

SECOND DIVISION

[G.R. No. 228231 [Formerly UDK 15531], August 28, 2019]

**PRUDENCIO CLEMENTE, JR., PETITIONER, VS. ESO-NICE
TRANSPORT CORPORATION, RESPONDENT.**

DECISION

REYES, J. JR., J.:

The Facts and The Case

Before the Court is a Petition for Review on *Certiorari*^[1] seeking to reverse and set aside the October 30, 2015 Decision^[2] and the February 5, 2016 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 138849 which nullified the September 29, 2014 Decision^[4] and the November 28, 2014 Resolution^[5] of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 08-002057-14 which affirmed *in toto* the July 16, 2014 Decision^[6] of the Labor Arbiter finding Prudencio Clemente, Jr. (petitioner) to have been illegally dismissed from employment.

Sometime in August 1998, ESO-Nice Transport Corporation (respondent) hired petitioner as bus dispatcher in its Baguio branch.^[7] When its Baguio branch operations was audited in August 2013, respondent found out that numerous collections were not deposited in its bank account.^[8] Thus, in an August 22, 2013 letter, the respondent gave the petitioner 72 hours to explain the following violations:

x x x x

[a] Unremitted collection of payment of United Van Assoc. - dated August 3, 2013[,] P15,000.00

[b] Unremitted payment of M. Kaley dated August 2013 – P60,000.00

[c] Other sales[.]^[9]

Petitioner also sent a similar letter to Alex Garcia (Garcia), who admitted using the money to pay the hospitalization bills of his father.^[10]

In his Reply dated August 24, 2013 which was written by hand in the explanation portion of the August 22, 2013 letter, petitioner explained:

- Regarding all this [sic] matter [sic], August 03, 2013 was my day-off so, I don't have any knowledge about the collection or parking fee of the United Van Transport[.]

- The said collection payment of Mr. Kaley has been made a receipt by yours truly, honestly, and remitted to Alex Garcia to be delivered at the main office SFC[,] La Union as the person in authority to keep in safe such money for the company[.]
- So my duty is to dispatch buses as a dispatcher and authorized also to make a receipt and received [sic] parking fees and rental and later turned over to him whenever he (Alex Garcia) is absent or on his day-off. x x x
- On other sales, no knowledge at all[.]
- Hoping for your kind & consideration to my explanation.[11]

On September 28, 2013, respondent called for a meeting to discuss the matter of undeposited collections. The meeting was attended by the petitioner and the other concerned employees of the respondent. Respondent claimed that during the said meeting, the petitioner admitted appropriating for himself numerous proceeds of the company.[12]

Subsequently, respondent claimed that petitioner and Garcia admitted to having fraudulently taken the undeposited collections in the amount of P56,710.46 and P665,090.55, respectively. As proof, respondent submitted a document denominated as Eso-Nice Transport Corp., Undeposited Collections, January 1 to August 31, 2013, which shows the petitioner and Garcia's handwritten and signed confession dated October 3, 2013.[13]

By reason of petitioner's admission, respondent, on October 9, 2013, served upon the petitioner a Notice of Termination dated October 3, 2013. The same reads:

x x x x

In a notice dated September 28, 2013, you were required to submit your reply/explanation as to why you should not be terminated from stealing from the company particularly of unlawfully appropriating for your personal use and benefit from the daily collections and what is supposed to be deposited daily.

Instead of a reply/explanation, you submitted an acknowledgement wherein you stated that:

"That I admit to have fraudulently taken the money and that the initial undeposited collections amount to **Fifty Six thousand Seven hundred Ten & 46/100.**

In accordance with your admission, you are hereby terminated effective from notice for commission of qualified theft against the company. In addition you are ordered to retribute the amount of **Fifty Six thousand Seven hundred Ten & 46/100.**

This Notice is not a waiver of the right of the Company to file the necessary criminal case against you.[14]

x x x x

Garcia was likewise served on October 9, 2013 a Notice of Termination for having admitted to the taking of the initial undeposited collections in the amount of P665,090.55.^[15]

On November 29, 2013, respondent filed with the Baguio City prosecutor's office a complaint against the petitioner and Garcia for qualified theft.

Meanwhile, the investigating prosecutor found probable cause for qualified theft against the petitioner and Garcia.^[16]

In an Order dated January 10, 2014, the Regional Trial Court (RTC) of Baguio City agreed with the finding of probable cause by the investigating prosecutor and ordered the issuance of a warrant of arrest against the petitioner.^[17] A warrant for the arrest of Garcia was likewise issued.^[18] Despite the issuance of the warrant of arrest on even date,^[19] it was returned unserved as the petitioner was nowhere to be found in Sta. Lucia, Ilocos Sur.^[20] Petitioner eventually surrendered voluntarily at the Sta. Lucia Police Station in Ilocos Sur on February 6, 2014.^[21]

In the meantime, or on January 10, 2014, petitioner filed a complaint for illegal dismissal, underpayment of wages, non-payment of 13th month pay in 2013 and wages for September 15 to 30, 2013 and October 1 to 9, 2013, service incentive leave pay, overtime pay, separation pay in lieu of reinstatement, full backwages and attorney's fees.^[22]

In a Decision^[23] dated July 16, 2014, the Labor Arbiter ruled that petitioner had been illegally dismissed given that respondent failed to show any valid cause for his termination. Respondent's claim that petitioner committed qualified theft had not been duly substantiated inasmuch as the prosecutor only found probable cause against Garcia. While respondent presented evidence showing that petitioner admitted to taking the amount of P56,710.46, the same becomes doubtful in light of his staunch denial of appropriating for himself the said amount in his August 24, 2013 written explanation. The Labor Arbiter also concluded that the signature of the petitioner in the said document where he allegedly admitted to pocketing the undeposited collections was forged because his handwriting therein was different from his penmanship in the document where he denied his liability for the missing collections. Furthermore, petitioner was not accorded his right to procedural due process. No hearing was conducted to investigate the alleged complicity of the petitioner for theft. As for petitioner's money claims, the same were granted by the Labor Arbiter for having been sufficiently proved.^[24] Thus, the Decision disposed as follows:

WHEREFORE, premises all considered, judgment is hereby rendered ordering respondents jointly and severally liable to:

(1) Pay [the petitioner] separation pay at one (1) month pay for

- every year of service in the amount of **P116,480.00;**
- (2) Pay [the petitioner] full backwages from the time he was illegally dismissed up to the finality of the judgment or decision in the amount of **P73,616.15:**
 - (3) Pay [the petitioner] his unpaid wages as indicated in the amount of **P6,440.00;**
 - (4) Pay [the petitioner] salary differentials on account of underpaid wages in the amount of **P28,288.00:**
 - (5) Pay [the petitioner] his unpaid 2013 13th month pay in the amount of **P4,870.10** and service incentive leave pay in the amount of **P1,166.65:** and
 - (6) Pay [the petitioner] attorney's fees at 10% of the total monetary award to be recovered in the amount of **P23,086.09.**

All other claims are dismissed for lack of merit.

SO ORDERED.^[25]

The NLRC affirmed *in toto* the July 16, 2014 Decision of the Labor Arbiter on appeal. In its Decision^[26] dated September 29, 2014, the NLRC held that other than petitioner's purported admission, respondent miserably failed to adduce substantial evidence to justify his termination. The document^[27] presented by the respondent detailing the company's undeposited collections for the period January 1 to August 31, 2013 does not substantiate the charge of qualified theft because the same is merely a list of undeposited collections. Even before conducting an exhaustive investigation among the bus dispatchers and bus inspectors in its Baguio branch, accountability for the missing funds was already heaped on the petitioner which shows that other than bare suspicion, respondent had nothing with which to pin down the petitioner for theft of company funds. The need for a thorough inquiry is brought to greater light by the fact that the petitioner is a mere dispatcher who is not charged with the custody of daily fare collections as such task belonged to Garcia being the company's cashier/teller. The NLRC also agreed with the Labor Arbiter that a marked variance exists between petitioner's supposed signature admitting the theft *vis-à-vis* his signature appearing on other documents submitted before it. The NLRC further ruled:

What writes *finis* to [respondent's] cause is the fact that the Office of the Baguio Prosecutor found probable cause for Qualified Theft against Alex Garcia only but not [petitioner] x x x. Furthermore, contrary to [respondent's] claim, the RTC of Baguio issued a warrant of arrest only against Alex Garcia and not [petitioner] x x x. At the risk of redundancy, the prosecutor did not find probable cause to indict [the petitioner] for Qualified Theft. To recall, the determination of probable cause by the public prosecutor requires a sufficient ground to engender a well-founded belief that a crime has been committed and that the person charged is probably guilty thereof and should be held for trial x x x. While a finding of probable cause need only rests on evidence showing that more likely than not a crime has been committed and was committed by the suspect,

it demands more than bare suspicion x x x. As well ratiocinated in *Spouses Boyboy v. Yabut, Jr.*, x x x if [respondent] could not even hurdle the low quantum and quality of proof necessary to sustain a finding of probable cause, how could they conclude with definiteness that their evidence has crossed the much more rigid threshold of substantial evidence?^[28] (Citation omitted; underscoring in the original)

The NLRC added that petitioner's termination cannot be upheld for the additional ground of want of procedural due process. The first notice which required the petitioner to explain the unremitted collections not only for August 3, 2013, but also for "other sales" is akin to a shotgun approach which does not apprise the employee of the particular acts or omissions for which his dismissal is sought. The special meeting called by the respondent is not equivalent to the required hearing since no searching questions were propounded during the meeting to ferret out the truth behind the unremitted collections. The three days that petitioner was given to answer the charge was also not sufficient.^[29]

Respondent moved for reconsideration, but the NLRC denied it in a Resolution dated November 28, 2014.^[30]

Unfazed, respondent elevated the matter before the CA *via* a Petition for *Certiorari*, which ruled in its favor in a Decision^[31] dated October 30, 2015.

Unlike the NLRC, the CA ruled that respondent complied with the twin-notice requirement when it gave the petitioner a chance to be heard and subsequently informed him of his dismissal from employment for committing qualified theft against it. The CA also found the admission of the petitioner that he failed to deposit the collections in the amount of P56,710.46 coupled with the findings of probable cause for Qualified Theft by both the investigating prosecutor and the RTC as valid ground for the respondent to impose disciplinary action upon the petitioner. However, the CA found the penalty of dismissal imposed by the respondent upon the petitioner to be not commensurate to the offense committed. Thus, it ordered petitioner's reinstatement to his former position without loss of seniority rights, but without backwages or other monetary benefits.^[32]

Aggrieved, the petitioner moved for reconsideration, but the CA denied it in its February 5, 2016 Resolution.^[33]

Hence, the present Petition.

The Issues

Petitioner submits the following issues for this Court's consideration:

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THE HONORABLE [CA] ERRED IN RULING THAT THE PETITIONER WAS LEGALLY DISMISSED BY THE RESPONDENT; [and]