

SAN MIGUEL CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND RODOLFO REBOLOS, RESPONDENTS.

G.R. No. 58630. November 25, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a Petition for Certiorari under Section 1, Rule 65 of the Rules of Court questioning the Decision of the National Labor Relations Commission (First Division), dated October 12, 1981, in ROX Arbitration Case No. 026-80 entitled "Rodolfo Rebolos vs. San Miguel Corporation (Cagayan de Oro Coca-Cola Plant), which modified the Decision of the Labor Arbitrator granting San Miguel Corporation's (SMC) application for clearance to terminate the employment of Rodolfo REBOLOS, and instead reinstating him to his former position without backwages, on the ground that the NLRC acted with grave abuse of discretion.

REBOLOS was employed by SMC on October 19, 1969 as relief salesman, and was promoted on October 1, 1970 as a regular salesman in the Cagayan de Oro Coca-Cola Plant. As such salesman he sold SMC products in the area and remitted the cash proceeds daily. He was also authorized to drive the company truck.

On November 23, 1976, while driving the company truck, REBOLOS figured in a vehicular collision. A criminal case was filed against REBOLOS for Reckless Imprudence resulting in Damage to Property. A bail bond in the amount of P7,000.00 being needed, SMC furnished the amount in cash. REBOLOS posted the cash bond in his name. The case was dismissed on November 22, 1977 when the insurance company paid for the damage sustained.

Sometime in May 1978, or six months after, REBOLOS withdrew the cash bond without informing nor remitting the amount to SMC. When a new SMC manager took over, all company transactions were reviewed. Upon communicating with the City Treasurer's Office of Cagayan de Oro, SMC was advised that the cash bond had previously been withdrawn by REBOLOS. Immediately, on August 21, 1979, management demanded the P7,000.00. On the same day, at the close of working hours, REBOLOS remitted the amount together with his daily collections.

In an investigation conducted by the company on August 28, 1979, REBOLOS was made to explain why he had retained the amount for one year and three months. Replying to some of the questions, REBOLOS stated:

"QUESTION NO. 19 - In your answer to question 18 that the withdrawn cash bond should be deposited for safekeeping as advised by the presiding judge, you mean to say you opened up a bank account for this purpose?

"ANSWER - No, sir, I did not open an account for that purpose. Instead, it was kept for safekeeping with our family funds.

"QUESTION NO. 20 - What do you mean by 'safekeeping with our family fund'? Does it mean that the bond was kept in your residence or in a bank account?

"ANSWER - The question is too personal, I choose to remain silent. At any rate, the cash bond was returned intact to the cashier's office immediately after it was ordered returned.

x x x x x x x x

"QUESTION NO. 27 - I have no more ques-tions to ask. Do you have anything more to say?

"ANSWER - Yes, sir. For your information, the cash bond was safely deposited & intact & was never used by me. Also, the cash bond was re-turned to the Compa-ny immediately after it was ordered to be returned. I am personally responsi-ble and accountable for the cash bond because it was en-trusted to me by the Company & there-fore, I have to keep it safely until it is returned. I also signed three (3) documents: two from the Company & one from Mr. Horilleno, also, I do not use any money that does not belong to me. I never used it. I have nothing more to say."[1] (Emphasis supplied)

In an Inter-office Memo from the SMC Manila Office, the Personnel & Administrative Department decided that REBOLOS should be separated from the service for having betrayed the trust and confidence reposed on him by SMC. REBOLOS was placed under preventive suspension effective on December 1, 1979 pending clearance to terminate his services from the Ministry of Labor on the ground of misappropriation of company funds and breach of trust aid confidence. REBOLOS received the notice of termination on November 19, 1979.

On November 28, 1979, REBOLOS filed a Complaint for ille-gal dismissal with Regional Office No. X, Ministry of Labor, alleging bias against him by the new SMC Manager and that his record of efficiency with SMC is very satisfactory. The com-plainant submitted a position paper and a reply thereto was filed by SMC. REBOLOS was unsuccessful at this level. The Labor Arbiter dismissed his complaint and granted SMC's applica-tion for clearance to terminate due to breach of trust and con-fidence by REBOLOS. On appeal by REBOLOS, the NLRC, although noting that REBOLOS had unreasonably kept in his possession the sum of P7,000.00 for one year and four months and had not sufficiently or satisfactorily explained the delay in returning the money, ordered his reinstatement without backwages, stating:

"Be that as it may, considering that complainant has been in the service of the respondent company for more than nine (9) years and the incident herein is an isolated one, not involving the regular work of the complainant, we believe the penalty of dismissal is too severe under the circumstances. We hereby rule that the period of time during which the complainant was out of work (is) sufficient penalty for the offense he has committed."[2]

Hence, this petition filed by SMC, predicated on the following issues:

"I

"The National Labor Relations Commission gravely abused its dis-cretion and acted in excess of its jurisdiction in ordering the reinstatement of private respondent in spite of the findings that the latter misappropriated company funds and breached the trust and confidence reposed upon him by his employer.

"II

"The National Labor Relations Commission committed a grave abuse of discretion in arbitrarily holding that the termination of the services of private respondent is too severe because such conclusion is contrary to law and prevailing jurisprudence."[3]

Petitioner maintains that the act committed by REBOLOS is misappropriation of company funds and constitutes serious breach of trust for which reason it has lost confidence in him, specially considering the sensitive position he holds, and that a reinstatement would negatively affect the morale and discipline of the other employees.

The position of REBOLOS, on the other hand, is that the transaction was a loan, which amount he borrowed to enable him to post bail; that he withdrew the cash bond only in May, 1978 after having been told by a clerk of the Court that the bond may be forfeited if not withdrawn; that he had acted in good faith and that the amount was paid immediately upon demand.

In our Resolution of April 4, 1982, we resolved to give due course and required the submission of memoranda by the parties, which they have complied with.

The amount of P7,000.00, which the private respondent failed to return for an unreasonable length of time, is not a loan. Two SMC vouchers referred to the disbursement as "sus-pense account" "to amount of Cash Bond to bail out Salesman Rebolos re vehicular Accident involving Plant Route Truck CB #4". Moreover, an essential element in a loan is that a person who receives the money acquires ownership thereof and is bound to pay to the creditor an equal amount.[4] That essential element of ownership is not present in this case. Further, in private respondent's answer during the investigation conducted by SMC, it is evident that the former did not consider the amount as a loan but as a cash bond "entrusted to me by the company".[5]

As correctly observed by the Labor Arbiter:

"After the thorough evaluation of the respective contentions of the parties and the evidence adduced in support thereof, we find that the amount of P7,000.00 is not a loan to complainant rather it is a company cash bond put up in the name of complainant to bail him out. This is evidenced by the two vouchers. (annexes 'A' & 'B' - respondent position paper) the first reads: x x x It can be readily gleaned from those aforequoted vouchers that the payee is respondent (SMC) itself. Had it been a direct loan, it could have been reflected in the vouchers by making the withdrawal for complainants' account."[6]

In other words, the amount of P7,000.00 was not a loan but a company cash bond entrusted to REBOLOS for the sole purpose of bailing him out in a case arising from the performance of his work as a travelling salesman of SMC and which the latter felt obliged to furnish. Private respondent acknowledged this, when he stated: "Yes, sir, it was the Company cash bond to be deposited personally in my name."[7]

Nor do we find that there has been any misappropriation in the legal sense. There is no evidence that REBOLOS actually intended to convert or divert the amount for his own personal use or for some other person, which is an essential element of misappropriation.[8] In fact, REBOLOS remitted the amount on the same day it was demanded.

However, we find that there was, indeed, breach of trust and confidence by REBOLOS. It was incumbent upon him to have returned the amount of P7,000.00 upon withdrawal knowing that it constituted company funds put up on his behalf only because he was an employee and was driving a company vehicle at the time of the accident. He was accountable for those funds. Instead, he clung to the amount for the long period of one year and three months for reasons of his own. The fact that he returned the amount to SMC upon demand does not exculpate nor mitigate the delay. He could give no satisfactory explanation for that delay except to state that he had kept it for safekeeping with family funds and had never used it.[9] He had violated the company regulation requiring immediate remittance of funds or collections held by them for and on behalf of the company. Knowing his obligations, demand by SMC should not have been necessary. That SMC itself had not attended to the withdrawal of the cash bond should not be of any significance. It had all the right to expect that as a salesman of the company, REBOLOS would live up to the trust and confidence reposed on him.

In sum, REBOLOS' act in withdrawing the cash bond and retaining the same for one year and three months and merging it with his family funds without justifiable reason constitutes willful breach of the trust reposed on him, and under Article 283 (c) of the Labor Code, as amended,[10] is a just cause for termination of employment.

There is ample reason for SMC to distrust him. The case of Galsim vs. PNB[11] has also laid down the guideline that "reinstatement under the circumstances is neither sound nor just in principle. It is irreconcilable with trust and confidence.

WHEREFORE, the Decision of the National Labor Relations Commission, dated October 12, 1981, is hereby REVERSED and SET ASIDE and the Decision of the Labor Arbiter ordering the dismissal of private respondent's complaint for illegal dismissal is hereby reinstated.

No costs.

SO ORDERED.

Teehankee, (Chairman), Plana, Relova, and Gutierrez, Jr., JJ., concur.

[1] Annex "D", Petition, pp. 42-43, Rollo.

[2] Annex "G", p. 2, p. 71, *ibid*.

[3] p. 5, *ibid*.

[4] Article 1953, Civil Code.

[5] *supra*

[6] p. 53, Rollo.

[7] Investigation Report, p. 2, Rollo, p. 41.

[8] *United States vs. Morales*, 15 Phil. 236 (1910); *Concepcion vs. People of the Philippines*, 74 Phil. 63 (1942).

[9] Answers to Qs. 19 and 27, Investigation Report, Annex "D", Petitioner's Manifestation before Ministry of Labor, pp. 42 & 43, Rollo.

[10] "ART. 283. Termination by employer. - An employer may terminate an employment for any of the following just causes:

x x x x x

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

x x x x x

[11] 29 SCRA 293 (1969).

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