

SAN MIGUEL CORPORATION, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION, MANUEL R. ENRIQUEZ AND FERNANDO CAPIO, RESPONDENTS.

G.R. No. 50321. March 13, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review by certiorari of the decision of the respondent National Labor Relations Commission (NLRC) which reversed the decision of the labor arbiter and ordered the reinstatement of the complainants with full backwages and no loss of seniority rights and other benefits.

Respondent Enriquez and Capió are budget clerk and accounting clerk respectively of the Metal Closure and Lithography Plant under the Accounting Department of the petitioner.

The labor arbiter found the following facts as substantially established by the evidences of both parties:

"On 11 November 1977, Messrs. Enriquez and Capió were each sent a letter by the Assistant Vice-President & Plant Manager F. Andres in this wise:

"Dear Mr. Enriquez:

"After investigation, the Management of San Miguel Corporation has found out that you have on various occasions received from the Acting Plant Cashier, Mr. Federico Esguerra and/or his back-up man Mr. Antonio Fontanilla, as well as the representative of the Storeroom Department Mr. Romualdo Abad, the total amount of P278,805.43 representing cash remittances for sale of finished products as well as storeroom materials from the period covering February, 1976 to July, 1977 for you to remit to the Cash Department, Makati Head Office which you failed to do.

"Demand is, therefore, made on you to pay and retribute to the Company the said amount of P278,805.43 within five (5) days from your receipt hereof. Should you fail to do so, much to our regret, we will be constrained to institute the appropriate criminal action against you."

"Dear Mr. Capió:

"After investigation, the Management of San Miguel Corporation has found out that you have received from Acting Plant Cashier, Mr. Federico Esguerra, and Mr. Romualdo Abad of the Storeroom Department, the total sum of P28,498.10 sometime last July, 1976 for your remittance to the Cash Department, Makati Head Office and which amount you failed to remit to said Cash Department to the prejudice of the company.

"Demand is made upon you to pay and retribute to the Company the said amount of P28,498.10 within five (5) days from your receipt of this letter. Should you fail to do so, much to our regret, we will be constrained to institute the appropriate criminal action against you."

"Clearances to terminate the services of Enriquez and Capió for alleged misappropriation of company funds were filed by SMC. Pending approval of the clearance applications, complainants were placed under

preventive suspension.

"On 18 November 1978, complainants filed a complaint for illegal dismissal against SMC which is, in effect, an opposition to the clearance applications. Hence, the instant case.

"The incident that precipitated the present con-troversy started on 20 July 1977 when Romeo Valderama, Plant Accountant of the Metal Closure and Lithography Plant of SMC, acting upon a report of the Billing and Recording Department verified a complaint of a customer who was allegedly called upon by SMC's Collectors in spite of the fact that it has already paid its account. Upon examination of the Cash Receipt Summary, he discovered that some official receipts issued by the Plant Cashier and Assistant Plant Cashier were not reflected in the Cash Receipts Summary. Otherwise stated, the cash amount covered by said official receipts were not delivered to and received by the Cash Department of SMC. He also discovered that amounts realized from sales of scrap metal were not remitted to the Cash Department of SMC because no official receipts were issued by said department. On the whole, a total of P307,303.53 were allegedly received and transmitted to the Cash Department of SMC but did not reach their supposed destination. The matter was then referred to the Legal Department of SMC and all the personnel of the Accounting Department were inves-tigated. The result of the investigation shows that the persons allegedly responsible for the misappropriation were Manuel Enriquez and Fernando Capio.

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"The evidence on record shows that Manuel Enriquez was charged with the task of personally delivering funds received or collected by the Metal Closure and Lithography Plant in Paco, Manila, to the Cash Department in Makati. His position description clearly indicates that he goes to the Head Office in Makati for cash deposits. This fact is further confirmed by witnesses for SMC. Hence, Manuel Enriquez' possession and control of company property is sufficiently clear.

"Witnesses for SMC also attest to the fact that whenever Enriquez is absent, complainant Capio, the mail carrier, takes charge of depositing cash remittances to Makati. Witness Romualdo Abad attests to the fact that on 7 July 1976 he turned over to Complainant Capio the amount of P28,498.10 for remittance and delivery to the Cash Department of SMC but records subsequently showed that the aforementioned amount of P28,498.10 never reached the Cash Department in Makati.

"The sizeable amount of money totalling P307,303.05 was actually lost is undenied by complainants. They merely asserted that somebody else was responsible. At any rate, witnesses Valderama, Abad, Fontanilla and Esguerra positively stated that various amounts were entrusted to the complainants. On the other hand, witnesses Vengco and Richard of the Cash Department denied having received the amounts in question and they are concurred in by the Cash Receipts Summary of the Billing and Recording Department. Official receipts issued by the Plant Cashier and/or his assistant were not validated by the Cash Department. No official receipts were also issued by the Cash Department for sales of scrap metal.

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"x x x The records show that complainants have to have either the logbooks or the transmittal slip signed by either Richard or Vengco of the Cash Department to show that the amounts entrusted to them for delivery were duly received. It appears that when investigations started the logbook in the possession of complainant Enriquez mysteriously disappeared. They therefore resorted to the use of the transmittal slips. SMA sub-mitted four (4) samples of transmittal slips which were apparently received by R. Vengco of the Cash Department. However, Vengco repudiated the signatures, explaining that they were obvious forgeries. At first glance, the spurious signatures appear genuine but a comparison with the real signature of R. Vengco reveals that the head of the capital 'R' is more closed, the tail of the letter 'g' is also closed and is connected with the letter 'C'.

"A transmittal slip dated 8 July 1977 was also submitted by SMC whereby complainant Enriquez acknowledged receipt of the amount of P2,340.96 (Annex 'B' -Res.). However, Vengco denied having received such amount.

"It is worthy to note that the general tenor of complainants' evidence is mere and outright denial of the charges imputed against them. This, however, failed to overcome the positive assertions of SMC's witnesses which, when taken together with SMC's documentary evidence, results in a clear preponderance in favor of SMC's stand that complainants were responsible for the amounts lost.

"Verily then, all the essential elements to justify loss of confidence or breach of trust are present in the instant case. Thus, individual complainant duties involve in a positive way the possession or control of company property; the actual loss of such property and; their conduct tending to prove a well-founded suspicion, including negligence or carelessness."

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The complainants, private respondents herein, appealed on grounds of abuse of discretion and serious errors in the findings of fact. The respondent NLRC adopted basically the same facts as found by the Labor Arbiter but came out with a different conclusion:

"We will readily concede one thing, which is that it was quite logical, and certainly very convenient, for the respondent to point the finger of suspicion at the complainants, for they admittedly handled money belonging to the respondent for transmittal from its Metal Closure and Lithography Plant to its Cash Department. But the suspicion could also be directed at its other functionaries, such as, for instance, those who received and handled the money first, who could have failed to deliver to the complainants the amounts supposedly lost for the purpose of having them transmitted to the Cash Department. In other words, it is entirely possible that the complainants never received the said amounts, in which case the latter could not have been responsible for their loss.

"There is no evidence, in fact, other than the unconfirmed statements of some of the respondent's witnesses, who, as stated above, are themselves not above suspicion, that the complainants received the amounts for the loss of which they are being made responsible.

"In his recommendatory memorandum in the case of the criminal complaint filed by the respondent company against complainant Manuel Enriquez, dated 11 April 1978, Manila Assistant Fiscal Felizardo M. Lota observed, among others, that the said company 'has not come up with records to pinpoint, much less impute liability' to complainant Enriquez. On this basis, he found that the Company was not able 'to establish a prima facie case to warrant the filing of the corresponding information' against Enriquez, and accordingly recommended the dismissal of the case against him. The record shows that this recommendation was approved by Fiscal Lota's superiors, and, to all appearances, no criminal information was ever filed against Enriquez in the proper court.

"No similar complaint appears to have been lodged against complainant Capio.

"Indeed, the record of this case shows the kind of laxity in accounting procedure that we have earlier remarked upon. The complainants, contrary to all standards of care, were not required to acknowledge the receipt of the money they were made to carry to the Cash Department. The result is that it could not be determined with any degree of certainty who was responsible for any loss that occurred between the time the money was received from the customers to the time it was supposed to be deposited in the Cash Department.

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"On the basis of the foregoing, we do not agree with the Labor Arbiter below that there exists in this case 'a well-founded suspicion' of wrongdoing upon which to base a judgment to terminate the complainants' services.

To repeat what we have earlier said, the complainants herein appear to us to be the victims and not the culprits of the supposed mis-deeds that led to this case."

A divided First Division of the NLRC rendered the above decision by a vote of two to one.

Petitioners raise the following assignments of errors:

A) RESPONDENT COMMISSION GRAVELY ABUSED ITS DISCRETION WHEN REVERSED THE DECISION OF THE LABOR ARBITER THAT WAS FULLY SUBSTANTIATED BY EVIDENCE AND, IN LIEU THEREOF, RENDERED A DECISION NOT SUPPORTED BY EVIDENCE ON RECORD.

B) FURTHERMORE, RESPONDENT COMMISSION GRAVELY ABUSED ITS DISCRETION IN FAILING TO APPLY ITS PREVIOUS RULINGS ON SIMILAR CASES AND IN FAILING TO APPLY SIMILAR DECISIONS OF THIS HONORABLE TRIBUNAL.

We find no compelling reasons to disturb the arbiter's findings of facts and his conclusions. The conclusions of the respondent NLRC based on practically the same facts established in the hearings before the arbiter impress us to be speculative and conjectural.

The doctrine that the findings of facts of the NLRC are binding on this Court if supported by substantial evidence is well established. (*Antipolo Highway Lines, Inc. v. Inciong*, 64 SCRA 441; *Philippine Labor Alliance Council (PLAC) v. Bureau of Labor Relations*, 75 SCRA 162; *Genconsu Free Workers Union v. Inciong*, 91 SCRA 311; *Pan-Philippine Life Insurance Corp. v. NLRC*, 114 SCRA 866; *Pepsi-Cola Labor Union-BFLU-TUPAS Local Chapter No. 896 v. National Labor Relations*, 114 SCRA 930; *Int'l. Hardwood and Veneer Co. of the Phil. v. Leogardo*, 117 SCRA 967 and *Mamerto v. Inciong*, 118 SCRA 265). However, in the same way that the findings of facts unsupported by substantial and credible evidence do not bind this Court (*Insular Life Assurance Co., Ltd. Employees Association-NATU v. Insular Life Assurance Co., Ltd.*, 76 SCRA 50), neither will we uphold erroneous conclusions of the NLRC when we find that the latter committed grave abuse of discretion in reversing the decision of the labor arbiter (See *Visperas v. Inciong*, 119 SCRA 477; *Kapisanan ng Manggagawa sa Camara Shoes v. Camara Shoes*, 111 SCRA 477).

The central issue in this case is focused on the right of an employer to terminate the employment of an employee on the ground of loss of confidence or breach of trust. The labor arbiter found sufficient evidence to uphold the right of the employer. As a rule this Court leans over backwards to help workers and employees continue in their employment. We have mitigated penalties imposed by management on erring employees and ordered employers to reinstate workers who have been punished enough through suspension. However, breach of trust and confidence and acts of dishonesty and infidelity in the handling of funds and properties are an entirely different matter.

In *Lepanto Consolidated Mining Co. v. Court of Appeals* (1 SCRA 1251) we held that where an employee occupies position of trust and confidence, as where he is entrusted with confidential or delicate matters, or with the custody, handling, or care and protection of the employer's property, acts tending to show untrustworthiness may constitute a just cause for dismissal, or of loss of employer's confidence.

Similarly, we stated in *Nevans v. Court of Industrial Relations* (23 SCRA 1321):

"loss of confidence is a valid ground for dismissing an employee, and proof beyond reasonable doubt of the employee's misconduct - apparently demanded by the Minister of Labor - is not required to dismiss him on this charge. (See *National Organization of Laborers and Employees v. Roldan*, 95 Phil. 727; *Phil. Refining Co. v. Garcia*, 18 SCRA 107; *Gatmaitan v. MRR*, 21 SCRA 191). It is sufficient if there is 'some basis' for such loss of confidence; (*Galsim v. PNB*, 29 SCRA 293) or if the employer has reasonable grounds to believe, if not to entertain the moral conviction that the employee concerned is responsible for the misconduct and that the

nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position." (See *Reyes v. Zamora*, 90 SCRA 92; *San Miguel Corp. v. the Deputy Minister of Labor and Employment*, G.R. Nos. 61232-33, December 29, 1983).

By and large, this Court has continually recognized the right of the employer to dismiss an employee on the ground of loss of confidence or breach of trust. In *Galsim v. Philippine National Bank* (29 SCRA 293) we upheld the dismissal of a bank teller found to have given money to a co-employee in violation of bank rules. Said act which caused prejudice to the bank was a justifiable basis for the bank to lose its confidence in the employee. Likewise, we upheld the dismissal of an employee on the grounds of use of company property for personal use and gain without authority, dishonesty, serious misconduct, fraud, and wilfull breach of trust in *Int'l. Hardwood and Veneer Co. of the Phil. v. Leogardo* (supra).

We have, of course stressed that the right of the employer must not be exercised arbitrarily and without just cause; otherwise, the constitutional guarantee of security of tenure of the workers would be rendered nugatory. While it is true that to dismiss or lay off an employee is a management's prerogative, it must never-theless be done without abuse of discretion, for what is at stake is not only the worker's position but also his means of livelihood (*Kapisanan ng Manggagawa sa Camara Shoes v. Camara Shoes*, supra).

This, we emphasized as follows:

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"xxx Such a vague, all-encompassing pretext as loss of confidence, if given the seal of approval by this Court, could easily be utilized to reduce to a barren form of words the constitutional guarantee of security of tenure. Precisely, the employee is afforded that protection so that his means of livelihood is not placed at the mercy of management. He is just as much a participant in the industrial process. He is entitled to be considered as such. Constitutional provisions protecting labor are in line with the predominant thinking all over the world safeguarding human dignity. It would then be to ignore not only a mandate of the fundamental law but also a counsel of wisdom and fair play to impart to the concept of loss of confidence such a latitudinarian scope. What matters the investigation undergone by private respondent resulting in the affirmation of his innocence, if thereafter management would just rely on an alleged loss of confidence? x x x" *Central Textile Mills, Inc. v. NLRC*, 90 SCRA 9; see also *Acda v. Minister of Labor*, 119 SCRA 306).

In disposing of this case, we have fully taken into account the above considerations. We note the undisputed fact that after the discovery of the failure to remit pay-ments made by the petitioner's customers to the Cash Department, the petitioner through its legal department conducted a thorough and intensive investigation. It was not only the respondents Enriquez and Capio who were under suspicion for the loss of the P307,303.53 but also all the other employees of the petitioner who could have had access to the funds prior to their remittance to the Cash Department. They were all equally investigated.

The respondent NLRC remarked that there was laxity in the accounting procedures of the petitioner. That is a matter addressed to the petitioner but it does not excuse dishonesty of employees and should not in any case hamper the right of the employer to terminate the employment of employees on the ground of loss of confidence or breach of trust. Precisely, the accounting procedure which called for improvements was based primarily on trust and confidence.

The two members of the respondent NLRC who voted for the reinstatement of the private respondents capitalized on what they considered insufficiency of the testimonial evidence. It should be noted however, that the logbook in the possession of respondent Enriquez had mysteriously disappeared and the petitioner had to rely on transmittal slips to bolster its evidence.

In *Phil. Education Co. v. Union of Phil. Education Employees and CIR* (107 Phil. 1003) we held that -

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"The relation of employer and employee, specially where the employee has access to the employer's property in the form of articles and merchandise for sale, necessarily involves trust and confidence. If said merchandise are lost and said loss is reasonably attributed to said employee, and he is charged with theft, even if he is acquitted of the charge on reasonable doubt, when the employer has lost its confidence in him, it would be highly unfair to require said employer to continue employing him or to reinstate him, for in that case, the former might find it necessary for its protection to employ another person to watch and keep an eye on him. x x x" (See also *Dole Philippines, Inc. v. NLRC*, 123 SCRA 673).

Private respondents rely on the fact that the criminal charges brought against them by the petitioner were dismissed by the Fiscal for insufficiency of evidence. Conviction in a criminal case for the loss of the P307,303.53 is not necessary in order that the petitioner may terminate the employment of respondents Enriquez and Capio (See *Phil. Geothermal, Inc. v. NLRC*, 117 SCRA 692):

"x x x Proof beyond reasonable doubt of the employee's misconduct is not required, it being sufficient that there is some basis for the sane or that the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded of his position. (*Reyes v. Zamora*, 90 SCRA 92 [1979]).

As correctly observed by the arbiter, the very wording of the Assistant Fiscal's memorandum shows that it was merely recommendatory. At any rate, a failure to pursue a criminal prosecution on grounds of insufficient evidence, as in this case where the primary documentary evidence was lost, is not determinative of the innocence or culpability of the private respondents for purposes of the case before the public respondent. We have held that the acquittal of an employee in the criminal charge filed against him by his employer does not guarantee his reinstatement if the employer has validly lost confidence in him (*Dole Philippines, Inc. v. NLRC*, supra). A company has the right to dismiss its erring employees if only as a measure of self-protection against acts inimical to its interest (*Manila Trading & Supply Co. v. Zulueta*, 69 Phil. 483; *Int'l Hardwood and Veneer Co. of the Phil. v. Leogardo*, supra).

WHEREFORE, the decision of the respondent National Relations Commission is REVERSED and SET ASIDE. The decision of the Labor Arbiter is REINSTATED and the clearance to terminate the employment of the private respondents may issue forthwith. SO ORDERED.

Melencio-Herrera, (Acting Chairman), Plana, Relova and De La Fuente, JJ., concur.

Teehankee, J., on leave.

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