

SAN MIGUEL CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND SERAFIN SAQUING, RESPONDENTS.

G.R. No. 70177. June 25, 1986

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Petition for certiorari to review the resolution of the National Labor Relations Commission which ordered the reinstatement of private respondent Serafin Saquing with backwages in petitioner's company.

Private respondent was employed by petitioner as one of its route salesmen to sell San Miguel beer products in the Cagayan Valley region. He was assisted by Alexander Suyo a route driver and by Salvador Bucaling, Jr., a route helper.

Sometime on August 6, 1981, private respondent went to Dodee's Store owned by one Dolores Santos to sell her San Miguel beer. He obtained an order for 20 cases of beer.

Private respondent and Salvador Bucaling, Jr., went inside the bodega of Dodee's store. Salvador Bucaling separated the empties and made three piles of ten cases high totalling thirty (30) cases. Private respondent thereafter called Mrs. Santos and showed her the empty bottles. Thereafter, private respondent called Alexander Suyo for him to get the empties with a pushcart. Suyo then placed the bottles at the door of the bodega. While removing the rest of the empties from the piles, the topmost empty slid, exposing the second layer of beer bottles with crowns. Private respondent replaced the top case back to its former position. Mrs. Santos who was standing nearby approached the piles and inserted her fingers inside the hole of the shells. She noticed that the cases below the top contained bottles with crowns. This infuriated her and she began shouting "may mga laman pala". It was discovered thereafter that there were six cases of filled bottles mixed with the twenty cases that were supposed to be empties.

On August 21, 1981, Mrs. Santos describing the incident, made the following sworn statement:

"That on or about the first week of August, 1981, an agent of the San Miguel Beer Corporation whom I know only by the name of SAQUING came to my storeroom as usual to see my beer stocks. After separating the empty bottles, said agent and his helper pointed to me the pile of empty bottles they placed outside of my storeroom, and we counted them as twenty boxes of empty bottles.

"But suspicion aroused in me, so that I felt with the top of my fingers the bottles on the pile, I found six (6) boxes with contents placed underneath, and these six boxes of bottles with contents were maliciously stock piled by the agent Saquing and his helper, so that those felled bottles could have been charged against my account if not discovered." (Rollo, pp. 78-79.).

After conducting an investigation, petitioner terminated the services of private respondent on the ground of loss of trust and confidence. Petitioner's letter of dismissal to private respondent reads:

"While you were assigned as Route Salesman of Solano Beer Sales Office, you were found to have committed

the following:

1) On August 6, 1981, you routed the area of Aritao and called on Dodee's Store, owned and operated by Mrs. Dolores Santos, you were caught in the very act of taking away surreptitiously six (6) cases of beer full goods by concealing these within the piles of empties being retrieved from the bodega of Mrs. Santos.

2) You were previously forcing your subordinates to pay for or find ways and means to cover up meal expenses in the route. This was inducement.

"Based on our records, you were involved in irregularities on the following instances:

a) You were demoted to Relief Salesman on February, 1980 for irregularity (over collection of Yamboa's Store in Diadi, Nueva Vizcaya).

b) You were suspended for thirty (30) days on September 1 to 30, 1980 for irregularity (consummated theft of four (4) cases at Ancheta's Store in Diffun, Quirino).

"In view of the foregoing, you are hereby SEPARATED from the service effective January 21, 1982 for breach of trust and confidence.

"Please acknowledge receipt of this letter." (Id., pp. 74-75.)

Private respondent subsequently filed a complaint against petitioner with the NLRC, Regional Arbitration Branch No. 9, in Tuguegarao, Cagayan, for illegal dismissal, illegal demotion and illegal suspension.

After hearing on September 16, 1983, the Labor Arbiter ordered the reinstatement of private respondent. The dispositive portion of the decision of the Labor Arbiter recites:

"WHEREFORE, IN VIEW OF ALL THE FOREGOING, a DECISION should be, as it is hereby entered, in the above-entitled case, DISMISSING the claim for illegal demotion and illegal suspension for lack of merit but ORDERING respondent SAN MIGUEL CORPORATION within ten (10) days from receipt hereof, to reinstate SERAFIN S. SAQUING to his former position as Salesman without loss of seniority rights and to pay him his full backwages in the amount of FIFTEEN THOUSAND PESOS (P15,000.00) from January 22, 1982 to September 21, 1983 or 20 months at P750.00 monthly basic salary plus 12% interest per annum from the date this decision becomes final and executory. In addition, respondent is also ordered to pay to Atty. Florentino Abadilla, ONE THOUSAND FIVE HUNDRED PESOS (P1, 500.00) as attorney's fee the sum being 10% of the award to his client." (Rollo, p. 26.)

On appeal, the public respondent NLRC issued a resolution dated December 28, 1984 affirming the above decision of the Labor Arbiter, hence this petition.

Petitioner alleges that "public respondent NLRC grossly misappreciated the facts and gravely abused its discretion when it affirmed the erroneous findings that petitioner was not able to present evidence sufficient enough to justify private respondent Saquing's dismissal." (Rollo, p. 6.)

On March 25, 1985 this Court issued a temporary restraining order enjoining the NLRC from enforcing its resolution. (Rollo, p. 34.)

The records reveal that the Labor Arbiter ordered the reinstatement of private respondent Saquing after finding that:

"x x x complainant did his best to substantiate his claim for illegal dismissal while respondent barely supported its position that it had justifiable grounds to terminate the services of complainant. Thus, because the evidence (sic) presented by the complainant as appearing on the record surpass the evidence (sic) presented by respondent, there is no reason why his claim for illegal dismissal should not be given due cause." (Rollo, p.

27.)

Public respondent NLRC in affirming the decision of the labor arbiter, gave credence to the second affidavit executed by the same Dolores Santos on August 28, 1981 who retracted her previous sworn statements stating that "Saquing came to her and explained that the six cases of beer with contents must have been included in the pile of twenty cases by mistake, because when they (Saquing and his helper) brought those 20 cases out of the storeroom, the cases were already piled up and they just scooped them out with their pushcart without verifying whether the pile included bottles with contents; that when she inquired from her saleslady, whom she designated to point to Saquing and his helper the cases with empty bottles to be taken out, she found that the saleslady was actually present at that time overseeing the bringing out of the empty cases and that the saleslady saw them first scoop out the cases believing that the bottles in the cases were all empty, as the saleslady did believe that they were also empty; and that, therefore, she realized that Saquing had no intention to get the six cases of beer bottles with contents but that the inclusion thereof among the empty cases was all by mistakes." (Rollo, p. 28.)

This petition is impressed with merit.

After evaluation of the pleadings, We are convinced that public respondent committed a grave abuse of discretion in sustaining the Labor Arbiter. Clear from the records is the malfeasance committed by private respondent, warranting his dismissal.

The corroborated testimony of his two assistants revealed the malicious intentions of private respondent. Route helper Salvador Bucaling, Jr., swore to the following:

"Q:

During the time that you were fixing the empties at 'Dodee's Store' where was your salesman?

A:

My salesman was with me in the bodega when I was fixing the empties. In the process of my fixing the empties I came to 2 piles of five cases high where the top most case was empty but the four at the bottom contained full goods. My salesman saw this and he instructed me to pull this pile but told him: 'Delicado boss, ta igga y macacua' meaning (it was delicate inasmuch as the owner was there). So what I did was to get the empties at the top of the two piles and the four full goods of the two pile was to mix it with the full goods stock of the store which all totaled to 18 cases. So the total empties of the store was 33 cases including one which was scattered on one side, plus the two which I removed from the two piles of five cases and the thirty wherein I brought down five cases each of three piles of ten cases high." (Rollo, p. 82.)

Driver/helper Alexander Suyo likewise made the following sworn statement:

"4.

Q:

As a Driver/Helper, what are your duties and responsibilities?

A:

As a Driver/Helper my duties and responsibilities are: to drive our route truck; deliver our beer products to our customers; maintain our unit; check our load and to assist my salesman in merchandising activities.

5.

Q:

Do you remember where were you last August 6, 1981 and do you remember anything unusual that happened on that day?

A:

As usual we went out to the route on August 6, 1981. Our itinerary was Malasin and Inaangan, Dupax del Norte. After serving our itine-rary, my salesman, Mr. Serafin Saquing, found out that our sales was very low and he ordered me and my Helper Salvador Bucaling that we will all proceed to Aritao, Nueva Vizcaya to look for more sales. We proceeded to Aritao and my salesman instructed me to park the unit infront of 'Erlinda's Store'. I did as I was instructed and when the unit was already parked, my salesman and helper went to 'Dodee's Store', which was opposite or across the road where our unit was parked. I was standing in front of our unit when I saw Bucaling fixing the empties at 'Dodee's Store' while my salesman was supervising him. I brought down my pushcard from our truck. When I was already on my way to 'Dodee's Store' I met Bucaling after segregating 30 cases empties on his way to 'Erlinda's Store'. When I entered the bodega of 'Dodee's Store' the owner as well as my salesman, Mr. Saquing, were in the bodega. As I was waiting for my salesman to order me how many case I will bring out, I overheard my salesman telling Ms. Dolores Santos, the owner of Dodee's Store that she will buy 30 cases, but the owner answered back that she will only buy 20 cases commenting: 'marami pa naman'. I started to shovel the empties by five and unloaded the same on the door of the bodega. When I finished unloading ten cases at the door and about to get another pile, my salesman made a sign to get the last 2 piles of five cases which was besides the first two piles. As I shoveled the 3rd pile, I felt that it was more heavy than the first 2 piles. I unloaded again the third pile besides the first two and went back of the last pile of five cases. Again when I shoveled the 4th pile, I felt again that this pile was heavier than the first two piles.

6.

Q:

Sensing that for feeling that the last two piles which you shovelled felt heavier than the first two piles, why didn't you check the pile if it contained full goods?

A:

I did not check the last two piles anymore because I know that it contained full goods because during our call at 'Dodee's Store' last August 4, 1981, my Salesman Serafin Saquing and Helper Salvador Bucaling called on this store. They both entered the bodega of 'Dodee's Store' and fixed empties. The store did not buy then. While we were inside the cab of our unit and about to leave Aritao on that day I heard my Helper Salvador Bucaling say to my salesman in Ibanag: 'igga kinalabbac ku nga annam nga full goods tu basyo' meaning ('I covered six cases full goods with empties') and my salesman Serafin Saquing also answered back in Ibanag saying: 'Maski naccan egga gapa kinallabbaccu nga walu' meaning ('even me, I also covered eight'). Considering that they were my companions I did not check anymore the last two piles.

7.

Q:

After feeling that the fourth pile was heavy what did you do?

A:

I shoveled the fourth pile and brought it besides the three piles, but as I was about to remove the pushcart from the load, the topmost empty slid from where it was locked when tilted the pushcart; the second layer exposed the content to have crowns. My salesman hurriedly slid back the top case to its former position. Ms. Dolores Santos who was standing nearby approached and started inserting her finger inside the hole of the shells and she felt that the cases below the top contained bottles with crowns. When Ms. Santos discovered that the supposed empties contained full goods, she started shouting, 'may mga laman pala'. I started to check the four piles of five cases each and sorted the empties from the full goods which came out that there were six cases full goods out of the twenty cases supposed to be empties. After that I left the place because I was ashamed be-cause the owner, Ms. Santos was shouting to everybody in front of the store to be witnesses to what had happened. I went to 'Erlinda's Store' where Helper Salvador Bucaling was and told him what happened and to call for him but he refused to go to 'Dodee's Store' because of shame because there were many people already attracted by the shouting of Ms. Santos." (Rollo, pp. 84-87.)

We have reservations on the second affidavit executed by Mrs. Dolores Santos. Firstly, the explanation of private respondent to Mrs. Santos that the twenty supposed cases with empty beer bottles were already piled up and that private respondent's assistant merely scooped them out with his pushcart without verifying whether the pile includes cases with contents runs contrary to the statements of Salvador Bucaling and Alexander Suyo. In his sworn testimony, Bucaling stated that they (private respondent and himself) arranged the empties inside the bodega of Dodee's store and made three piles of empties of ten cases high totaling thirty cases. Alexander Suyo likewise stated that he felt the empties weighed heavier when he carted the empties, impliedly admitting that he knew that some cases contained full goods and not empties. Secondly, for the first time, Mrs. Santos spoke about her saleslady who oversaw the loading of the empties from the bodega. It seems strange why this saleslady was not mentioned in the statements of Salvador Bucaling and Alexander Suyo nor in the first affidavit of Mrs. Dolores Santos. To Us, this late introduction of the saleslady into the scene is more of an after-thought and intended merely as a cover-up story.

Aside from the incident that occurred on August 6, 1981, petitioner has other reasons to lose its trust and confidence with private respondent. In September, 1980, private respondent was suspended for 30 days for having stolen four (4) cases of beer from Ancheta's store in Diffun, Quirino, (p. 233, Vol. I, Records). In February 1980, private respondent was demoted to relief salesman for overcharging a customer. (Comment of the Solicitor-General, pp. 58-87.) Private respondent has not denied these imputations.

Private respondent represents petitioner in his dealings with the public. When charges of theft of customer's properties and misconduct on the job are imputed on the sales agent, and these charges are supported with evidence, they constitute sufficient reasons for termination of employment. Well established in our jurisprudence is the right of an employer to dismiss an employee whose continuance in the service is inimical to the employer's interest. (Manila Trading and Supply Co., vs. Philippine Labor Union, 71 Phil. 124; Engineering Equipment, Inc., vs. NLRC, 133 SCRA 752.)

WHEREFORE, the petition is granted and the temporary restraining order is hereby made permanent. The

resolution of public respondent National Labor Relations Commission dated December 28, 1984 and the Decision of the Labor Arbiter dated September 16, 1983 are reversed and set aside. No special pronouncement as to costs.

SO ORDERED.

Yap, Narvasa, Melencio-Herrera, and Cruz, JJ., concur.

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