

**KAKAMPI AND ITS MEMBERS, VICTOR PANUELOS, ET AL.,
REPRESENTED BY DAVID DAYALO, KAKAMPI VICE PRESIDENT AND
ATTORNEY-IN-FACT, PETITIONER, VS. KINGSPPOINT EXPRESS AND
LOGISTIC AND/O...**

G.R. No. 194813. April 25, 2012

Ponente: REYES, J.

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REYES, J.:

This is a petition for review under Rule 45 of the Rules of Court of the Amended Decision[1] dated March 16, 2010 and Resolution[2] dated December 16, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 106591.

Victor Pañuelos (Pañuelos), Bobby Dacara (Dacara), Alson Dizon (Dizon), Saldy Dimabayao (Dimabayao), Fernando Lupangco, Jr. (Lupangco), Sandy Pazi (Pazi), Camilo Tabarangao, Jr. (Tabarangao), Eduardo Hizole (Hizole) and Reginald Carillo (Carillo) were the former drivers of Kingspoint Express and Logistic (Kingspoint Express), a sole proprietorship registered in the name of Mary Ann Co (Co) and engaged in the business of transport of goods. They were dismissed from service on January 20, 2006 on the grounds of serious misconduct, dishonesty, loss of trust and confidence and commission of acts inimical to the interest of Kingspoint Express.

Prior thereto, Kingspoint Express issued separate notices to explain to the individual petitioners on January 16, 2006, uniformly stating that:

RE: CHARGES OF DISHONESTY
SERIOUS MISCONDUCT &
LOSS OF CONFIDENCE

Dear Mr. Dacara:

You are hereby formally charged with DISHONESTY, SERIOUS MISCONDUCT, LOSS OF CONFIDENCE, and acts inimical to the company, by filing with the National Labor Relations Commission (NLRC) false, malicious, and fabricated cases against the company. Further, your refusal to undergo drug testing is unwarranted and against company policy.

Please submit your answer or explanation to the foregoing charges within forty-eight (48) hours [from] receipt hereof. Your failure to do so would mean that you waive your right to submit your answer.

You may likewise opt for a formal investigation with the assistance of counsel, or proceed with the investigation as you may choose.

In the meantime, you are place[d] under preventive suspension for thirty (30) days effective on January 16, 2006. You are physically barred from company premises while the preventive suspension exists[.][3]

The individual petitioners failed to submit their written explanation within the stated period. Subsequently, Kingspoint Express issued to them separate yet uniformly worded notices on January 20, 2006, informing them of

their dismissal. Kingspoint Express expressed its decision in this wise:

On January 16, 2006, you were formally charged with DISHONESTY, SERIOUS MISCONDUCT and LOSS OF CONFIDENCE and ACTS INIMICAL TO THE COMPANY based on the following acts:

1. FABRICATION OF BASELESS MONEY CLAIMS against the company;
2. MISLEADING FELLOW CO-WORKERS to sign the MALICIOUS COMPLAINT FOR MONEY CLAIMS against the company;
3. REFUSAL TO UNDERGO THE COMPANY'S GENERAL DRUG TEST[;]
4. EXTORTING MONEY FROM CO-WORKERS TO FUND ACTIVITIES THAT THEY WERE NEVER FULLY INFORMED OF;

You were given two (2) days to respond to these charges, but you failed to do [so].[4]

In addition to the foregoing, Dacara was dismissed for consummating his sexual relations with one of Co's household helpers inside Co's residence thus impregnating her.[5]

A complaint for illegal dismissal was subsequently filed, alleging that the charges against them were fabricated and that their dismissal was prompted by Kingspoint Express' aversion to their union activities.

In a Decision[6] dated April 23, 2007, Labor Arbiter Cresencio G. Ramos, Jr. (LA Ramos) found Dacara, Lupangco, Pazi, Tabarangao, Hizole and Carillo illegally dismissed. On the other hand, the complaint was dismissed insofar as Panuelos, Dizon and Dimabayao are concerned as they were deemed not to have filed their position papers. While the allegation of anti-unionism as the primordial motivation for the dismissal is considered unfounded, the respondents failed to prove that the dismissal was for a just cause. The pertinent portion of the decision reads:

From a perusal and examination of the pieces of evidence adduced by the respondents in support of their defense, this Office finds the same as not being sufficient and substantial to establish the charges of serious misconduct and breach of trust. Consider the following:

On the complainants' alleged refusal to undergo the company's general drug testing, the same is explicitly nothing but an unsubstantiated allegation, therefore, undeserving of judicial and quasi-judicial cognizance.

On the alleged act of the complainants in extorting money from co-workers to fund activities that they were not fully informed of as well as the alleged misleading of co-workers to sign "malicious money claims" against the company, it is to be noticed that respondents' support or evidence thereto are the joint affidavit of drivers and helpers as well as that of one Ronie Dizon. On said pieces of evidence, this Office could not give much probative or evidentiary value and weight thereto as said sworn statements may definitely not be said to have genuinely emanated from the affiants (sic) drivers and helpers. To be precise, the joint-affidavit of the drivers and helpers (annex "B", respondents' position paper) obviously was "tailor-made", so to speak, to conform with the respondents' position or defense in the instant case. Said joint-affidavit in fact is couched in english, thus, tremendously lowering the probability that the statements therein really came from the "hearts and souls" of the lowly-educated drivers and helpers.

On the breach of trust allegedly committed by Bobby Dacara with respect to the alleged act of repeatedly sneaking in the household of respondent Mary Ann Co and thereafter impregnating one of the latter's househelps, the same is nothing but an unsubstantiated allegation and therefore, undeserving of judicial and quasi-judicial cognizance. Jurisprudence definitely is explicit on this point that an affirmative allegation made by a party must duly be proven to merit acceptance (People vs. Calayca, 301 SCRA 192).[7]

On appeal, the National Labor Relations Commission (NLRC) affirmed LA Ramos' Decision dated April 23, 2007 in its Resolution[8] dated April 30, 2008, thus:

In the case at bar, We are persuaded to agree with the findings of the Labor Arbiter that "the pieces of evidence adduced by the respondents in support of their defense x x x not being sufficient and substantial to establish the charges of serious misconduct and breach of trust" (Records, p. 96).[9]

In addition, the NLRC ruled that the respondents failed to comply with the procedural requirements of due process. Specifically:

It is also observed that much is to be desired insofar as the observance of the procedural due process aspect is concerned. Firstly, there was no compliance with the due process requirement of the law considering that the uniformly worded first notice, all dated January 16, 2006, sent by respondents-appellants to the complainants-appellees, did not apprise them of the particular acts or omission for which their dismissal were sought. As clearly shown by the said individual notices, each of the complainants-appellees was merely informed that he or she is "formally charged with DISHONESTY, SERIOUS MISCONDUCT, LOSS OF CONFIDENCE and acts inimical to the Company" x x x without specifying the particular or specific acts or omissions constituting the grounds for their dismissal.

The purpose of the first notice is to sufficiently apprise the employee of the acts complained of and to enable the employee to prepare his defense. In this case, though, the said first notice did not identify the particular acts or omissions committed by each of the complainants-appellees. The extent of their knowledge and participation in the generally described charges were not specified in the said first notice, hence, the complainants-appellee could not be expected to intelligently and adequately prepare their defense. The first notice should neither be pro-forma nor vague; that it should set out clearly what each of the employees is being held liable for. They should be given ample opportunity to be heard and not mere opportunity. Ample opportunity means that each of the complainants-appellees should be specifically informed of the charges in order to give each of them, an opportunity to refute such accusations. Since, the said first notices are inadequate, their dismissal could not be in accordance with due process x x x.

Secondly, there was no just or authorized cause for the respondents-appellants to terminate the complainants-appellees' services. It is observed that the Notices of Termination, all dated January 20, 2006, merely mentioned the ground relied upon, to wit:

x x x x

Placing side by side the first (1st) notices and the Notice of Termination, We can easily notice the wide disparity between them. In the first (1st) notices, the alleged charges leveled against each of complainants-appellees were couched in general terms, such as: DISHONESTY, SERIOUS MISCONDUCT, LOSS OF CONFIDENCE and ACTS INIMICAL TO THE COMPANY, such that the complainants-appellees could not be expected to prepare their responsive pleadings; while the uniformly worded Notices of Termination, as earlier quoted, the charges leveled against of (sic) them are more specific.[10]

Respondents moved for reconsideration and in a Decision[11] dated July 17, 2008, the NLRC reversed itself and declared the individual petitioners legally dismissed:

Respondent company is an entity engaged in the delivery of goods called "door-to-door" business. As such, respondents are in custody of goods and moneys belonging to customers. Thus, respondents want to ensure that their drivers are drug-free and honest. It is undeniable that persons taking prohibited drugs tend to commit criminal activities when they are "high", as most of them are out of their minds. Complainants are drivers and are on the road most of the time. Thus, they must see to it that they do not cause damage to other motor vehicles and pedestrians.

Likewise, when delivering goods and money, it is not impossible that they could commit acts inimical to the respondents' interest, like failure to deliver the money or goods to the right person or do a "hold-up me" scenario.

Thus, to guarantee complainants-drivers' safety and effective performance of their assigned tasks, respondents ordered complainants to undergo drug testing. However, they refused to follow the directive. Neither did they give a clear explanation for their refusal to the respondents. This shows complainants' wrongful attitude to defy the reasonable orders which undoubtedly pertain to their duties as drivers of the respondents. Such act is tantamount to willful disobedience of a lawful order, a valid ground for dismissal under the Labor Code, as amended.

Furthermore, employees who are not complainants in this case, in a sworn statement attested to the fact that complainants tricked them to sign papers which turned out to be a complaint for money claims. They also accused them of abusing their trust in order to achieve their selfish motives. Complainants even convinced them to shell out part of their salaries without authorization and consent, as "panggatos para sa papeles, transportasyon ng abugado" but said money was used for the Union's purposes. Worse, complainants even threatened them to file criminal charges against them if they did not follow the complainants' evil plans. x x x

In their Rejoinder, respondents also mentioned about the loss of cargoes to be delivered to Pampanga and Nueva Ecija. Complainants failed to refute the allegations nor comment on the matter. This led to respondents' loss of trust and confidence reposed in them. Considering that the drivers have in their possession money and goods to be delivered, the continuance of their employment depends on the trust and confidence in them. Undeniably, trust, once lost is hard to regain.

x x x x

We disagree.

On January 16, 2006, respondents sent each of the complainants a letter stating the infractions committed by them. They directed them to explain the said infractions with a warning that failure to do so would mean waiver of their right to submit their answer. They further advised them to "opt for a formal investigation with assistance of the counsel, or proceed with the investigation you may choose".

However, complainants failed to answer. Neither did they do any act to dispute the charges. They remained silent on the infractions which a person would not normally do if he is not guilty of the said charges. If they were really innocent, immediately, even without any notice, they should have reacted and did everything to dispute the charges. But they failed, despite the notice to explain. This would lead to the conclusion that they were guilty of the charges imputed against them. As a consequence thereof, the complainants are considered to have waived their right to defend themselves.[12]

Petitioners moved for reconsideration but the same was denied in a Resolution[13] dated September 30, 2008.

Subsequently, the petitioners filed a petition for certiorari with the CA. In a Decision[14] dated July 17, 2009, the CA reversed and set aside the NLRC Decision dated July 17, 2008 and Resolution dated September 30, 2008. Thus:

Initially, this Court must determine whether the petitioners violated the Company Policies as would warrant their dismissal from the service. However, a painstaking review of the records of this case negate[s] a finding of such culpability on the part of the petitioners.

The charges of dishonesty, serious misconduct and loss of confidence against the petitioners are nothing more than bare allegations as neither the show cause orders nor the termination letters specify in clear and unmistakable manner, the specific acts committed by the petitioners as would amount to dishonesty, serious misconduct or loss of confidence. Neither of these notices even contain any averments as to how and when the

alleged infractions were committed by the petitioners.

x x x

In this case, respondent company had not been able to identify an act of dishonesty, serious misconduct or any illicit act, which the petitioners may have committed in connection with their work, except the allegation that petitioners filed false, malicious, and fabricated cases against the company which, under the Labor Code, is not a valid ground for termination of employment. There is even no mention of any company policy or rule violated by any of the petitioners to warrant their dismissal. The charges are clearly unfounded.

x x x x

The superficial compliance with two notices and a hearing in this case cannot be considered valid where the notices to explain were issued four (4) days before the petitioners were terminated. The termination was obviously hurriedly effected, as the respondent failed to give the petitioners the avenue to contradict the charges against them either by submission of their answer or by the conduct of an actual investigation in order to give spirit to the requirement of due process. Petitioners were thus robbed of their rights to explain their side, to present evidence and rebut what was presented against them, rights ensured by the proper observance of procedural due process.[15]

Respondents promptly filed a motion for reconsideration. Similar to the NLRC, the CA reversed itself and retracted its earlier finding that the individual petitioners were illegally dismissed. In its Amended Decision[16] dated March 16, 2010, the CA concluded that the two (2) notices issued by Kingspoint Express complied with the requirements of the law:

In the assailed Decision, We conceded that all the petitioners were actually furnished with a letter dated 16 January 2006. In each letter, petitioners were individually charged with “dishonesty, serious misconduct, loss of confidence for performing acts inimical to the company by filing with the NLRC false, malicious and fabricated cases against the company and their refusal to undergo drug testing.” They were directed to submit an answer or explanation within forty-eight (48) hours and were even given the option to avail of a formal investigation with the assistance of counsel. They were further advised that failure to submit said answer/explanation would mean waiver on their part. Thus, when they failed to submit an explanation/Answer, and failed to inform their employer that they wanted a formal investigation on the matter, their employer was constrained to serve upon them on 20 January 2006, or four (4) days later, separate notices of termination stating the offenses they committed, viz.:

x x x x

Show-cause letters/memoranda create a burden on the employees to explain their innocence. In turn, it is from such explanation that the employer will be obliged to prove his case in an investigation. Since the petitioners did not explain, much less invoke their right to investigation, it follows that they are deemed to have waived their rights under Art. 277(b) of the Labor Code. Technically, the law on evidence considers them to have admitted the charges against them. With such admission, the employer is discharged from the need to prove the offenses charged. It is well-settled that in any forum, whether judicial or administrative, a party need not prove what is admitted.[17] (Citations omitted)

The CA also held that the individual petitioners performed acts, which constitute serious misconduct:

The assailed Decision admits what constitutes serious misconduct.

Here, except for Bobby Dacara, each of the three petitioners conceded the existence of the following bases for their dismissal: (1) complainants’ refusal to undergo mandatory drug-testing; (2) creating disharmony and distrust among the workers and misleading them to go against the employer; and (3) losing cargo with a value of P250,000.00 entrusted to respondent company for door-to-door delivery.

Verily, each of the aforestated grounds independently constitute[s] serious misconduct. Each of them were (sic) committed in relation to petitioners' work. And again, the commission of said infractions constitutes a ground to dismiss under Art. 282(a) of the Code. The Court, therefore, gravely erred when it held that no serious misconduct was committed by petitioners in this case.

On the other hand, in the case of Bobby Dacara, records show that he committed breach of trust and confidence by sneaking into the house of private respondent Co and engaging one of Co's helpers in repeated sexual congress leading to her pregnancy. As held in Santos, Jr. vs. NLRC, such behavior amounts to immorality which is a case of serious misconduct; a just cause to dismiss an employee.[18] (Citation omitted)

Petitioners moved for reconsideration but this was denied by the CA in its Resolution[19] dated December 16, 2010.

The lone issue for the disposition of this Court is the validity of the individual petitioners' dismissal.

It is fundamental that in order to validly dismiss an employee, the employer is required to observe both substantive and procedural due process – the termination of employment must be based on a just or authorized cause and the dismissal must be effected after due notice and hearing.[20]

As to whether Kingspoint Express complied with the substantive requirements of due process, this Court agrees with the CA that the concerned employees' refusal to submit themselves to drug test is a just cause for their dismissal.

An employer may terminate an employment on the ground of serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work. Willful disobedience requires the concurrence of two elements: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge. Both elements are present in this case.

As to the first element, that at no point did the dismissed employees deny Kingspoint Express' claim that they refused to comply with the directive for them to submit to a drug test or, at the very least, explain their refusal gives rise to the impression that their non-compliance is deliberate. The utter lack of reason or justification for their insubordination indicates that it was prompted by mere obstinacy, hence, willful and warranting of dismissal.

It involves little difficulty to accuse Kingspoint Express of anti-unionism and allege that this was what motivated the dismissal of the petitioners, but the duty to prove such an accusation is altogether different. That the petitioners failed at the level of substantiation only goes to show that their claim of unfair labor practice is a mere subterfuge for their willful disobedience.

As to the second element, no belabored and extensive discussion is necessary to recognize the relevance of the subject order in the performance of their functions as drivers of Kingspoint Express. As the NLRC correctly pointed out, drivers are indispensable to Kingspoint Express' primary business of rendering door-to-door delivery services. It is common knowledge that the use of dangerous drugs has adverse effects on driving abilities that may render the dismissed employees incapable of performing their duties to Kingspoint Express and acting against its interests, in addition to the threat they pose to the public.

The existence of a single just cause is enough to order their dismissal and it is now inconsequential if the other charges against them do not merit their dismissal from service. It is therefore unnecessary to discuss whether the other acts enumerated in the notices of termination issued by Kingspoint Express may be considered as any of the just causes.

Nonetheless, while Kingspoint Express had reason to sever their employment relations, this Court finds its supposed observance of the requirements of procedural due process pretentious. While Kingspoint Express required the dismissed employees to explain their refusal to submit to a drug test, the two (2) days afforded to them to do so cannot qualify as “reasonable opportunity”, which the Court construed in *King of Kings Transport, Inc. v. Mamac*[21] as a period of at least five (5) calendar days from receipt of the notice.

Thus, even if Kingspoint Express’ defective attempt to comply with procedural due process does not negate the existence of a just cause for their dismissal, Kingspoint Express is still liable to indemnify the dismissed employees, with the exception of Panuelos, Dizon and Dimabayao, who did not appeal the dismissal of their complaints, with nominal damages in the amount of P30,000.00.

WHEREFORE, premises considered, the Decision dated March 16, 2010 and Resolution dated December 16, 2010 of the Court of Appeals are AFFIRMED with MODIFICATION in that respondent Kingspoint Express and Logistic is hereby held liable for the payment of nominal damage, in the amount of P30,000.00 each to petitioners Bobby Dacara, Fernando Lupangco, Jr., Sandy Pazi, Camilo Tabarangao, Jr., Eduardo Hizole and Reginaldo Carillo, for non-observance of procedural due process required in terminating employment.

SO ORDERED.

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

[1] Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Noel G. Tijam and Vicente S.E. Veloso, concurring; rollo, pp. 43-55.

[2] Id. at 74-75.

[3] Id. at 203.

[4] Id. at 243.

[5] Id. at 212.

[6] Id. at 228-235.

[7] Id. at 233-234.

[8] Id. at 236-245.

[9] Id. at 241.

[10] Id. at 241-244.

[11] Id. at 247-255.

[12] Id. at 248-251.

[13] Id. at 62.

[14] Id. at 58-71.

[15] Id. at 65-69.

[16] Supra note 1.

[17] Id. at 48-50.

[18] Id. at 51-52.

[19] Supra note 2.

[20] See Bughaw, Jr. v. Treasure Island Industrial Corporation, G.R. No. 173151, March 28, 2008, 550 SCRA 307, 316-318 citing Articles 282 and 283 of the Labor Code of the Philippines and Challenge Socks Corporation v. Court of Appeals, G.R. No. 165268, November 8, 2005, 474 SCRA 356, 363-364.

[21] G.R. No. 166208, June 29, 2007, 526 SCRA 116.

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