

DOMINADOR MALABUNGA, JR., PETITIONER, VS. CATHAY PACIFIC STEEL CORPORATION, RESPONDENT.

G.R. No. 198515. June 15, 2015

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

An employer may not blame its employees for losses caused by its own disorganized system and inept personnel.

This Petition for Review on Certiorari[1] assails: 1) the March 16, 2011 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 111296 nullifying and setting aside the February 27, 2009 Decision[3] of the National Labor Relations Commission (NLRC) in NLRC CA Case No. 050647-06 and reinstating the July 31, 2006 Decision[4] of the Labor Arbiter, NLRC NCR, Quezon City in NLRC NCR Case No. 03-02096-05; and 2) the CA's September 5, 2011 Resolution[5] denying petitioner's Motion for Reconsideration[6] of the herein assailed Decision.

Factual Antecedents

Respondent Cathay Pacific Steel Corporation is a duly registered domestic corporation engaged in the business of manufacturing steel products. It hired petitioner Dominador Malabunga, Jr. on April 10, 1996 as one of its machinists.

On July 9, 2004, an inventory of respondent's tools and items at the company warehouse was made, and it was found that one aluminum level[7] was issued to respondent's Fabrication Unit, and another to petitioner.[8]

On July 11, 2004, petitioner returned an aluminum level to the warehouse.[9]

On July 24, 2004, respondent served a written Notice[10] upon petitioner, charging the latter with theft of the aluminum level issued to its Fabrication Unit and requiring him to submit a written explanation. Respondent claimed that petitioner stole the aluminum level issued to the Fabrication Unit and returned the same to cover up the loss of the one issued to him. In other words, respondent accused petitioner of stealing the aluminum level issued to the Fabrication Unit and returning the same on July 11, 2004, passing it off as the one that was issued to him previously; by doing this, petitioner would then cover up the loss of or failure to return the one that was previously issued to him.[11]

Attached to the July 24, 2004 Notice were handwritten statements of respondent's warehouse foreman Salvador Narvasa (Narvasa) and warehouseman Reymundo Manuel Baetiong (Baetiong), both executed on July 23, 2004. In his statement,[12] Narvasa claimed that on July 13, 2004, he discovered an untarnished ("malinis") aluminum level which petitioner apparently returned on July 11, 2004, but which was issued to the Fabrication Unit; that upon checking his records, it was confirmed that it was petitioner who returned the said tool; that on July 22, 2004, he called petitioner and Nonito Tercero (Tercero) – one of respondent's workers assigned to the Fabrication Unit/Machine Shop who apparently discovered that what petitioner returned on July 11, 2004 was the missing aluminum level issued to the Fabrication Unit – to a meeting and told them that what petitioner returned was the

aluminum level issued to the Fabrication Unit; and that petitioner remarked that if the aluminum level was lost or he stole it, the Fabrication Unit crew should be charged for the loss of the tool which was issued to them because they were negligent in its handling (“x x x ang sagot ni Malabunga wala daw namang problema doon dahil kung naka issue yon sa Fabrication kahit ninakaw niya ay [sic] at nawala sa kanila dapat daw ay ipakaltas ko sa Fabrication crews dahil naging pabaya ang mga ito.”[13]).

On the other hand, Baetiong claimed in his statement[14] that he was on duty on July 11, 2004 – or when petitioner returned the aluminum level; that he was then with Rudolfo Zapanta, another warehouseman; that petitioner returned an aluminum level; that days after, he learned that what petitioner returned was the aluminum level issued to the Fabrication Unit; that it was Tercero who told him that the level returned by petitioner was the one issued to the Fabrication Unit; that Tercero came to know of this when he came to the warehouse to borrow an aluminum level; that from an inspection of the warehouse records, it was discovered that there were only two individuals who borrowed tools from the warehouse – petitioner and one Carlo Alocino; that of the two, only petitioner was able to return an aluminum level.

In his written explanation,[15] petitioner insisted that the accusation against him was false, baseless and unfair; that the aluminum level he borrowed on June 28, 2004 was the very same tool which he returned on July 11, 2004; that when he returned the aluminum level he borrowed, the warehousemen readily accepted the same and they did not complain about the condition thereof, nor did they notice anything unusual – for example, that the markings thereon were erased or defaced, or that there was any defect in the tool; that respondent’s tools should be permanently marked or security coded in order to prevent confusion and to forestall baseless accusations such as those being leveled against him; and that the Fabrication Unit placed a mark on the aluminum level which it claims to belong to it only several days after the occurrence of the unfortunate incident. Thus, petitioner wrote in part:

July 23, 2004 – inirequest kong pag-usapan na ito sa mataas na kapulungan dahil hindi kami magkaintindihan. Sinisisi ko ang bodegero dahil ang alam ko may mga palatandaan yan bawat isa, kesyo nabubura daw ang inilagay nilang palatandaan paliwanag ni Ginoong Narvasa na kaharap din si Sir STU. May paraan yan para lagyan nang palatandaan na di agad-agad nabubura maliban na lang kung ito ay sadyang burahin at kung sadyain man itong burahin kapag hiniram yan na may seguridad na palatandaan. Halimbawa aluminum level #3 ang hiniram ko, nang isauli ko ito ay kapansinpinsin na ito ay sinadyang burahin. Kuwestiyonabol yon bakit ito binura, ang ibig kong sabihin hindi basta makakalusot ang isinoling aluminum level kung ito ay may seguridad na palatandaan. Nang isauli ko ang aluminum level kong hiniram, walang alinlangan itong tinanggap ni Raymond[16] at nakita man ni Sir STU ang hitsura nang aluminum level na may diperensya, pwedeng sabihin ni Raymond sa akin na bakit ganyan ang hitsura niyan dati na ba yan noong ipahiram sa yo? Pwede ng sabihin na i-check mo dyan sa borrower slip kung may nakalagay na damage ang kabilang parte. Sir, kung may naganap na ganyang pag-uusap kami ni Raymund hindi sana humantong sa ganito. Kung may sapat na seguridad na palatandaan sa aluminum level at masigasig nila itong sinisiyasat bago ito tanggapin at ipahiram sa amin walang magaganap na ganitong problema.

Papano ko sasang-ayunan na ang isinauli kong aluminum level ay hindi akin samantalang aminado kayo kaharap si Sir STU na walang identity o seguridad na palatandaan ang inisyu ninyong aluminum level sa Fabrication. Nilagyan nila ito ng pangalan kaya nila nasabi na sa kanila nga ito. Samantalang kung may identity ito o seguridad na palatandaan nang inisyu ninyo ito sa kanila kahit lagyan nila ito ng pangalan walang magaganap na ganitong usapin. Kulang si Raymund sa pagsisiyasat at walang sapat na seguridad na palatandaan nang tanggapin niya ang isinauli kong aluminum level at makalipas ng 3 araw humiram si Tercero nang aluminum level. Nang mapasakamay niya ito nagtanong siya “Bakit nasa iyo ang aluminum level nilang nawawala, na ang ginamit niyang basehan ay may pangalan ito na Fabrication. Ako ngayon ang binalingan ninyo dahil ako lamang ang huling nagsauli nang aluminum level at wala nang iba o kasunod na nagsauli nito.

Sa personal kong opinion hindi yata ito MAKATARUNGAN.[17]

During the course of the investigation, hearings were conducted. The written statements of several employees were likewise taken, thus:

- Rodolfo Mangahas (Mangahas), of respondent's Fabrication Unit/Machine Shop, declared in his sworn statement[18] that sometime in June 2004, he learned that their aluminum level was missing; that on July 13, 2004, he was called to the warehouse to identify an aluminum level; that after examining said tool, he concluded that it was the Fabrication Unit's missing tool; and that he knew this because the missing aluminum level had a dent at the edge thereof, and the tool which he was asked to identify had the same dent.

- In his sworn declaration,[19] Tercero said that sometime in June 2004, he learned that their aluminum level was missing; that on July 13, 2004, he went to the warehouse to borrow an aluminum level; that he was given one; that what was given to him turned out to be the Fabrication Unit's missing aluminum level; and that he knew this because the word "Fabrication" was engraved thereon; and that thereafter he informed Dennis Zapanta, another warehouseman, of his discovery.

- Antonio Nagales (Nagales), welder/fabricator at the Fabrication Unit, declared in his sworn statement[20] that sometime in June 2004, he noticed that the unit's aluminum level was missing; that on July 13, 2004, he was called to the warehouse to identify an aluminum level; and that he examined the said tool that was shown to him, and he concluded that it was the Fabrication Unit's missing aluminum level as it had a dent at the edge which he knew was caused by its having fallen when he used the same in the past.

On December 2, 2004, respondent issued its Decision[21] suspending petitioner for a period of 30 days and requiring him to return the value of the lost aluminum level, or P280.00, through salary deductions. The decision stated that petitioner was charged with theft of the Fabrication Unit's aluminum level; that on July 11, 2004, petitioner returned to the warehouse an aluminum level upon which was engraved the word "FABRICATION" and which had a dent on the edge thereof; that Tercero discovered the theft when he borrowed the aluminum level from the warehouse; that upon investigation, it was learned that petitioner stole the Fabrication Unit's aluminum level in order to pass it off as the one which he borrowed previously; that petitioner's written explanation was insufficient to subvert the circumstantial evidence which points to him as the perpetrator of the theft; that petitioner is guilty of serious misconduct under Article 282 of the Labor Code[22] and "Patakaran Bilang 26"[23] of the company rules and regulations relative to theft of company property or employee/visitor belongings; and that on account of petitioner's years of service and the small amount involved, the company decided to impose the penalty of suspension and not dismissal.

On January 13, 2005, petitioner – through the company union (CAPASCO) – filed a Motion for Review[24] seeking a reconsideration of the above Decision, arguing that there is no convincing evidence to link petitioner to the theft of the Fabrication Unit's aluminum level except for Narvasa's statement that what petitioner returned was the aluminum level issued to the Fabrication Unit.

Respondent conducted a hearing on the motion for review, and on February 18, 2005, it issued through its Human Resource Manager Leonardo A. Visorro, Jr. a resolution on petitioner's motion for review.[25] It held:

At its core, you questioned the findings of guilt declared in the decision of Mr. Rolando Valerio, Administrative Officer – WRM. It is your contention that guilt could not be established for lack of witness to the commission of the act of theft. The event by itself precludes the presence or existence of witness. But the decision of Mr. Valerio used the sequence of events and circumstantial evidence in coming up with a finding of guilt. The finding was premised on the testimonies of witnesses who shed light on the following sequence of events:

- June 2004 – discovery of loss of aluminum level issued to the “Fabrication Unit”. Discovery made by Antonio Nagales, Welder/Fabricator, but not reported to Warehouse.
- July 9, 2004 – Warehouse made paper inventory of aluminum levels and other items. Record stood that one (1) aluminum level was issued to “Fabrication” unit and one (1) to Dominador Malabonga[,] Jr.
- July 11, 2004 – Malabonga Jr. returned one (1) aluminum level to Warehouse.
- July 13, 2004 – Jose Tercero, Welder/Fabricator, noticed the presence of one (1) aluminum level at the Warehouse marked with the engraving “Fabrication”, and a small dent showing that the said item was hit by a hard object.
- Thereafter – investigation on the issue proceeded.

Investigation conducted clearly showed that the aluminum level with marking of “Fabrication” was not returned by personnel of the Fabrication. There is no record of such transaction. In the immediate time-frame from its discovery, only you had physically approached the Warehouse (on July 11, 2004) to return an aluminum level. It appeared that only you could have done so.

In the argument given by Mr. Jovito Octubre, Union President, he asked what if the aluminum level in question was borrowed by Malabonga Jr. after the discovery of its loss in June 2004 by Nagales. We find the reasoning argumentative and speculative. Malabonga Jr. made it appear that he borrowed the aluminum [level] for his individual use sometime in June 2004.

In response to this Mr. Salvador Narvasa, Warehouse Section Head showed a document dated March 23, 2004. It was an inventory of items issued earlier than March 23, 2004 which were due for return to the Warehouse. It instructed employees concerned to return to the Warehouse items issued to them within seven (7) days, otherwise deductions will be made on their wages corresponding to the value of the items. Dominador Malabonga[,] Jr. was included in the list and the document alleged that the aluminum level issued to him was number 11.

At this instance, it is recalled that Malabonga Jr. averred that he borrowed the aluminum level issued to him in the middle of June 2004. But this was not so. The one issued to him was borrowed by him in early March 2004 or earlier, and this was merely re[-]issued to him after the release of the notice dated March 23, 2004. Mr. Narvasa vouched for the authenticity of the document and Malabonga Jr. himself did not contest it. So then Malabonga Jr. was not forthright in his testimony in the investigation when he averred that he borrowed the aluminum level issued to him personally in June 2004. Was this a lapse of memory or intended to obscure a fact and mislead the investigating panel in the proper evaluation of the case? Mr. Narvasa, the Warehouse Section Head, averred to all present in the investigation that there is no aluminum level marked 11 (eleven) in the custody of the Warehouse.

With the above, we find that the decision was based on established evidence both testimonial and documentary. Hence, the decision of Mr. Valerio is affirmed as to suspending Malabonga Jr. for 30 days and requiring him to pay Php 280.00 for the acquisition price of the aluminum level through payroll deduction. No further appeal will be entertained by this Office.[26]

Thus, petitioner was suspended without pay from January 10, 2005 up to February 13, 2005. Thereafter, he returned to work.

Ruling of the Labor Arbiter

On March 2, 2005, petitioner filed a Complaint for illegal suspension before the NLRC NCR, Quezon City, docketed as NLRC NCR Case No. 03-02096-05. In his Position Paper,[27] petitioner argued that he should not be blamed for the alleged loss of the Fabrication Unit’s aluminum level; that respondent’s warehousemen were to

blame for their failure to maintain a system that would clearly indicate the identity of borrowed tools and items from the warehouse; that in order to conceal their negligence and lack of a system of checking and verifying tools and items in the warehouse, the warehousemen instead passed the blame on to petitioner; that if he was being charged with the alleged theft of the Fabrication Unit's aluminum level – which was recovered anyway – then he should not have been suspended and made to pay for the value of the recovered item; that the aluminum level he returned was not the Fabrication Unit's issued tool; that when he returned the tool on July 11, 2004, the tool had no markings or defects which would indicate that it was the allegedly lost aluminum level issued to the Fabrication Unit; and that the word "Fabrication" was engraved on the tool only later on, or after he returned the same on July 11, 2004. Thus, petitioner prayed that his suspension without pay from January 10, 2005 up to February 13, 2005 be declared illegal and that respondent be made to pay his salary during the period, based on his daily rate of P357.85. He likewise prayed for the recovery of attorney's fees equivalent to 10 per cent (10%) of the total award.

In its Position Paper,[28] respondent claimed that petitioner's suspension was valid; that based on the written statements of the employees and other evidence, petitioner was found guilty of theft of company property, for returning an aluminum level "which was issued to the Fabrication unit and not the one issued to him;" that petitioner was the one who returned the missing aluminum level to the warehouse; and that the aluminum level returned by petitioner was "positively identified by three employees as the particular level issued to the Fabrication unit which was reported missing as of June 2004." Respondent concluded that the evidence against the petitioner was sufficient to satisfy the requirement of substantial evidence and warrant his suspension, and thus it prayed for the dismissal of the complaint for illegal suspension.

In a Reply[29] to respondent's Position Paper, petitioner contended that the warehousemen and the Fabrication Unit workers conspired against him to cover up the loss of the unit's aluminum level sometime in June 2004, which was not reported at all to the warehouse; that the warehousemen were negligent in not adopting a system that would enable the proper identification of tools and items borrowed; that as a result of the lack of such a system, he was falsely accused of theft; that in fact, there was no evidence to prove that he stole the unit's aluminum level; and that on the other hand, there could be no theft of the unit's aluminum level since, as far as everyone is concerned, it was never lost at all since it was never reported missing by the unit.

In a Rejoinder[30] to petitioner's Reply, respondent argued that evidence existed in the form of inventory reports and the written statements of witnesses which point to petitioner as the culprit who took the Fabrication Unit's aluminum level; that the aluminum level issued to petitioner had not been accounted for either; and that since he violated company policy against the unlawful taking of company property, he should be punished, except that instead of dismissal as stated in the company rules, he was merely suspended.

In a Rejoinder,[31] petitioner claimed that respondent's Position Paper did not comply with the requirement of certification against forum-shopping and that it did not contain the required board resolution or certification authorizing respondent's counsel to sign for and in behalf of respondent.

On July 31, 2006, the Labor Arbiter issued his Decision dismissing petitioner's complaint for illegal suspension. The Labor Arbiter held that substantial evidence – in the form of written statements of respondent's witnesses positively identifying petitioner as returning the Fabrication Unit's aluminum level and not the one issued to him – warranted the imposition of the penalty of suspension. Thus, the Labor Arbiter decreed:

WHEREFORE, premises considered, the complaint is hereby DISMISSED for lack of merit.

SO ORDERED.[32]

Ruling of the National Labor Relations Commission

Petitioner appealed to the NLRC, where the case was docketed as NLRC CA Case No. 050647-06. On February 27, 2009, the NLRC issued its Decision, declaring as follows:

We find merit in the appeal.

Anent the first ground for appeal, complainant claims that the Labor Arbiter erred in giving probative weight to the affidavits submitted by respondent supporting the charge of theft against him. Complainant asserts that the said affidavits are self-serving evidence having been executed by the employees who are always submissive to the wishes of the respondent. We agree. Indeed, aside from the admitted fact that they are all employees of respondent, a perusal of the affidavits of Rodolfo Mangahas, Nonito Tercero and Antonio Nagales (Annexes “H”, “I” and “J”, Respondent’s Position Paper) disclose[s] that they are seriously inadequate to support a conclusion that it was the complainant who took the lost aluminum level. All of them merely reinforce the fact that an aluminum level had been lost and that the same was discovered to have been in the warehouse when Nonito Tercero borrowed an aluminum level and was given by the warehouseman Dennis Zapanta, by chance, the lost aluminum level. Nothing therein states that the said aluminum level was taken by complainant.

Apparently, respondent relied heavily on the statement of the warehouseman pointing to the complainant as the one who returned to him the lost aluminum level. But there is nothing on record, except for such statement, that the item returned by complainant is the same aluminum level that was lost. Even assuming that it was the complainant who returned the aluminum level 24” that was discovered subsequently as the very aluminum level 24” that had been lost in the fabrication unit, said fact alone does not create a presumption that it was also the complainant who had stolen the same. For it is highly inconceivable if not completely absurd, for complainant, if he was indeed guilty of the crime of theft, to return the very object of the crime. Clearly, this theory defies logic and ordinary human experience.

What is clear from the records is the admitted fact that the warehouseman, as correctly pointed out by complainant, failed to immediately call the attention of the latter upon the receipt of his borrowed item if there was indeed a discrepancy between the level he borrowed, and [the one] he returned. It took the warehouseman a few days to declare the item returned by complainant as different from [the one] he borrowed. Thus, we quote with approval complainant’s argument on this score:

“21. If the Warehouseman was only doing his duty well by recording the true identity of the item borrowed by the complainant, it could have been easily determined whether or not the aluminum level 24” borrowed by the complainant on June 28, 2004 was the same aluminum level that was previously missing from the fabrication department. Unfortunately, someone is passing the blame to the complainant for [him] to avoid complication arising from [his] own serious negligence.” (Memorandum of Appeal)

Further, We also find equally unacceptable the Labor Arbiter’s explanation in giving the statements of the warehouseman credence and weight on the presumption that he was not impelled with malice or ill-motive in declaring so. This finding further defies logic. It should be noted that the lost aluminum level 24” was found in the possession of the warehouseman three days after complainant returned his borrowed item. To be sure, the warehouseman, as a matter of self-preservation, would do anything to pass the blame to somebody else as pointed out by the complainant. Otherwise, he would be held answerable by the company for having been caught in possession of the lost item. To our mind, this fact invariably renders his statement highly suspicious.

Thus, the foregoing doubts in the evidence submitted by respondent should be resolved against [it]. After all, it is a cardinal rule in labor cases, that in case of doubts in the evidence presented by the parties, the doubts should be resolved in favor of labor.

WHEREFORE, judgment is hereby rendered, REVERSING and SETTING ASIDE the assailed Decision, and a new one issued finding the penalty of suspension imposed upon the complainant without factual basis. Hence,

respondent Cathay is hereby ordered to pay complainant his salary commensurate to his one month suspension.

SO ORDERED.[33]

Respondent moved for reconsideration,[34] but in a July 28, 2009 Resolution,[35] the NLRC denied the motion.

Ruling of the Court of Appeals

In a Petition for Certiorari[36] filed with the CA and docketed as CA-G.R. SP No. 111296, respondent sought a reversal of the NLRC Decision, arguing that the latter committed grave abuse of discretion and gross error in exonerating petitioner from the charge of theft and in nullifying his suspension. It insisted that petitioner “took the aluminum level issued to the fabrication unit to make it appear that he has already returned the same aluminum level 11 issued to him in order to escape liability for the level issued to him.”

On March 16, 2011, the CA issued the assailed Decision containing the following decretal portion:

WHEREFORE, the petition is GRANTED. The February 27, 2009 decision of the public respondent NLRC in NLRC CA CASE No. 050647-06 is NULLIFIED and SET ASIDE. The July 31, 2006 decision of the Labor Arbiter in NLRC NCR CASE No. 03-02096-05 is REINSTATED.

SO ORDERED.[37]

The CA held that there was reasonable ground to believe that petitioner was responsible for the theft of the aluminum level assigned to the respondent’s Fabrication Unit. It sustained the Labor Arbiter’s findings that based on the statements of Mangahas, Tercero and Nagales – workers at the Fabrication Unit – and the written explanations of Narvasa and Baetiong, it was established that what petitioner returned to the warehouse on July 11, 2004 was the Fabrication Unit’s aluminum level and not the one issued to him; that the aluminum level he returned contained the engraving “Fabrication” and a dent which was familiar to the Fabrication Unit’s workers; and that the inventory records would show that at the time, petitioner was the only one who returned an aluminum level to the warehouse.

The CA added that petitioner’s defense of alibi and denial could not be given weight, in the face of positive identification by the other witnesses that what he returned on July 11, 2004 was the Fabrication Unit’s aluminum level, since it was engraved with “Fabrication” and had the familiar dent.

The appellate court further declared:

Evident from the record is the NLRC’s strained attempt at ratiocination when it concluded that the warehouseman, as a matter of self-preservation, would do anything to pass the blame to somebody else or risk being held answerable by the company for having been caught in possession of the lost item. Being the custodian of all the tools and equipment of Cathay, it is the warehouseman’s duty to issue and receive the tools/equipments requested and returned by the workers. If a worker returns a tool, it would logically be in [the] possession of the warehouse section. The NLRC thus erred in holding the warehouse section liable just because it was in possession of the aluminum level when it was clearly its responsibility to have custody and possession thereof.

The NLRC likewise manifestly erred in ruling that “it is highly inconceivable if not completely absurd for Malabonga, if he was indeed guilty of the crime of theft, to return the very object of the crime.” In so ruling, it disregarded Cathay’s finding that the “Fabrication” mark on the aluminum level was small and the dent thereon was hardly noticeable such that a person who was unfamiliar with them would not know that the level was the one issued to the Fabrication Unit. x x x[38]

Petitioner filed a motion for reconsideration, but the CA denied the same in its September 5, 2011 Resolution.

Hence, the present Petition.

Issue

Petitioner submits that –

THE COURT OF APPEALS ERRED IN VACATING THE DECISION AND RESOLUTION OF THE NATIONAL LABOR RELATIONS COMMISSION FINDING RESPONDENT CORPORATION GUILTY OF ILLEGAL SUSPENSION.[39]

Petitioner's Arguments

Praying that the assailed CA dispositions be set aside and that the NLRC's February 27, 2009 Decision in NLRC CA Case No. 050647-06 be reinstated instead, petitioner essentially maintains in the Petition and Reply[40] that the evidence does not support respondent's claim that he is guilty of theft and that what he returned was the Fabrication Unit's aluminum level; that the witnesses' statements are biased, self-serving and intended to exonerate the declarants from liability for their negligence and failure to secure the Fabrication Unit's aluminum level both in the warehouse and in the Fabrication Unit, thus making him a mere scapegoat; and that the witnesses' statements are doubtful, as they are uniform and were executed on the same date and notarized by the same notary public.

Respondent's Arguments

In its Comment,[41] respondent maintains that petitioner raises issues of fact which are beyond the purview of a petition for review on certiorari; that what petitioner seeks is a review of the whole evidence and the credibility of the witnesses against him, which are clearly issues of fact and not law; that there is no reason to disturb the CA Decision since there is nothing wrong therewith, and a finding of grave abuse of discretion against the NLRC was justified; and that substantial evidence exists to warrant a finding that petitioner is guilty of theft.

Our Ruling

The Court grants the Petition.

In labor cases, issues of fact are for the labor tribunals to resolve, as this Court is not a trier of facts. However, in exceptional cases, this Court may be urged to resolve factual issues: "[1] where there is insufficient or insubstantial evidence to support the findings of the tribunal or the court below; or [2] when too much is concluded, inferred or deduced from the bare or incomplete facts submitted by the parties[;] or, [3] where the [Labor Arbiter] and the NLRC came up with conflicting positions.[42] "When there is a divergence between the findings of facts of the labor tribunals and the CA, there is a need to refer to the record." [43]

The instant Petition presents not only a situation where the Labor Arbiter, the NLRC and the CA differ in their assessment of petitioner's case, but also one where the evidence miserably fails to support a finding that petitioner committed theft. The Labor Arbiter and the CA – and the NLRC as well – ignored one material piece of evidence which should have exonerated petitioner from the theft charge.

Respondent claims that what petitioner returned to its warehouse on July 11, 2004 was the Fabrication Unit's aluminum level. This is based on the identical claim of Fabrication Unit workers – Mangahas, Tercero, and Nagales – that they discovered their lost aluminum level upon which was engraved the word "Fabrication" and had the familiar dent which, based on warehouse records, turned out to be that which was returned by petitioner.

However, the warehousemen who are in custody of the respondent's tools and items tell a different story. Thus, in his written statement, Narvasa declared among others that –

Nais ko pong ipabatid sa inyong kaalaman ang pangyayari ukol sa nawawalang aluminum level na naka-issue (sa) Fabrication. Martes po ng umaga July 13, 2004 tinawag ako ni Dennis Zapanta para kausapin si N. Tercero. Nakita daw ni N. Tercero ang nawawala nilang a. level sa bodega. Nang aking alamin kung alin sa mga level ang kanyang tinutukoy ay walang duda na sa kanila nga naka-issue. Tinanong ko si Dennis kung saan nanggaling ang level na iyon dahil yong araw lang na yon ko nakita sa loob ng bodega. Malinis ang level at ibang-iba sa mga pinahihiram ng bodega. Ang sagot niya si Malabonga daw ang nagsauli sa kanila nang araw ng Linggo July 11, 2004. Tinignan ko ang record kung sino ang mga posibleng nagsauli nito at napatunayan na si Malabonga lang ang nagsauli niyon.[44] (Emphasis and word in parentheses supplied)

In other words, Narvasa positively declared that what petitioner returned, and what he and co-warehouseman Dennis Zapanta actually received from petitioner, was an untarnished (malinis) and unique aluminum level. In other words, it did not contain any engraving nor bear any dent, damage or scratch. This directly contradicted the claims of the Fabrication Unit workers.

An examination of the statement of another warehouseman, Baetiong,[45] revealed that he had no personal knowledge at all that what petitioner returned was the Fabrication Unit's aluminum level; he claimed to have learned of this fact only from Tercero, who came to borrow an aluminum level on July 13, 2004. Upon being given one, Tercero apparently noticed that it was the Fabrication Unit's aluminum level, and he told the warehousemen of this fact. Based on Tercero's unilateral claim, the warehousemen concluded that what petitioner returned was indeed the Fabrication Unit's aluminum level.

If it is true that the Fabrication Unit's aluminum level was supposedly lost sometime in June 2004 which loss was never reported, and subsequently discovered by Tercero to be in the warehouse all along when he went there to borrow one on July 13, 2004, then it could not be the case that said aluminum level – which contained an engraving of the word “Fabrication” and had a dent – was the one petitioner returned on July 11, 2004. The declaration of warehouseman Narvasa was categorical; he and his colleague Dennis Zapanta received from petitioner an untarnished aluminum level which had no dent or damage whatsoever. This can only mean that petitioner returned the aluminum level that was originally issued to him as stated in the warehouse records, and not the Fabrication Unit's aluminum level, since it did not contain an engraving, and had no dent.

With the foregoing finding, the only logical conclusion that may be arrived at is that petitioner did not commit theft of the Fabrication Unit's aluminum level.

Even if it were to be assumed for the sake of argument that what petitioner returned was indeed the Fabrication Unit's aluminum level, still there could be no valid basis to charge him with theft. As respondent and its witnesses themselves admitted, there was no official report of loss of the Fabrication Unit's aluminum level; the workers at said unit concealed the loss, and declared it so and admitted it only when Tercero supposedly discovered that what he had borrowed on July 13, 2004 was the very same aluminum level which was purportedly missing since June 2004. In other words, the aluminum level was declared lost at the same time it was found, in which case – using common sense and logic – there could be no loss at all. As far as respondent is concerned, the Fabrication Unit's aluminum level was never lost. More to the point, we cannot rely on the statements of the Fabrication Unit workers Mangahas, Tercero, and Nagales; their failure to report the loss of their unit's aluminum level makes their statements not only highly doubtful and self-serving, but unnecessary and uncalled for – an afterthought not worth considering.

There are many ways to secure company property from pilferage and theft. As petitioner himself suggested, security features could be incorporated in each item or property of the employer. An effective and efficient system of property identification, recording and monitoring may be adopted; more efficient and responsible personnel may be hired. In respondent's case, it is quite clear that its warehousemen do not have an efficient system of

monitoring and recording the items or tools being brought in or out of its warehouse. No codes or identifying marks were assigned to the items and tools to facilitate their easy identification; respondent's warehousemen cannot identify the tools and items within the warehouse, and they readily believe the declarations and statements of the workers – thus giving out the impression that the warehousemen are not even familiar with the tools in their custody. These are just a few observations, but they nonetheless indicate that respondent adopts a poor system of recording, monitoring and accountability within its warehouse, and its warehousemen cannot be relied upon.

Faced with the limitations in respondent's system, this Court cannot sustain its view that petitioner is guilty of theft of company property. It could simply be that due to the ineffective system within the warehouse and its inefficient personnel, there was a mix-up of records; worse, it could be that tools and items within the warehouse were misplaced or lost due to its irresponsible personnel. If any, respondent is alone responsible; it cannot conveniently put the blame on its employees in order to make up for or cover its losses caused by its own disorganized system and inept personnel.

From the foregoing, there are serious doubts in the evidence on record as to the factual basis of the charges against petitioner. These doubts shall be resolved in (his) favor in line with the policy under the Labor Code to afford protection to labor and construe doubts in favor of labor. The consistent rule is that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.[46] (Word in parentheses supplied)

WHEREFORE, the Petition is GRANTED. The assailed March 16, 2011 Decision and September 5, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 111296 are REVERSED and SET ASIDE, and the February 27, 2009 Decision of the National Labor Relations Commission in NLRC CA Case No. 050647-06 is REINSTATED and AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, Mendoza, and Leonen, JJ., concur.

[*] Also spelled as Malabonga in some parts of the records.

[1] Rollo, pp. 8-22.

[2] Id. at 173-186; penned by Associate Justice Rebecca de Guia-Salvador and concurred in by Associate Justices Sesinando E. Villon and Amy C. Lazaro-Javier.

[3] Id. at 46-51; penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go.

[4] Id. at 121-124; penned by Labor Arbiter Ariel Cadiente Santos.

[5] Id. at 193-194; penned by Associate Justice Rebecca de Guia-Salvador and concurred in by Associate Justices Sesinando E. Villon and Amy C. Lazaro-Javier.

[6] Id. at 187-191.

[7] A "level" is a tool or "device for establishing a horizontal plane. It consists of a small glass tube containing alcohol or similar liquid and an air bubble; the tube is sealed and fixed horizontally in a wooden or metallic block or frame with a smooth lower surface. The glass tube is slightly bowed, and adjustment to the horizontal is indicated by movement of the bubble. The device is on a level surface when the bubble is in the middle of the glass tube. The level's sensitivity is proportional to the radius of the curvature of the glass."

<http://www.britannica.com/EBchecked/topic/337831/level>. Visited April 29, 2015.

[8] Rollo, p. 174

[9] Id. at 10.

[10] Id. at 59.

[11] Id. at 65.

[12] Id. at 60-61.

[13] Id. at 61.

[14] Id. at 62.

[15] Id. at 89-90.

[16] Baetiong.

[17] Rollo, pp. 82-83, 89-90.

[18] Id. at 71-72.

[19] Id. at 73-74.

[20] Id. at 75-76.

[21] Id. at 65-66.

[22] 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 representatives; and

(e) Other causes analogous to the foregoing.

[23] Rollo, p. 66.

Patakaran Bilang 26

- Pagnanakaw, pagkuha o pagtangkang pagkuha para sa sariling kapakinabangan ng mga kagamitan ng Kompanya o ng kapwa manggagawa o bisita nito.

- Parusa – Tatanggalin sa trabaho.

[24] Id. at 67-68.

[25] Id. at 69-70.

[26] Id.

[27] Id. at 77-84.

[28] Id. at 52-58.

[29] Id. at 99-104.

[30] Id. at 105-110.

[31] Id. at 114-119.

[32] Id. at 124.

[33] Id. at 49-51.

[34] CA rollo, pp. 141-151.

[35] Rollo, pp. 43-44; penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go.

[36] Id. at 23-41.

[37] Id. at 185-186.

[38] Id. at 182-183.

[39] Id. at 14.

[40] Id. at 216-226.

[41] Id. at 196-206.

[42] See *Tagle v. Anglo-Eastern Crew Management, Phils., Inc.*, G.R. No. 209302, July 9, 2014.

[43] *Castillo v. Prudentiallife Plans, Inc.*, G.R. No. 196142, March 26, 2014.

[44] Rollo, p. 60.

[45] Id. at 62.

[46] *Asuncion v. National Labor Relations Commission*, 414 Phil. 329, 341-342 (2001).

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