

# FIRST DIVISION

[ G.R. No. 226089, March 04, 2020 ]

**COCA-COLA FEMSA PHILIPPINES, INC., (FORMERLY KNOWN AS COCA-COLA BOTTLERS PHILS., INC.), PETITIONER, VS. JESSE L. ALPUERTO, RESPONDENT.**

## DECISION

**REYES, J. JR., J.:**

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision<sup>[1]</sup> dated March 14, 2016 and the Resolution<sup>[2]</sup> dated July 19, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 139155.

### Factual Antecedents

Jesse L. Alpuerto (respondent) worked for Coca-Cola Bottlers Phils., Inc. (petitioner) as a Finance Clerk, and was assigned at petitioner's warehouse and sales office in San Fernando, Pampanga. He was positioned at the gates of the warehouse and his duties, among others, involved goods receipt inventory, full goods verification at the office's gate, encoding and recording duties of assets that get in and out of said warehouse.<sup>[3]</sup> He oversaw that all levels of control and procedures were in order to ensure accuracy and timely input of data that tracks the location, quantity, condition, maintenance status of all managed assets.<sup>[4]</sup> Petitioner also averred that respondent was specifically tasked, among others, to do the following:

- Performs physical checking of goods and all items/objects for accuracy of cost, sales and volume records at assigned location ensuring that it is in accordance with the proper processes and procedures;
- Performs real-time encoding of all assets moving in and out of the gates, and ensures the recording and reporting of all non-trade assets received and transferred out of the designated gate;
- Issues and processes claim memo of all Driver's shortages that make-up for lost or damaged inventory;
- Provides the raw inputs of financial data and information in each location for roll-up to plant and company financials;
- Ensures that all goods, supplies and materials received and dispatched are in order and complete according to manifests and delivery receipts;

- Responsible for proper physical checking and recording of input or data/information per Company procedures during specific assigned locations and times;
- Also handles the monitoring and directing of internal and external deliveries and movement of assets to various parts of the grounds or buildings;
- Prevents unauthorized removal of company property or products and ensures the complete system input of all assets entering and leaving; and
- Counts truck inventory and keeps accurate records of finished goods transported out of the facility for sales delivery or distribution to another warehouse. Receives finished goods into inventory and maintains appropriate records.<sup>[5]</sup>

Respondent had been petitioner's employee for 11 years.

On March 12, 2012 at 6:20 p.m., respondent, who was then on leave, arrived at petitioner's warehouse together with his family to pick up nine cases of 237 ml. Coke Zero products that were allegedly classified as bad orders (BOs) which they intend to take to their trip to Batangas. He took out the nine cases of soft drink and replaced them with empty bottles.<sup>[6]</sup> Respondent alleged that Rodel Padua (Padua), the site Operations Manager of The Redsystems Company, Inc. (TRCI), told him that it was alright to drink the said soft drinks. TRCI is petitioner's independent contractor for logistics and warehousing. The event that transpired above was noted in the guard's logbook.

Later, petitioner issued a Notice to Explain<sup>[7]</sup> dated August 15, 2012 requiring respondent to explain why he should not be subjected to disciplinary action or dismissed for violation of petitioner's 2010 Employee's Code of Disciplinary Rules and Regulations (Red Book)<sup>[8]</sup> and the Code of Business Conduct (COBC),<sup>[9]</sup> particularly theft or unauthorized taking of funds or property which may carry the penalty of discharge and criminal prosecution.<sup>[10]</sup> The charge was based on the record of the security guard stationed at the warehouse.

On August 22, 2012, respondent gave an explanation<sup>[11]</sup> where he admitted that he took the Coke Zero products and explained that they were already classified as BOs subject to condemnation since their expiry dates were either December 23, 2011 or February 22, 2012. He also claimed that he was the only one being charged with theft when everyone was benefiting from the BOs, and he believed that it was alright to take them since everyone was allowed to consume them.

A hearing<sup>[12]</sup> was held on December 4, 2012, where respondent elaborated that before the incident, he already solicited for BOs and such was granted by the checker. Respondent claimed that Richard Guamos (Guamos), an inventory analyst of TRCI, also allegedly told him and other employees that such bad orders were considered as empties. Respondent elaborated that he had to bring bottles because the checker said that he should bring replacements before he can get the BOs since the bottles still have peso value. Respondent said that since it was alright with the

"big bosses," he believed that he did not need to get approval from his superiors.

In an Inter-Office Memorandum<sup>[13]</sup> dated January 8, 2013, petitioner dismissed respondent for theft of company products, serious misconduct and loss of trust and confidence. Petitioner explained that the respondent's taking of the Coke Zero products and appropriating them for his personal use deprived them of the opportunity to write them off as tax deductions for expenses. Respondent's 11 years of service was taken as an aggravating circumstance since his long stay in the position should be taken against him since he knows very well that every movement should be followed by documentation and that he failed to ask permission from his superiors.

On January 21, 2013, respondent filed for illegal dismissal and unfair labor practices (ULP) against petitioner and its former finance manager, Roberto Luistro (Luistro) and the plant's asset and inventory manager, Jovita Carbelledo (Carbelledo). Respondent prayed for payment of back wages, reinstatement, benefits and other damages. Respondent presented the testimonies of seven employees including a security guard (Alvin G. Cabrera) who claimed to have heard Padua saying that it was alright to consume the subject soft drinks.

### **Ruling of the Labor Arbiter**

The Labor Arbiter<sup>[14]</sup> (LA) dismissed the complaint and upheld the legality of respondent's dismissal. The LA found as credible the statements of Guamos, who denied directing anyone to re-classify any of petitioner's products or property for recording purposes, and Padua, who denied giving permission to respondent to take petitioner's products out of the warehouse without consent from superiors and without proper documentation.<sup>[15]</sup> The LA noted that respondent failed to disprove the said statements. Moreover, respondent's admission that he failed to observe the procedure and that it was an error of judgment was construed to be an admission of theft.<sup>[16]</sup>

The LA also dismissed the charge of ULP for failure to present proof that petitioner interfered with respondent's right to self-organization.<sup>[17]</sup> Finally, the LA ordered that Luistro and Carbelledo be dropped from the case for failure to present evidence of their direct participation in respondent's dismissal.<sup>[18]</sup>

The dispositive portion of the Decision<sup>[19]</sup> dated June 17, 2014 reads:

WHEREFORE, premises considered, a DECISION is hereby rendered  
DISMISSING this case with prejudice for lack of merit.

All other money claims, damages and attorney's fees of the [respondent]  
as raised in his complaint are likewise ordered DISMISSED with prejudice  
for lack of merit.

x x x x

SO ORDERED.<sup>[20]</sup>

Respondent elevated the case to the NLRC.

### **Ruling of the NLRC**

In a Decision<sup>[21]</sup> dated September 30, 2014, the NLRC denied respondent's appeal and affirmed the LA's ruling. The NLRC held that respondent failed to prove the authenticity and due execution of the Inventory Write-Off Form (IWOFF) which he presented to prove that the Coke Zero products which were taken were already expired. The NLRC opined that while administrative and quasi-judicial bodies are not bound by technical rules of procedure, this should not be construed as a license to disregard certain fundamental evidentiary rules,<sup>[22]</sup> and that the evidence presented must at least have a modicum of admissibility to be given some probative value.<sup>[23]</sup> Furthermore, even assuming that the IWOFF is admissible in evidence, it failed to establish that the Coke Zero products enumerated therein were the same with the ones taken by respondent.<sup>[24]</sup>

The NLRC also found that the statements of Cabrera as well as respondent's co-employees do not support his claim that the Coke Zero products were already considered as BOs and that their taking was done with the permission of Padua and Guamos. The statements reveal that the permission given was to drink the Coke Zero 240 ml. or 8 ounce products and not to take them outside the premises. On this score, the NLRC also noted that the Coke Zero products which were allowed to be consumed were different from the ones taken by respondent (Coke Zero 237 ml.).<sup>[25]</sup> Finally, the NLRC noted that if indeed the Coke Zero products taken by respondent were already expired, it would have posed a serious health risk and petitioner's reputation as manufacturer of non-alcoholic beverages would be seriously damaged if said products were to be consumed by the public.<sup>[26]</sup>

Respondent filed a Motion for Reconsideration (MR) but the same was denied in a Resolution<sup>[27]</sup> dated November 19, 2014. Respondent then filed a Petition for *Certiorari* under Rule 65 to the CA.

### **Ruling of the CA**

In its assailed Decision, the CA reversed the NLRC Decision. On the respondent's non-compliance with Section 3, Rule 46 of the Rules of Court for failure to attach material portions of the record, i.e. the complaint and petitioner's rejoinder, the CA held that an outright dismissal is not mandatory and that respondent was able to submit all the material portions of the record necessary to resolve the petition. At any rate, a dismissal based on this ground would be hollow considering that petitioner already attached said portions of the record to its own pleadings before the CA.<sup>[28]</sup>

On the merits, the CA agreed with the NLRC in not considering the IWOFF but ruled that respondent's argument that the Coke Zeros in question were already expired was amply supported by evidence on record. First, petitioner itself repeatedly referred to the Coke Zeros as BOs that would be written-off in its notice of dismissal to respondent. The CA held that this supports respondent's claim that they already expired on December 23, 2011 and February 22, 2012 - a claim which petitioner has not categorically denied. Furthermore, although the subject Coke Zero products

were described as full goods, the CA took it to mean that the bottles still contained soft drinks as opposed to empty bottles.<sup>[29]</sup>

The CA noted that while the LA gave more weight to the denials made by Guamos and Padua in giving permission to take out the Coke Zero products, the NLRC gave more weight to the statements of respondent's co-employees that they were given permission to drink them. While the CA agreed with the NLRC on this point, it arrived at a different conclusion that the products taken by respondent were not different from the ones permitted to be consumed, considering that 8 ounces (which was allowed to be consumed) is equivalent to 236.5882 ml. or 237 ml. (which was taken by respondent) when rounded-off.<sup>[30]</sup>

The CA also held that respondent's act was not attended by malice as he relied on the approval of Padua and Guamos, whom he regarded as TRCI's "big bosses," believing that such was sufficient and that he was under the impression that he can take it out since it was approved for consumption. The CA also found the following circumstances that would negate ill motive and bad faith on respondent's part in taking the said BOs: (1) he asked the checker a day before he took them if he can have some bad orders; (2) he brought his family; (3) he replaced the old bottles with new bottles; (4) he picked up the beverages despite knowing that the security guard will note it down; (5) the beverages taken were for his family trip in Batangas; and (6) he readily admitted to the taking when he was required to explain.<sup>[31]</sup>

The CA construed the charge of theft to be akin to theft under Article 308 of the Revised Penal Code (RPC) since criminal prosecution, aside from dismissal, is also possible as stated in the Red Book. Thus, the charge against respondent was akin to the crime of theft where intent has to be proved. Thus, respondent's act which was done in good faith cannot be regarded as theft.<sup>[32]</sup>

The CA, however, held that respondent's act was indicative of lack of prudence as he was careless in relying solely on the permission of the TRCI superiors in order to take out the Coke Zeros, which was an improper procedure. However, while such carelessness should be punished, the penalty for such carelessness should be commensurate with the gravity of the offense. Taking into account respondent's 11 years of service without evidence that his employment record was previously tarnished, and the fact that the value of the products he took was P1,215.00 only while his monthly salary at the time of his dismissal was P20,800.00, the CA concluded that a penalty of suspension for one month is reasonable.<sup>[33]</sup> The CA also held that petitioner's officers, Robert Luistro and Jovita Carbelledo, should not be held liable in the absence of evidence that they acted maliciously or in bad faith in dismissing respondent.<sup>[34]</sup>

The dispositive of the Decision dated March 14, 2016 reads:

**WHEREFORE**, the petition is **GRANTED**. The assailed decision and resolution dated November 19, [2014] of the NLRC in NLRC LAC NO. 07-00185-14 are set aside. Respondent Coca Cola Bottlers Philippines, Incorporated is hereby **ORDERED** to reinstate Alpuerto to his former or equivalent position without loss of seniority rights, benefits, and privileges and to pay backwages, inclusive of allowances and other