

COSMOS BOTTLING CORP., PETITIONER, VS. WILSON FERMIN, RESPONDENT.

G.R. No. 193676. June 20, 2012

Ponente: SERENO, J.

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SERENO, J.:

Before this Court are two consolidated cases, namely: (1) Petition for Review dated 26 October 2010 (G.R. No. 193676) and (2) Petition for Review on Certiorari under Rule 45 dated 14 October 2010 (G.R. No. 194303).[1] Both Petitions assail the Decision dated 20 May 2009[2] and Resolution dated 8 September 2010[3] issued by the Court of Appeals (CA). The dispositive portion of the Decision reads:

WHEREFORE, the August 31, 2005 Decision and October 21, 2005 Resolution of the National Labor Relations Commission in NLRC NCR CA No. 043301-05 are hereby SET ASIDE. Respondent Cosmos Bottling Corporation is, in light of the foregoing discussions, hereby ORDERED to pay Petitioner his full retirement benefits.

There being no data from which this Court can properly assess Petitioner's full retirement benefits, the case is, thus, remanded to the Labor Arbiter only for that purpose.

SO ORDERED.

Wilson B. Fermin (Fermin) was a forklift operator at Cosmos Bottling Corporation (COSMOS), where he started his employment on 27 August 1976.[4] On 16 December 2002, he was accused of stealing the cellphone of his fellow employee, Luis Braga (Braga).[5] Fermin was then given a Show Cause Memorandum, requiring him to explain why the cellphone was found inside his locker.[6] In compliance therewith, he submitted an affidavit the following day, explaining that he only hid the phone as a practical joke and had every intention of returning it to Braga.[7]

On 21 December 2002, Braga executed a handwritten narration of events stating the following:[8]

(a)

At around 6:00 a.m. on 16 December 2002, he was changing his clothes inside the locker room, with Fermin as the only other person present.

(b)

Braga went out of the locker room and inadvertently left his cellphone by the chair. Fermin was left inside the room.

(c)

After 10 minutes, Braga went back to the locker room to retrieve his cellphone, but it was already gone.

(d)

Braga asked if Fermin saw the cellphone, but the latter denied noticing it.

(e)

Braga reported the incident to the security guard, who thereafter conducted an inspection of all the lockers.

(f)

The security guard found the cellphone inside Fermin's locker.

(g)

Later that afternoon, Fermin talked to Braga to ask for forgiveness. The latter pardoned the former and asked him not to do the same to their colleagues.

After conducting an investigation, COSMOS found Fermin guilty of stealing Braga's phone in violation of company rules and regulations.[9] Consequently, on 2 October 2003,[10] the company terminated Fermin from employment after 27 years of service,[11] effective on 6 October 2003.[12]

Following the dismissal of Fermin from employment, Braga executed an affidavit, which stated the belief that the former had merely pulled a prank without any intention of stealing the cellphone, and withdrew from COSMOS his complaint against Fermin.[13]

Meanwhile, Fermin filed a Complaint for Illegal Dismissal,[14] which the Labor Arbiter (LA) dismissed for lack of merit on the ground that the act of taking a fellow employee's cellphone amounted to gross misconduct.[15] Further, the LA likewise took into consideration Fermin's other infractions, namely: (a) committing acts of disrespect to a superior officer, and (b) sleeping on duty and abandonment of duty.[16]

Fermin filed an appeal with the National Labor Relations Commission (NLRC), which affirmed the ruling of the LA[17] and denied Fermin's subsequent Motion for Reconsideration.[18]

Thereafter, Fermin filed a Petition for Certiorari with the Court of Appeals (CA),[19] which reversed the rulings of the LA and the NLRC and awarded him his full retirement benefits.[20] Although the CA accorded with finality the factual findings of the lower tribunals as regards Fermin's commission of theft, it nevertheless held that the penalty of dismissal from service was improper on the ground that the said violation did not amount to serious misconduct or wilful disobedience, to wit:

[COSMOS], on which the onus of proving lawful cause in sustaining the dismissal of [Fermin] lies, failed to prove that the latter's misconduct was induced by a perverse and wrongful intent, especially in the light of Braga's Sinumpaang Salaysay which corroborated [Fermin's] claim that [Fermin] was merely playing a prank when he hid Braga's cellular phone. Parenthetically, the labor courts dismissed Braga's affidavit of desistance as a mere afterthought because the same was executed only after [Fermin] had been terminated.

It must be pointed out, however, that in labor cases, in which technical rules of procedure are not to be strictly applied if the result would be detrimental to the workingman, an affidavit of desistance gains added importance in the absence of any evidence on record explicitly showing that the dismissed employee committed the act which caused the dismissal. While We cannot completely exculpate [Fermin] from his violation at this point, We cannot, however, turn a blind eye and disregard Braga's recantation altogether. Braga's recantation all the more bolsters Our conclusion that [Fermin's] violation does not amount to or borders on "serious or willful" misconduct or willful disobedience to call for his dismissal.

Moreover, [COSMOS] failed to prove any resultant material damage or prejudice on their part as a consequence of [Fermin's] questioned act. To begin with, the cellular phone subject of the stealth belonged, not to [COSMOS], but to Braga. Secondly, the said phone was returned to Braga in due time. Under the

circumstances, a penalty such as suspension without pay would have sufficed to teach [Fermin] a lesson and for him to realize his wrongdoing.

x x x x x x x x

On another note, [COSMOS], in upholding the legality of [Fermin's] termination from service, considered the latter's past infractions with [COSMOS], i.e. threatening, provoking, challenging, insulting and committing acts of disrespect to a superior officer/defiance to an instruction and a lawful order of a superior officer; and, sleeping while on duty and abandonment of duty or leaving assigned post with permission from immediate supervisor, as aggravating circumstances to his present violation [stealth (sic) of a co-employee's property]. We disagree with Public Respondent on this matter.

The correct rule is that previous infractions may be used as justification for an employee's dismissal from work in connection with a subsequent similar offense, which is obviously not the case here. x x x. [21] (Emphases in the original.)

COSMOS and Fermin moved for reconsideration, but the CA likewise denied their motions.[22] Thus, both parties filed the present Petitions for Review.

COSMOS argues, among other things, that: (a) Fermin committed a clear act of bad faith and dishonesty in taking the cellphone of Braga and denying knowledge thereof; (b) the latter's recantation was a mere afterthought; (c) the lack of material damage or prejudice on the part of COSMOS does not preclude it from imposing the penalty of termination; and (d) the previous infractions committed by Fermin strengthen the decision of COSMOS to dismiss him from service.[23]

On the other hand, Fermin contends that since the CA found that the penalty of dismissal was not proportionate to his offense, it should have ruled in favor of his entitlement to backwages.[24]

It must be noted that in the case at bar, all the lower tribunals were in agreement that Fermin's act of taking Braga's cellphone amounted to theft. Factual findings made by administrative agencies, if established by substantial evidence as borne out by the records, are final and binding on this Court, whose jurisdiction is limited to reviewing questions of law.[25] The only disputed issue left for resolution is whether the imposition of the penalty of dismissal was appropriate. We rule in the affirmative.

Theft committed against a co-employee is considered as a case analogous to serious misconduct, for which the penalty of dismissal from service may be meted out to the erring employee,[26] viz:

Article 282 of the Labor Code provides:

Article 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 his representatives in connection with his work;

x x x x x x x x

(e) Other causes analogous to the foregoing.

Misconduct involves "the transgression of some established and definite rule of action, forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment." For misconduct to be serious and therefore a valid ground for dismissal, it must be:

1. of grave and aggravated character and not merely trivial or unimportant and
2. connected with the work of the employee.

In this case, petitioner dismissed respondent based on the NBI's finding that the latter stole and used Yuseco's credit cards. But since the theft was not committed against petitioner itself but against one of its employees, respondent's misconduct was not work-related and therefore, she could not be dismissed for serious misconduct.

Nonetheless, Article 282(e) of the Labor Code talks of other analogous causes or those which are susceptible of comparison to another in general or in specific detail. For an employee to be validly dismissed for a cause analogous to those enumerated in Article 282, the cause must involve a voluntary and/or willful act or omission of the employee.

A cause analogous to serious misconduct is a voluntary and/or willful act or omission attesting to an employee's moral depravity. Theft committed by an employee against a person other than his employer, if proven by substantial evidence, is a cause analogous to serious misconduct.[27] (Emphasis supplied.)

In this case, the LA has already made a factual finding, which was affirmed by both the NLRC and the CA, that Fermin had committed theft when he took Braga's cellphone. Thus, this act is deemed analogous to serious misconduct, rendering Fermin's dismissal from service just and valid.

Further, the CA was correct in ruling that previous infractions may be cited as justification for dismissing an employee only if they are related to the subsequent offense.[28] However, it must be noted that such a discussion was unnecessary since the theft, taken in isolation from Fermin's other violations, was in itself a valid cause for the termination of his employment.

Finally, it must be emphasized that the award of financial compensation or assistance to an employee validly dismissed from service has no basis in law. Therefore, considering that Fermin's act of taking the cellphone of his co-employee is a case analogous to serious misconduct, this Court is constrained to reverse the CA's ruling as regards the payment of his full retirement benefits. In the same breath, neither can this Court grant his prayer for backwages.

WHEREFORE, the Petition in G.R. No. 194303 is DENIED, while that in G.R. No. 193676 is GRANTED. The Decision dated 20 May 2009 and Resolution dated 8 September 2010 of the Court of Appeals are hereby REVERSED and SET ASIDE. The Decision dated 20 August 2004 of the Labor Arbiter is REINSTATED.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Reyes, JJ., concur.

[1] Resolution dated 17 November 2010 ordering the consolidation of G.R. Nos. 193676 and 194303, rollo (G.R. No. 194303), pp. 144-145.

[2] Rollo (G.R. No. 193676), pp. 7-21; rollo (G.R. No. 194303), pp. 26-39. Penned by CA Associate Justice Noel G. Tijam and concurred in by Associate Justices Arturo G. Tayag and Priscilla J. Baltazar-Padilla.

[3] Rollo (G.R. No. 193676), pp. 22-28; rollo (G.R. No. 194303), pp. 40-45.

[4] Petition, rollo (G.R. No. 193676), p. 40; Petition, rollo (G.R. No. 194303), p. 15.

[5] Petition, rollo (G.R. No. 193676), p. 41.

[6] Show Cause Memorandum dated 16 December 2002, rollo (G.R. No. 193676), p. 149; rollo (G.R. No. 194303), p. 66.

[7] Letter dated 17 December 2002, rollo (G.R. No. 194303), p. 76; rollo (G.R. No. 193676), p.163.

[8] Rollo (G.R. No. 193676), p. 172.

[9] Stealing or pilfering the property, records, documents or other effects of the company, or those of fellow employees or of other persons within the premises of the Company, including those of company customers and suppliers, or obtaining such properties, records, documents or effects in a fraudulent manner. CA Decision, p. 2; rollo (G.R. No. 193676), p. 9; rollo (G.R. No. 1984303), p. 27.

[10] The Decisions of the Labor Arbiter and the CA indicate 21 October 2003 as the date of Fermin's dismissal from employment, while the pleadings of the parties refer to 2 October 2003. See CA Decision, p. 2, rollo (G.R. No. 193676), p. 9; Labor Arbiter's Decision, rollo (G.R. No. 193676), p. 186; Reply for Respondents (COSMOS), rollo (G.R. No. 193676), p. 157; Petition for Certiorari, rollo (G.R. No. 193676), p. 247.

[11] CA Decision, p. 2, rollo (G.R. No. 193676), p. 9; rollo (G.R. No. 194303), p. 27.

[12] Petition, rollo (G.R. No. 193676), p. 40; Petition, rollo (G.R. No. 194303), p. 15; CA Decision, p. 6; rollo (G.R. No. 193676), p. 13; rollo (G.R. No. 194303), p. 31.

[13] Sinumpaang Salaysay dated 16 October 2003, rollo (G.R. No. 194303), p. 60.

[14] Rollo (G.R. No. 194303), p. 53.

[15] Decision dated 20 August 2004 penned by Labor Arbiter Waldo Emerson R. Gan, rollo (G.R. No. 193676), pp. 184-198; rollo (G.R. No. 194303), pp. 87-100.

[16] Id.

[17] Decision dated 31 August 2005 penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioners Tito F. Genilo and Romeo C. Lagman, rollo (G.R. No. 193676), pp. 207-213; rollo (G.R. No. 194303), pp. 116-121.

[18] Resolution 21 October 2005, rollo (G.R. No. 193676), pp. 243-244; rollo (G.R. No. 194303), pp. 127-128.

[19] Petition for Certiorari Under Rule 65 dated 5 January 2006, rollo (G.R. No. 193676), pp. 245-257; rollo (G.R. No. 194303), pp. 129-140.

[20] Decision dated 20 May 2009, rollo (G.R. No. 193676), pp. 7-21; rollo (G.R. No. 194303), pp. 26-39.

[21] Decision dated 20 May 2009, rollo (G.R. No. 193676), pp. 16-17, 19; rollo (G.R. No. 194303), pp. 34-35, 37.

[22] Resolution dated 8 September 2010, rollo (G.R. No. 193676), pp. 22-28; rollo (G.R. No. 194303), pp. 40-45.

[23] Petition for Review, pp. 6-17, rollo (G.R. No. 193676), pp. 44-55.

[24] Petition for Review on Certiorari Under Rule 45, pp. 7-10, rollo (G.R. No. 194303), pp. 19-22.

[25] *Gonzales v. Civil Service Commission*, 524 Phil. 271, 279 (2006).

[26] *John Hancock Life Insurance Corporation v. Davis*, G.R. No. 169549, 3 September 2008, 564 SCRA 92.

[27] Id. at 96-98.

[28] Citing *McDonald's (Katipunan Branch) v. Alba*, G.R. No. 156382, 18 December 2008, 574 SCRA 427, 436-437.

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