

FIRST DIVISION

[G.R. No. 216452, June 20, 2016]

**TING TRUCKING/MARY VIOLAINE A. TING, PETITIONER, VS.
JOHN C. MAKILAN, RESPONDENT.**

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated February 25, 2014, and the Resolution^[3] dated December 12, 2014, of the Court of Appeals, Cebu City (CA), in CA-G.R. SP No. 06785, which reversed and set aside the Decision^[4] dated July 29, 2011 and the Resolution^[5] dated November 24, 2011 of the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-05-000345-2011, declaring respondent John C. Makilan (respondent) to have been illegally dismissed.

The Facts

Petitioner Ting Trucking is a sole proprietorship owned by Mary Violaine A. Ting (petitioner), and is engaged in hauling services to and from Negros, Cebu, and Iloilo, with nine (9) employees in its workforce.^[6]

On February 12, 2010, respondent was hired as a driver with the following wage conditions: standby pay of P150.00 per day, additional allowance of P300.00 for trips from Bacolod City to Iloilo City and vice versa, and P500.00 for trips from Bacolod City to Cebu City and vice versa, weekly food supply in the amount of P539.00, and additional out of town allowance of P100.00 for trips from Bacolod City to Iloilo City and P150.00 for trips from Bacolod City to Cebu City. In the course of his employment, respondent was assigned one (1) helper, Genesis O. Chavez (Chavez).^[7]

On August 20, 2010, respondent claimed that while on his way to work, he received a call from petitioner informing him to stop reporting for work purportedly to avoid his regularization,^[8] prompting him to file a complaint^[9] for illegal dismissal against petitioner before the NLRC Regional Arbitration Branch No. VI, docketed as NLRC RAB Case No. VI-09-10705-10. He maintained that he did not receive oral or written notice of any fault or infraction and that he was not given any notice of dismissal.^[10]

On the other hand, petitioner denied that respondent was illegally dismissed. She stated that the latter was never hired on a probationary basis and that he was a regular employee.^[11] Nonetheless, respondent abused the trust and confidence reposed on him after learning from Chavez the several anomalies he had committed while in the performance of his duties,^[12] namely: (a) he would only put in

P2,500.00 worth of fuel into the truck despite being given a gas allowance of P3,500.00, and pocket the balance, (b) on June 23, 2010, he took twenty (20) kilos of corn worth P600.00 from the cargo he was to deliver and brought it home, (c) on July 16, 2010, while the truck was at the Roro Port of Bacolod City, he siphoned ten (10) liters of diesel fuel valued at P470.00 and sold the same, and (d) he took the spare parts of the truck worth P15,000.00 which he likewise sold, and when asked to return the said parts, instructed Chavez to look for scrap spare parts to present to petitioner.^[13] In addition, petitioner learned from her secretary, Fely M. Bonganciso^[14] (Bonganciso), that respondent's truck ran out of fuel on eight (8) different occasions prompting the former to demand the turn over of the fuel receipts which was not heeded.^[15] On August 16, 2010, respondent's truck ran out of fuel again and upon reaching its destination, the cargo owner informed petitioner that several kilos of corn cargo - valued at P2,800.00 - were missing, and that they would deduct the said amount from their payment.^[16] Thereafter, or from August 17 to 20, 2010, respondent no longer reported for work and was spotted by his co-workers driving a public utility jeepney.^[17] Thus, on August 20, 2010, petitioner called respondent and confronted him about the discrepancy in the cargo he delivered on August 16, 2010, and reiterated the demand to turn over the fuel receipts as well as the spare parts of the motor vehicle which he failed to comply.^[18] As a result, a complaint^[19] for Qualified Theft was filed against him before the City Prosecutor of Bacolod. Lastly, petitioner contended that respondent's claim of illegal dismissal was belied by his receipt of his standby pay on August 21, 2010, and that his money claims were without legal basis.^[20] In support thereof, petitioner submitted, among others, the affidavits of Bonganciso,^[21] Chavez and co-employees,^[22] as well as several charge invoices^[23] that were signed by respondent acknowledging receipt of the spare parts on behalf of Ting Trucking.

The LA Ruling

In a Decision^[24] dated March 3, 2011, the Labor Arbiter (LA) ruled that respondent's actions constituted serious misconduct, a just cause for termination under Article 297^[25] (a) of Presidential Decree No. 442,^[26] otherwise known as the "Labor Code of the Philippines," as amended (Labor Code). However, the LA observed that the dismissal was effected without procedural due process; hence, petitioner was ordered to pay respondent nominal damages in the amount of P20,000.00.^[27]

In so ruling, the LA found substantial evidence to support the charges leveled against respondent and took note of the criminal case for Qualified Theft filed against him.^[28] The LA observed that respondent did not deny selling the spare parts that were taken out from his assigned truck.^[29] Accordingly, the LA held that his actions constituted serious misconduct since it showed his propensity to gain from his employer's property and the latter's customers while in the performance of his duties, clearly making him unfit to work for petitioner.^[30]

With respect to his money claims, the LA held that respondent was not entitled to service incentive leave pay as the company was admittedly employing less than ten (10) employees thereby exempting it from said benefit under Article 95^[31] of the

Labor Code.^[32] The LA likewise found no factual and legal bases to award the claims for holiday pay, overtime pay, and damages.^[33] On the other hand, the LA ruled that respondent was underpaid^[34] for the periods February 21, 2010 to February 27, 2010, May 23 to May 29, 2010, and June 6, 2010 to June 12, 2010, and is entitled to his proportionate 13th month pay, pursuant to PD No. 851 as amended by Memorandum Order No. 28, as well as attorney's fees for having been compelled to litigate to protect his interests.^[35]

Only respondent appealed^[36] to the NLRC, arguing, among others, that the LA erred in ruling that he did not deny the allegations leveled against him and that petitioner had adduced substantial evidence justifying his termination.^[37]

The NLRC Ruling

In a Decision^[38] dated July 29, 2011, the NLRC affirmed the LA ruling that respondent's actions constituted serious misconduct which warranted his dismissal.^[39] It held that respondent failed to support with clear and convincing evidence his claim that the documentary and testimonial evidence raised against him were all fabricated.^[40] It observed that petitioner's witnesses - Chavez and Bonganciso - were credible, holding that Chavez was constantly with respondent during the trips, while Bonganciso was petitioner's secretary who was tasked to disburse the salaries of the employees and monitor the trips of the trucks.^[41] It added that there was no showing of ill motive on their part to falsely testify against him. Moreover, it found the charge invoices to have clearly identified respondent as the one who had received the spare parts.^[42] Lastly, the testimony of his co-workers seeing him drive a passenger jeepney on August 20, 2010 contradicted his claim that he was dismissed by petitioner on said date.^[43]

Dissatisfied, respondent moved for reconsideration,^[44] which the NLRC denied in a Resolution^[45] dated November 24, 2011, prompting him to elevate his case to the CA *via* a petition for *certiorari*,^[46] docketed as CA-G.R.SP. No. 06785.

The CA Ruling

In a Decision^[47] dated February 25, 2014, the CA gave due course to the petition and reversed the NLRC's decision, and, accordingly, ordered the remand of the case to the LA for computation of respondent's backwages, 13th month pay, attorney's fees and separation pay.^[48] Contrary to the findings of the LA and the NLRC, the CA did not give credence to the testimonies of Chavez and the other employees, noting that petitioner failed to call respondent's attention to the instances when the truck ran out of fuel, and that the July 16, 2010 siphoning of fuel while at the Roro Port of Bacolod City was not one of the eight (8) recorded instances when his truck ran out of fuel.^[49] Likewise, no evidence was presented to substantiate the claim that respondent had gassed up his fuel tank less than the required amount of P3,500.00, pointing out that petitioner should have been prudent in demanding the fuel receipts at all times and not merely make assumptions.^[50] It further opined that petitioner's delayed reaction over the alleged theft and pilferage left much to be desired.^[51]

Also, respondent's act of filing a complaint for illegal dismissal was inconsistent with the claim that he abandoned his employment.^[52] As such, the CA concluded that the charges against respondent were fabricated and that his dismissal was tainted with malice and bad faith, for which reason it deemed it proper to award moral and exemplary damages in the amounts of P10,000.00 and P5,000.00, respectively.^[53] Finally, it noted that petitioner did not appeal the LA's grant of salary differentials, proportionate 13th month pay, nominal damages and attorney's fees, and therefore were deemed to have attained finality.^[54]

Unperturbed, petitioner moved for reconsideration,^[55] which the CA denied in a Resolution^[56] dated December 12, 2014; hence, the instant petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly ascribed grave abuse of discretion on the part of the NLRC in ruling that respondent's dismissal was valid.

The Court's Ruling

The petition is impressed with merit.

At the outset, it is settled that the jurisdiction of the Supreme Court in cases brought before it from the CA *via* Rule 45 of the Rules of Court is generally limited to reviewing errors of law. The Court is not the proper venue to consider a factual issue as it is not a trier of facts. The rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the LA and the NLRC, on the one hand, and the CA, on the other hand, are contradictory, as in this case. There is therefore a need to review the records to determine whether the CA, in the exercise of its *certiorari* jurisdiction, erred in finding grave abuse of discretion on the part of the NLRC, in ruling that respondent was not illegally dismissed.^[57]

To justify the grant of the extraordinary remedy of *certiorari*, petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.^[58]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.^[59]

Guided by the foregoing considerations, the Court finds that the CA committed reversible error in granting respondent's *certiorari* petition since the NLRC did not gravely abuse its discretion in ruling that respondent was not illegally dismissed. The NLRC's ruling cannot be equated to a capricious and whimsical exercise of judgment since its pronouncement of a dismissal grounded on a just cause squares with

existing legal principles.

Fundamental is the rule that an employee can be dismissed from employment only for a valid cause. Serious misconduct is one of the just causes for termination under Article 297 of the Labor Code, which reads in part:

ART. 297. **Termination By Employer.** - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

x x x x

Misconduct is defined as an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.^[60] To constitute a valid cause for the dismissal within the text and meaning of Article [297] of the Labor Code, the employee's misconduct must be serious - that is, of such grave and aggravated character and not merely trivial or unimportant.^[61] Additionally, the misconduct must be related to the performance of the employee's duties showing him to be unfit to continue working for the employer. Further, the act or conduct must have been performed with wrongful intent.^[62] Thus, for serious misconduct to be a just cause for dismissal, the concurrence of the following elements is required: **(a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.**^[63]

In the case at bar, all of the foregoing requisites have been duly established by substantial evidence. Records disclose that respondent was charged of misappropriating fuel allowance, theft of fuel and corn, and sale of spare parts while in the performance of his duties. Submitted as proof thereof was the affidavit of Chavez, among others. Contrary to the findings of the CA, the Court finds the same to be substantial evidence. Other than respondent's claim that the charges were fabricated and that Chavez was a biased witness, no evidence was presented that would taint the latter's credibility. In fact, it was not shown that Chavez was impelled by dubious or ill-motive to testify falsely against respondent; hence, his testimony should be accorded full faith and credence.

It is worthy to note that despite the absence of fuel receipts to substantiate the charge of misappropriation of the P3,500.00 gas/fuel allowance by filling the truck's fuel tank with P2,500 worth of fuel only and pocketing the rest, it is undisputed that respondent's truck ran out of fuel on eight (8) separate occasions, including his last trip on August 16, 2010 with no justification proffered for such shortages. And while the July 16, 2010 incident where Chavez claimed to have seen respondent siphon fuel from the truck's fuel tank was not one of the eight (8) instances that his truck ran out of fuel, the foregoing charge cannot be disregarded given the pattern of unexplained fuel shortages incurred by respondent which naturally leads one to a fair and reasonable conclusion that at the very least he may have either under-filled his assigned truck's fuel tank or siphoned fuel therefrom to petitioner's prejudice.