

## SECOND DIVISION

[ G.R. No. 229429, November 09, 2020 ]

**NOEL M. MANRIQUE, PETITIONER, VS. DELTA EARTHMOVING, INC., ED ANYAYAHAN AND IAN HANSEN, RESPONDENTS.**

### DECISION

**LOPEZ, J.:**

Whether substantial evidence exists to establish loss of trust and confidence as a valid ground for dismissal is the main issue in this Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of Rules of Court assailing the Court of Appeals' (CA) Decision<sup>[2]</sup> dated August 11, 2016 and Resolution<sup>[3]</sup> dated January 20, 2017 in CA-G.R. SP No. 140827.

### ANTECEDENTS

The case stemmed from a Complaint<sup>[4]</sup> for illegal dismissal, reinstatement with full backwages and benefits, non-payment of salary/wages, 13<sup>th</sup> month pay, vacation leave and sick leave credits, moral, exemplary and nominal damages and attorney's fees filed by Noel M. Manrique (Manrique) against Delta Earthmoving, Inc. (Delta Earth), Ed Anyayahan (Anyayahan) and Ian Hansen (Hansen). Manrique alleged that on January 2, 2013, he was hired as Assistant Vice President for Mining Services by Delta Earth to take charge of the company's human resources department and to perform other administrative functions. As required, he reported at the mine site located at Didipio, Kasibu, Nueva Vizcaya. Later in June 2013, the company assigned him to work as Officer-in-Charge of the Oceana Gold Philippines, Inc. - Didipio Gold Project to assist in the operations while his immediate supervisor, Hansen, was on roster break. On December 29, 2013, Manrique claimed that he was instructed to pack his things and to not report back to work. Hansen told him that the head office of Delta Earth decided to terminate him. On January 6, 2014, he went to the head office in Quezon City to verify and Anyayahan, who is the Executive Vice President and Chief Operating Officer, confirmed the termination of his employment. Manrique was asked to tender a voluntary resignation but he refused. Instead, he filed the present complaint.

On the other hand, Delta Earth, Anyayahan, and Hansen maintained that Manrique was validly dismissed due to poor performance, resulting in loss of trust and confidence. To prove the just cause for the dismissal, Delta Earth pointed to the Performance Evaluation and various memoranda indicating gross neglect of duty and inefficiency on the part of Manrique, as follows: (1) neglected instructions from his superiors, such as truck hauling and volume studies; (2) failure to improve KM 20 to serve as employees' accommodation; (3) failure to submit 2013 mine operations budget; (4) delay in the submission of cost reports and billings resulting to delayed collection; and (5) failure to perform his duties despite constant reminders. Delta Earth stated that Manrique refused to receive the performance evaluation as he was

insisting that he was performing well. Aside from the presence of just cause, the management also complied with procedural due process in terminating Manrique's employment. Lastly, Delta Earth argued that being a managerial employee, Manrique is not entitled to 13<sup>th</sup> month pay, as well as vacation leave and sick leave credits since he enjoyed rotation leave.

On September 30, 2014, the Labor Arbiter (LA) found that Manrique was illegally dismissed and ruled that only Delta Earth is liable,<sup>[5]</sup> thus:

WHEREFORE, premises considered, judgment is rendered declaring NOEL M. MANRIQUE ILLEGALLY DISMISSED. DELTA EARTH MOVING INC is ordered to pay NOEL M. MANRIQUE:

[1] Separation pay equivalent to one month pay per year of service;

[2] Full backwages [excluding site living allowance] from January 16, 2014, both separation pay and full backwages shall be computed up to date of actual payment;

[3] Proportionate 13<sup>th</sup> month pay from February 2013 up to December 2013.

[4] attorney's fees equivalent to 10% of the monetary award.

Claims for unpaid salaries and leave credits are dismissed without prejudice.

All other claims are dismissed for lack of merit.

The total monetary award is as computed in Annex "A" forming part of this Decision.

SO ORDERED.<sup>[6]</sup>

Aggrieved, Delta Earth filed an appeal with an urgent motion to reduce appeal bond<sup>[7]</sup> before the National Labor Relations Commission (NLRC). On March 31, 2015, the NLRC issued a Resolution,<sup>[8]</sup> granting the prayer for reduction of appeal bond after considering Delta Earth's posting of a bond equivalent to ten percent (10%) of the monetary award to be reasonable and finding the grounds raised in the appeal to be meritorious. On the main issue of whether there was illegal dismissal, the NLRC held in the same Resolution that Manrique was validly dismissed by reason of loss of trust and confidence. Delta Earth received reports of Manrique's failure to perform various tasks and this led to the issuance of six memoranda relative to his work assignments. A performance evaluation was conducted and Manrique failed. The NLRC noted that while Manrique denied these allegations, he did not present any proof that he turned in the required reports, or that he completed the assigned tasks. On the procedural aspect, the NLRC ruled that Manrique was afforded due process as his adamant refusal to submit a written explanation should not be taken against Delta Earth, thus:

**WHEREFORE**, premises considered, the Urgent Motion to Reduce Appeal Bond filed by respondents is **GRANTED**. The Decision dated September 30, 2014 is hereby **REVERSED and SET ASIDE**. The complaint for illegal dismissal and money claims is **DISMISSED** for lack of merit.

**SO ORDERED.**<sup>[9]</sup> (Emphases supplied.)

Manrique elevated the matter on *certiorari* to the CA. In its Decision<sup>[10]</sup> dated August 11, 2016 in *CA-G.R. SP No. 140827*, the CA upheld the NLRC's judgment that there was no substantial evidence of illegal dismissal. Manrique sought reconsideration but this too was denied.<sup>[11]</sup> Hence, this petition. Manrique claims that Delta Earth's appeal should not have been given due course as there is no meritorious ground that will justify the reduction of the appeal bond. As for his dismissal, Manrique insists that there was no competent evidence to prove the alleged loss of trust and confidence as he was not even apprised of his superiors' alleged dissatisfaction with his performance. He was not given copies of the memoranda and the Performance Management Form and was therefore deprived of the opportunity to submit his explanation. Conversely, Manrique points to the remarks of his immediate superior Hansen that he did a good job on the mining site. He contends that the NLRC and the CA failed to recognize that Hansen is in a better position to evaluate his work performance than his superiors stationed in the Delta Earth main office as the former worked with him closely on-site.

On the procedural aspect, Manrique alleges that his termination was aggravated by Delta Earth's failure to give the required notices. He was asked by Hansen to leave the company premises after the Christmas break and was told to stop reporting for work upon the instruction from Delta Earth's management. Worse, Anyayahan tried to convince him to execute a letter of voluntary resignation in exchange for payment of one month's salary. Finally, he contends that the alleged abandonment and desire to resign are mere afterthoughts.

## **RULING**

***The NLRC has full discretion to determine the existence of meritorious ground in granting a motion to reduce appeal bond.***

Article 229 [formerly Article 223] of the Labor Code governs the appeal in labor cases:

ART. 229. [223] *Appeal*. - Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x

x x x x

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

x x x x

The indispensable nature of the posting of a bond in appeals from the LA to the NLRC is further highlighted in Section 4 (b) Rule VI of the 2011 NLRC Rules of Procedure, which states that: "*A mere notice of appeal without complying with the other requisites aforesaid shall not stop the running of the period for perfecting an appeal.*" The posting by the employer of a cash or surety bond is mandatory to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. The requirement was designed to discourage employers from using an appeal to delay, or even evade, their obligation to satisfy their employees' just and lawful claims.<sup>[12]</sup>

Here, Delta Earth's appeal was filed with a motion to reduce appeal bond, accompanied by the posting of ten percent (10%) of the judgment award as appeal bond. In *McBurnie v. Ganzon*,<sup>[13]</sup> the Court explained that in order to stop the running of the period to perfect an appeal, a motion to reduce bond must comply with two conditions: (1) that the motion to reduce bond shall be based on meritorious grounds; and (2) a reasonable amount of bond in relation to the monetary award is posted by the appellant. This is allowed under Section 6, Rule VI of the 2011 NLRC Rules of Procedure. The "*meritorious ground*" takes into account the respective rights of the parties and the attending circumstances and could pertain to either the appellant's lack of financial capability to pay the full amount of the bond, the merits of the main appeal, the absence of an employer-employee relationship, prescription of claims, and other similarly valid issues that are raised in the appeal.<sup>[14]</sup>

The NLRC in this case made a preliminary determination that Delta Earth has a valid claim in that there is no illegal dismissal to justify the award. For this reason, the CA could not be faulted when it sustained the NLRC's approval of the motion to reduce the appeal bond, especially since the determination of the presence of a "*meritorious ground*" is a matter fully within the discretion of the NLRC.<sup>[15]</sup>

***Loss of trust and confidence, as a ground for dismissal, may not be invoked arbitrarily.***

Article 297 of the Labor Code enumerates the just causes for the dismissal of an employee: