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SECOND DIVISION

[G.R. No. 194813, April 25, 2012]

KAKAMPI AND ITS MEMBERS, VICTOR PANUELOS, ET AL., REPRESENTED BY DAVID DAYALO, KAKAMPI VICE PRESIDENT AND ATTORNEY-IN-FACT, PETITIONER, VS. KINGSPOINT EXPRESS AND LOGISTIC AND/OR MARY ANN CO, RESPONDENTS.

D E C I S I O N

REYES, J.:

This is a petition for review under Rule 45 of the Rules of Court of the Amended Decision[1] dated March 16, 2010 and Resolution[2] dated December 16, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 106591.

Victor Pañuelos (Pañuelos), Bobby Dacara (Dacara), Alson Dizon (Dizon), Saldy Dimabayao (Dimabayao), Fernando Lupangco, Jr. (Lupangco), Sandy Pazi (Pazi), Camilo Tabarangao, Jr. (Tabarangao), Eduardo Hizole (Hizole) and Reginald Carillo (Carillo) were the former drivers of Kingspoint Express and Logistic (Kingspoint Express), a sole proprietorship registered in the name of Mary Ann Co (Co) and engaged in the business of transport of goods. They were dismissed from service on January 20, 2006 on the grounds of serious misconduct, dishonesty, loss of trust and confidence and commission of acts inimical to the interest of Kingspoint Express.

Prior thereto, Kingspoint Express issued separate notices to explain to the individual petitioners on January 16, 2006, uniformly stating that:

> RE: CHARGES OF DISHONESTY
> SERIOUS MISCONDUCT &
> LOSS OF CONFIDENCE
>
> Dear Mr. Dacara:
>
> You are hereby formally charged with DISHONESTY, SERIOUS MISCONDUCT, LOSS OF CONFIDENCE, and acts inimical to the company, by filing with the National Labor Relations Commission (NLRC) false, malicious, and fabricated cases against the company. Further, your refusal to undergo drug testing is unwarranted and against company policy.
>
> Please submit your answer or explanation to the foregoing charges within forty-eight (48) hours [from] receipt hereof. Your failure to do so would mean that you waive your right to submit your answer.

> You may likewise opt for a formal investigation with the assistance of counsel, or proceed with the investigation as you may choose.
>
> In the meantime, you are place[d] under preventive suspension for thirty (30) days effective on January 16, 2006. You are physically barred from company premises while the preventive suspension exists[.][3]

The individual petitioners failed to submit their written explanation within the stated period. Subsequently, Kingspoint Express issued to them separate yet uniformly worded notices on January 20, 2006, informing them of their dismissal. Kingspoint Express expressed its decision in this wise:

> On January 16, 2006, you were formally charged with DISHONESTY, SERIOUS MISCONDUCT and LOSS OF CONFIDENCE and ACTS INIMICAL TO THE COMPANY based on the following acts:
>
> 1. FABRICATION OF BASELESS MONEY CLAIMS against the company;
>
> 2. MISLEADING FELLOW CO-WORKERS to sign the MALICIOUS COMPLAINT FOR MONEY CLAIMS against the company;
>
> 3. REFUSAL TO UNDERGO THE COMPANY'S GENERAL DRUG TEST[;]
>
> 4. EXTORTING MONEY FROM CO-WORKERS TO FUND ACTIVITIES THAT THEY WERE NEVER FULLY INFORMED OF;
>
> You were given two (2) days to respond to these charges, but you failed to do [so].[4]

In addition to the foregoing, Dacara was dismissed for consummating his sexual relations with one of Co's household helpers inside Co's residence thus impregnating her.[5]

A complaint for illegal dismissal was subsequently filed, alleging that the charges against them were fabricated and that their dismissal was prompted by Kingspoint Express' aversion to their union activities.

In a Decision[6] dated April 23, 2007, Labor Arbiter Cresencio G. Ramos, Jr. (LA Ramos) found Dacara, Lupangco, Pazi, Tabarangao, Hizole and Carillo illegally dismissed. On the other hand, the complaint was dismissed insofar as Panuelos, Dizon and Dimabayao are concerned as they were deemed not to have filed their position papers. While the allegation of anti-unionism as the primordial motivation for the dismissal is considered unfounded, the respondents failed to prove that the dismissal was for a just cause. The pertinent portion of the decision reads:

> From a perusal and examination of the pieces of evidence adduced by the respondents in support of their defense, this Office finds the same as *not* being sufficient and substantial to establish the charges of serious

misconduct and breach of trust. Consider the following:

> On the complainants' *alleged* refusal to undergo the company's general drug testing, the same is explicitly nothing but an unsubstantiated *allegation*, therefore, undeserving of judicial and quasi-judicial cognizance.
>
> On the *alleged* act of the complainants in extorting money from co-workers to fund activities that they were not fully informed of as well as the *alleged* misleading of co-workers to sign "malicious money claims" against the company, it is to be noticed that respondents' support or evidence thereto are the joint affidavit of drivers and helpers as well as that of one Ronie Dizon. On said pieces of evidence, this Office could not give much probative or evidentiary value and weight thereto as said sworn statements may definitely not be said to have genuinely emanated from the affiants (sic) drivers and helpers. To be precise, the joint-affidavit of the drivers and helpers (annex "B", respondents' position paper) obviously was "tailor-made", so to speak, to conform with the respondents' position or defense in the instant case. Said joint-affidavit in fact is couched in english, thus, tremendously lowering the probability that the statements therein really came from the "hearts and souls" of the lowly-educated drivers and helpers.
>
> On the breach of trust allegedly committed by Bobby Dacara with respect to the *alleged* act of repeatedly sneaking in the household of respondent Mary Ann Co and thereafter impregnating one of the latter's househelps, the same is *nothing* but an *unsubstantiated allegation* and therefore, undeserving of judicial and quasi-judicial cognizance. Jurisprudence definitely is explicit on this point that an *affirmative allegation* made by a party must duly be proven to merit acceptance (People vs. Calayca, 301 SCRA 192).[7]

On appeal, the National Labor Relations Commission (NLRC) affirmed LA Ramos' Decision dated April 23, 2007 in its Resolution[8] dated April 30, 2008, thus:

> In the case at bar, We are persuaded to agree with the findings of the Labor Arbiter that "the pieces of evidence adduced by the respondents in support of their defense x x x not being sufficient and substantial to establish the charges of serious misconduct and breach of trust" (Records, p. 96).[9]

In addition, the NLRC ruled that the respondents failed to comply with the procedural requirements of due process. Specifically:

> It is also observed that much is to be desired insofar as the observance of the procedural due process aspect is concerned. Firstly, there was no compliance with the due process requirement of the law considering that the uniformly worded first notice, all dated January 16, 2006, sent by

respondents-appellants to the complainants-appellees, did not apprise them of the particular acts or omission for which their dismissal were sought. As clearly shown by the said individual notices, each of the complainants-appellees was merely informed that he or she is "formally charged with DISHONESTY, SERIOUS MISCONDUCT, LOSS OF CONFIDENCE and acts inimical to the Company" x x x without specifying the particular or specific acts or omissions constituting the grounds for their dismissal.

The purpose of the first notice is to sufficiently apprise the employee of the acts complained of and to enable the employee to prepare his defense. In this case, though, the said first notice did not identify the particular acts or omissions committed by each of the complainants-appellees. The extent of their knowledge and participation in the generally described charges were not specified in the said first notice, hence, the complainants-appellee could not be expected to intelligently and adequately prepare their defense. The first notice should neither be pro-forma nor vague; that it should set out clearly what each of the employees is being held liable for. They should be given ample opportunity to be heard and not mere opportunity. Ample opportunity means that each of the complainants-appellees should be specifically informed of the charges in order to give each of them, an opportunity to refute such accusations. Since, the said first notices are inadequate, their dismissal could not be in accordance with due process x x x.

Secondly, there was no just or authorized cause for the respondents-appellants to terminate the complainants-appellees' services. It is observed that the Notices of Termination, all dated January 20, 2006, merely mentioned the ground relied upon, to wit:

x x x x

Placing side by side the first (1st) notices and the Notice of Termination, We can easily notice the wide disparity between them. In the first (1st) notices, the alleged charges leveled against each of complainants-appellees were couched in general terms, such as: DISHONESTY, SERIOUS MISCONDUCT, LOSS OF CONFIDENCE and ACTS INIMICAL TO THE COMPANY, such that the complainants-appellees could not be expected to prepare their responsive pleadings; while the uniformly worded Notices of Termination, as earlier quoted, the charges leveled against of (sic) them are more specific.[10]

Respondents moved for reconsideration and in a Decision[11] dated July 17, 2008, the NLRC reversed itself and declared the individual petitioners legally dismissed:

Respondent company is an entity engaged in the delivery of goods called "door-to-door" business. As such, respondents are in custody of goods and moneys belonging to customers. Thus, respondents want to ensure that their drivers are drug-free and honest. It is undeniable that persons taking prohibited drugs tend to commit criminal activities when they are

"high", as most of them are out of their minds. Complainants are drivers and are on the road most of the time. Thus, they must see to it that they do not cause damage to other motor vehicles and pedestrians.

Likewise, when delivering goods and money, it is not impossible that they could commit acts inimical to the respondents' interest, like failure to deliver the money or goods to the right person or do a "hold-up me" scenario.

Thus, to guarantee complainants-drivers' safety and effective performance of their assigned tasks, respondents ordered complainants to undergo drug testing. However, they refused to follow the directive. Neither did they give a clear explanation for their refusal to the respondents. This shows complainants' wrongful attitude to defy the reasonable orders which undoubtedly pertain to their duties as drivers of the respondents. Such act is tantamount to willful disobedience of a lawful order, a valid ground for dismissal under the Labor Code, as amended.

Furthermore, employees who are not complainants in this case, in a sworn statement attested to the fact that complainants tricked them to sign papers which turned out to be a complaint for money claims. They also accused them of abusing their trust in order to achieve their selfish motives. Complainants even convinced them to shell out part of their salaries without authorization and consent, as "panggatos para sa papeles, transportasyon ng abugado" but said money was used for the Union's purposes. Worse, complainants even threatened them to file criminal charges against them if they did not follow the complainants' evil plans. x x x

In their Rejoinder, respondents also mentioned about the loss of cargoes to be delivered to Pampanga and Nueva Ecija. Complainants failed to refute the allegations nor comment on the matter. This led to respondents' loss of trust and confidence reposed in them. Considering that the drivers have in their possession money and goods to be delivered, the continuance of their employment depends on the trust and confidence in them. Undeniably, trust, once lost is hard to regain.

x x x x

We disagree.

On January 16, 2006, respondents sent each of the complainants a letter stating the infractions committed by them. They directed them to explain the said infractions with a warning that failure to do so would mean waiver of their right to submit their answer. They further advised them to "opt for a formal investigation with assistance of the counsel, or proceed with the investigation you may choose".

However, complainants failed to answer. Neither did they do any act to dispute the charges. They remained silent on the infractions which a person would not normally do if he is not guilty of the said charges. If