

SECOND DIVISION

[G.R. No. 212616, July 10, 2017]

DISTRIBUTION & CONTROL PRODUCTS, INC./VINCENT M. TIAMSIC, PETITIONERS, V. JEFFREY E. SANTOS, RESPONDENT.

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision^[1] and Resolution^[2] of the Court of Appeals (CA), dated November 22, 2013 and May 20, 2014, respectively, in CA-G.R. SP No. 125911. The questioned CA Decision affirmed the May 16, 2012 Decision^[3] and June 25, 2012 Resolution^[4] of the National Labor Relations Commission (NLRC) which, in turn affirmed, with modification the January 30, 2012 Decision^[5] of the Labor Arbiter (LA), which found herein respondent illegally dismissed and ordered his reinstatement and payment of his full backwages.

The pertinent factual and procedural antecedents of the case are as follows:

Herein petitioner is a domestic corporation engaged in the business of selling and distributing electrical products and equipment with petitioner Vincent M. Tiamsic as its president. Respondent, on the other hand, was employed as petitioners' company driver.

On July 25, 2011, herein respondent filed against herein petitioners a complaint for constructive illegal dismissal and payment of separation pay. In his Position Paper^[6], respondent contended that: he started working as petitioners' company driver on April 5, 2005; on December 16, 2010, he received a notice informing him that he was being placed under preventive suspension for a period of thirty (30) days beginning December 17, 2010 because he was one of the employees suspected of having participated in the unlawful taking of circuit breakers and electrical products of petitioners; a criminal complaint was filed against him and several other persons with the Prosecutor's Office of Mandaluyong City; he immediately inquired from petitioner company's Human Resources Department as to the exact reason why he was suspended because he was never given the opportunity to explain his side before he was suspended but the said Department did not give him any concrete explanation; and after the lapse of his 30-day suspension he was no longer allowed to return to work without any justification for such disallowance.

On their part, petitioners claimed in their Position Paper^[7] that: they employed respondent as their company driver whose job included the delivery of items purchased by customers, receipt documentation and recording of previously purchased products which were returned by customers and coordination with the company warehouseman and the accounting department concerning all items which are subject of delivery and receipt by the company; on February 19, 2010,

petitioner corporation, through its hired auditors, conducted a physical stock inventory of all materials stored in the company's warehouse and in its office building; after such inventory, it was found out that a number of electrical materials and products with an estimated value of P457,394.35, were missing; a subsequent inventory on April 24, 2010 likewise revealed that a 2000-ampere circuit breaker worth P106,341.75 was also missing, as well as thirty-seven (37) pieces of 40-ampere circuit breakers which had a total value of P39,940.04; herein respondent and the company warehouseman were the only persons who had complete access to the company warehouse as they were entrusted with the handling of all products from the company's suppliers; considering the size and weight of the missing items, they can only be carried by no less than two (2) persons; petitioners demanded an explanation from respondent and the warehouseman, but they failed to make an account as to how these products had gone missing from the warehouse and office building; as such, petitioners filed a criminal complaint for qualified theft and, thereafter, they suspended herein respondent; and after the lapse of his suspension, respondent no longer returned to work.

On January 30, 2012, the LA handling the case rendered his Decision finding respondent to be illegally terminated from his employment, thus, ordering his reinstatement and payment of his full backwages amounting to P297,916.67. The LA held that herein petitioners had the burden of proving that respondent's dismissal was valid and their failure to discharge this burden only means that the dismissal was not justified and, therefore, illegal.

Petitioners filed an appeal with the NLRC.

On May 16, 2012, the NLRC promulgated its Decision dismissing petitioners' appeal and affirming, with modification, the decision of the LA. In addition to the payment of backwages, the NLRC ordered petitioners to pay respondent separation pay equivalent to one (1) month for every year of service, instead of reinstatement.

Petitioners filed a Motion for Reconsideration but the NLRC denied it in its Resolution dated June 25, 2012.

Aggrieved, petitioners filed a petition for *certiorari* with the CA.

On November 22, 2013, the CA rendered its assailed Decision denying the *certiorari* petition and affirming the questioned NLRC Decision and Resolution.

Petitioners filed a Motion for Reconsideration, but it was likewise denied in the CA Resolution of May 20, 2014.

Hence, the present petition for review on *certiorari* anchored on the following issues:

WHETHER OR NOT THE COURT OF APPEALS INTRUDED INTO THE RIGHT OF THE EMPLOYER TO DISMISS AN EMPLOYEE WHOSE CONTINUED EMPLOYMENT IS INIMICAL TO THE EMPLOYER'S INTEREST; [AND]

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DECIDING THE INSTANT CASE NOT IN ACCORD WITH THE HONORABLE SUPREME COURT DECISIONS, i.e., WHERE DISMISSED EMPLOYEE FOR VALID GROUND SHOULD BE PAID ONLY NOMINAL DAMAGES, IF THE TWO-NOTICE RULE IS NOT COMPLIED WITH.^[8]

The petition lacks merit.

Our Constitution, statutes and jurisprudence uniformly guarantee to every employee or worker tenurial security.^[9] What this means is that an employer shall not dismiss an employee except for a just or authorized cause and only after due process is observed.^[10]

In the case of *Brown Madonna Press, Inc. v. Casas*,^[11] this Court held:

In determining whether an employee's dismissal had been legal, the inquiry focuses on whether the dismissal violated his right to substantial and procedural due process. An employee's right not to be dismissed without just or authorized cause as provided by law, is covered by his right to substantial due process. Compliance with procedure provided in the Labor Code, on the other hand, constitutes the procedural due process right of an employee.

The violation of either the substantial due process right or the procedural due process right of an employee produces different results. Termination without a just or authorized cause renders the dismissal invalid, and entitles the employee to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.

An employee's removal for just or authorized cause but without complying with the proper procedure, on the other hand, does not invalidate the dismissal. It obligates the erring employer to pay nominal damages to the employee, as penalty for not complying with the procedural requirements of due process.

Thus, two separate inquiries must be made in resolving illegal dismissal cases: **first**, whether the dismissal had been made in accordance with the procedure set in the Labor Code; and **second**, whether the dismissal had been for just or authorized cause.^[12]

As to substantive due process, this Court, in *Agusan Del Norte Electric Cooperative, Inc., et al. v. Cagampang, et al.*,^[13] held that:

In termination cases, the burden of proof rests upon the employer to show that the dismissal is for just and valid cause; failure to do so would necessarily mean that the dismissal was illegal. The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. Moreover, the quantum of proof required in determining the legality of an employee's dismissal is only substantial evidence. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.^[14]

In the instant case, petitioners contend that their termination of respondent's employment was based on their loss of trust and confidence in him.