Unauthorized use of deposited motorcycle unit owned by Ludy Gamboa;
- c) Requiring customer Amy Pastor to pay excessive amount over her account balance;
- d) Disbursement of sales commissions to unauthorized persons;
- e) Doing personal business of selling safety helmets using the facility of the branch.

Further, it is so disappointing to note that despite management support and cooperation, your branch performance continuously failed to reach to an acceptable level as illustrated below:

YEAR

SALES QUOTA

ACTUAL AVERAGE SALES

ACCEPTABLE COLLEX

ACTUAL AVERAGE COLLEX

2001 (Jan-Dec)

13 units

5 only

70%

43% only

2002 (Jan-Jun)

13 units

5 only

70%

39% only

Please take note that adverse audit findings above coupled with inefficiency are sufficient grounds for termination. In this light therefore, you are commanded to explain in writing within 24 hours upon receipt of this notice to show cause why you will not be terminated from your service with the company. Failure on your part to response shall be construed as waiver of your right to be heard.

x x x x[11]

On August 21, 2002, petitioners terminated respondent's services for loss of trust and confidence and gross inefficiency.[12]

Aggrieved, respondent filed a complaint for illegal suspension and illegal dismissal before the Sub-Regional Arbitration Branch X in Iligan City.

On March 14, 2003, Labor Arbiter Quintin B. Cueto III rendered a Decision,[13] finding respondent to have been illegally dismissed. The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, in the light of all the foregoing, judgment is hereby rendered declaring the termination of complainant Delfin Descallar to be illegal and respondent NORKIS Distributor, Inc. is ordered to pay complainant separation pay equivalent to one (1) month for every year of service plus backwages from the time he was illegally suspended until the promulgation of this decision computed as follows:

Unpaid Wages:

July 1-6, 2002

July 24, 2002

Aug. 13-22, 2002

P8,773.00/mo. @ 17days ----- P 5,736.19

Backwages:

July 8, 2002 to July 23, 2002

July 25, 2002 to Aug. 10, 2002

Aug. 11, 2002 to March 10, 2003

P8,773 x 8 mos. ----- P70,184.00

13[th] Month Pay:

P70,184.00 + P5,736.19 x 1/12 ----- P 6,326.68

Separation Pay (April 26, 1993 – March 10, 2003)

P8,773 x 10 yrs. ----- P 87,730.00

Or in the total amount of P169,976.87.

Respondent is likewise ordered to pay ten (10%) percent of the total award representing attorney's fees.

Other claims are hereby ordered dismissed for lack of merit.

SO ORDERED.[14]

Not satisfied, petitioners appealed to the NLRC. In a Resolution[15] dated November 30, 2004 the NLRC

reversed the Labor Arbiter's decision and found respondent to have been validly dismissed. The NLRC, however, upheld the Labor Arbiter's finding that petitioners are liable to respondent for unpaid wages. The NLRC held:

WHEREFORE, foregoing considered, the questioned decision is MODIFIED in favor of the finding that complainant was validly suspended, thence, dismissed for just cause and after due process. Accordingly, he is not entitled to awards of back wages, separation pay and even 13th month pay. Respondent is only ordered to pay the complainant the unpaid wages as stated above in the amount of P5,736.19.

SO ORDERED.[16]

Respondent's motion for reconsideration having been denied, he filed with the CA a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

In a Decision dated March 31, 2008, the appellate court reinstated with modification the decision of the Labor Arbiter, to wit:

WHEREFORE, the assailed Resolution dated November 30, 2004 of public respondent is hereby SET ASIDE. The Decision of the Labor Arbiter is hereby REINSTATED with the MODIFICATION that the following be DELETED:

- The award of 13[th] month pay.
- The award of backwages for the period July 8, 2002 to July 23, 2002.

All other awards in the Decision of the Labor Arbiter are affirmed.

SO ORDERED.[17]

Respondent filed a motion for clarification as to the awards of separation pay and back wages while petitioners filed a motion for reconsideration.

On October 24, 2008, the CA issued a Resolution stating that as regards respondent's motion for clarification, the separation pay and back wages shall be reckoned from the time respondent was illegally suspended until finality of the March 31, 2008 Decision. The CA likewise denied petitioners' motion for reconsideration in the same resolution.

Hence, petitioners filed the present petition.

Essentially, petitioners argue that the CA gravely erred in not giving weight to the affidavits and sworn certifications of their witnesses, and in finding that they relied entirely on the affidavits of their witnesses in terminating respondent. Likewise, petitioners claim that the CA committed grave error in holding that the failure of respondent to reach his monthly sales quota is not a valid basis for loss of trust and confidence.

On the other hand, respondent points out that the issues raised in this petition are factual as they are solely focused on the probative value of the affidavits of petitioners' witnesses. He contends that questions of fact cannot be raised in this mode of appeal considering that the Supreme Court is not a trier of facts. Thus, respondent submits that the instant petition deserves outright denial.

We dismiss the petition for lack of merit.

Loss of trust and confidence as a ground for termination of an employee under Article 282[18] of the Labor Code requires that the breach of trust be willful, meaning it must be done intentionally, knowingly, and purposely, without justifiable excuse.[19] The basic premise for dismissal on the ground of loss of confidence is that the employees concerned holds 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.

Here, there is no question that as petitioners' Branch Manager in Iligan City, respondent was holding a position of trust and confidence. He was responsible for the administration of the branch, and exercised supervision and control over all the employees. He was also incharge of sales and collection.

Now, petitioners terminated his employment on the ground of loss of trust and confidence for supposedly committing acts inimical to the company's interests. However, in termination cases, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause and failure to do so would necessarily mean that the dismissal was illegal.[20] The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. Moreover, the quantum of proof required in determining the legality of an employee's dismissal is only substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[21] Thus, it is incumbent upon petitioners to prove by substantial evidence that valid grounds exist for terminating respondent's employment on the ground of loss of trust and confidence. However, our review of the records of this case reveals that the CA correctly held that petitioners failed to discharge this burden.

In terminating respondent's services, petitioners relied on several grounds. First, petitioners relied on the affidavit of customer Ludy Gamboa. In her affidavit, Ludy Gamboa accused respondent of refusing to accept payment of P7,000 to redeem a motorcycle unit sometime on May 21-23, 2001.[22] However, respondent was able to prove by submitting the Monthly Inventory Report[23] that the motorcycle unit had already been repossessed by the company due to Gamboa's failure to settle her account. Respondent's refusal to receive the partial payment was therefore undeniably justified. And the motorcycle already having been repossessed, it could also be sold to any person who might like to buy it including respondent's nephew.

Second, petitioners also allege that respondent charged customer Amy Pastor an excessive amount. In her affidavit, Pastor claimed that sometime on January 2002, respondent required her to pay the amount of P5,566, while her outstanding balance was only P378.[24] However, a closer look at the audit report conducted by the internal auditor of petitioner Norkis, Joelito L. Florenosos, would show that there was no over-collection.[25] Said exculpatory finding was also made after the internal auditor noted that the official receipt respondent issued to cover the said collection showed no such over-collection. Why petitioners chose to believe Pastor's affidavit over the findings of its own internal auditor which was duly supported by documentary evidence is perplexing.

Third, petitioners accuse respondent of giving unauthorized commissions to Mr. Gary Bellen. Respondent however asserted, and petitioners did not rebut, that Bellen is a legitimate Personalized Sales Representative of Norkis Distributors, as evidenced by the contract they signed.[26] Respondent also explained, and petitioners again did not rebut, that Bellen tutored the staff in computer programming and operation free of charge, on the condition that he may entertain customers and receive commissions. Clearly, therefore, the arrangement made with Bellen was even beneficial to the company. Hence, in giving commissions to Bellen, as sales representative, it cannot be said that respondent willfully breached petitioners' trust and confidence in him.

Fourth, petitioners argue that respondent's failure to reach his monthly sales quota is a valid basis for loss of trust and confidence. In his explanation, respondent asserted that certain factors were to be considered for the low sales performance in their branch such as the existence of other competitors which offered low down payments, low monthly installments, and other promotional items. Respondent also emphasized that the customers' capacity to pay had been affected by the financial crisis at the time, thus making it more difficult to collect from them.

To our mind, the failure to reach the monthly sales quota cannot be considered an intentional and unjustified act of respondent amounting to a willful breach of trust on his part that would call for his termination based on loss of confidence. This is simply not the willful breach of trust and confidence contemplated in Article 282(c) of the Labor Code. Indeed, the low sales performance could be attributed to several factors which are beyond respondent's control. To be a valid ground for an employee's dismissal, loss of trust and confidence must be based on a willful breach.[27] To repeat, a breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse.[28]

Petitioners having failed to establish by substantial evidence any valid ground for terminating respondent's services, we uphold the finding of the Labor Arbiter and the CA that respondent was illegally dismissed.

But did the CA award correct reliefs to respondent? We likewise rule in the affirmative.

An illegally dismissed employee is entitled to two reliefs: back wages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement if such is viable, or separation pay if reinstatement is no longer viable, and to back wages.

The normal consequences of respondent's illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of back wages computed from the time compensation was withheld from him up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of back wages.[29]

Petitioners question the CA Resolution dated October 24, 2008, arguing that it modified its March 31, 2008 Decision which has already attained finality insofar as respondent is concerned. Petitioners point out that the October 24, 2008 CA Resolution clarified that the payment of separation pay and back wages shall be reckoned from the time respondent was illegally suspended until finality of the March 31, 2008 CA Decision. But petitioners point out that when the Labor Arbiter declared that the payment of back wages shall be "until the promulgation of this Decision," he was referring to his own Decision promulgated on March 14, 2003.

We do not agree.

Such contention is misplaced. The CA merely clarified the period of payment of back wages and separation pay up to the finality of its decision (March 31, 2008) modifying the Labor Arbiter's decision. In view of the modification of monetary awards in the Labor Arbiter's decision, the time frame for the payment of back wages and separation pay is accordingly modified to the finality of the CA decision. The clarification thus made on motion of the respondent was not an amendment of the March 31, 2008 Decision. Even assuming that the CA indeed corrected or amended the dispositive portion of its decision, it is well within its appellate jurisdiction to treat respondent's motion for clarification as a partial motion for reconsideration[30] insofar only as to declare until when the payment of such back wages and separation pay shall be made.

WHEREFORE, the petition for review on certiorari is DENIED. The Decision dated March 31, 2008 and the Resolution dated October 24, 2008 of the Court of Appeals in CA-G.R. SP No. 00363 are AFFIRMED.

Costs against petitioners.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perlas-Bernabe,[*] JJ., concur.

[*] Designated additional member per Special Order No. 1207 dated February 23, 2012.

[1] Rollo, pp. 49-72. Penned by Associate Justice Romulo V. Borja with Associate Justices Mario V. Lopez and Elihu A. Ybañez concurring.

[2] Id. at 73-74.

[3] CA rollo, pp. 31-34.

[4] Id. at 70.

[5] Id. at 71.

[6] Id. at 72.

[7] Id. at 74-75.

[8] Id. at 76-78.

[9] Id. at 80.

[10] Id. at 79.

[11] Id. at 228.

[12] Id. at 83-84.

[13] Id. at 40-50.

[14] Id. at 49-50.

[15] Supra note 3.

[16] Id. at 33.

[17] Rollo, p. 71.

[18] ART. 282. Termination by employer.—An employer may terminate an employment for any of the following causes:

x x x x

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

x x x x

[19] 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.

[20] Philippine Long Distance Telephone Company, Inc. v. Tiamson, G.R. Nos. 164684-85, November 11, 2005, 474 SCRA 761, 771.

[21] Id.

[22] CA rollo, p. 215.

[23] Id. at 86-87.

[24] Id. at 216.

[25] Id. at 135.

[26] Records, Vol. III, p. 51.

[27] Easycall Communications Phils., Inc. v. King, G.R. No. 145901, December 15, 2005, 478 SCRA 102, 111, citing Asia Pacific Chartering (Phils.), Inc. v. Farolan, 441 Phil. 776, 792 (2002) and National Bookstore, Inc. v. Court of Appeals, 428 Phil. 235, 246 (2002).

[28] National Bookstore, Inc. v. Court of Appeals, id.

[29] Mt. Carmel College v. Resuena, G.R. No. 173076, October 10, 2007, 535 SCRA 518, 541.

[30] See Philippine Amusement and Gaming Corporation v. Angara, G.R. No. 142937, July 25, 2006, 496 SCRA 453.

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