

SECOND DIVISION

[G.R. No. 193676, June 20, 2012]

**COSMOS BOTTLING CORP., PETITIONER, VS. WILSON FERMIN,
RESPONDENT.**

[G.R. NO. 194303]

**WILSON B. FERMIN, PETITIONER, VS. COSMOS BOTTLING
CORPORATION AND CECILIA BAUTISTA, RESPONDENTS.**

D E C I S I O N

SERENO, J.:

Before this Court are two consolidated cases, namely: (1) Petition for Review dated 26 October 2010 (G.R. No. 193676) and (2) Petition for Review on Certiorari under Rule 45 dated 14 October 2010 (G.R. No. 194303).^[1] Both Petitions assail the Decision dated 20 May 2009^[2] and Resolution dated 8 September 2010^[3] issued by the Court of Appeals (CA). The dispositive portion of the Decision reads:

WHEREFORE, the August 31, 2005 *Decision* and October 21, 2005 *Resolution* of the National Labor Relations Commission in NLRC NCR CA No. 043301-05 are hereby **SET ASIDE**. Respondent Cosmos Bottling Corporation is, in light of the foregoing discussions, hereby **ORDERED** to pay Petitioner his full retirement benefits.

There being no data from which this Court can properly assess Petitioner's full retirement benefits, the case is, thus, remanded to the Labor Arbiter only for that purpose.

SO ORDERED.

Wilson B. Fermin (Fermin) was a forklift operator at Cosmos Bottling Corporation (COSMOS), where he started his employment on 27 August 1976.^[4] On 16 December 2002, he was accused of stealing the cellphone of his fellow employee, Luis Braga (Braga).^[5] Fermin was then given a Show Cause Memorandum, requiring him to explain why the cellphone was found inside his locker.^[6] In compliance therewith, he submitted an affidavit the following day, explaining that he only hid the phone as a practical joke and had every intention of returning it to Braga.^[7]

On 21 December 2002, Braga executed a handwritten narration of events stating the following:^[8]

(a) At around 6:00 a.m. on 16 December 2002, he was changing his

clothes inside the locker room, with Fermin as the only other person present.

- (b) Braga went out of the locker room and inadvertently left his cellphone by the chair. Fermin was left inside the room.
- (c) After 10 minutes, Braga went back to the locker room to retrieve his cellphone, but it was already gone.
- (d) Braga asked if Fermin saw the cellphone, but the latter denied noticing it.
- (e) Braga reported the incident to the security guard, who thereafter conducted an inspection of all the lockers.
- (f) The security guard found the cellphone inside Fermin's locker.
- (g) Later that afternoon, Fermin talked to Braga to ask for forgiveness. The latter pardoned the former and asked him not to do the same to their colleagues.

After conducting an investigation, COSMOS found Fermin guilty of stealing Braga's phone in violation of company rules and regulations.^[9] Consequently, on 2 October 2003,^[10] the company terminated Fermin from employment after 27 years of service,^[11] effective on 6 October 2003.^[12]

Following the dismissal of Fermin from employment, Braga executed an affidavit, which stated the belief that the former had merely pulled a prank without any intention of stealing the cellphone, and withdrew from COSMOS his complaint against Fermin.^[13]

Meanwhile, Fermin filed a Complaint for Illegal Dismissal,^[14] which the Labor Arbiter (LA) dismissed for lack of merit on the ground that the act of taking a fellow employee's cellphone amounted to gross misconduct.^[15] Further, the LA likewise took into consideration Fermin's other infractions, namely: (a) committing acts of disrespect to a superior officer, and (b) sleeping on duty and abandonment of duty.^[16]

Fermin filed an appeal with the National Labor Relations Commission (NLRC), which affirmed the ruling of the LA^[17] and denied Fermin's subsequent Motion for Reconsideration.^[18]

Thereafter, Fermin filed a Petition for Certiorari with the Court of Appeals (CA),^[19] which reversed the rulings of the LA and the NLRC and awarded him his full retirement benefits.^[20] Although the CA accorded with finality the factual findings of the lower tribunals as regards Fermin's commission of theft, it nevertheless held that the penalty of dismissal from service was improper on the ground that the said violation did not amount to serious misconduct or wilful disobedience, to wit:

[COSMOS], on which the onus of proving lawful cause in sustaining the dismissal of [Fermin] lies, failed to prove that the latter's misconduct was induced by a perverse and wrongful intent, especially in the light of Braga's *Sinumpaang Salaysay* which corroborated [Fermin's] claim that [Fermin] was merely playing a prank when he hid Braga's cellular phone. Parenthetically, the labor courts dismissed Braga's affidavit of desistance

as a mere afterthought because the same was executed only after [Fermin] had been terminated.

It must be pointed out, however, that in labor cases, in which technical rules of procedure are not to be strictly applied if the result would be detrimental to the workingman, an affidavit of desistance gains added importance in the absence of any evidence on record explicitly showing that the dismissed employee committed the act which caused the dismissal. While We cannot completely exculpate [Fermin] from his violation at this point, We cannot, however, turn a blind eye and disregard Braga's recantation altogether. Braga's recantation all the more bolsters Our conclusion that [Fermin's] violation does not amount to or borders on "serious or willful" misconduct or willful disobedience to call for his dismissal.

Moreover, [COSMOS] failed to prove any resultant material damage or prejudice on their part as a consequence of [Fermin's] questioned act. To begin with, the cellular phone subject of the stealth belonged, not to [COSMOS], but to Braga. Secondly, the said phone was returned to Braga in due time. Under the circumstances, a penalty such as suspension without pay would have sufficed to teach [Fermin] a lesson and for him to realize his wrongdoing.

x x x

x x x

x x x

On another note, [COSMOS], in upholding the legality of [Fermin's] termination from service, considered the latter's past infractions with [COSMOS], i.e. threatening, provoking, challenging, insulting and committing acts of disrespect to a superior officer/defiance to an instruction and a lawful order of a superior officer; and, sleeping while on duty and abandonment of duty or leaving assigned post with permission from immediate supervisor, as *aggravating circumstances* to his present violation [stealth (sic) of a co-employee's property]. We *disagree with Public Respondent on this matter*.

The correct rule is that previous infractions may be used as justification for an employee's dismissal from work in connection with a subsequent *similar* offense, which is obviously not the case here. x x x. [21]
(Emphases in the original.)

COSMOS and Fermin moved for reconsideration, but the CA likewise denied their motions.[22] Thus, both parties filed the present Petitions for Review.

COSMOS argues, among other things, that: (a) Fermin committed a clear act of bad faith and dishonesty in taking the cellphone of Braga and denying knowledge thereof; (b) the latter's recantation was a mere afterthought; (c) the lack of material damage or prejudice on the part of COSMOS does not preclude it from imposing the penalty of termination; and (d) the previous infractions committed by Fermin strengthen the decision of COSMOS to dismiss him from service.[23]