

PORFIRIO AUXILIO, JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, BAGUIO COUNTRY CLUB CORPORATION AND LOLITA GENOVE, RESPONDENTS.

G.R. No. 82189, August 02, 1990

Ponente: PARAS, J.

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PARAS, J.:

In the herein petition for certiorari, petitioner seeks the review of the decision of public respondent National Labor Relations Commission (NLRC) dated February 12, 1988, which reversed the decision of the Labor Arbiter in NLRC Case No. RAB--1-0048-82, finding as legal and valid the employer's act of terminating the services of petitioner and dismissing the latter's complaint for illegal dismissal.

The facts of the case are undisputed:

Petitioner Porfirio Auxilio, Jr. was first employed by private respondent Baguio Country Club Corporation as a houseman in 1977. He became a regular employee in 1978 and in 1981 was assigned as a front desk clerk with a basic pay of P524.00 per month. He was in charge of hotel rooms, received guests' registration and acted as switchboard operator.

On January 17, 1982, the amount of Fifteen Thousand Pesos (P15,000.00), which had been placed in the cashier's office of the Baguio Country Club, was found to be missing. The loss was brought to the attention of the management on January 18, 1982. Upon receipt of the report, the Baguio City Police Department (INP) forthwith conducted a spot investigation. Police investigation ruled out signs of forcible entry or robbery, and concluded that it was an "inside job". Accordingly, all employees of the Country Club who had access to the cashier's office, including the petitioner, were invited for questioning. All of them denied having stolen the money. They were then subjected to a Polygraph examination conducted by the NBI.

Meanwhile, on January 20, 1982, petitioner was placed under preventive suspension for the usual 30-day period due to his possible involvement in the theft, pending final result of the investigation.

The results of the Polygraph Examination revealed that petitioner could not fully explain his answers to vital questions relative to the missing money. He was again invited to the Police Headquarters for further investigation but he refused to attend and said that he was not feeling well when he was under the polygraph examination (Comment of Solicitor General, p. 3). In the polygraph report on the petitioner dated February 16, 1982, it was declared that petitioner offered no satisfactory explanation for the adverse result of the polygraph test conducted on him. All the other employees subjected to the same examination showed no indications of deception as they explained their side satisfactorily that they did not steal the money.

Petitioner was asked to appear for investigation by the management. However, no further examination was conducted by the police or the employer because petitioner could not be found in his residence and the notices sent to him were rejected by his wife.

Thus, in a Memorandum dated February 20, 1982 issued by the Baguio Country Club Corporation, Porfirio Auxilio, Jr. was terminated for "loss of trust and confidence" and for "giving false statement during official investigation."

Aggrieved, petitioner filed a complaint for illegal dismissal with the Labor Arbiter alleging that he was dismissed on mere suspicion that he stole the money and that he was denied an opportunity to defend himself pursuant to the provision of the Collective Bargaining Agreement between private respondent and the union of which petitioner was a member.

In a decision dated October 26, 1984, Labor Arbiter Saturnino P. Orate ordered the reinstatement of petitioner, finding that there was no reasonable ground in dismissing the latter because private respondent failed to establish by preponderance of evidence the legality of the dismissal.

On appeal, the NLRC, on February 12, 1988, set aside the Labor Arbiter's decision and entered another dismissing petitioner's complaint for illegal dismissal for lack of merit.

Hence, this petition.

Petitioner Porfirio Auxilio, Jr. claims that he was denied due process of law because the grievance procedure provided in the Collective Bargaining Agreement (CBA) was not strictly observed. He likewise maintains that with the rejection by the Labor Arbiter of the probative value of his flight, the Special Investigation Report and Polygraph Report, his dismissal from employment is not legal.

A review of the records of this case shows that public respondent did not commit any grave abuse of discretion in reversing the Labor Arbiter's decision.

The Grievance Machinery in the CBA states:

"xxx Sec. 2. A GRIEVANCE is any controversy by the Union or an employee against the CLUB or any controversy by the CLUB against the UNION or an employee concerning any ruling practice or working condition in the CLUB, or any dispute as to the interpretation of any provisions of this Agreement." (p. 38, Rollo)

As correctly pointed out by the Solicitor General in his Comment, the instances enumerated where the grievance machinery may be availed of are not present in this case and that there was no overt act on the part of petitioner to bring any cause for complaint to the attention of the Immediate supervisor concerned as prescribed in Step 1 on the Supervisory level. What is truly involved in the case at hand is the last action pursued by private respondent in the face of overwhelming evidence found by the police investigators on the theft of its P15,000.00 on January 17, 1982. The invocation of the grievance machinery provisions of the CBA is not in place. (Comment, p. 8).

No doubt petitioner was afforded due process of law. There is convincing and sufficient evidence on record to show that private respondent corporation fully complied with the notice and hearing requirements of due process. Petitioner was notified and repeatedly invited for further investigation but he "chose to ignore" the said notices by his "convenient absence" from his residence and the continued refusal by his wife to receive the notices (Memorandum of public respondent, p. 5). Private respondent cannot be faulted as petitioner had ample opportunity to be heard. Since he unjustifiably rejected the opportunity, petitioner cannot now complain that he was denied due process of law.

Petitioner also maintains that his dismissal was without basis as his complicity in the theft of the P15,000.00 was solely based on suspicions and on the polygraph test conducted on his person.

"Loss of confidence is a valid ground for dismissing an employee. Proof beyond reasonable doubt of the

employer's misconduct is not required, it being sufficient that there is some basis for the same or that the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein rendered him unworthy of the trust and confidence demanded of his position. (Nat'l Org. of Laborers and Employers vs. MRR, 21 SCRA 191; Nevans v. Court of Industrial Relations, 23 SCRA 1321; Galsim v. PNB, 29 SCRA 293; Reyes v. Zamora, 90 SCRA 92; Villadolid v. Inciong, 121 SCRA 205; San Miguel Corp. v. Deputy Minister of Labor and Employment, G.R. Nos. 61232-33, Dec. 29, 1983)

The job of petitioner is of such nature as to require a substantial amount of trust and confidence on the part of the employer. He may thus be dismissed on the ground of loss of trust and confidence. It was established that petitioner had ready access to the cashier's office. He admitted having borrowed the nail cutter of the cashier included among the bunch of keys to the latter's drawer. The investigations and inquiries conducted were made on all the employees who had access to the cashier's drawer and not on the petitioner alone. However, his erratic reaction to the investigator's questioning narrowed down the list of suspects to him alone. We agree with the public respondent that petitioner's continued absence from his residence and unexplained disappearance despite several notices for further police investigation implied flight associated with guilt. The requirement that there be some basis or reasonable ground to believe that the employee is responsible for the misconduct is sufficiently met in the case at bar.

Petitioner's behavior rendered him unworthy of the trust and confidence demanded by his position. Considering that an employer is entitled to terminate the services of employees for just cause and that stealing and other forms of dishonesty have been held to be sufficient grounds for dismissal, as a measure of self-protection, private respondent was justified in dismissing petitioner. Although petitioner's guilt was not proved beyond reasonable doubt, the totality of the evidence presented is sufficient to warrant the dismissal of petitioner Porfirio Auxilio, Jr. As held in the case of *Filipro, Inc. vs. NLRC*, 145 SCRA 123:

The law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer."

WHEREFORE, the decision of the National Labor Relations Commission (NLRC) is AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.
Sarmiento, J., on leave.

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