

## SECOND DIVISION

[ G.R. No. 187120, February 15, 2010 ]

**PHILIPPINE JOURNALISTS, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER FEDRIEL S. PANGANIBAN AND EDUARDO S. RIVERA, RESPONDENTS.**

### DECISION

**BRION, J.:**

We resolve in this Decision the petition for review on *certiorari*<sup>[1]</sup> filed by the Philippine Journalists, Inc. (*PJI*), assailing the decision<sup>[2]</sup> dated February 24, 2009 of the Court of Appeals (*CA*) in CA-G.R. SP No. 98666.<sup>[3]</sup>

#### The Antecedents

The facts, as set out in the assailed decision, are summarized below.

PJI is a corporation engaged in the publication of People's Journal, People's Journal Tonight, People's Journal International, People's Taliba, Women's Journal, and Insider. In December 1978, it employed respondent Eduardo S. Rivera (*Rivera*) as proof reader. Rivera rose from the ranks over the years, becoming purchasing manager in 1998. His primary duty involved the canvassing and purchase of paper and other materials for PJI's day-to-day operations. He received a monthly salary of P25,000.00, exclusive of allowances and other benefits.

Sometime in November 2002, Women's Journal implemented a calendar insertion project requiring paper-coated materials. Rivera canvassed and purchased 68,500 sheets of C25 120 coated paper, 170 gsm size 23" x 27" from the Nation Paper Products Corporation (*NAPPCO*) at P6.50 a sheet for the total amount of P445,250.00.<sup>[4]</sup>

On January 8, 2003, PJI's Corporate Secretary and Chief Legal Counsel, Atty. Ruby Ruiz-Bruno (*Ruiz-Bruno*), issued a memorandum<sup>[5]</sup> requiring Rivera to explain in writing why he "*should not be terminated from employment for defrauding or attempting to defraud the Company x x x*" in the canvassing and purchase of Women's Journal's paper requirements. The memo alluded to a "*reliable quotation from NAPPCO for 68,000 sheets of this kind of paper with exactly the same specifications, shows a price of only P3.40/sheet.*" Pending investigation of the matter, PJI placed Rivera under preventive suspension.

On January 10, 2003, PJI's Audit Supervisor, Nephthalie E. Hernandez (*Hernandez*), submitted a report<sup>[6]</sup> to PJI President Bobby Dela Cruz (*Dela Cruz*) about the canvass of the price of the Women's Journal paper requirements. The canvass showed: a price of P3.91/sheet from Security Commercial although no quotation

from the supplier was secured; the lowest price with quotation was P4.12/sheet from Purity Enterprises Co.; and, a telephone canvass with NAPPCO revealed an offer of P3.80/sheet.

On January 13, 2003, Rivera submitted his written explanation,<sup>[7]</sup> denying that he defrauded or attempted to defraud PJI. In support of his position, he attached a letter dated January 9, 2003 from NAPPCO's Vice-President Kenneth Chong (*Chong*) to Dela Cruz.<sup>[8]</sup> Chong denied in his letter giving a quotation of P3.40/sheet for PJI's paper requirement. He explained that NAPPCO quoted a price of P5.80 cash on delivery (*COD*), but since PJI could not meet its terms, it quoted a price of P6.50 at 30-90 days credit.

Rivera, in a letter dated January 31, 2003 addressed to Dela Cruz, explained the details of the purchase transaction with NAPPCO.<sup>[9]</sup> As a result of this letter-explanation, Ruiz-Bruno issued a memorandum on the same day to Assistant Purchasing Manager Jean Alvarado (*Alvarado*), requiring her to explain the difference in the quotation of P6.50 from NAPPCO and P4.26/piece (23x27) and P4.68/piece (25x27) from LAMCO, another supplier.<sup>[10]</sup>

On the same day, Alvarado submitted her explanation,<sup>[11]</sup> stating that she signed the canvass sheet as instructed by Rivera, but she was not aware that Rivera included LAMCO. She claimed that the canvass sheet (No. 20800)<sup>[12]</sup> itself showed that the figures were written by Rivera himself.

In a memorandum dated February 7, 2003,<sup>[13]</sup> Ruiz-Bruno notified Rivera of the termination of his service effective February 8, 2003, "*on the ground of loss of confidence*" after finding Rivera's "*acts and omissions are indicative of fraud and a clear manifestation of your inability as a Manager to protect the Company's interests.*" The memo stated that: during the open investigation, Rivera admitted the truth of Alvarado's statements; he also admitted that the figures he wrote on the canvass sheet were fictitious because no such figures were given by LAMCO; and he purposely made the insertions to provide a comparative pricing and to facilitate the approval of the purchase order. Ruiz-Bruno further stated in her memorandum that: she interviewed NAPPCO officials who informed her that they had the available stocks cut to give PJI the exact 23" x 27" size of paper it needed, with the wastage to be passed on to PJI, thus, the price of P6.50/sheet; Rivera failed to disclose this detail of NAPPCO's offer, nor did he inform the company if the waste materials were ever delivered to PJI for its disposition; and that Rivera had been talking directly with NAPPCO, contrary to what he said to Ruiz-Bruno that the purchase was based on Alvarado's canvass.

On October 14, 2003, Rivera filed a complaint for illegal dismissal against PJI, Dela Cruz, Executive Vice-President Arnold Banares and Ruiz-Bruno.

### **The Compulsory Arbitration Decisions**

On October 29, 2004, Labor Arbiter Fedriel S. Panganiban found, in his decision of October 29, 2004,<sup>[14]</sup> that Rivera's dismissal was for cause on the ground that he "*committed acts of dishonesty, or has committed fraud.*" The labor arbiter observed that as purchasing manager - a position of trust and confidence - Rivera had the

duty to canvass and purchase PJI's needed materials in a manner most beneficial to the company. Rivera failed in this regard.

On appeal, the National Labor Relations Commission (NLRC) reversed the labor arbiter's decision, ruling that Rivera's dismissal was illegal.<sup>[15]</sup> It opined that: Alvarado's statements in her January 31, 2003 letter<sup>[16]</sup> cannot prejudice Rivera as the "*rights of a party cannot be prejudiced by an act, declaration, or omission of another,*" citing the Rules of Court in that regard;<sup>[17]</sup> Rivera had not been involved in any work-related controversy; neither did he commit any infraction of company rules and regulations, nor did he have any derogatory record at PJI. Rivera cannot be held liable for fraud because PJI did not present any record of investigation showing the admissions Rivera allegedly made during the investigation.

The NLRC awarded Rivera backwages and separation pay in lieu of reinstatement on the finding that strained relations had resulted from the parties' "*respective imputations of bad faith against each other.*"

The NLRC denied PJI's motion for reconsideration on January 31, 2007.<sup>[18]</sup> PJI thus sought relief from the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court. PJI prayed as well for the issuance of a writ of preliminary injunction to stop the enforcement of the NLRC decision. The CA issued the writ after PJI posted a bond equivalent to the P1,862,687.50 award.

### **The CA Decision**

The CA denied the petition for lack of merit.<sup>[19]</sup> It fully affirmed the assailed NLRC rulings and lifted the writ of preliminary injunction it issued on July 24, 2007. The CA declared that "*after a thorough evaluation of the evidence submitted by the parties, from the facts borne by the records in this case, we are constrained to rule that the dismissal of Rivera based on loss of confidence is not clearly established and supported by substantial evidence.*" PJI now seeks relief from the Court through a petition for review on *certiorari* pursuant to Rule 45 of the Rules of Court.<sup>[20]</sup>

### **The Petition**

PJI submits that the CA seriously erred in failing to recognize that the commission of fraud by an employee is a ground under the law for termination of employment. It insists that Rivera was dismissed for cause; as manager of the Purchasing Department, tasked primarily with the canvassing and purchase of supplies for the company's operations, he handled the paper requirements of the Women's Journal project in a manner that breached his employer's trust and confidence in him.

Specifically, PJI faults Rivera for his failure to make a thorough canvass of the price of the project's paper requirement, as well as for dishonesty that resulted in a transaction disadvantageous to the company. PJI cites Rivera's limited canvass, covering only NAPPCO and LAMCO, where NAPPCO quoted the price of P6.50, while LAMCO's quotation was reflected in the canvass sheet only to show that an actual canvass had been made when in fact there was none. PJI insists that during the investigation, Rivera admitted that he inserted a fictitious quotation from LAMCO to provide the appearance of comparative pricing and that this was done after Alvarado

had prepared the canvass sheet.

While PJI admits that no written report of the investigation was made, it claims that Rivera never rebutted the findings made at the investigation. When he submitted his written explanation dated January 13, 2003,<sup>[21]</sup> he only referred to NAPPCO, not to LAMCO; he made no explanation on LAMCO's pricing, a clear indication that no canvass was made on LAMCO. Further, PJI contends that Rivera only relied on NAPPCO's pricing which, at P6.50, was higher than the prices of other suppliers of the same material. It points out that an actual canvass of the unit price of the coated paper material showed that there were other suppliers offering the same material at lower prices, yet Rivera failed to canvass these other suppliers, to the company's prejudice. PJI adds that Rivera did not only fail to conduct a proper canvass; he also failed to disclose to the company NAPPCO's quotation of P5.80 for a COD purchase.

PJI concludes that Rivera had been remiss in the performance of his duty in relation with the transaction, and had committed fraud and acts of dishonesty against the company, to its prejudice and loss amounting to P200,000.00; Rivera had as well breached the employer's trust and confidence. All these, the company proved by substantial evidence. It finally posits that for Rivera, a managerial employee, the mere existence of a basis to believe that he had breached the employer's trust is sufficient cause for dismissal.

### **The Case for Rivera**

In his Comment<sup>[22]</sup> filed on May 29, 2009, Rivera prays that the petition be dismissed for lack of merit, for "*it is very apparent that the malicious charges*" brought against him "*had no leg to stand on and therefore had no basis but speculation and conjectures.*" Rivera contends that PJI failed to prove how he committed the alleged fraud; instead, the company simulated and fabricated findings that he did not conduct a canvass before he made the purchase of the Women's Journal's paper requirements.

To prove his innocence, Rivera cites the January 9, 2003 letter of NAPPCO's vice president, Chong,<sup>[23]</sup> and the memorandum dated January 3, 2003 of Alvarado, to show that a canvass may be done, not only in writing, but also by phone. Also, Rivera claims that Chong denied the "*reliable quotation*" of P3.40 mentioned in Ruiz-Bruno's memo to Rivera, which quotation was even contradicted by the Report of Canvass<sup>[24]</sup> submitted to PJI President Dela Cruz by Hernandez; Hernandez's report was accompanied by a summary of canvass that showed a unit price of P6.00 for 25" x 38" coated paper required by PJI's project from both NAPPCO and LAMCO. Rivera posits that the evidence proved that there was nothing irregular with the price of P6.50; the verbal quotation by NAPPCO was for P5.80 not P3.40 and the P6.50 was anchored on credit purchase conditions that took into account the cost of money, capacity to pay, the ability to deliver, the availability of the seasonal supplies, and the texture and grammage of the supplies required.

Additionally, Rivera submits that the transaction involved the supply of paper materials for a purpose different from the paper requirements of the company's day-to-day operations. The calendar insertion project was also certified as a "*rush*" job by PJI's advertising department.

Rivera disputes PJI's submission that he admitted the company's assertions during the open investigation conducted by the investigating panel. He contends that PJI bears the burden of proving its allegations; the company's assertions have no factual basis as it failed to present an investigation report. In particular, Rivera questions PJI's insinuation of his guilt when he did not mention the LAMCO pricing (also P6.50) and referred only to NAPPCO in his explanation letter dated January 13, 2003. He contends that these insinuations are inappropriate and misleading as he was required to explain only the purchase with NAPPCO; no mention of LAMCO was made at all in Ruiz-Bruno's memorandum. He denies that he inserted a fictitious figure for LAMCO in the canvass sheet as implied in the Alvarado memorandum because Alvarado was not aware that he included LAMCO in the canvass; nowhere did Alvarado's memo say that the figures were fictitious, nor that he did not conduct a canvass. On the contrary, he maintains, the Alvarado memo confirmed the practice of conducting a canvass by phone and that suppliers at times do not give written quotations.

On PJI's contention that his failure to advise the company of his actions and the developments is indicative of fraud, Rivera argues that as purchasing manager, he is empowered to decide on behalf of the company purchase strategies and procedures without compromising the integrity of the company, and that he observed the standard procedures for rush transactions in the calendar insertion project. He maintains that the conduct of twenty or more canvasses would entail enormous time that could hinder the implementation of the project. He views the audit canvass the company presented in evidence as inconclusive and a mere recitation of quoted prices without any indication of the conditionalities involved. Rivera further submits that there is no truth to PJI's claim that he failed to advise the company that NAPPCO cut the available sheets that it had (25" x 38") to the required 23" x 27" measurement. He argues that he explained the matter to Dela Cruz in his letter dated January 31, 2003.<sup>[25]</sup>

Summing up, Rivera insists that PJI failed to prove that he had been dismissed for a just cause; even managerial employees like him enjoy security of tenure, among other rights. Procedurally, Rivera contends that PJI failed to submit any question of law to the Court; the core issue of whether the company was prejudiced by the purchase of coated paper material from NAPPCO is a factual matter appropriately ruled upon by the NLRC. When subsequently sustained by the CA, these factual findings can no longer be disturbed.

### **The Court's Ruling**

We first resolve whether the petition was properly filed in light of the private respondent's position that it solely raises questions of fact that are improper for a Rule 45 petition.

While as a rule,<sup>[26]</sup> a petition for review on *certiorari* shall raise only questions of law, we deem it appropriate to examine the facts in this review, given the conflicting factual findings between the Labor Arbiter, on the one hand and, the NLRC and the CA, on the other.<sup>[27]</sup> The Labor Arbiter sustained Rivera's dismissal with the finding that he committed acts of dishonesty or fraud against his employer. The NLRC and the CA held that no substantial evidence existed to support Rivera's dismissal.