

FIRST DIVISION

[G.R. No. 162385, July 15, 2013]

SAMAR-MED DISTRIBUTION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, AND JOSAFAT GUTANG, RESPONDENTS.

D E C I S I O N

BERSAMIN, J.:

Although an employer may legally dismiss an employee for a just cause, the non-observance of the requirements of due process before effecting the dismissal leaves the employer liable for nominal damages.

The Case

The employer appeals the decision promulgated on November 24, 2003^[1] whereby the Court of Appeals (CA) in CA-G.R. SP No. 74561 annulled and set aside the resolution dated February 28, 2001 of the National Labor Relations Commission (NLRC) in Cebu City dismissing the complaint for illegal dismissal,^[2] and declared respondent Josafat Gutang to have been illegally dismissed. Consequently, the CA reinstated the decision of the Labor Arbiter, and ordered the remand of the claim to the Labor Arbiter for the proper computation of the monetary awards.

Antecedents

Samar-Med Distribution, a sole proprietorship registered in the name of Danilo V. Roleda (Roleda), engaged in the sale and distribution of intravenous fluids (IVs) in Region VIII (comprised by the several Samar and Leyte provinces). Gutang was hired for a basic salary of P7,000.00/month and an allowance of P2,000.00/month, and had the task of supervising the company's sales personnel and sales agents, and of representing Samar-Med in transactions with the government in Region VIII.^[3]

On August 16, 1996, Gutang filed a complaint for money claims against Roleda/Samar-Med in the NLRC. He refiled the complaint on March 4, 1999 because the records were misplaced.^[4] He claimed that Samar-Med had difficulty paying his compensation during his employment, resulting in his not being paid salaries since November 1995, allowances since June 1994, and commissions from sales and 13th month pay in 1996; that Samar-Med made illegal deductions in June 1994 and February 1995; that he had no knowledge of any infraction that had caused his dismissal; that he did not receive any notice informing him of the cessation of Samar-Med's business operations; and that he had been compelled to look for other sources of income beginning on March 26, 1996 in order to survive.^[5]

Roleda/Samar-Med denied liability for Gutang's monetary claims, contending that Gutang was not his employee but an employee of the City Council of Manila; that Gutang had approached and asked him if he could assist in the operation of the business of Samar-Med in order to have extra income; that Gutang was thus permitted to sell Samar-Med's products in his own hometown in Region VIII; that Gutang stopped selling and no longer returned to Manila after he was tasked to conduct an investigation of the shortage in sales collections;^[6] that there was no dismissal of Gutang, to speak of, but abandonment on his part; and that the complaint was a harassment suit to retaliate for the criminal case he (Roleda) had meanwhile filed against Gutang for misappropriating Samar-Med's funds totaling P3,302,000.71, as reflected in the demand letter dated May 15, 1996.

Decision of the Labor Arbiter

In his decision dated October 29, 1999,^[7] Executive Labor Arbiter Vito C. Bose (ELA Bose) declared Gutang an employee of Samar-Med, and ruled that he had been illegally dismissed. ELA Bose further ruled that Roleda's allegation of abandonment by Gutang could not be believed because no written notice was served on Gutang to substantiate the allegation; that the immediate filing of the complaint in 1996 disproved the claim of abandonment; that Gutang was forced to obtain interim employment elsewhere in March 1996 because Samar-Med failed to pay his salary beginning November 1995; that Roleda, as the proprietor of Samar-Med, had to pay Gutang backwages fixed at one year only and separation pay in lieu of reinstatement in the total amount of P171,000.00: ELA Bose also ruled, however, that Gutang's claim for 13th month pay could not be granted because he had been a managerial employee exempted from the coverage of Presidential Decree No. 851; and that Gutang's other monetary claims lacked of factual and legal bases.

Ruling of the NLRC

The NLRC initially denied Roleda's appeal on August 14, 2000 for his failure to post the required appeal bond.

Upon Roleda's motion for reconsideration, the NLRC gave due course to the appeal through its resolution of February 28, 2001, and dismissed the complaint of Gutang,^[8] viz:

On the other hand, We find in the records copies of Official Receipts signed and issued by the complainant, a copy of a Purchase Order as well as a Voucher for the payment of the Order which clearly shows his participation in the transactions (pp. 71-79, Records). However, upon close examination, We find no conflict between the Certification and the Receipts, Purchase Order and Voucher. The certification shows that complainant was employed by City Hall Manila from July 16, 1992 to April 30, 1994, while the Purchase Order was dated September 9, 1994 (p. 78, records). Clearly, the transactions entered into by complainant were made after his employment with City Hall Manila. Indubitably, complainant was an employee of respondent. Moreover, contrary to respondent's later denials, it already admitted complainant's status as a managerial employee when it stated in its position paper that "as

discussed above, complainant is a managerial employee.” (p. 13, Records).

That notwithstanding, We simply cannot gloss over the fact that complainant stands charged of embezzling not just a few thousand pesos, but Three Million (P3,000,000.00) Pesos. While the Official Receipts, Purchase Order and Voucher proved his status as a managerial employee, it likewise shows that he received sums of money in behalf of respondent including the One Million, Six Hundred Thirty-Six Thousand, Seven Hundred Seventy-seven and Fifty-seven Centavos (1,636,777.57) paid by the Province of Leyte as evidence by his signature (p. 79, records). Obviously, complainant failed to account for the money hence the demand letter by respondent’s counsel dated May 15, 1996 (p. 98, records). When complainant failed to pay, the proper complaint was filed in the Provincial Prosecutor’s Office Cavite, who conducted the preliminary investigation before filing the appropriate Information for Estafa in Court. Indeed, the certification appended to the Information signed by Manuel Tano, Asst. Provincial Prosecutor, reads as follows: “It is hereby certified as shown by the records that the preliminary investigation in this case has been conducted by the Asst. City Prosecutor Mary June P. Orquiza; that upon review of the records, there is reasonable ground to believe that the crime charged has been committed and that the accused is probably guilty thereof.” (p. 26-27, records). Such findings made by a fellow government agency especially tasked with resolving criminal complaints filed before it is persuasive and deserves full weight and credence. Pursuant thereto, a Warrant of Arrest was issued by the RTC, Branch 20, Imus, Cavite (p. 28, records).

Under the above circumstances, respondent has sufficient reasons to lose its trust and confidence on the complainant. More so, in this case where complainant is a managerial employee. “When an employee accepts a promotion to a managerial position or to an office requiring full trust and confidence, she gives up some of the rigid guarantees available to an ordinary worker. Infraction which if committed by others would be overlooked or condoned or penalties mitigated, may be visited with more serious disciplinary action.” (Metro Drug Corporation vs. NLRC, 143 SCRA 132).

Complainant claimed that he had elevated on appeal to the Department of Justice the findings of the Provincial Prosecutor. Whatever the outcome, the fact remains that the trust and confidence reposed on him by respondent has been breached as respondent has ample reasons to distrust him. “it has been repeatedly held by this Court in a long line of decisions that where an employee has been guilty of breach of trust or his employer has ample reason to distrust him, a labor tribunal cannot deny the employer the authority to dismiss the employee. Loss of trust and confidence by management justifies grant of clearance to dismiss. Indeed, it is an established principle that an employer cannot be compelled to continue in employment an employee guilty of acts inimical to the interests of the employer and justifying loss of confidence in him. (San Miguel Corp. vs. Deputy Minister of Labor and Employment, 145 SCRA 196).

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"Loss of confidence as a ground for dismissal does not entail proof beyond reasonable doubt of the employee's misconduct. It is enough that there be "some basis" for such loss of confidence or that "the employer has reasonable grounds to believe, if not to entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position." (Tabacalera Insurance Co. vs. NLRC, 152 SCRA 667).

WHEREFORE, premises considered, Our decision is hereby **MODIFIED**, reinstating and giving due course to respondent's appeal. The decision of the Executive Labor Arbiter is hereby **SET ASIDE** and a new one entered **DISMISSING** the complaint for illegal dismissal.

SO ORDERED.

Gutang sought reconsideration, but the NLRC denied his motion.

Ruling of the CA

Gutang then assailed the outcome in the NLRC through a petition for *certiorari* that he filed in the CA, submitting the following issues, namely:

WHETHER OR NOT THE NLRC GRAVELY ABUSED ITS DISCRETION WHEN IT ADMITTED PRIVATE RESPONDENT'S APPEAL DESPITE THE LATE POSTING OF AN APPEAL BOND.

WHETHER OR NOT PETITIONER WAS ILLEGALLY DISMISSED.

On November 24, 2003, the CA promulgated its decision,^[9] to wit:

The petition is partly meritorious.

On the first issue, this Court finds that the NLRC did not abuse its discretion when it considered private respondent's appeal as perfected. Indeed, the Supreme Court has relaxed the requirement of posting a supersedeas bond for the perfection of appeal when there is a substantial compliance with the rules (*Star Angel Handicraft v. NLRC*, 236 SCRA 580, *Globe General Services and Security Agency v. NLRC*, 249 SCRA 408).

It appears from the records that private respondent filed a manifestation to allow the late filing of a surety bond within the period to appeal. Thereafter, it filed the surety bond on March 8, 2000. As such, the NLRC acted within its discretion when it reconsidered its resolution dismissing the appeal for failure to post a bond and considered petitioner's manifestation as a motion to reduce bond. It is worthy to note that the

purpose of the posting of a bond is to assure the workers that if they finally prevail in the case the monetary award will be given to them upon dismissal of the employer's appeal. It is further meant to discourage employers from using the appeal to delay or evade payment of their obligations to the employees (*Coral Point Development Corporation v. NLRC*, 336 SCRA 554).

On the second issue, however, the Court finds the same meritorious. It is clear from the records that there is an employer-employee relationship between the parties. As such, a valid termination of the same by the employer may only be had after the latter has complied with both the substantive and procedural requirements of the law. The Labor Code in Articles 282 and 283 provide for the just and authorized causes for termination while the procedural requirement pertains to the two notices and hearing requirements. These requirements provide that the employer must: 1) serve notice to the employee informing him/her of the grounds for his/her possible termination, 2) give the employee a chance to be heard, and 3) serve termination notice to the employee therefore (*Rules Implementing the Labor Code, Rule XXIII, Section 2*). The employer has the burden of proving the same.

Based on the foregoing requirements, petitioner's termination from employment is illegal. Private respondent submitted that it was petitioner who abandoned his job. The records, however, is bereft of proof to show abandonment on the part of petitioner. It is settled that for abandonment to be a just cause for termination, the following requisites must concur: 1) the employee's intention to abandon employment, and 2) overt acts from which such intention may be inferred – as when the employee shows no desire to resume work (*Hyatt Taxi Service, Inc. v. Catinoy*, 359 SCRA 686). It is well to note that petitioner looked for another source of income after he was not paid his salary for several months. Thereafter, he filed a complaint for money claims against private respondent only several months after he decided to look for other sources of income. This circumstance would show that petitioner had no intention to abandon his work.

Moreover, even granting that petitioner abandoned his job, private respondent still failed to provide petitioner with the procedural due process required by law consisting of the two notices and hearing requirements. Thus, since private respondent failed to prove the valid termination of petitioner, the decision of the Labor Arbiter granting the money claims of petitioner including his backwages and separation pay is proper.

WHEREFORE, based on the foregoing, the instant petition is hereby **GRANTED**. The assailed decision and resolution of the NLRC are **ANNULLED** and **SET ASIDE**. The decision of the Labor Arbiter is hereby **REINSTATED**. The records of the case are remanded to the Labor Arbiter for proper computation of the monetary awards.

SO ORDERED.