

## SECOND DIVISION

[ G.R. No. 188747, January 29, 2014 ]

**MANILA WATER COMPANY, PETITIONER, VS. CARLITO DEL ROSARIO, RESPONDENT.**

### DECISION

**PEREZ, J.:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> filed pursuant to Rule 45 of the Revised Rules of Court, assailing the 31 March 2009 Decision<sup>[2]</sup> rendered by the Fifth Division of the Court of Appeals in CA-G.R. SP No. 92583. In its assailed decision, the appellate court: (1) reversed as grave abuse of discretion the Resolution of the National Labor Relations Commission (NLRC) which dismissed the petition of Manila Water Company (Manila Water) on technical grounds; and (2) proceeded to affirm with modification the ruling of the Labor Arbiter. Manila Water was ordered to pay respondent Carlito Del Rosario (Del Rosario) separation pay to be computed from 1 August 1997 up to June 2000.

In a Resolution<sup>[3]</sup> dated 7 July 2009, the appellate court refused to reconsider its earlier decision.

#### *The Facts*

On 22 October 1979, Del Rosario was employed as Instrument Technician by Metropolitan Waterworks and Sewerage System (MWSS). Sometime in 1996, MWSS was reorganized pursuant to Republic Act No. 8041 or the National Water Crisis Act of 1995, and its implementing guidelines - Executive Order No. 286. Because of the reorganization, Manila Water absorbed some employees of MWSS including Del Rosario. On 1 August 1997, Del Rosario officially became an employee of Manila Water.

Sometime in May 2000, Manila Water discovered that 24 water meters were missing in its stockroom. Upon initial investigation, it appeared that Del Rosario and his co-employee, a certain Danilo Manguera, were involved in the pilferage and the sale of water meters to the company's contractor. Consequently, Manila Water issued a Memorandum dated 23 June 2000, directing Del Rosario to explain in writing within 72 hours why he should not be dealt with administratively for the loss of the said water meters.<sup>[4]</sup> In his letter-explanation,<sup>[5]</sup> Del Rosario confessed his involvement in the act charged and pleaded for forgiveness, promising not to commit similar acts in the future.

On 29 June 2000, Manila Water conducted a hearing to afford Del Rosario the opportunity to personally defend himself and to explain and clarify his defenses to the charge against him. During the formal investigation Del Rosario was found responsible for the loss of the water meters and therefore liable for violating Section

11.1 of the Company's Code of Conduct.<sup>[6]</sup> Manila Water proceeded to dismiss Del Rosario from employment on 3 July 2000.<sup>[7]</sup>

This prompted Del Rosario to file an action for illegal dismissal claiming that his severance from employment is without just cause. In his Position Paper submitted before the labor officer, Del Rosario averred that his admission to the misconduct charged was not voluntary but was coerced by the company. Such admission therefore, made without the assistance of a counsel, could not be made basis in terminating his employment.

Refuting the allegations of Del Rosario, Manila Water pointed out that he was indeed involved in the taking of the water meters from the company's stock room and of selling these to a private contractor for personal gain. Invoking Section 11.1 of the Company's Code of Conduct, Manila Water averred that such act of stealing the company's property is punishable by dismissal. The company invited the attention of this Court to the fact that Del Rosario himself confessed his involvement to the loss of the water meters not only in his letter-explanation, but also during the formal investigation, and in both instances, pleaded for his employer's forgiveness.<sup>[8]</sup>

After weighing the positions taken by the opposing parties, including the evidence adduced in support of their respective cases, the Labor Arbiter issued a Decision<sup>[9]</sup> dated 30 May 2002 dismissing for lack of merit the complaint filed by Del Rosario who was, however, awarded separation pay. According to the Labor Arbiter, Del Rosario's length of service for 21 years, without previous derogatory record, warrants the award of separation pay. The decretal portion of the decision reads:

WHEREFORE, viewed from the foregoing, judgment is hereby rendered DISMISSING the complaint for illegal dismissal for lack of merit.

[Manila Water] is hereby ordered to pay complainant separation pay equivalent to one-half (1/2) month's salary for every year of service based on his basic salary (Php 11,244.00) at the time of his dismissal. This shall be computed from [1 August 1997] up to June 2000, the total amount of which is ONE HUNDRED EIGHTEEN THOUSAND SIXTY-TWO (Php 118,062.00) PESOS.<sup>[10]</sup>

In a Resolution<sup>[11]</sup> dated 30 September 2003, the NLRC dismissed the appeal interposed by Manila Water for its failure to append a certification against forum shopping in its Memorandum of Appeal.

Similarly ill-fated was Manila Water's Motion for Reconsideration which was denied by the NLRC in a Resolution<sup>[12]</sup> dated 28 April 2005.

On *Certiorari*, the Court of Appeals in its Decision dated 31 March 2009, reversed the NLRC Resolution and held that it committed a grave abuse of discretion when it dismissed Manila Water's appeal on mere technicality. The appellate court, however, proceeded to affirm the decision of the Labor Arbiter awarding separation pay to Del Rosario. Considering that Del Rosario rendered 21 years of service to the company

without previous derogatory record, the appellate court considered the granting of separation pay by the labor officer justified. The *fallo* of the assailed Court of Appeals Decision reads:

WHEREFORE, the petition is partly granted. The assailed Resolutions dated September 30, 2003 and [April 28, 2005] of public respondent NLRC are set aside. The Decision dated May 30, 2002 of the [L]abor [A]rbiter is reinstated, subject to the modification that the computation of the award of separation pay [to] private respondent shall be counted from August 1, 1997 x x x up to June 2000.<sup>[13]</sup>

In a Resolution<sup>[14]</sup> dated 7 July 2009, the Court of Appeals refused to reconsider its earlier decision.

Unrelenting, Manila Water filed the instant Petition for Review on *Certiorari* assailing the foregoing Court of Appeals Decision and Resolution on the sole ground that:

THE [COURT OF APPEALS] SERIOUSLY ERRED IN ISSUING THE QUESTIONED DECISION AND RESOLUTION WHICH DIRECTLY CONTRAVENE BOOK VI, RULE 1, AND SECTION 7 OF THE OMNIBUS RULES IMPLEMENTING THE LABOR CODE AND PREVAILING JURISPRUDENCE WHICH CATEGORICALLY PROVIDE THAT AN EMPLOYEE SEPARATED FROM SERIOUS MISCONDUCT IS NOT ENTITLED TO TERMINATION (SEPARATION) PAY.<sup>[15]</sup>

### ***The Court's Ruling***

In the instant petition, Manila Water essentially questions the award of separation pay to respondent who was dismissed for stealing the company's property which amounted to gross misconduct. It argues that separation pay or financial assistance is not awarded to employees guilty of gross misconduct or for cause reflecting on his moral character.<sup>[16]</sup>

Del Rosario for his part maintains that there is no legal ground to justify his termination from employment. He insists that his admission pertaining to his involvement in the loss of the water meters was merely coerced by the company. Since his dismissal was without valid or just cause, Del Rosario avers that Manila Water is guilty of illegal dismissal rendering it liable for the payment of backwages and separation pay.<sup>[17]</sup>

It must be stressed at the outset that the correctness of the Labor Arbiter's pronouncement on the legality of Del Rosario's dismissal is no longer an issue and is beyond modification. While Manila Water timely appealed the ruling of the Labor Arbiter awarding separation pay to Del Rosario, the latter did not question the dismissal of his illegal termination case.<sup>[18]</sup> It is settled in our jurisprudence that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision.<sup>[19]</sup> Due process

prevents the grant of additional awards to parties who did not appeal.<sup>[20]</sup> Having said that, this Court will no longer dwell on the issue of whether or not Del Rosario was illegally dismissed from employment. Included in the closed aspect of the case is respondent's argument that the absence of his counsel when he admitted the charge against him diminished the evidentiary value of such admission. Nonetheless, it may be mentioned that the constitutional right to counsel is available only during custodial investigation. If the investigation is merely administrative conducted by the employer and not a criminal investigation, the admission made during such investigation may be used as evidence to justify dismissal.<sup>[21]</sup>

Our focus will be on the propriety of the award for separation pay.

As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282<sup>[22]</sup> of the Labor Code is not entitled to a separation pay.<sup>[23]</sup> Section 7, Rule I, Book VI of the Omnibus Rules implementing the Labor Code provides:

*Sec. 7. Termination of employment by employer.* — The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

In exceptional cases, however, the Court has granted separation pay to a legally dismissed employee as an act of "social justice" or on "equitable grounds."<sup>[24]</sup> In both instances, it is required that the dismissal (1) was not for serious misconduct; and (2) did not reflect on the moral character of the employee.<sup>[25]</sup>

In the leading case of *Philippine Long Distance Telephone Company v. NLRC*,<sup>[26]</sup> we laid down the rule that separation pay shall be allowed as a measure of social justice only in the instances where the employee is validly dismissed for causes other than serious misconduct reflecting his moral character. We clarified that:

We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that