

## THIRD DIVISION

[ G.R. No. 188464, July 29, 2015 ]

**ALBERTO J. RAZA, PETITIONER, VS. DAIKOKU ELECTRONICS  
PHILS., INC. AND MAMORU ONO, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

Before the Court is a petition for review on *certiorari* assailing the Court of Appeals' Decision<sup>[1]</sup> dated December 22, 2008 and Resolution<sup>[2]</sup> dated April 14, 2009 which upheld the finding of the National Labor Relations Commission (NLRC) in its Resolutions dated May 31, 2006 and July 31, 2006 that petitioner was validly dismissed by respondents.

The facts of the case follow.

Petitioner Alberto J. Raza (*Raza*) was hired as a driver by respondent Daikoku Electronics Phils., Inc. (*Daikoku*) on January 11, 1999. Eventually, he was assigned to drive for the other respondent, the company president Mamoru Ono (*Ono*). Raza claims that his working days and hours depended on Ono's schedule and needs, so it was not unusual for him to be ordered to work from very early in the morning up to past midnight of any day, including Sundays.<sup>[3]</sup>

On the evening of July 21, 2003, Raza dropped Ono off at the latter's residence called the Pacific Plaza Condominium in Makati City. But Raza, instead of parking the company vehicle at the condominium building's parking area, drove the vehicle to his home and parked it there overnight. The next morning, as Raza was about to fetch Ono, the latter confronted him and asked why the vehicle was not at the condominium parking lot. Raza replied with a lie, telling Ono that he parked the car at the condominium building but in the wrong slot. Three (3) days later, on July 24, 2003, Raza was served a company Notice of Violation of the Code of Conduct for Dishonesty. On July 25, 2003, Raza submitted his written explanation wherein he admitted bringing the car to his home without permission and lying about it to Ono.<sup>[4]</sup> He apologized for these infractions but he also indicated that he was previously told by Ono that he could use the car if he needed to.<sup>[5]</sup>

The company's Investigation Committee conducted a hearing wherein Raza again admitted bringing the car home and lying about it to Ono, but Raza reiterated that there were previous occasions when Ono authorized him to bring the vehicle home.<sup>[6]</sup> The Committee then recommended the suspension of Raza for twelve (12) days without pay for the offenses of parking the company vehicle at home without authority and for lying about it.<sup>[7]</sup> However, disregarding such recommendation, the company's General Affairs Manager Gerardo Gaytano sent a letter dated August 7, 2003 terminating Raza's services for dishonesty.<sup>[8]</sup> Respondents explain that the

harsher punishment was imposed because at the meeting of the board of directors, Ono denied permitting Raza to use the company car and even presented a report from the Pacific Plaza Security Office stating that from May 1, 2003 to July 20, 2003, Raza did not park the company car at the said building for a total of thirty-one (31) instances, all without authority nor permission.<sup>[9]</sup>

Thus, Raza filed his Complaint for illegal dismissal with claims for damages and attorney's fees.

On January 15, 2005, Labor Arbiter Lita V. Alibut rendered a Decision<sup>[10]</sup> in favor of Raza as complainant. In NLRC Case No. RAB-IV-9-18127-03-L, the said officer ruled as follows:

WHEREFORE, finding the complainant's dismissal unlawful, respondents are hereby directed to reinstate complainant to his former position without loss of seniority rights and other benefits and (are) further ordered solidarily to pay complainant backwages from the time of his dismissal up to actual reinstatement minus the salary corresponding to the suspension period of twelve days plus 10% of the total award for attorney's fees computed as follows:

**FULL BACKWAGES:**

**A. Basic pay**

From 8/14/03 to  
1/14/05

P 12,000 x            P204,360.00  
17.03 =

**B. 13th month  
pay**

P 204,360 ÷            17,030.00  
12 =

**C. Service  
Incentive Leave  
Pay**

P 12,000 ÷ 30  
x 5 days x            2,838.33  
17.03 ÷ 12 =

P224,228.33

Less: P12,000 ÷            4,800.00  
30 x 12 days =

**TOTAL:**            P219,428.33

**Attorney's fee of**

P219,428.33 x            P 21,942.83  
10% =

**SO ORDERED.**<sup>[11]</sup>

The Labor Arbiter found that the allegations of Raza's infractions, such as his repeated use of the company vehicle without permission, are unsubstantiated by evidence.<sup>[12]</sup> She ruled that although the company alleges that there were thirty-one (31) prior incidents of Raza taking the company vehicle, allegedly reported by the condominium security guard, Raza was not confronted with the same in the notice of violation and neither was it presented during the deliberations by the

investigating committee. And even if such report was admitted, the Labor Arbiter still sustained Raza's explanation that he was permitted to do so by Ono and that there were times when Raza would work until 1:30 in the morning and was told to report back to work at 7:00 in the morning of the same day, or with just a few hours of rest in between.<sup>[13]</sup>

Disagreeing with the decision of the Labor Arbiter, respondents filed an appeal to the NLRC.

In a Resolution<sup>[14]</sup> dated August 31, 2005, the NLRC dismissed the appeal due to respondents' failure to include a certificate of non-forum shopping and lack of proper verification.

A motion for reconsideration with manifestation and compliance was filed by respondents.<sup>[15]</sup> It was duly opposed by Raza, who alleged that the same was filed out of time.<sup>[16]</sup>

The NLRC, in a Resolution<sup>[17]</sup> dated May 31, 2006, reinstated the appeal of respondents and ruled that the application of technical rules of procedure may be relaxed to meet the demands of substantial justice. In the same resolution, the NLRC set aside the findings of the Labor Arbiter and ruled in favor of respondents.<sup>[18]</sup> It held that Raza was not illegally dismissed since the infractions he committed were a just cause for dismissal.<sup>[19]</sup> Such infractions include the taking of the company vehicle without authority, which the NLRC described as a "recurring act," and the uttering of falsehood towards company president Ono, which it believed was a show of disrespect and brought dishonor to the latter.<sup>[20]</sup> However, the NLRC still found respondents liable for Raza's monthly salary, 13th month pay and service incentive leave pay during his period of reinstatement from the time of their receipt of the Labor Arbiter's decision up to the time of the NLRC's decision.<sup>[21]</sup> The NLRC held:

WHEREFORE, premises considered, respondents' Motion for Reconsideration is GRANTED. Complainant's Motion to Cite Respondents in Contempt is DENIED for lack of merit.

The assailed Decision dated January 15, 2005 of the Labor Arbiter is REVERSED and SET ASIDE and a new one is hereby entered declaring that complainant was validly dismissed from his employment. Nevertheless, for failure to reinstate complainant Alberto J. Raza pursuant to the Labor Arbiter's Decision, respondent DAIKOKU ELECTRONICS PHILS., INC. is hereby ordered to pay him his wages from 11 March 2005 up to the promulgation of this Resolution, provisionally computed as follows:

Basis pay:  
(3/11/05 –  
5/11/06)  
(P8,790.00 x 14 =  
months) P123,060.00  
13<sup>th</sup> month pay:  
(P123,060.00/12 = 10,255.55

|                   |                 |
|-------------------|-----------------|
| mos.)             |                 |
| Service Incentive |                 |
| Leave Pay:        |                 |
| (P8,790.00/30 x   |                 |
| 5 days x 14       | <u>1,709.17</u> |
| mos. / 12) =      |                 |
| TOTAL             | =               |
|                   | P135,024.72     |

SO ORDERED.<sup>[22]</sup>

Raza filed a motion for reconsideration of the above decision, but the same was denied by the NLRC in a Resolution<sup>[23]</sup> dated July 31, 2006.

Raza filed a petition for *certiorari* with the CA, assailing the NLRC's resolutions, but the petition was initially dismissed by the appellate court in its Order<sup>[24]</sup> dated November 6, 2006 for its failure to meet procedural requirements, such as the inclusion of pleadings and documents relevant to the petition, as well as the inclusion of the actual addresses of the respondents.

From the said dismissal, Raza filed a motion for reconsideration while submitting the pertinent documents that were missing in his petition.<sup>[25]</sup> Thus, in an Order<sup>[26]</sup> dated September 24, 2007, the CA granted the motion and reinstated the petition, as well as declared Raza an indigent litigant.

On December 22, 2008, the CA, in CA-G.R. SP No. 100714, rendered its assailed Decision,<sup>[27]</sup> denying the petition filed by Raza. The dispositive portion of that decision states:

WHEREFORE, in view of the foregoing, the petition is DISMISSED. The assailed rulings STAND.

SO ORDERED.<sup>[28]</sup>

The CA rejected Raza's allegation that respondents' motion for reconsideration of the NLRC's August 31, 2005 Resolution was filed late with the NLRC, stating that Raza failed to substantiate such allegation with evidence.<sup>[29]</sup> Then, it found that Raza's dishonesty, consisting of parking the vehicle at his home overnight and lying about it to Ono, is deserving of the sanction of dismissal.<sup>[30]</sup>

The motion for reconsideration filed by Raza was likewise denied in the other assailed Resolution,<sup>[31]</sup> dated April 14, 2009.

Hence, this petition. Petitioners rely on the following grounds for the grant of their petition:

# I.

THE HONORABLE COURT OF APPEALS ERRED IN LAW WHEN IT CONSIDERED RESPONDENTS' MOTION FOR RECONSIDERATION DATED OCTOBER 21, 2005 SUBMITTED BEFORE THE NATIONAL LABOR RELATIONS COMMISSION WHICH WAS OBVIOUSLY FILED OUT OF TIME

II.

THE HONORABLE COURT OF APPEALS ERRED IN LAW WHEN IT ALLOWED THE IMPOSITION OF A GROSSLY DISPROPORTIONATE PENALTY ON THE ALLEGED INFRACTION COMMITTED BY PETITIONER.

The issues for this Court's resolution are procedural and substantive: whether the respondents' Motion for Consideration dated October 21, 2005 was submitted on time with the NLRC, and whether petitioner Alberto J. Raza committed infractions or violations of company rules that merit the penalty of dismissal from employment.

As for the procedural ground, petitioner Raza argues that the motion for reconsideration filed by respondents with the NLRC after the tribunal initially dismissed their appeal was filed out of time.<sup>[32]</sup> He states that the deadline for filing the said motion was October 21, 2005, but there was allegedly a certification from the postmaster that the latter's office was without any clear record of mailing, or even a record of mailing or dispatch.<sup>[33]</sup> Raza admits, however, that the envelopes sent to the NLRC and his counsel all indicate through stamps and handwritten markings that the mailing date was October 21, 2005.<sup>[34]</sup>

To this Court, Raza's contentions as to the allegedly late filing of respondents' motion with the NLRC are untenable. Verily, the concerns raised are all factual which, under a petition for review under Rule 45, should not have been elevated to this Court for review. This Court is not a trier of facts, and this rule applies in labor cases.<sup>[35]</sup> The issue in question first came up and was already raised on the appeal with the NLRC, whose disposition of it was already affirmed by the Court of Appeals. In such a situation, the findings of the lower tribunals are no longer to be disturbed, and are even accorded finality,<sup>[36]</sup> unless the case falls under any of the exceptions that would necessitate this Court's review.<sup>[37]</sup> The petition does not even allege nor demonstrate that the case is covered by any of these exceptions.

At any rate, this Court finds nothing out of the ordinary nor irregular in the mailing of the motion of respondents as would put in doubt the timeliness of its filing. The mailing of the motion was done on the deadline for the filing and service of such, which was October 21, 2005, as indicated by the post office on the envelopes as well as in the registry receipts sent to the NLRC. Thus, the motion is considered filed on that date and the filing was on time. Petitioner does not dispute but even admits the fact that the envelopes and registry receipts bear that date. The rule is that whenever the filing of a motion or pleading is not done personally, the date of mailing (by registered mail), as indicated by the post office on the envelope or the registry receipt, is considered as the date of filing.<sup>[38]</sup> The fact that the post office indicated October 21, 2005 on the envelope and receipts as the mailing date, as examined first-hand by the NLRC based on its records, entitles respondents to the presumption that the motion was indeed mailed on said date. Official duties – in this case, of a post office employee – are presumed to be regularly performed, unless there is an assertion otherwise and the one so asserting rebuts such with affirmative evidence of irregularity or failure to perform a duty.<sup>[39]</sup> In addition, the stamps and marks made by the postal worker are considered entries in the regular course of