

SECOND DIVISION

[G.R. No. 197598, November 21, 2012]

**MIRANT (PHILIPPINES) CORPORATION, PETITIONER, VS.
DANILO A. SARIO, RESPONDENT.**

DECISION

BRION, J.:

This is a petition for review on *certiorari*^[1] assailing the decision^[2] dated March 29, 2011 and the resolution^[3] dated July 11, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 112975.

The Antecedents

On December 7, 2005, respondent Danilo A. Sario filed a complaint^[4] for illegal dismissal, backwages, damages and attorney's fees against the petitioner, Mirant (Philippines) Corporation (*company*), and its officers, namely: Ronald Harris, President; Thomas J. Sliman, Jr., Executive Vice-President for Operations; and Alejandro Lito Aprieto, Officer-in-Charge, Materials Management Department (*MMD*). The company owns shares in Mirant Sual Corporation and Mirant Pagbilao Corporation which operate power stations in the provinces of Pangasinan and Quezon. Sario worked for the company as procurement officer from March 1998 to October 2005. As procurement officer, he was tasked to:

- a. Perform the entire purchasing process of a Station's set of materials, parts, equipment, and/or project;
- b. Receive Purchase Requisition Form ("PRF") assignments through the Q4 system (Q4 PR downloading process);
- c. Identify vendors/suppliers to be invited and set bid periods and deadlines for bid submission. Coordinate technical issues with end-users and prepare Request for Quotation ("RFQ") packages. Send RFQs to vendors and initiate RFQ confirmation status. Resolve commercial issues with vendors (RFQ process);
- d. Receive quotes/bids. Review tenders and resolve commercial issues with vendors. Perform Tender Analysis Summary revisions when necessary;
- e. Secure and evaluate justification for single tender transactions in accordance with the MMD manual. Coordinate price, payment and delivery terms with vendor (Single tender process);

- f. Prepare Purchase Orders ("PO"). Check if approval of PO is according to limits of authority. Monitor PO status. If necessary, prepare Tender Analysis Addendum ("TAA") and PO revisions. Keep PO status in Q4 updated (PO processing); and
- g. Coordinate vendor performance with plant end-user. Provide information on vendor performance to be used in the vendor performance evaluation. Resolve disputes arising out of vendor deliveries between end-user and vendor. Recommend appropriate sanctions for vendor infractions (Vendor management).^[5]

Allegedly, at the time material to the case, the company discovered that some of its employees had been involved in the rampant practice of favoring certain suppliers, thereby seriously impairing transparency in its procurement process and compromising the quality of purchased materials. To curb the practice, the company issued the 2002 MMD Policies and Procedures Manual (*2002 Procurement Manual*)^[6] for the guidance of its employees and officers in soliciting bid quotations and proposals from vendors, suppliers and contractors. The 2002 Procurement Manual was duly disseminated and it became effective in January 2002. It was disseminated through seminars.

The 2002 Procurement Manual was replaced by the 2004 Procurement Policies and Procedures Manual (*2004 Procurement Manual*)^[7] which was disseminated and which became effective on August 31, 2004. Again, seminars were conducted and a proficiency examination was administered to familiarize the company buyers/procurement officers and the team leaders with the 2004 Procurement Manual. Sario took the proficiency examination on September 28, 2004.

On September 8, 2005, Sario received a Show Cause Notice^[8] from the company, advising him that based on an internal audit, he was found to have committed the following violations:

1. Non-compliance with the Minimum Bid/Quotation Requirements[;]

x x x x

2. Non-compliance with the Single Tender Justification Requirement[;]

x x x x

3. No Evidence of Independent Approval of the PRF[;]

x x x x

4. No Evidence of Authorized Recommendation or Approval of the PO[;]

x x x x

5. PO not Awarded to the lowest Bidder[; and]

x x x x

6. No TAS Attached[.]

Sario was given ten (10) days, or until September 18, 2005, to explain why no disciplinary action should be taken against him for the violations. He was also notified that an investigation would be conducted on the matter. He was placed on preventive suspension pending the investigation. He submitted his written explanation on September 17, 2005,^[9] through his lawyer, Angel H. Gatmaitan.

At the administrative hearing on October 6, 2005, Sario argued that he could not be faulted for not complying with the 2004 Procurement Manual because it was never properly disseminated (rolled out) and neither did he take the proficiency examination on the manual. He admitted, however, that he failed to comply with the procurement procedures laid out in the manual due to his desire to meet the quota imposed by his supervisors.

On October 25, 2005, Sliman sent Sario a letter^[10] informing him of the termination of his employment for his failure to comply with the standard operating procedures/instructions; for his serious misconduct or willful disobedience of the lawful orders of the company in connection with his work; and for his gross and habitual neglect of his duties. The company found Sario liable for his failure to comply with the 2002 and 2004 Procurement Manuals, especially his unabated practice of sending Requests for Quotation (*RFQs*) to suppliers who have a history of not responding to requests or of not sending quotes. The practice, the company lamented, resulted in the issuance of purchase orders to the lone bidders.

Sario, on the other hand, argued before the Labor Arbiter that he was a mere rank-and-file employee with no discretion in the procurement of materials; his work was merely recommendatory as it was subject to the approval of his supervisor and other company officers. He pointed out that the show cause notice to him was the first and only communication from the company calling his attention to his alleged infractions. He stressed that at any rate, he should have been meted a lighter penalty, such as suspension, considering his length of service with the company, without a derogatory record.

The Compulsory Arbitration Rulings

In a decision dated November 28, 2006,^[11] Labor Arbiter Arden S. Anni declared Sario to have been illegally dismissed. Consequently, he ordered: (1) Sario's immediate reinstatement without loss of seniority rights and other privileges; and (2) the company, Sliman and Aprieto, jointly and severally, to pay Sario back wages, moral damages of Two Hundred Thousand Pesos (P200,000.00), exemplary damages of One Hundred Thousand Pesos (P100,000.00) and 10% of the total monetary award as attorney's fees. Labor Arbiter Anni absolved Harris from liability.

Labor Arbiter Anni stressed that the 2002 and 2004 Procurement Manuals have no commensurate penalties for any breach of their provisions and that Sario's dismissal

was neither due to fraud nor willful breach of the trust reposed on him by his employer. He noted that there was nothing on record to support the company's contention that Sario, as procurement officer, exercised sufficient discretion so as not to be bound by what his superiors required him to do. In any event, Labor Arbiter Anni found Sario's dismissal too harsh a penalty, considering his almost eight years of service, without a derogatory record, with the company.

The respondents appealed to the National Labor Relations Commission (NLRC). On June 30, 2009, the NLRC reversed the labor arbiter's ruling^[12] and dismissed the complaint for lack of merit. It found that Sario was dismissed on valid grounds and was afforded due process. The labor tribunal was not convinced by Sario's defense that if he indeed violated the company's procurement procedures, the resulting transactions were nevertheless approved by his superiors, thereby negating his liability. It emphasized that by the nature of his job, Sario was at the forefront of the company's procurement program and it was incumbent upon him to exercise care in the performance of his duties. He cannot, therefore, shield himself from liability with the argument that his actions bore the approval of his superiors.

Sario moved for reconsideration, but the NLRC denied the motion in a resolution rendered on November 27, 2009.^[13] He then sought relief from the CA, through a petition for *certiorari* under Rule 65 of the Rules of Court.

The CA Decision

In its decision of March 29, 2011,^[14] the CA granted the petition. It set aside the NLRC rulings and reinstated the Labor Arbiter's decision, with modifications. It deleted the award of moral and exemplary damages, and absolved Harris, Sliman and Aprieto from liability in the case. Like the Labor Arbiter, it found the penalty of dismissal meted on Sario too harsh.

The appellate court opined that while Sario appeared to be passing the blame on his superiors, it recognized some merit in his stance. It stressed that Sario's supervisors and managers should have seen his mistakes and corrected them at the earliest opportunity; they should have provided checks and balances to ensure strict compliance with the company's procedures, but they failed in that respect.

The company moved for partial reconsideration, but the CA denied the motion; hence, the present recourse.

The Petition

The company prays that the petition be granted, contending that the CA gravely erred when it reversed the NLRC's decision of June 30, 2009^[15] and reinstated the labor arbiter's ruling that Sario was illegally dismissed. It insists, on the contrary, that Sario was validly dismissed for having committed repeated violations of the company's 2002 and 2004 Procurement Manuals (27 times), especially his unabated practice of sending RFQs to non-responding suppliers. The violations, it adds, are indicative of a bigger scheme to compromise the company's bidding process.

The company submits that its 2002 and 2004 Procurement Manuals were intended to eliminate corrupt practices in its MMD and to ensure transparency in its

procurement activities. Sario's repeated violations of the 2002 and 2004 Procurement Manuals effectively emasculated their objectives and unduly compromised the interests of the company and those dealing with it. It thus posits that there is sufficient basis to consider Sario's disregard of the 2002 and 2004 Procurement Manuals as a willful disobedience to the company's lawful orders, which is a just cause for his dismissal under Article 282 of the Labor Code.

The company disputes the CA's finding that Sario exercised no discretion in his work and that his actions were, in any event, subject to the approval of his superiors. It points out that Sario's duties involved the procurement of materials at the most economical cost, and ensuring their timely, safe and expeditious delivery; observing the highest ethical standards, and adhering to the company's policies and sound business practice. He was also tasked to identify the vendors/suppliers to be invited, to set bid periods and deadlines for bid submission, to send RFQs, to initiate RFQ confirmation status, and to resolve commercial issues with vendors. All these tasks, the company posits, require the exercise of discretion.

The company insists that Sario cannot be allowed to escape the consequences of his transgressions. It maintains that the alleged shortcomings of Sario's superiors with respect to his violations do not make the violations right. Also, the violations were not a mere mistake; they formed a pattern of a deliberate disregard of the 2002 and 2004 Procurement Manuals as they were committed not just on a single day, but within a period covering January 2004 to May 2005.

Lastly, the company avers that Sario made a false assertion during the administrative investigation when he denied that he took the proficiency examination pertaining to the 2004 Procurement Manual when, in fact, he took the examination in September 2004. This falsehood, the company asserts, compounds the several infractions he had committed.

The Case for Sario

In compliance with the Court's directive,^[16] Sario filed his Comment^[17] on June 8, 2012, praying for a denial of the petition on the following grounds: (1) the petition raises no genuine question of law, but only questions of fact, in violation of the Rules of Court,^[18] and (2) the CA committed no reversible error in its assailed decision as it was supported by more than substantial evidence.

With respect to the procedural issue, Sario contends that the petition abounds with factual issues rather than with any clear and distinct question of law; with the petition's narration of his violations,^[19] the Court is being asked to "review the factual issues" already passed upon by the CA. In a Reply^[20] dated June 22, 2012, the company denied that the petition raises only questions of fact and not of law.

On the merits of the case, Sario maintains that the CA decision "was not concocted out of thin air"^[21] as it was shored up by more than substantial evidence that he was illegally dismissed. He posits that the appellate court committed no error in holding that his dismissal was too harsh a penalty for his mistakes, considering that he was not even reprimanded nor warned of his infractions and, while the company claims that he violated the 2002 Procurement Manual, he was punished only after