

SECOND DIVISION

[G.R. No. 188267, December 02, 2013]

BAGUIO CENTRAL UNIVERSITY, PETITIONER, VS. IGNACIO GALLENTE, RESPONDENT.

DECISION

BRION, J.:

We resolve in this petition for review on *certiorari*^[1] the challenge to the March 12, 2009 decision^[2] and the May 26, 2009 resolution^[3] of the Court of Appeals (CA) in CA-G.R. Sp No. 104144. This CA decision vacated the November 28, 2007 decision^[4] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 050099-06 (NLRC CASE NO. RAB-CAR-12-0657-05) which, in turn, modified the June 30, 2006 decision^[5] of the Labor Arbiter (LA) declaring that respondent Ignacio **Gallente** had been illegally dismissed.

The Factual Antecedents

In October 1991, petitioner Baguio Central University (BCU) hired Gallente as an instructor. The BCU subsequently promoted and appointed Gallente as Dean of the BCU's Colleges of Arts and Sciences and Public Administration.

On February 5, 2005, Gallente, using the name "Genesis Gallente," along with six other incorporators, organized the GRC Review and Language Center, Inc. (GRC).^[6] The GRC's Articles of Incorporation^[7] (AOI) listed its primary purpose as "to conduct review classes for teachers, nursing, engineering and other professional and technical for Board Licensure examinations and Civil Service Professional examination," and its secondary purpose as "to conduct tutorial and proficiency trainings for foreign languages." This AOI also listed the BCU as the GRC's primary address.

The BCU's President, Dr. Margarita **Fernandez**, subsequently called Gallente's attention regarding the establishment of the GRC and his use of the BCU as the GRC's address and of the BCU's resources. The BCU's officers conducted grievance meetings^[8] with Gallente to allow him to explain his side. On September 30, 2005, Gallente tendered his resignation by letter.^[9]

On December 8, 2005, Gallente filed before the LA a complaint for illegal (constructive) dismissal, non-payment of vacation and sick leave pay for 2005, tax refund for the same year and attorney's fees.

In the June 30, 2006 decision,^[10] the LA found that Gallente was illegally dismissed and ordered the BCU and Fernandez to pay Gallente separation pay, backwages,

13th month pay, vacation and sick leave pay, service incentive leave benefits, tax refund for the year 2005 and attorney's fees. The LA essentially held that, *first* Gallente's resignation was not voluntary. The LA noted that while the BCU conducted grievance meetings, the BCU had already decided to terminate Gallente's employment and practically coerced him to resign. Thus, to the LA, the BCU constructively dismissed Gallente.

And *second*, the BCU's bases for the loss-of-trust-and-confidence charge did not sufficiently justify Gallente's dismissal. The LA pointed out that: (1) Gallente did not benefit from the GRC nor did the GRC's incorporation cause the BCU any damage or besmirch its reputation; (2) the claimed competition between the BCU and the GRC was highly speculative; (3) Gallente's position as Dean did not conflict with his position as organizer of the GRC since his intention was to help the BCU alumni; and (4) the BCU failed to show that Gallente's performance of his duties as Dean suffered when he organized the GRC.

The NLRC's Ruling

In its decision^[11] of November 28, 2007, the NLRC partially granted the BCU's appeal. In contrast with the LA's ruling, the NLRC found justifiable grounds for the BCU's loss of trust and confidence that rendered Gallente's dismissal valid. The NLRC noted that Fernandez permitted Gallente only to conduct review classes for the Civil Service Examination, but not to organize the GRC or to conduct review courses for other government regulated examinations (that the BCU also offered) nor to give tutorial and proficiency trainings for foreign languages. The NLRC declared that by offering these other activities that were clearly beyond what Fernandez permitted, Gallente betrayed the BCU's trust and directly competed with the latter. Thus, Gallente was guilty of conflict of interest and disloyalty.

Further, the NLRC pointed out that the absence of pecuniary loss on the BCU's part or the GRC's failure to fully operate did not excuse Gallente from culpability for his acts. To the NLRC, actual damage or loss is not necessary to render Gallente liable for willful breach of trust and confidence; as a Dean and as the holder of a responsible and sensitive position, he owed utmost fidelity to his employer's interests. Accordingly, the NLRC reversed the LA's illegal dismissal findings and deleted the award of backwages and separation pay.

Gallente moved to reconsider^[12] this NLRC ruling, which the NLRC denied in its March 18, 2008 resolution.^[13]

The CA's Ruling

In its March 12, 2009 decision,^[14] the CA reversed the NLRC's ruling and reinstated the LA's June 30, 2006 decision. The CA significantly affirmed the LA's findings on the insufficiency of the BCU's bases for the loss-of-trust charge. Additionally, the CA pointed out that at the time Gallente organized the GRC, the BCU's Review Center did not yet exist; also, the GRC did not successfully operate because it failed to comply with certain legal requirements. The CA submitted that even if it were to assume that Gallente committed a breach, this breach was ordinary and was not sufficient to warrant his dismissal; to be a legally sufficient basis, the employee's breach must be willful and intentional. Since the BCU failed to prove willful breach of

trust, the CA declared Gallente's dismissal to be invalid.

The BCU filed the present petition after the CA denied its motion for reconsideration^[15] in the CA's May 26, 2009 resolution.^[16]

The Petition

The BCU argues that it validly dismissed Gallente for willful breach of trust and confidence.^[17] It points out that as Dean and, therefore, as a managerial employee, Gallente owed utmost fidelity to it as an educational institution and to its business interests. To the BCU, Gallente effectively competed with it and breached the trust that his position held when he organized the GRC that offered review courses for other government examinations, aside from the civil service examination and tutorial and proficiency training in foreign languages that BCU similarly offers. The BCU also claims that Gallente created a conflict of interest when he offered thesis dissertation courses in the GRC. Thesis dissertation was part of its (the BCU's) own graduate school program and Gallente, as Dean, sits as member of the judgment panel during oral defenses of thesis dissertations. The BCU thus maintains that regardless of the presence or absence of pecuniary benefit, it validly terminated Gallente's employment as these acts, alone, justified his dismissal.

The BCU adds that Gallente's use of the BCU, as the GRC's principal address in the AOI and his use of BCU's property when he posted the GRC's streamer advertisement outside the BCU's premises – both of which were made without its permission – negate Gallente's claim of good faith. The BCU argues that by doing so, Gallente not only lied before the Securities and Exchange Commission (SEC) but also represented to the public that BCU gave the GRC its imprimatur. Moreover, the BCU points out that while it did not yet have a review center when Gallente organized the GRC, it had, at this time, already been conducting review classes for the nursing examination and thesis dissertation. Although the GRC failed to fully operate, the BCU insists that Gallente unquestionably engaged in a venture that directly conflicted with its interests.

The BCU concludes that whether Gallente voluntarily resigned or was dismissed, the termination of Gallente's employment was valid for it was for a just cause, *i.e.*, loss of trust and confidence. Accordingly, since Gallente was validly dismissed, the BCU argues that Gallente is not entitled to the awarded separation pay, backwages, allowances and other benefits.

The Case for the Respondent

In his comment,^[18] Gallente maintains that he was illegally dismissed as the ground on which the BCU relied for his dismissal had no basis. He argues that the BCU failed to prove that he willfully breached its trust and that he competed with it, intentionally or otherwise, when he organized the GRC. He points to the following reasons.

First, he never offered any review course; the most that the BCU could have used as basis for its claim of competition was the advertisement that he posted and handed out for the conduct of review courses for the civil service examination. Even then, the competition actually took place, as the GRC failed to fully operate.

Second, even if the civil service examination review course that he advertised pushed through, the BCU was not yet offering similar review courses that could have directly competed with it.

Third, although the GRC's AOI included programs or courses that the BCU had already been offering, he did not intend the GRC to offer these courses; if he did, he would have otherwise included these programs or courses in the advertisement.

Fourth, he merely included the review courses for other government examinations in the GRC's AOI on advice of the local SEC official.

Finally, the BCU did not yet have its own review center at the time he organized the GRC.

Procedurally, Gallente argues that the present petition's issues and arguments are factual and are not allowed in a Rule 45 petition. Moreover, the BCU's arguments fail to show that the CA gravely abused its discretion to warrant the CA decision's reversal.

The Issues

In sum, the core issue is the presence or absence of loss of trust and confidence as basis. In the context of the Rule 65 petition before the CA, the issue is whether the CA correctly found the NLRC in grave abuse of discretion in ruling that the BCU validly dismissed Gallente on this ground.

The Court's Ruling

We resolve to **GRANT** the petition.

Preliminary considerations; Nature of the issues; Montoya ruling and the factual-issue-bar rule

In this Rule 45 petition for review on *certiorari*, we review the CA's decision rendered under Rule 65 of the Rules of Court. Our power of review under the present petition is limited to legal errors that the CA might have committed in issuing its assailed decision,^[19] in contrast with the review for jurisdictional errors which we undertake in an original *certiorari* (Rule 65) action.^[20]

In reviewing the legal correctness of the CA decision in a labor case taken under Rule 65, we examine the CA decision based on how it determined the presence or absence of grave abuse of discretion in the NLRC decision before it and not on the basis of whether the NLRC decision on the merits of the case was correct.^[21] In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.^[22]

Moreover, the Court's power in a Rule 45 petition limits us to a review of questions of law raised against the assailed CA decision.^[23] A question of law arises when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts.^[24] In contrast, a question of fact exists when a doubt or

difference arises as to the truth or falsehood of facts.^[25]

In this petition, the BCU essentially asks the question – whether, under the circumstances and the presented evidence, the termination of Gallente’s employment was valid. As framed, therefore, the question before us is a proscribed factual issue that we cannot generally consider in this Rule 45 petition, except to the extent necessary to determine *whether the CA correctly found the NLRC in grave abuse of its discretion in considering and appreciating this factual issue.*^[26]

All the same, we deem it proper to review the conflicting factual findings of the LA and the CA, on the one hand, and the NLRC, on the other, as an exception to the Rule 45 requirement^[27] which allows us to undertake a factual review, based on the record, when the factual findings of the tribunals below are in conflict. This rule allows us to arrive at a complete resolution of this case’s merits.

On the issue of whether Gallente’s employment was validly terminated; Loss of trust and confidence as ground for dismissal

Our Constitution, statutes and jurisprudence uniformly guarantee to every employee or worker tenurial security. What this means is that an employer shall not dismiss an employee except for just or authorized cause^[28] and only after due process is observed.^[29] Thus, for an employee’s dismissal to be valid, the employer must meet these basic requirements of: (1) just or authorized cause (which constitutes the substantive aspect of a valid dismissal); and (2) observance of due process (the procedural aspect).

1. Substantive aspect; dismissal based on loss of trust and confidence

Loss of trust and confidence is a just cause for dismissal under Article 282(c) of the Labor Code.^[30] Article 282(c) provides that an employer may terminate an employment for “fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.” However, in order for the employer to properly invoke this ground, the employer must satisfy two conditions.

First, the employer must show that the employee concerned holds a position of trust and confidence. Jurisprudence provides for two classes of positions of trust. The first class consists of managerial employees, or those who by the nature of their position, are entrusted with confidential and delicate matters and from whom greater fidelity to duty is correspondingly expected.^[31] Article 212(m) of the Labor Code defines managerial employees as those who are “vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or to effectively recommend such managerial actions.” The second class includes “cashiers, auditors, property custodians, or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of [the employer’s] money or property”^[32]

Second, the employer must establish the existence of an act justifying the loss of trust and confidence.^[33] To be a valid cause for dismissal, the act that betrays the employer’s trust must be real, *i.e.*, founded on clearly established facts,^[34] and the employee’s breach of the trust must be willful, *i.e.*, it was done intentionally,