689 Phil. 494

THIRD DIVISION

[G.R. No. 174809, June 27, 2012]

DUTY FREE PHILIPPINES SERVICES, INC., PETITIONER, VS. MANOLITO Q. TRIA, RESPONDENT.

D E C I S I O N

PERALTA, J.:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the Court of Appeals (CA) Decision[1] dated May 31, 2006 and Resolution[2] dated September 21, 2006 in CA-G.R. SP No. 70839. The assailed decision affirmed the National Labor Relations Commission (NLRC) Resolution[3] dated March 15, 2002 in NLRC NCR Case No. 00-12-009965-98, while the assailed resolution denied petitioner Duty Free Philippines Services, Inc.'s (DFPSI's) motion for reconsideration.

The facts, as found by the CA, are as follows:

> Petitioner Duty Free Philippines Services, Inc. is a manpower agency that provides personnel to Duty Free Philippines (*DFP*).
>
> On March 16, 1989, [respondent] Manolo Tria was employed by Petitioner and was seconded to DFP as a Warehouse Supervisor.
>
> In an *Audit Report*, dated January 16, 1998, it was revealed that 1,020 packs of Marlboro bearing Merchandise Code No. 020101 under WRR No. 36-04032 were not included in the condemnation proceedings held on December 27, 1996 and that there were "*glaring discrepancies*" in the related documents which "*indicate a malicious attempt to conceal an anomalous irregularity.*" The relevant Request for Condemnation was found to have been fabricated and all signatories therein, namely, Ed Garcia, Stockkeeper; Catherino A. Bero, DIU Supervisor; and Constantino L. Cruz, were held "*accountable for the irregular loss of the unaccounted Marlboro KS Pack of 5…*"
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> After further investigation, it was discovered that the subject merchandise was illegally brought out of the warehouse and it was made to appear that in all the documents prepared said goods were legally condemned on December 27, 1996. Ed Garcia, one of the respondents in the Audit Review, implicated [respondent] and [two] others. Garcia claimed that he was unaware of the illegality of the transaction as he was only obeying the orders of his superiors who included [respondent]. Garcia disclosed that it was [respondent] who ordered him to look for a van for the supposed "*direct condemnation*" of the subject merchandise.

> Consequently, the Discipline Committee *requested* [respondent] to submit a written reply/explanation regarding the findings in the Audit Report and the allegations of Garcia.
>
> [Respondent] *denied* his participation in the illegal transaction. Although he admitted that he instructed Garcia to look for a van, it was for the purpose of transferring the damaged merchandise from the main warehouse to the proper warehouse for damaged goods.
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> On August 27, 1998, the DFP Discipline Committee [DFPDC] issued a *Joint Resolution* holding [respondent] *"GUILTY OF DISHONESTY for (his) direct participation in the fake condemnation" and pilferage of the missing 1,020 Marlboro Pack of 5's cigarettes … and orders (his) DISMISSAL from the service for cause and for loss of trust and confidence, with forfeiture of all rights and privileges due them from the company, except earned salaries and leave credits."*
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> On September 18, 1998, Petitioner sent [respondent] a memorandum terminating his employment with Petitioner and his secondment to DFP *"on the basis of the findings and recommendation of the (DFP's) Discipline Committee."*
>
> Aggrieved, [respondent] filed a Complaint against Petitioner for Illegal Dismissal and for payment of backwages, attorney's fees and damages. [4]

On May 31, 1999, the Labor Arbiter (LA) rendered a Decision[5] finding respondent to have been illegally dismissed from employment. The dispositive portion of the decision reads:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondent company to reinstate complainant to his former position with all the rights, privileges, and benefits appertaining thereto, including seniority, plus full backwages which as of May 31, 1999 already amount to P172,672.50. Further, the respondent is ordered to pay complainant the equivalent of ten percent (10%) of the total backwages as and for attorney's fees.
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> The claim for damages is denied for lack of merit.
>
> SO ORDERED.[6]

On appeal, the NLRC affirmed[7] the LA decision, but deleted the award of attorney's fees. Petitioner's motion for reconsideration was also denied[8] on March 15, 2002.

When petitioner elevated the case to the CA, it denied for the first time the existence of employer-employee relationship and pointed to DFP as respondent's real employer. The appellate court, however, considered said defense barred by estoppel for its failure to raise the defense before the LA and the NLRC.[9] It

nonetheless ruled that although DFPDC conducted the investigation, petitioner's dismissal letter effected respondent's termination from employment.[10] On the validity of respondent's dismissal from employment, the CA respected the LA and NLRC findings and reached the same conclusion that respondent was indeed illegally dismissed from employment.[11] Petitioner's motion for reconsideration was likewise denied in a Resolution[12] dated September 21, 2006.

Undaunted, petitioner elevates the case before the Court in this petition for review on certiorari based on the following grounds:

> THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT PETITIONER DFPSI IS LIABLE FOR ILLEGAL DISMISSAL AND DECLARE THAT:
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> A. DFPSI IS THE DIRECT EMPLOYER OF RESPONDENT INSTEAD OF DUTY FREE PHILIPPINES ("DFP"); AND
> B. THE ISSUE AS TO WHO TERMINATED RESPONDENT WAS RAISED ONLY FOR THE FIRST TIME ON APPEAL.
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> THE COURT OF APPEALS GRAVELY ERRED AND RULED CONTRARY TO LAW AND JURISPRUDENCE WHEN IT FAILED TO RULE ON THE LIABILITY OF DFP, AS AN INDISPENSABLE PARTY TO THE COMPLAINT FOR ILLEGAL DISMISSAL.
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> THE COURT OF APPEALS GRAVELY ERRED AND RULED CONTRARY TO LAW AND JURISPRUDENCE WHEN IT HELD THAT RESPONDENT'S EMPLOYMENT WAS ILLEGALLY TERMINATED.[13]

Petitioner insists that the CA erred in not considering its argument that it is not the employer of respondent. It likewise faults the CA in not ruling on the liability of DFP as an indispensable party.

We cannot sustain petitioner's contention. In its Position Paper,[14] petitioner highlighted respondent's complicity and involvement in the alleged "fake condemnation" of damaged cigarettes as found by the DFPDC. This, according to petitioner, was a just cause for terminating an employee.

In its Motion for Reconsideration and/or Appeal,[15] petitioner insisted that there was basis for the termination of respondent's employment. Even in its Supplemental Appeal[16] with the NLRC, petitioner reiterated its stand that respondent was terminated for a just and valid cause and due process was strictly observed in his dismissal. It further questioned the reinstatement aspect of the LA decision allegedly because of strained relations between them.

With the aforesaid pleadings submitted by petitioner, together with the corresponding pleadings filed by respondent, the LA and the NLRC declared the dismissal of respondent illegal. These decisions were premised on the finding that there was an employer-employee relationship. [17] Nowhere in said pleadings did

petitioner deny the existence of said relationship. Rather, the line of its defense impliedly admitted said relationship. The issue of illegal dismissal would have been irrelevant had there been no employer-employee relationship in the first place.

It was only in petitioner's Petition for *Certiorari* before the CA did it impute liability on DFP as respondent's direct employer and as the entity who conducted the investigation and initiated respondent's termination proceedings. Obviously, petitioner changed its theory when it elevated the NLRC decision to the CA. The appellate court, therefore, aptly refused to consider the new theory offered by petitioner in its petition. As the object of the pleadings is to draw the lines of battle, so to speak, between the litigants, and to indicate fairly the nature of the claims or defenses of both parties, a party cannot subsequently take a position contrary to, or inconsistent, with its pleadings.[18] It is a matter of law that when a party adopts a particular theory and the case is tried and decided upon that theory in the court below, he will not be permitted to change his theory on appeal. The case will be reviewed and decided on that theory and not approached and resolved from a different point of view.[19]

The review of labor cases is confined to questions of jurisdiction or grave abuse of discretion.[20] The alleged absence of employer-employee relationship cannot be raised for the first time on appeal.[21] The resolution of this issue requires the admission and calibration of evidence and the LA and the NLRC did not pass upon it in their decisions.[22] We cannot permit petitioner to change its theory on appeal. It would be unfair to the adverse party who would have no more opportunity to present further evidence, material to the new theory, which it could have done had it been aware earlier of the new theory before the LA and the NLRC.[23] More so in this case as the supposed employer of respondent which is DFP was not and is not a party to the present case.

In *Pamplona Plantation Company v. Acosta*,[24] petitioner therein raised for the first time in its appeal to the NLRC that respondents therein were not its employees but of another company. In brushing aside this defense, the Court held:

> x x x Petitioner is estopped from denying that respondents worked for it. In the first place, it never raised this defense in the proceedings before the Labor Arbiter. Notably, the defense it raised pertained to the nature of respondents' employment, *i.e.*, whether they are seasonal employees, contractors, or worked under the *pakyaw* system. Thus, in its Position Paper, petitioner alleged that some of the respondents are coconut filers and copra hookers or *sakadors*; some are seasonal employees who worked as scoopers or *lugiteros;* some are contractors; and some worked under the pakyaw system. In support of these allegations, petitioner even presented the company's payroll which will allegedly prove its allegations.
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> ***By setting forth these defenses, petitioner, in effect, admitted that respondents worked for it, albeit in different capacities. Such allegations are negative pregnant – denials pregnant with the admission of the substantial facts in the pleading responded to which are not squarely denied, and amounts to an***