

SECOND DIVISION

[G.R. No. 198515, June 15, 2015]

**DOMINADOR MALABUNGA,* JR., PETITIONER, VS. CATHAY
PACIFIC STEEL CORPORATION, RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

An employer may not blame its employees for losses caused by its own disorganized system and inept personnel.

This Petition for Review on *Certiorari*^[1] assails: 1) the March 16, 2011 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 111296 nullifying and setting aside the February 27, 2009 Decision^[3] of the National Labor Relations Commission (NLRC) in NLRC CA Case No. 050647-06 and reinstating the July 31, 2006 Decision^[4] of the Labor Arbiter, NLRC NCR, Quezon City in NLRC NCR Case No. 03-02096-05; and 2) the CA's September 5, 2011 Resolution^[5] denying petitioner's Motion for Reconsideration^[6] of the herein assailed Decision.

Factual Antecedents

Respondent Cathay Pacific Steel Corporation is a duly registered domestic corporation engaged in the business of manufacturing steel products. It hired petitioner Dominador Malabunga, Jr. on April 10, 1996 as one of its machinists.

On July 9, 2004, an inventory of respondent's tools and items at the company warehouse was made, and it was found that one aluminum level^[7] was issued to respondent's Fabrication Unit, and another to petitioner.^[8]

On July 11, 2004, petitioner returned an aluminum level to the warehouse.^[9]

On July 24, 2004, respondent served a written Notice^[10] upon petitioner, charging the latter with theft of the aluminum level issued to its Fabrication Unit and requiring him to submit a written explanation. Respondent claimed that petitioner stole the aluminum level issued to the Fabrication Unit and returned the same to cover up the loss of the one issued to him. In other words, respondent accused petitioner of stealing the aluminum level issued to the Fabrication Unit and returning the same on July 11, 2004, passing it off as the one that was issued to him previously; by doing this, petitioner would then cover up the loss of or failure to return the one that was previously issued to him.^[11]

Attached to the July 24, 2004 Notice were handwritten statements of respondent's warehouse foreman Salvador Narvasa (Narvasa) and warehouseman Reymundo

Manuel Baetiong (Baetiong), both executed on July 23, 2004. In his statement,^[12] Narvasa claimed that on July 13, 2004, he discovered an untarnished ("*malinis*") aluminum level which petitioner apparently returned on July 11, 2004, but which was issued to the Fabrication Unit; that upon checking his records, it was confirmed that it was petitioner who returned the said tool; that on July 22, 2004, he called petitioner and Nonito Tercero (Tercero) – one of respondent's workers assigned to the Fabrication Unit/Machine Shop who apparently discovered that what petitioner returned on July 11, 2004 was the missing aluminum level issued to the Fabrication Unit – to a meeting and told them that what petitioner returned was the aluminum level issued to the Fabrication Unit; and that petitioner remarked that if the aluminum level was lost or he stole it, the Fabrication Unit crew should be charged for the loss of the tool which was issued to them because they were negligent in its handling ("*x x x ang sagot ni Malabunga wala daw namang problema doon dahil kung naka issue yon sa Fabrication kahit ninakaw niya ay [sic] at nawala sa kanila dapat daw ay ipakaltas ko sa Fabrication crews dahil naging pabaya ang mga ito.*" ^[13]).

On the other hand, Baetiong claimed in his statement^[14] that he was on duty on July 11, 2004 – or when petitioner returned the aluminum level; that he was then with Rudolfo Zapanta, another warehouseman; that petitioner returned an aluminum level; that days after, he learned that what petitioner returned was the aluminum level issued to the Fabrication Unit; that it was Tercero who told him that the level returned by petitioner was the one issued to the Fabrication Unit; that Tercero came to know of this when he came to the warehouse to borrow an aluminum level; that from an inspection of the warehouse records, it was discovered that there were only two individuals who borrowed tools from the warehouse – petitioner and one Carlo Alocino; that of the two, only petitioner was able to return an aluminum level.

In his written explanation,^[15] petitioner insisted that the accusation against him was false, baseless and unfair; that the aluminum level he borrowed on June 28, 2004 was the very same tool which he returned on July 11, 2004; that when he returned the aluminum level he borrowed, the warehousemen readily accepted the same and they did not complain about the condition thereof, nor did they notice anything unusual – for example, that the markings thereon were erased or defaced, or that there was any defect in the tool; that respondent's tools should be permanently marked or security coded in order to prevent confusion and to forestall baseless accusations such as those being leveled against him; and that the Fabrication Unit placed a mark on the aluminum level which it claims to belong to it only several days after the occurrence of the unfortunate incident. Thus, petitioner wrote in part:

July 23, 2004 – inirequest kong pag-usapan na ito sa mataas na kapulungan dahil hindi kami magkaintindihan. Sinisisi ko ang bodegero dahil ang alam ko may mga palatandaan yan bawat isa, kesyo nabubura daw ang inilagay nilang palatandaan paliwanag ni Ginoong Narvasa na kaharap din si Sir STU. May paraan yan para lagyan nang palatandaan na di agad-agad nabubura maliban na lang kung ito ay sadyang burahin at kung sadyain man itong burahin kapag hiniram yan na may seguridad na palatandaan. Halimbawa aluminum level #3 ang hiniram ko, nang isauli ko ito ay kapansinpansin na ito ay sinadyang burahin. Kuwestiyonabol

yon bakit ito binura, ang ibig kong sabihin hindi basta makakalusot ang isinoling aluminum level kung ito ay may seguridad na palatandaan. Nang isauli ko ang aluminum level kong hiniram, walang alinlangan itong tinanggap ni Raymond^[16] at nakita man ni Sir STU ang hitsura nang aluminum level na may diperensya, pwedeng sabihin ni Raymond sa akin na bakit ganyan ang hitsura niyan dati na ba yan noong ipahiram sa yo? Pwede ng sabihin na i-check mo dyan sa borrower slip kung may nakalagay na damage ang kabilang parte. Sir, kung may naganap na ganyang pag-uusap kami ni Raymund hindi sana humantong sa ganito. Kung may sapat na seguridad na palatandaan sa aluminum level at masigasig nila itong sinisiyasat bago ito tanggapin at ipahiram sa amin walang magaganap na ganitong problema.

Papano ko sasang-ayunan na ang isinauli kong aluminum level ay hindi akin samantalang aminado kayo kaharap si Sir STU na walang identity o seguridad na palatandaan ang inisyu ninyong aluminum level sa Fabrication. Nilagyan nila ito ng pangalan kaya nila nasabi na sa kanila nga ito. Samantalang kung may identity ito o seguridad na palatandaan nang inisyu ninyo ito sa kanila kahit lagyan nila ito ng pangalan walang magaganap na ganitong usapin. Kulang si Raymund sa pagsisiyasat at walang sapat na seguridad na palatandaan nang tanggapin niya ang isinauli kong aluminum level at makalipas ng 3 araw humiram si Tercero nang aluminum level. Nang mapasakamay niya ito nagtanong siya "Bakit nasa iyo ang aluminum level nilang nawawala, na ang ginamit niyang basehan ay may pangalan ito na Fabrication. Ako ngayon ang binalingan ninyo dahil ako lamang ang huling nagsauli nang aluminum level at wala nang iba o kasunod na nagsauli nito. Sa personal kong opinion hindi yata ito MAKATARUNGAN.^[17]

During the course of the investigation, hearings were conducted. The written statements of several employees were likewise taken, thus:

1. Rodolfo Mangahas (Mangahas), of respondent's Fabrication Unit/Machine Shop, declared in his sworn statement^[18] that sometime in June 2004, he learned that their aluminum level was missing; that on July 13, 2004, he was called to the warehouse to identify an aluminum level; that after examining said tool, he concluded that it was the Fabrication Unit's missing tool; and that he knew this because the missing aluminum level had a dent at the edge thereof, and the tool which he was asked to identify had the same dent.
2. In his sworn declaration,^[19] Tercero said that sometime in June 2004, he learned that their aluminum level was missing; that on July 13, 2004, he went to the warehouse to borrow an aluminum level; that he was given one; that what was given to him turned out to be the Fabrication Unit's missing aluminum level; and that he knew this because the word "Fabrication" was engraved thereon; and that thereafter he informed Dennis Zapanta, another warehouseman, of his discovery.
3. Antonio Nagales (Nagales), welder/fabricator at the Fabrication Unit, declared in his sworn statement^[20] that sometime in June 2004, he noticed that the unit's aluminum level was missing; that on July 13, 2004, he was called to the

warehouse to identify an aluminum level; and that he examined the said tool that was shown to him, and he concluded that it was the Fabrication Unit's missing aluminum level as it had a dent at the edge which he knew was caused by its having fallen when he used the same in the past.

On December 2, 2004, respondent issued its Decision^[21] suspending petitioner for a period of 30 days and requiring him to return the value of the lost aluminum level, or P280.00, through salary deductions. The decision stated that petitioner was charged with theft of the Fabrication Unit's aluminum level; that on July 11, 2004, petitioner returned to the warehouse an aluminum level upon which was engraved the word "FABRICATION" and which had a dent on the edge thereof; that Tercero discovered the theft when he borrowed the aluminum level from the warehouse; that upon investigation, it was learned that petitioner stole the Fabrication Unit's aluminum level in order to pass it off as the one which he borrowed previously; that petitioner's written explanation was insufficient to subvert the circumstantial evidence which points to him as the perpetrator of the theft; that petitioner is guilty of serious misconduct under Article 282 of the Labor Code^[22] and "*Patakaran Bilang 26*"^[23] of the company rules and regulations relative to theft of company property or employee/visitor belongings; and that on account of petitioner's years of service and the small amount involved, the company decided to impose the penalty of suspension and not dismissal.

On January 13, 2005, petitioner – through the company union (CAPASCO) – filed a Motion for Review^[24] seeking a reconsideration of the above Decision, arguing that there is no convincing evidence to link petitioner to the theft of the Fabrication Unit's aluminum level except for Narvasa's statement that what petitioner returned was the aluminum level issued to the Fabrication Unit.

Respondent conducted a hearing on the motion for review, and on February 18, 2005, it issued through its Human Resource Manager Leonardo A. Visorro, Jr. a resolution on petitioner's motion for review.^[25] It held:

At its core, you questioned the findings of guilt declared in the decision of Mr. Rolando Valerio, Administrative Officer – WRM. It is your contention that guilt could not be established for lack of witness to the commission of the act of theft. The event by itself precludes the presence or existence of witness. But the decision of Mr. Valerio used the sequence of events and circumstantial evidence in coming up with a finding of guilt. The finding was premised on the testimonies of witnesses who shed light on the following sequence of events:

1. June 2004 – discovery of loss of aluminum level issued to the "Fabrication Unit". Discovery made by Antonio Nagales, Welder/Fabricator, but not reported to Warehouse.
2. July 9, 2004 – Warehouse made paper inventory of aluminum levels and other items. Record stood that one (1) aluminum level was issued to "Fabrication" unit and one (1) to Dominador Malabonga[,]
Jr.
3. July 11, 2004 – Malabonga Jr. returned one (1) aluminum level to Warehouse.

4. July 13, 2004 – Jose Tercero, Welder/Fabricator, noticed the presence of one (1) aluminum level at the Warehouse marked with the engraving “Fabrication”, and a small dent showing that the said item was hit by a hard object.

5. Thereafter – investigation on the issue proceeded.

Investigation conducted clearly showed that the aluminum level with marking of “Fabrication” was not returned by personnel of the Fabrication. There is no record of such transaction. In the immediate time-frame from its discovery, only you had physically approached the Warehouse (on July 11, 2004) to return an aluminum level. It appeared that only you could have done so.

In the argument given by Mr. Jovito Octubre, Union President, he asked what if the aluminum level in question was borrowed by Malabonga Jr. after the discovery of its loss in June 2004 by Nagales. We find the reasoning argumentative and speculative. Malabonga Jr. made it appear that he borrowed the aluminum [level] for his individual use sometime in June 2004.

In response to this Mr. Salvador Narvasa, Warehouse Section Head showed a document dated March 23, 2004. It was an inventory of items issued earlier than March 23, 2004 which were due for return to the Warehouse. It instructed employees concerned to return to the Warehouse items issued to them within seven (7) days, otherwise deductions will be made on their wages corresponding to the value of the items. Dominador Malabonga[,] Jr. was included in the list and the document alleged that the aluminum level issued to him was number 11.

At this instance, it is recalled that Malabonga Jr. averred that he borrowed the aluminum level issued to him in the middle of June 2004. But this was not so. The one issued to him was borrowed by him in early March 2004 or earlier, and this was merely re[-]issued to him after the release of the notice dated March 23, 2004. Mr. Narvasa vouched for the authenticity of the document and Malabonga Jr. himself did not contest it. So then Malabonga Jr. was not forthright in his testimony in the investigation when he averred that he borrowed the aluminum level issued to him personally in June 2004. Was this a lapse of memory or intended to obscure a fact and mislead the investigating panel in the proper evaluation of the case? Mr. Narvasa, the Warehouse Section Head, averred to all present in the investigation that there is no aluminum level marked 11 (eleven) in the custody of the Warehouse.

With the above, we find that the decision was based on established evidence both testimonial and documentary. Hence, the decision of Mr. Valerio is affirmed as to suspending Malabonga Jr. for 30 days and requiring him to pay Php 280.00 for the acquisition price of the aluminum level through payroll deduction. No further appeal will be entertained by this Office. ^[26]