

THIRD DIVISION

[G.R. No. 197763, December 07, 2015]

**SMART COMMUNICATIONS, INC., MR. NAPOLEON L. NAZARENO,
AND MR. RICKY P. ISLA, PETITIONERS, VS. JOSE LENI Z.
SOLIDUM, RESPONDENT.**

[G.R. No. 197836]

**JOSE LENI Z. SOLIDUM, PETITIONER, VS. SMART
COMMUNICATIONS, INC., MR. NAPOLEON L. NAZARENO, AND
MR. RICKY P. ISLA, RESPONDENTS.**

D E C I S I O N

VELASCO JR., J.:

The Case

These are consolidated petitions filed under Rule 45 of the Rules of Court assailing the Decision dated April 4, 2011^[1] and Resolution dated July 14, 2011^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 109765 entitled *Jose Leni Z. Solidum v. National Labor Relations Commission (First Division), Smart Communications, Inc., Napoleon L. Nazareno and Ricky P. Isla*. The CA Decision affirmed with modification the Resolution dated January 26, 2009 and Decision dated May 29, 2009 of the National Labor Relations Commission (NLRC) in NLRC Case No. 00-11-09564-05.

The Facts

The facts as found by the CA are as follows:

In an Employment Contract dated April 26, 2004,^[3] Smart Communications, Inc. (Smart) hired Jose Leni Solidum (Solidum) as Department Head of Smart Prepaid/Buddy Activations under the Product Marketing Group. Existing company procedures provide that a department head shall approve project proposals coming from his marketing assistants and product managers/officers. Once approved, a finance officer will assign a reference number to the project with a stated budget allocation. If the Company decides to engage the services of a duly accredited creative agency, the department head will coordinate with it to discuss the details of the project. The implementation details and total amount of the project will then be included in a Cost Estimate (CE) submitted to the Company, routed for approval, and returned to the selected agency for implementation. After the project is carried out, the agency will bill the Company by sending the CE with attached invoices and other supporting documents.

On September 21, 2005, Solidum received a Notice to Explain of even date^[4] from the Company charging him with acts of dishonesty and breach of trust and

confidence. In summary, he was charged with violating "various company policies by misrepresenting and using his position and influence in his grant plot to defraud Smart by conceptualizing fictitious marketing events, appointing fictitious advertising agencies to supposedly carry out marketing events and submitting fictitious documents to make it appear that the marketing events transpired."^[5] He was charged with the following infractions: (1) falsification and/or knowingly submitting falsified contents of reports/documents relative to his duties and responsibilities; (2) obtaining through fraudulent means materials, goods or services from the Company; (3) failing or refusing to disclose to the Company any existing or future dealings, transactions, relationships, etc. posing or would pose possible conflict of interest; (4) other forms of deceit, fraud, swindling, and misrepresentation committed by an employee against the company or its representative; and (5) fraud or willful breach of trust in relation to transactions covered by Invoice No. 2921 and CE No. 2005-533 as well as CE Nos. 2005-413, 2005-459, 2005-461, 2005-526, 2005-460, 2005-552 and 2005-527 that were approved/noted by him. Solidum received a copy of the Notice on the same date. Pending administrative investigation, Solidum was placed under preventive suspension without pay for a period of thirty (30) days.

In a letter dated September 26, 2005,^[6] Solidum denied the charges and claimed that he never defrauded nor deceived the Company in his transactions.

Continued audit investigation, however, revealed that Solidum approved/noted several CEs covering activities for which payments were made but did not actually carried out. Unaccredited third parties were also engaged in the implementation of the projects. Thus, the Company issued another Notice to Explain dated October 21, 2005^[7] to Solidum, this time covering the following additional CEs: 2005-416, 2005-480, 2005-481, 2005-479, 2005-512, 2005-513, and 2005-533. Solidum was again preventively suspended for another ten (10) days. Further, the Company scheduled the administrative investigation of the case on October 26, 2005.

Solidum then sent a letter dated October 24, 2005^[8] to the Company requesting copies of the pertinent documents so he can prepare an intelligible explanation. In another letter dated October 26, 2005,^[9] Solidum stated that the investigation is highly suspicious and his extended suspension imposed undue burden. He also reserved his right to present evidence. In his last letter dated October 28, 2005,^[10] Solidum declared that he shall no longer receive or entertain notices or memorandum, except the final decision resolving the administrative charges against him.

Thereafter, the Company issued a letter dated November 2, 2005, alleging that Solidum refused to accept the documents that he had requested. Using this allegation, the Company imposed an additional preventive suspension often (10) days on Solidum.

Based on the available evidence, the Company decided to dismiss Solidum for breach of trust in a Notice of Decision dated November 9, 2005.^[11] Corollarily, a Notice of Termination was served on him on November 11, 2005.

Aggrieved, Solidum filed a complaint dated November 19, 2005 for illegal

suspension and dismissal with money claims before the Arbitration Branch of the NLRC claiming that his extended suspension and subsequent termination were without just cause and due process.

In a Decision dated July 3, 2006,^[12] the labor arbiter declared that the extended period of suspension without pay was illegal and that Solidum was unjustly dismissed from work without observance of procedural due process. He was ordered reinstated and was awarded backwages and monetary claims. The labor arbiter ratiocinated that the ground of breach of trust and confidence is restricted to managerial employees; however, no substantial evidence was presented to prove that Solidum has the prerogatives akin to a manager other than his titular designation as department head.

The Company appealed the adverse decision of the labor arbiter to the NLRC but was denied for having been filed out of time and/or for non-perfection, thus:

Records show that respondents received a copy of the Decision on "July 10, 2006" (See Registry Return Receipt, p. 561, Record) However, respondents filed their appeal only on "July 25, 2006" x x x already beyond the reglementary ten (10) calendar day period for filing an appeal to the Commission. x x x

Moreover, perusal of the appeal shows that the appeal bond attached to it is not accompanied by a security deposit or collateral. The CERTIFICATE OF NO COLLATERAL x x x that was submitted by the bonding company stating that the bond was issued on (sic) behalf of respondent SMART "without collateral because they are our valued client" and that "[t]he company declares its commitment to honor the validity of the foregoing bond notwithstanding the absence of collateral" does not serve any purpose other than an admission that the security deposit or collateral requirement under Section 6, Rule VI of the Revised Rules of [Procedure of the NLRC for perfecting an appeal was not complied with. Needless to state, the absence of a security deposit or collateral securing the bond renders the appeal legally infirm.^[13]

In its motion for reconsideration, the Company insisted that the appeal was filed within the reglementary period considering that it received the labor arbiter's decision only on July 13, 2006 and not July 10, 2006. It presented among others the Certification from Makati Central Post Office, the pertinent page of the letter carrier's Registry Book, and the respective affidavit of the letter carrier and the Company's receiving clerk. It added that in case of conflict between the registry receipt and the postmaster's certification, the latter should prevail. Likewise, the Company maintained that the surety bond was secured by its goodwill and the alleged lack of collateral or security will not render the bond invalid in view of the surety's unequivocal commitment to pay the monetary award.

Finding merit in the motion, the NLRC issued a Resolution dated January 26, 2009^[14] reversing its earlier ruling and giving due course to the appeal. It upheld the certification of the postmaster over the registry receipt and found that there was substantial compliance with the bond requirement, viz:

Given the factual milieu, the Commission rules that respondents' appeal was indeed filed within the ten (10) day period x x x. Since the Decision [of the Labor Arbiter] dated July 3, 2006 was received by respondents on July 13, 2006, respondents have (sic) effectively until July 25, 2006 (considering that July 23 was a Sunday, and July 24 was a declared nonworking day) x x x.

x x x x

As to the absence of security deposit or collateral, the Commission x x x finds that respondents were able to comply substantially with the pre-requisite for the perfection of appeal.

x x x While the appeal bond was posted without security or collateral, the Certification dated July 20, 2006, issued by the bonding company attests to the latter's "commitment to honor the validity of the foregoing bond notwithstanding the absence of collateral." Otherwise stated, the very purpose of a security or collateral should be deemed served considering the guarantee of the bonding company to pay the entire amount of the bond in the event respondents suffer an adverse disposition of their appeal. It matters not that the bond was issued on behalf of respondents without collateral for after all, the bond is accompanied by a declaration under oath bearing the bonding company's commitment to honor the validity of the surety bond and attesting that the surety bond is genuine and shall be in effect until the final disposition of the case.

The NLRC likewise reversed the labor arbiter's decision. It ruled that the seriousness of Solidum's infractions justified the additional period of suspension. It added that the labor arbiter erred in declaring Solidum's dismissal illegal and without just cause on the basis that he is not a managerial employee. On the contrary, overwhelming evidence showed that Solidum holds a position of trust and has violated various company policies. Finally, the NLRC found that Solidum was accorded procedural due process. The dispositive portion of the Resolution thus reads:

WHEREFORE, the foregoing considered, the Commission hereby resolves as follows:

1. complainant's Motion to Inhibit dated June 13, 2008 is DENIED for lack of merit.
2. respondents' Motion for Reconsideration dated July 27, 2007 is GRANTED and their instant appeal dated July 25, 2006 is given DUE COURSE.
3. the Commission's Resolution dated July 4, 2007 is SET ASIDE and VACATED.
4. the appealed Decision a quo dated July 3, 2006 is SET ASIDE and new one is ENTERED dismissing the complaint below for lack of merit.

SO ORDERED.

Thus, Solidum appealed to the CA. The CA then rendered the assailed Decision dated April 4, 2011 affirming with modification the Decision of the NLRC. The dispositive portion of the CA Decision reads:

FOR THESE REASONS, the Court AFFIRMS the NLRC Resolution dated January 26, 2009 with the MODIFICATION that petitioner Jose Leni Solidum be paid his salaries and benefits which accrued during the period of his extended preventive suspension.

SO ORDERED.

From such Decision both parties moved for reconsideration. The CA denied such Motions in a Resolution dated July 14, 2011. From such ruling of the appellate court, both parties appealed. Hence, the instant petitions.

The Issues

In G.R. No. 197763, Smart raises the following issues:

(A)

The Court of Appeals gravely erred in declaring illegal the second preventive suspension imposed by petitioner Smart upon the respondent.

(B)

The Court of Appeals gravely erred in declaring that petitioner Smart may not place the respondent under another preventive suspension after discovery of additional offenses notwithstanding that the offenses committed by the respondent warrant another preventive suspension.^[15]

In G.R. No. 197836, Solidum raises the following issues, to wit:

A.

Whether or not the public respondent Court of Appeal's Decision dated April 4, 2011 and Resolution dated July 14, 2011, ruling that the appeal of private respondent Smart filed with public respondent NLRC was well taken within the reglementary period, is in accordance with law, rules and prevailing jurisprudence.

B.

Whether or not the public respondent Court of Appeal's Decision dated April 4, 2011 and Resolution dated July 14, 2011, considering private respondent Smart's appeal with the NLRC as perfected by upholding the validity of the appeal bond posted by said private respondent Smart even if there was no security deposit or collateral, is in accordance with Section 4 and 6, Rule VI of the 2005 NLRC Revised Rules of Procedure, NLRC Memorandum Circular 1-01, series of 2004, and prevailing jurisprudence.

C.