

ALFREDO BOTULAN, JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND PEPSI-COLA BOTTLING COMPANY-MUNTINGLUPA BRANCH, RESPONDENTS.

G.R. No. 69073. June 09, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari under Rule 65 seeking the annulment of the resolution of respondent National Labor Relations Commission which reversed the decision of the Labor Arbiter ordering the reinstatement of petitioner Botulan.

The antecedent facts of this case as set forth in the decision of the Labor Arbiter are as follows:

"Complainant is a regular salesman of the respondent. He has been employed since 1958. Sometime in August 1979, a certain Mr. Bienvenido Liwag, a dealer of respondent's products, received a delivery of Pepsi-Cola products of the respondent from a certain jobber by the name of 'Pelargio.' Mr. Liwag received the aforesaid delivery on condition that the same shall be delivered to the complainant because his storage was already full. The jobber accepted the condition and issued to Mr. Liwag the corresponding receipt worth P20,842.20. The products were then delivered to the complainant who received the same but did not sign any receipt because the products were actually for Mr. Liwag. The said invoice was No. 16082 in the name of Mr. Bienvenido Liwag dated August 25, 1979. The following morning, complainant went to see Mr. Liwag and asked the latter why the Pepsi-Cola products were delivered to complainant's house. Complainant and Mr. Liwag then entered into an agreement that complainant will pull out the Pepsi-Cola for his disposal.

"Complainant remitted to the respondent two payments in the amount of P4,743.65. Considering that the delivery receipt was in the name of Mr. Liwag, the latter demanded from the complainant the payment of the delivered Pepsi-Cola because according to him respondent corporation was demanding payment from him. In order to avoid embarrassment on the part of Mr. Liwag, complainant paid Mr. Liwag the amount of P17,000.00. A certification to the effect was issued by Mr. Liwag dated December 2, 1980. The incident was referred by Mr. Cadorniga, the supervisor of the complainant to the management of the respondent. The report was discussed in the conference room on December 5, 1980, between the management and the P.S.A.U. officers.

"On February 12, 1981, a letter was sent to the complainant by Mr. S.A. Caamic, informing the complainant that he is being charged for failure to remit cash collections in the amount of P20,842.50 and that he is dismissed for cause with forfeiture of all the benefits effective February 25, 1981. On February 13, 1981, an application for clearance to terminate complainant's employment was filed. x x x." (pp. 21-22, Rollo)

On August 4, 1983, the Labor Arbiter rendered a decision finding the complaint meritorious and ordered respondent Pepsi-Cola Bottling Company-Muntinglupa Branch (Pepsi for brevity) "to reinstate complainant Alfredo Botulan, Jr. to his former position with full backwages and benefits, from the time of his dismissal until actually reinstated without loss of seniority rights and privileges."

Not satisfied with the decision of the Labor Arbiter, respondent Pepsi appealed with the respondent Commission

alleging that the Labor Arbiter abused his discretion in failing to consider the evidence which showed that petitioner Botulan committed dishonesty in violation of company rules and regulations. On June 29, 1984, respondent Commission rendered a decision reversing the decision of the Labor Arbiter. The respondent Commission said:

"The company rule and regulation allegedly violated by' complainant provides that all collections from route sales of company products or articles must be turned in and all sales whether in cash, credit or consignment must be accounted at the end of each routing day.

"Respondent alleges that sometime in August 1979, a certain Bienvenido Liwag, a dealer of respondent's products, received from the complainant Pepsi-products (fulls) worth P20,842.50 as evidenced by Invoice No. 16082 dated August 25, 1979. After a few days, complainant got the products from Bienvenido Liwag and placed them in his residence and issued a typewritten receipt dated December 9, 1979 to said Bienvenido Liwag x x x. Of the said amount, complainant has paid to the respondent two payments in the total amount of P4,743.65 x x x. With respect to the remaining balance, complainant alleges that he already paid the same to Bienvenido Liwag.

"Anent the account of Ester Guinto, respondent likewise alleges that the company's audit report shows that Ester Guinto disowned or denied having accepted the delivery of Pepsi-Cola products covered under Charge Invoice No. 15860 amounting to P36,476.70 dated July 28, 1979. According to the respondent, the complainant had even admitted having forged the signature of Ester Guinto, but said he committed it in order to prevent shortages.

"The Labor Arbiter, in deciding the case in favor of the complainant relied heavily on the claim of Alfredo Botulan that he was able to prove that he already paid the remaining balance of P17,000.00 to Bienvenido Liwag. It is, however, to be noted that the first two payments were made by the complainant to the respondent; P2,508.80 under TOR No. 22263 and P2,234 under TOR No. 19760. x x x"

"When the complainant paid the two installments in the total amount of P4,743.65, he impliedly admitted that he is under obligation to pay the respondent the sum of P20,842.50. Why then did he pay the balance to Bienvenido Liwag, and not to the herein respondent?

"Under the circumstances, we are inclined to agree with the claim of the respondent that the payment of P17,000.00 was mere scheme concocted by the complainant with the cooperation of Bienvenido Liwag. Moreover, the complainant had already in his possession the money, but he did not turn over the same to the respondent. For his failure to turn over the balance to the respondent, the latter has valid reason to lose its trust on the complainant as a salesman.

"As to the account of Ester Guinto, complainant was asked to get a confirmation of the delivery of P36,476.70 from the said dealer. This would not be hard to get from Ester Guinto if such delivery was really made. He failed to get such confirmation during the investigation conducted in the company. Moreover it is on record that complainant that he (sic) 'put his (my) own signature in the name of Ester Guinto.' Thus, it lends credence to respondent's theory that the delivery to Ester Guinto was a fictitious delivery." (pp. 43-46, Rollo)

Hence, this petition was filed by petitioner alleging the following:

1. The alleged receipt for P20,842.20 signed by the petitioner showing his receipt from Bienvenido Liwag of said amount has never been presented before the Labor Arbiter although the same was dated December 9, 1979, and the Labor Arbiter decided the case on August 4, 1983.
2. The finding of the Labor Arbiter that Ester Guinto actually received the products is supported by the evidence, namely the duplicate original invoice with reference to Voucher No. 15858 bearing the signature of Guinto, which fact was not rebutted by respondent Pepsi-Cola. In fact, Guinto was never called to testify on respondent's

allegation of non-delivery to Guinto.

The Solicitor General in his comment, agreed with the petitioner's contentions and recommended that the petition be granted by this Court. The Solicitor General also alleged that the findings of facts of the labor arbiter are supported by the evidence whereas the respondent Commission relied merely on the version presented by respondent company which was not satisfactorily proven.

We find the petition impressed with merit.

It is a basic principle in the dismissal of employees that the burden of proof rests upon the employer to show that the dismissal of the employee is for a just cause, and failure to do so would necessarily mean that the dismissal is not justified.

To prove the legality of the dismissal of petitioner, respondent Pepsi-Cola presented only one witness, namely, the Plant Safety and Security Officer of the company, who submitted and identified the respondent's documentary evidence, to wit, termination letter, the transcript of proceedings taken during the meeting between the union members and management, and the notice of the administrative investigation. From this evidence, respondent Commission upheld respondent Pepsi Cola's allegations that petitioner Botulan violated company rules and regulations in failing to submit and turn in to respondent Pepsi-Cola all payments collected by him as a result of the sale of Pepsi-Cola products received by Liwag who is a dealer of the respondent. The Commission also believed respondent's submission that petitioner made a fictitious delivery of products to another dealer Guinto on the ground that petitioner failed to get from Guinto a confirmation of the delivery during the administrative investigation.

In the absence of substantial evidence, the contentions of respondent Pepsi-Cola are merely self-serving and are not sufficient to show that the dismissal of petitioner was justified. Respondent Commission cannot rely merely on the weakness of the defense of petitioner or on the latter's failure to present evidence to disprove respondent's charge of dishonesty or violation of company rules.

To exonerate himself from the charge, petitioner presented adequate documentary proof that the accusation made by the company was false. As found by the labor arbiter and Solicitor General, the documentary exhibits submitted by petitioner consist of: 1) receipt signed by Liwag showing that Botulan paid him the remaining unpaid balance of P17,000.00, 2) receipt of Ester Guinto showing that Botulan made delivery to her, 3) receipt prepared by Botulan showing the erroneous computation he made of the delivery to Ester Guinto and, 4) receipt issued by Botulan with the corrected amount of delivery to Guinto.

Based on the above, the Labor Arbiter correctly concluded:

"Apparently, complainant was able to present evidence to prove that he has paid Mr. Liwag the amount of P17,000. The evidence on record shows that on December 2, 1980 Mr. Liwag issued a certification to the effect that he had received from the complainant the amount of P17,000.00 as full payment of the products sold by the complainant. x x x. This payment is in addition to the first two payments made by complainant to the respondent, to wit: P2,508.80 with TOR No. 22263 and P2,234.85 with TOR No. 19760 or a total amount of P4,743.65. So, actually complainant made an overpayment of P901.00.

"The contention of the respondent that complainant should pay directly to the respondent is rather untenable because the former has no transaction or dealing with the latter regarding the delivery of Pepsi-Cola products to Mr. Liwag. The evidence on record shows that invoice was issued in the name of Mr. Liwag and therefore the latter is liable to the respondent. If there is any agreement, it is between the complainant and Mr. Liwag.

"With regards (sic) to the case of Ester Guinto a dealer of the respondent, wherein complainant was also

charged for dishonesty, complainant was able to present evidence that said Ester Guinto actually received the Pepsi-Cola products in the amount of P36,476.70 as appearing in the ledger of the company. Hence, Ester Guinto and not the complainant who is liable to the respondent company," (pp. 19-20, Rollo).

In view of the foregoing, We find that no valid ground exists for the dismissal of petitioner Botulan. Petitioner cannot be said to have violated the company regulation which provides that all collections from route sales of company products or articles must be turned in and all sales whether in cash, credit or consignment must be accounted at the end of each routing day. It was Liwag as dealer and customer of respondent company who was directly liable to the latter for a certain sum of money when he received Pepsi-Cola products from the company. These products however were delivered by Liwag to petitioner who was able to sell the same. Although petitioner gave part of the proceeds of the sale to respondent company, he gave the rest of the money to Liwag who demanded payment from him. Clearly, petitioner Botulan has no obligation or duty in the first place to turn in to respondent company all the money he received from his sale of the products. The said amount was not obtained through the usual collections from route sales of the company products. When Liwag gave the products to petitioner Botulan for the latter to sell, the agreement was private between Liwag and petitioner and does not concern respondent Pepsi-Cola. As far as respondent Pepsi-Cola is concerned, it was Liwag who had the obligation to pay the purchases he made directly from respondent company. Moreover, it is shown that petitioner had no financial liability whatsoever to respondent company as a result of his actuations. The circumstance that petitioner was a salesman of respondent Pepsi-Cola cannot be used as a basis for the latter to lose its trust on petitioner as the transaction which the latter entered with Liwag did not affect or prejudice in any way the interests of respondent. With respect to the account of Guinto, there is evidence showing that petitioner Botulan actually delivered the products to the former and that she received them from petitioner. Besides, respondent Pepsi-Cola has no other proof aside from its self-serving allegation to support its claim that the delivery of the products to Guinto was fictitious.

ACCORDINGLY, the petition is GRANTED and the assailed decision of the respondent Commission dated June 29, 1984 is REVERSED and SET ASIDE. Respondent Pepsi-Cola is hereby ordered to reinstate petitioner Alfredo Botulan with payment of backwages corresponding to a period of three (3) years without qualification or deduction.

SO ORDERED.

Cruz, (Chairman), Grino-Aquino, and Bellosillo, JJ., concur.

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