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THIRD DIVISION

[G.R. No. 198620, November 12, 2014]

P.J. LHUILLIER, INC. AND MARIO RAMON LUDEÑA, PETITIONERS, VS. FLORDELIZ VELAYO, RESPONDENT.

D E C I S I O N

REYES, J.:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Decision[2] dated June 30, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 03069, affirming the finding of the National Labor Relations Commission (NLRC) that respondent Flordeliz Velayo (respondent) was illegally dismissed. The Resolution[3] dated September 14, 2011 denied the motion for reconsideration thereof.

The Facts

The essential antecedent facts are summarized in the assailed CA decision, to wit:

> On June 13, 2003, (herein petitioner) PJ (CEBU) LHUILLIER, INC. (PJ LHUILLIER for brevity) hired FLORDELIZ M. ABATAYO [sic] as Accounting Clerk at the LH-4, Cagayan de Oro City Branch with a basic monthly salary of P9,353.00. On February 9, 2008 appellant (herein private respondent) was served with a Show Cause Memo by MARIO RAMON LUDENA, Area Operations Manager of PJ Lhuillier (herein petitioner), ordering her to explain within 48 hours why no disciplinary action should be taken against her for dishonesty, misappropriation, theft or embezz[le]ment of company funds in violation of Item 11, Rule V of the Company Code of Conduct. Thereafter, (s)he was placed under preventive suspension from February 9 to March 8, 2008 while her case was under investigation.
>
> The charges against the appellant (herein private respondent) were based on the Audit Findings conducted on October 29, 2007, where the overage amount of P540.00 was not reported immediately to the supervisor, not recorded at the end of that day.
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> On February 11, 2008, complainant (herein private respondent) submitted her reply and admitted that she was not able to report the overage to the supervisor since the latter was on leave on that day and that she was still tracing the overage; and that the omission or failure to report immediately the overage (sic) was just a simple mistake without intent to defraud her employer.
>
> On March 10, 2008, after the conduct of a formal investigation and after

> finding complainant's (herein private respondent's) [explanations] without merit, PJ LHUILLIER (herein petitioner) terminated her employment as per Notice of Termination on grounds of serious misconduct and breach of trust.[4] (Citation omitted)

On March 14, 2008, the respondent filed a complaint for illegal dismissal, separation pay and other damages against RJ. Lhuillier, Inc. (PJLI) and Mario Ramon Ludena, Area Operations Manager (petitioners). On July 23, 2008, the Labor Arbiter (LA) rendered judgment, the dispositive portion of which reads as follows:

> WHEREFORE, in view of all the foregoing, judgment is hereby entered ordering the dismissal of the instant complaint for lack of merit.
>
> SO ORDERED.[5]

The LA found that the respondent's termination was valid and based not on a mere act of simple negligence in the performance of her duties as cashier:

> This is not a case of simple negligence as the facts show that complainant, instead of reporting the matter immediately, had set aside the P540.00 for her personal use instead of reporting the overage or recording it in the operating system of the company.
>
> Complainant is not entitled to moral as well as exemplary damages for lack of basis.[6]

On appeal, the NLRC in its Decision dated March 19, 2009 countermanded the LA, holding that the respondent was illegally dismissed since the petitioners failed to prove a just cause of serious misconduct and willful breach of trust:

> In fine, the Labor Arbiter *a quo* utterly disregarded the rule on proportionality that has been observed in a number of cases, that is, "the penalty imposed should be commensurate to the gravity of his offense."
> x x x
>
> x x x x
>
> In the instant case, PJ LHUILLIER was not able to discharge the burden of proving that the dismissal of the complainant was for valid or just causes of serious misconduct and willful breach of trust. Thus, We disagree with the Labor Arbiter's findings and conclusion that complainant was validly dismissed from service.
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> x x x x
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> ... Significantly, the complainant's omission or procedural lapse did not cause any loss or damage to the company.[7]

Nonetheless, finding that the relations between the petitioners and the respondent have become strained, the NLRC did not order the reinstatement of the respondent. Thus:

> WHEREFORE, the instant appeal is GRANTED. The assailed decision is hereby SET ASIDE and REVERSED, and a new one entered declaring that complainant was ILLEGALLY DISMISSED. Accordingly, respondent PJ (CEBU) LHUILLIER, INC. is hereby ORDERED:
>
> (a) to pay complainant separation pay equivalent to one (1) month salary for every year of service, a fraction of at least six (6) months being considered as one (1) whole year in lieu of reinstatement due to strained relationship, computed from June 13, 2003 up to the finality of the promulgation of this judgment;
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> (b) to pay complainant FULL BACKWAGES in accordance with Bustamante vs. NLRC ruling (265 SCRA 061); and
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> (c) to pay ten percent (10%) of the total money award as attorney's fees.
>
> SO ORDERED.[8]

The NLRC subsequently denied the petitioners' motion for reconsideration thereof. On July 31, 2009, the petitioners filed a petition for *certiorari* in the CA with prayer for issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction, invoking the following issues:

> I
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> WHETHER OR NOT THE RESPONDENT [NLRC] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT DEVIATED FROM THE FINDINGS OF FACTS OF THE HONORABLE LABOR ARBITER.
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> II
>
> WHETHER OR NOT PETITIONERS ARE ENTITLED TO THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY INJUNCTION PENDING THE RESOLUTION OF THE INSTANT PETITION.[9]

The respondent filed her comment on August 19, 2009. On October 8, 2009, the petitioners filed an urgent motion to resolve their petition for *certiorari* and prayer for TRO and/or writ of preliminary injunction. On November 9, 2009, the CA denied the petitioners' prayer for TRO stating that they have not shown that they stood to suffer grave and irreparable injury if the TRO was denied. The remaining issue in the CA, then, was whether the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it set aside the factual conclusion and ruling of

the LA. The CA ruled in the negative:

> We concur with the NLRC in finding for private respondent. Time and again, the Supreme Court has held that it is cruel and unjust to impose the drastic penalty of dismissal if not commensurate to the gravity of the misdeed.
>
> In employee termination disputes, the employer bears the burden of proving that the employee's dismissal was for just and valid cause. In the instant case, the evidence does not support the finding of the Labor Arbiter that private respondent is guilty of serious misconduct.
>
> In this jurisdiction, the Supreme Court has consistently defined misconduct as an improper or wrong conduct, a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, implies wrongful intent and not mere error of judgment. To be a just cause for termination under Article 282 of the Labor Code of the Philippines, the misconduct must be serious, that is, it must be of such grave and aggravated character and not merely trivial or unimportant. However serious, such misconduct must nevertheless be in connection with the employee's work; the act complained of must be related to the performance of the employee's duties showing him to be unfit to continue working for the employer.
>
> **Private respondent's lapse was not a "serious" one, let alone indicative of serious misconduct.** In fact, she (herein private respondent) admitted that she was not able to report the overage to the supervisor since the latter was on leave on that day and that she was still tracing the overage; **and that the omission or failure to report immediately the overage was just a simple mistake without intent to defraud her employer**. As found by the NLRC, private respondent worked for petitioner for almost six (6) years, and it is not shown that she committed any infraction of company rules during her employment. In fact, private respondent was once awarded by petitioner due to her heroic act of defending her Manager, Ms. Lilibeth Cortez, while resisting a hold-upper.
>
> The settled rule is that when supported by substantial evidence, factual findings made by quasi-judicial and administrative bodies are accorded great respect and even finality by the courts. These findings are not infallible, though; when there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. Hence, when factual findings of the Labor Arbiter and the NLRC are contrary to each other, there is a necessity to review the records to determine which conclusions are more conformable to the evidentiary facts. The case before Us shows that the finding of the NLRC is supported by substantive evidence as compared to the finding of the Labor Arbiter with respect to the issue of illegal dismissal. Moreover, in case of doubt, such cases should be resolved in favor of labor, pursuant to the social justice policy of labor laws and the Constitution.

> Finally, it is a time-honored principle that although it is the prerogative of management to employ the services of a person and likewise to discharge him, such is not without limitations and restrictions. The dismissal of an employee must be done with just cause and without abuse of discretion. It must not be done in an arbitrary and despotic manner. To hold otherwise would render nugatory the security of tenure clause enshrined in the Constitution.[10] (Citations omitted and emphasis ours)

Invoking Article 279[11] of the Labor Code, the CA agreed with the NLRC that the respondent should have been reinstated without loss of seniority rights and other privileges, with payment of her full backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the time her compensation was withheld up to the time of actual reinstatement. However, with the parties' relations now strained, the CA conceded that the payment of a separation pay, along with backwages as a separate and distinct relief, is an acceptable alternative to reinstatement. The CA further awarded the respondent attorney's fees since she was forced to litigate and incur expenses to protect her rights and interests by reason of the unjustified acts of the petitioners.

Petition for Review in the Supreme Court

In this petition, the petitioners raise the following issues:

I. WHETHER OR NOT THE MISAPPROPRIATION BY A PAWNSHOP PERSONNEL IN THE AMOUNT OF [P]540.00, COUPLED WITH SUBSEQUENT DENIALS, AMOUNT TO A SERIOUS MISCONDUCT IN OFFICE?

II. WHETHER OR NOT THE IMPOSITION OF THE PENALTY OF TERMINATION FROM OFFICE [UPON] A PAWNSHOP PERSONNEL WHO MISAPPROPRIATED AN AMOUNT OF P540.00 FROM THE COFFERS OF THE PAWNSHOP, AND WHO MADE SUBSEQUENT DENIALS, IS CRUEL AND UNJUST?[12]

The appellate court agreed with the NLRC that the respondent's lapse was "just a simple mistake without intent to defraud her employer;"[13] that the incident was neither serious nor indicative of serious misconduct; and that her dismissal was disproportionate to her offense. It accepted the respondent's explanation that her failure to report her cash overage of P540.00 on October 29, 2007 to the branch manager, who was her immediate superior, was because the latter was then on leave, and that for days thereafter, she was hard-pressed in trying to trace and determine the cause thereof. The CA noted that the respondent had worked for PJLI for almost six years without any previous infractions of company rules, and that she was once commended for a heroic act of defending her former branch manager, Ms. Lilibeth Cortez, during a branch holdup.

On the other hand, the petitioners strongly maintain that under Rule V(A)(11) of its Code of Conduct on "Dishonesty, Misappropriation, Theft or Embezzlement of Company Funds or Property," the respondent committed a "First Level Offense" which is punishable by outright dismissal. According to the petitioners, the