

SPECIAL TWENTY-THIRD DIVISION

[CA-G.R. SP NO. 05380-MIN, February 06, 2015]

**DEL MONTE FRESH PRODUCE (PHILIPPINES), INC., PETITIONER,
VS. NATIONAL LABOR RELATIONS COMMISSION AND JERSON R.
VISTAL, RESPONDENTS.**

DECISION

SANTOS, J.:^[1]

This is a Petition for Certiorari^[2] assailing the Decision^[3] dated 29 June 2012 and the Resolution^[4] dated 29 November 2012 issued by the public respondent, National Labor Relations Commission, Eighth Division, Cagayan de Oro City (NLRC) in a case docketed as NLRC No. MAC-12-012351-2011 for illegal dismissal. In the assailed Decision, the NLRC reversed and set aside the Decision^[5] dated 27 October 2011 rendered by the Regional Arbitration Branch No. XI, Davao City finding that private respondent Jerson R. Vistal was validly dismissed by petitioner Del Monte Fresh Produce (Philippines), Inc. (Del Monte). The dispositive portion of the assailed NLRC Decision reads:

WHEREFORE, foregoing premises considered, the appeal is GRANTED and the appealed decision is REVERSED and SET ASIDE. In lieu thereof, a new judgment is rendered declaring the dismissal from employment of complainant Jerson R. Vistal illegal and thus ordering respondent Del Monte Fresh Produce (Phil.), Inc. to immediately reinstate complainant Vistal to his former position without loss of seniority rights and other privileges and to pay him backwages from the date he was dismissed on April 1, 2011 until his actual reinstatement plus ten percent (10%) of the amount thereof as attorney's fees, subject to computation by the Regional Arbitration Branch of origin during the execution proceedings.

SO ORDERED.^[6]

A subsequent Motion for Reconsideration filed by petitioner was denied by the NLRC in the assailed Resolution.

The Antecedents

Petitioner is a corporation duly organized and existing under the laws of the Philippines and an affiliate of Del Monte International GmbH (DMI GmbH). Petitioner is engaged in the business of providing coordination services for DMI GmbH and technical assistance and inspection services to the latter's exclusive fruit growers. Specifically, petitioner administers the supply of packaging materials, including IFCO crates, pursuant to the exclusive production agreements between DMI GmbH and its growers.

Private respondent Jerson R. Vistal worked for petitioner as Logistics Assistant from

13 April 2009 until he was dismissed on 1 April 2011.

As Logistics Assistant, private respondent was tasked to perform the following functions as outlined in his job description:

1. Receives and reviews Packaging Materials delivery requests of growers;
2. Prepares Loading Guides as basis for the Forklift Operator in loading Packaging Materials for issuance to the farms;
3. Coordinates and Monitors the delivery of KDs and OPMs to the different farms and prepares Confirmation Reports upon receipt;
4. Prepares Monthly Summary of PMIS, Plastic Crates Monitoring, and the QMS reports on the timeliness and accuracy of Delivery of PMs;
5. Gathers the balances per farm for the weekly balance report;
6. Implements related operational control procedures as defined in the QMS Documentation.^[7]

On 22 February 2011, petitioner issued a Notice to Explain with Notice of Preventive Suspension⁸ directing private respondent to submit his written explanation regarding the alleged loss of IFCO crates withdrawn from San Vicente Terminal and Brokerage Services, Inc. (SVT) located at Panabo Wharf. In response to the 22 February 2011 Notice, private respondent submitted his written explanation⁹ on 28 February 2011.

On 21 March 2011, an administrative hearing was conducted whereby private respondent was given the opportunity to further explain his side.^[10]

Then, on 24 March 2011, petitioner placed private respondent on payroll reinstatement pending the resolution of the administrative investigation.^[11]

On 29 March 2011, petitioner issued another Notice to Explain in Writing^[12] directing private respondent to submit an explanation regarding the following acts allegedly committed by the latter:

1. Removal and destruction of SVT D.R. Nos. 36118 and 36124 from the October 2010 SVT D.R booklet on November 2, 2010;
2. Giving false information on the nature of purchase of [respondent's] Motorcycle – Suzuki Raider 150 R acquired last October 11, 2010 and which [respondent] allegedly bought via installment plan.
3. Releasing a loading guide to Ranny Ando and his helper in the evening of October 1, 2010 without corresponding PMIS for said withdrawal.^[13]

On 31 March 2011, private respondent submitted his written explanation^[14] in response to the 29 March 2011 Notice.

Subsequently, on 1 April 2011, petitioner issued a Notice of Disciplinary Action^[15] dismissing private respondent from his employment on the ground of serious misconduct.

Thus, on 10 May 2011, private respondent filed a Complaint^[16] for illegal dismissal, money claims for unpaid wages during reinstatement period, damages, and attorney's fees against petitioner Del Monte and/or its General Manager, Guido Bellavita, before the Regional Arbitration Branch No. XI, Davao City.

After the parties submitted their respective position papers and documentary evidence, the case was submitted for decision by the Labor Arbiter.

Thereafter, on 27 October 2011, the Labor Arbiter rendered a Decision dismissing private respondent's Complaint for illegal dismissal. The Labor Arbiter ruled that private respondent was accorded ample opportunity to defend himself against the charges against him.^[17] The Labor Arbiter then ruled that private respondent was legally dismissed by petitioner, *to wit*:

In the case at bar, complainant was not able to convincingly explain the loss of at least 13,000 IFCO crates and the removal of delivery receipts resulting in the falsification of his reports. As Logistic[s] Assistant, his position is imbued with trust and confidence as he is entrusted with the custody of packaging materials used in the transport of bananas. It should be noted that complainant's main task is to issue loading guides which are necessary for the release of such crates. The investigation conducted ultimately resulted to the findings that complainant was involved in the pilferage of 4,500 crates withdrawn on October 1, 2010 which loading guide was issued to Ranny Ando, duly entered in the security logbook but not received by any personnel in the Del Monte warehouse. Likewise, records show that he deliberately removed from the booklet of SVT Delivery Receipt No. 36118 and 36124 which involved withdrawal of 4,500 and 4,000 IFCO crates which resulted to a cover-up in his reports x x x. Hence there was sufficient basis or substantial evidence for respondent to dismiss complainant from service due to serious misconduct.^[18]

Aggrieved with the ruling of the Labor Arbiter, petitioner filed an appeal before the NLRC.

After due proceedings, the NLRC rendered the assailed Decision dated 29 June 2012 setting aside the ruling of the Labor Arbiter and finding private respondent to have been illegally dismissed by petitioner. The NLRC ratiocinated as follows:

From the preceding discussion, the dearth of convincing evidence on record constitutes serious doubt as to the factual basis of the charge that complainant committed serious misconduct through stealing of the IFCO crates. This doubt is resolved in favor of complainant in line with the policy under the labor (sic) and construe doubts in favor of labor. The consistent rule is that if doubts exist between the evidence presented by the [employer] and the employee, the scales of justice must be tilted in favor of the latter. For having failed to prove by clear and convincing evidence that complainant committed the offense constitutive of serious

misconduct, we find that respondent company dismissed complainant without just cause. Consequently, the termination of his employment was illegal.^[19]

Petitioner now comes before this Court in this petition for *certiorari*.

Issues

Petitioner submits the following issues in this petition:

I.

Whether or not public respondent gravely abused its discretion amounting to lack or excess of jurisdiction when it reversed the Labor Arbiter's decision by disregarding crucial evidence presented by Del Monte to support Vistal's dismissal and by seeing more to the evidence presented by Vistal.

II.

Whether or not public respondent committed grave abuse of discretion in reversing the Decision of the Labor Arbiter by requiring "clear and convincing evidence" to justify the dismissal of Vistal.

III.

Whether or not public respondent committed grave abuse of discretion in denying Del Monte's Motion for Reconsideration without touching upon the grounds raised therein.^[20]

This Court's Ruling

This Court shall first deal with the procedural issue raised by private respondent in his Comment.^[21] Private respondent argues that the instant Petition for *certiorari* is unauthorized for lack of a board resolution authorizing Rossana C. Calingin, the Senior Manager for Human Resources of petitioner, to sign the Verification and Certification Against Forum Shopping attached in the petition.^[22]

There is no question that where the petitioner is a corporation, the certification against forum shopping should be signed by its duly authorized director or representative.^[23]

In this case, attached in the petition is the Secretary's Certificate^[24] showing that Rossana C. Calingin has been appointed as the duly authorized representative of petitioner.

Contrary to the unfounded assertion of private respondent, the Secretary's Certificate constitutes sufficient proof that Rossana C. Calingin was duly authorized to represent petitioner and to sign the verification and certification in its behalf.

Nonetheless, the Supreme Court has recognized that certain officials or employees

of a corporation can sign the verification and certification without need of a board resolution, such as: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.^[25]

This Court finds that Rossana C. Calingin, in her capacity as the Senior Manager for Human Resources of petitioner, clearly falls under the above class of officers and, as such, is deemed to be in a position to verify the truthfulness and correctness of the allegations in the petition. Thus, the submission of a Board Resolution authorizing Ms. Calingin to sign the verification and certification is no longer necessary in this case.

That issue having been settled, this Court shall now proceed with the merits of the petition.

In illegal dismissal cases, the fundamental rule is that the employer must comply with both substantive and procedural due process.^[26]

Procedural due process means that the employer must observe the twin requirements of notice and hearing before a dismissal can be effected.^[27] The Supreme Court has ruled:

Procedural due process in dismissal cases consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first notice apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second notice informs the employee of the employer's decision to dismiss him. Before the issuance of the second notice, the requirement of a hearing must be complied with by giving the worker an opportunity to be heard. It is not necessary that an actual hearing be conducted.^[28]

In this case, petitioner issued a Notice to Explain with Notice of Preventive Suspension^[29] dated 22 February 2011, informing the private respondent of the charges against him and directing him to submit his written explanation regarding the said charges. Thereafter, an administrative hearing was conducted on 21 March 2011 where private respondent was able to present his defense.^[30] On 29 March 2011, petitioner issued another Notice to Explain in Writing^[31] which informed private respondent of the additional charges against him and again directing private respondent to submit his written explanation thereto. After the investigation, petitioner issued a Notice of Disciplinary Action^[32] dated 1 April 2011 dismissing private respondent from his employment on the ground of serious misconduct.

As regards private respondents claim that petitioner refused to reveal the identity of its witness, this Court finds nothing in the records to show that private respondent demanded the same from petitioner.

Based on the foregoing, there can be no doubt that private respondent was given ample opportunity to defend himself. It is clear, therefore, that petitioner sufficiently complied with the requirements of procedural due process in the case at bar.