

SPECIAL SIXTEENTH DIVISION

[CA-G.R. SP No. 130097, May 08, 2014]

[*]TVS MOTOR PHILIPPINES CORPORATION AND GRANSTAR MOTORS & INDUSTRIAL CORPORATION, DULY REPRESENTED BY RINO GELENA, PETITIONER, VS. THE SIXTH DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION AND RONALDO A. ENCINAS, RESPONDENTS.

D E C I S I O N

MACALINO, J:

The Case

This is a Petition for Certiorari^[1] under Rule 65 of the Rules of Court seeking the nullification of the January 22, 2013 Decision^[2] ("Assailed Decision") and the March 14, 2013 Resolution^[3] of the National Labor Relations Commission ("NLRC") Sixth (6th) Division in NLRC LAC Case No. 03-000874-12, which affirmed the December 16, 2011 Decision^[4] of the Labor Arbiter in NLRC RAB V Case No. 07-00163-11 finding that Private Respondent Ronaldo A. Encinas ("Private Respondent") was illegally dismissed by Petitioner Granstar Motors and Industrial Corporation, formerly TVS Motors Philippines^[5] ("Petitioner"), and ordering the latter to pay Private Respondent full backwages and separation pay in lieu of reinstatement totaling PhP170,726.67 and moral and exemplary damages in the amount of PhP50,000.00.

The Facts

Petitioner is a domestic corporation engaged in the selling of motorcycles. On October 4, 2007, Petitioner hired Private Respondent as its Naga City Branch Manager for a monthly salary of PhP10,400.00.^[6]

In a memo^[7] dated May 13, 2011 and signed by Human Resources Manager Jinky L. Lacsa ("Lacsa"), Petitioner charged Private Respondent with violating its policy when he made the following transactions:

1. On April 27, 2011, Private Respondent sold to Melchor Manalo ("Manalo") a Cruiser 150 unit for PhP15,000.00 instead of PhP16,500.00 as stated in Petitioner's memo dated April 15, 2011;
2. On the same date, Private Respondent sold to Alvin Evangelista ("Evangelista") an FX 125 unit at the price of PhP10,000.00 instead of PhP11,500.00 as prescribed in Petitioner's Memo dated April 15, 2011;
3. Subsequently, Private Respondent sold to Donald Mora ("Mora") an XTREME 125 unit, which was repossessed by Petitioner on April 28, 2011, for PhP11,500.00 in contravention with Petitioner's memo dated April 20, 2011

mandating that only existing inventory as of April 15, 2011 are allowed to be sold at the said price.

In the same memo, Petitioner directed Private Respondent to submit a written explanation why he should not be terminated for serious misconduct and loss of trust and confidence at an investigation to be conducted on May 17, 2011. At the same time, Petitioner placed Private Respondent under a thirty-day preventive suspension without pay.

Thereafter, Private Respondent served his thirty-day suspension but failed to attend the May 17, 2011 investigation.^[8]

On June 9, 2011^[9], Private Respondent submitted his reply^[10] to the charges leveled against him and explained that Petitioner gave him the power to make decisions in good faith. According to him, Manalo and Evangelista asked for a discount because the units sold to them were damaged, such that they would have to shoulder mechanic labor and tipster fees. As regards the unit sold to Mora, Private Respondent pointed out that it was already scheduled for hauling on April 4, 2011 and thus, he did not violate Petitioner's memo stating that only existing inventory as of April 15, 2011 are allowed to be sold at PhP11,500.00. Private Respondent expressed the view that he did not commit any fraudulent act since the amounts stated in the official receipts are the same as those in the triplicate copies. At any rate, he postulated that Petitioner may deduct the balance from his operational refund if it deems his explanation unacceptable.

On June 13, 2011, Private Respondent received a letter^[11] from Petitioner signed by Lacsa, apprising him of his termination from service due to his commission of acts of dishonesty, serious misconduct and loss of trust and confidence by not remitting payments amounting to PhP25,500.00 from Petitioner's customers, to wit: Perry Tormes, Sherly Samarita, Ryan Arena Quiniano and Ricardo Nantes. In the same letter, Petitioner informed Private Respondent that it was not satisfied with his belated explanation on the underpricing of the three (3) motorcycles.

Thus, on July 11, 2011, Private Respondent filed before the Regional Arbitration Branch No. 5 in Legaspi City a verified complaint^[12] for illegal dismissal with claims for holiday pay, holiday and rest day premium pay, service incentive leave pay, 13th month pay, separation pay and moral and exemplary damages. The complaint, docketed as NLRC RAB V Case No. 07-00163-11, impleaded Lacsa, Petitioner and its auditor, Joseph Dela Cuesta ("Dela Cuesta").

In his Position Paper^[13], Private Respondent maintained that he was justified in selling the three (3) motorcycle units at a lower price. Allegedly, he received the memo dated May 13, 2011 only on May 25, 2011 or eight (8) days after the scheduled administrative investigation.^[14] Private Respondent posited that since he was not afforded due process and was dismissed for reasons other than those stated in the memo dated May 13, 2011, Petitioner should be held liable for illegal dismissal. Private Respondent also averred that other than his monthly salary, he received no benefits from Petitioner.

As Petitioner, Lacsa and Dela Cuesta submitted no position paper despite an order requiring them to do so^[15], the Labor Arbiter favored Private Respondent in a Decision dated December 16, 2011, decreeing as follows:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of complainant RONALDO A. ENCINAS and against respondent TVS MOTORS PHILS. CORP. AND GRAINSTAR (sic) (MOTORS) & INDUSTRIAL CORP., ordering the latter to pay the former full backwages and separation pay in lieu of reinstatement, for the total amount of **Php170,726.67.**

Moreover, respondent is held liable for moral and exemplary damages for **Php50,000.00.**

(computation of complainant's monetary award is hereto attached as integral part of this decision)

SO ORDERED."^[16]

Since Private Respondent's accusation of illegal dismissal was not controverted, the Labor Arbiter awarded backwages and separation pay in his favor, in view of the strained relationship between him and Petitioner. The Labor Arbiter, however, disallowed Private Respondent's claims for holiday pay, holiday and rest day premium pay, service incentive leave pay and 13th month pay because Private Respondent is a managerial employee who is not entitled to such benefits under Article 82 of the Labor Code. The Labor Arbiter also deemed proper the award of moral and exemplary damages against Petitioner since it effected Private Respondent's dismissal in bad faith.

Petitioner then appealed^[17] to the NLRC and for the first time presented its case. The appeal, docketed as NLRC LAC Case No. 03-000874-12, was assigned to the Sixth (6th) Division of the NLRC.

Before the NLRC, Petitioner stressed that Private Respondent admitted that he sold the three (3) motorcycle units at a lower price, and in the first paragraph of his reply, he likewise acknowledged receipt of the memo dated May 13, 2011 on the same day.^[18] Petitioner alleged that prior to May 13, 2011, Private Respondent had committed several other violations.^[19] Petitioner also emphasized that Private Respondent did not submit his written explanation nor attended the scheduled administrative investigation on May 17, 2011, and asserted that he was dismissed for the same causes stated in the memo dated May 13, 2011, i.e., serious misconduct and loss of trust and confidence. As it was justified in dismissing Private Respondent and complied with the two-notice rule, Petitioner contended that it cannot be adjudged liable for illegal dismissal.

Initially, the appeal was dismissed due to Petitioner's defective surety bond^[20], but was reinstated in view of Petitioner's rectification of the said defect.^[21]

Disposing of the case on the merits, the NLRC affirmed the Labor Arbiter's Decision in the Assailed Decision dated January 22, 2013, the *fallo* of which reads:

"WHEREFORE, premises considered, the Decision dated December 16, 2011 is **AFFIRMED.**

SO ORDERED."^[22]

The conclusion of the NLRC was founded on lack of just cause and procedural due process. The NLRC found sufficient Private Respondent's justification in selling the three (3) motorcycle units at a lower price. It further explained that the acts of dishonesty allegedly committed by Private Respondent and cited by Petitioner as one of the grounds for his dismissal were never mentioned in the memo dated May 13, 2011, thus affording Private Respondent no opportunity to explain his side.

Upon the denial of Petitioner's Motion for Reconsideration^[23] in the Assailed Resolution dated March 14, 2013, Petitioner lodged the instant Petition before this Court.

The Issues

Petitioner submits that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it:

"I

RELIED ON THE FINDINGS OF THE LABOR ARBITER WHO MERELY RELIED ON THE PRIVATE RESPONDENT'S BARE ALLEGATION THAT THE DISMISSAL WAS FOR GROUNDS NOT EARLIER CHARGED IN THE SHOW-CAUSE LETTER

II

IGNORED AND MISAPPRECIATED CERTAIN FACTS AND/OR DID NOT CONSIDER THE FACTS ALLEGED IN PETITIONER'S MEMORANDUM OF APPEAL"^[24]

Whereas, Private Respondent takes a firm stand that the NLRC committed no such grave abuse of discretion.^[25]

This Court's Ruling

The Petition lacks merit.

There was no just cause for Private Respondent's dismissal from service

The burden of proving that the termination of an employee was for a just or authorized cause lies with the employer. If the employer fails to meet this burden, the conclusion would be that the dismissal was unjustified and, therefore, illegal.^[26]

Since Petitioner maintains that Private Respondent committed serious misconduct and loss of trust and confidence when he sold the three (3) motorcycle units less than the mandated selling price, it bears the burden of proving that Private Respondent was validly dismissed.

Misconduct has been defined as improper or wrong conduct; the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful in character *implying wrongful intent and not mere error of judgment*. To be a just cause for dismissal, such misconduct (a) must be serious; (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer.^[27]