

## SECOND DIVISION

[ G.R. No. 157861, February 02, 2010 ]

**BIBIANA FARMS AND MILLS, INC., PETITIONER, VS. ARTURO LADO, RESPONDENT.**

### DECISION

**BRION, J.:**

Before us is the Petition for Review on *Certiorari*,<sup>[1]</sup> filed by the Bibiana Farms and Mills, Inc. (*petitioner*), assailing the Decision<sup>[2]</sup> dated August 21, 2002 and the Resolution<sup>[3]</sup> dated January 27, 2003 of the Former Thirteenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 66005 entitled "*Arturo Lado v. National Labor Relations Commission (Fifth Division) and Bibiana Farms and Mills, Inc.*"

### THE ANTECEDENTS

The facts of the case are briefly summarized below.

The petitioner is an agricultural corporation located in Katangawan, General Santos City engaged in hog and cattle raising and corn milling. Respondent Arturo Lado (*Lado*) started his employment with the petitioner on November 2, 1982 as Quality Controller of Feeds. When he was dismissed in 1998, Lado held the position of Warehouseman with the tasks of receiving incoming and outgoing feed ingredients; supervising the feed mill laborers; acting as empty sacks classifier and controller; and feeds ingredients classifier.

On September 7, 1998, at about 9:30 a.m., Mildred Manzo (*Manzo*) transacted with Rosalia Manalo (*Manalo*), the petitioner's cashier, for the purchase of 3,000 pieces of empty sacks. Since the price of the sacks still had to be ascertained, Manalo advised Manzo to come back in the afternoon. When Manzo returned at **4:35 p.m.**, Manalo quoted the price at P3.50 per sack. Manalo then gave Manzo a note containing the number and words "3,000/mix-mix" and told her to proceed to the warehouse. Manzo did and showed the note to Lado. The latter in turn showed her the bundles of empty sacks (50 pieces per bundle) available for sale. At Manzo's request, Lado loaded 68 bundles (or 3,400 pieces of empty sacks) in the dump truck for unloading at the gate after payment. Upon payment, however, Manalo only accepted the cash payment for 60 bundles (3,000 pieces) and refused to accept Manzo's personal check for the excess; thus, Manzo only paid for the original 60 bundles purchased. Instead of personally overseeing the segregation and unloading of the excess 8 bundles on being informed (through the delivery receipt and the gate pass) that only 60 bundles were paid for, Lado allegedly delegated the task. The excess 8 bundles, however, were not removed from the truck and the whole lot was unloaded at the gate. When Manalo passed by the gate on her way home, she saw the sacks "dumped outside the guardhouse." She asked for a count of the sacks as they

appeared to be more than the 60 bundles that Manzo purchased.<sup>[4]</sup> She confirmed that there were 68 bundles outside the guardhouse.

On September 8, 1998, the petitioner's General Operations Manager/Production Supervisor, Peter L. Lim (*Lim*), issued two (2) inter-office memoranda<sup>[5]</sup> directing Lado to submit his written explanation on: (1) the release of 3,400 pieces of empty sacks when only 3,000 pieces were duly paid for and covered by receipt, and (2) the release of one-use sack when Manalo's note expressly authorized the release of mix-use sacks.

On September 9, 1998, Lado submitted to Lim an Explanation/Clarification.<sup>[6]</sup> He apologized for the incident, but stressed that the company did not lose anything. He explained that it was an honest mistake due to time constraints and that he acted without any malice or bad intention.

On September 9, 1998, Lim issued an inter-office memorandum<sup>[7]</sup> placing Lado under preventive suspension for one week or from September 10 to September 16, 1998. He also informed Lado that the company would conduct an investigation whose place, date and time would be relayed to him.

Later on the same day, Lim issued a notice informing Lado that management would conduct further investigation/inquiry on the incident at 4:00 p.m. of September 11, 1998.<sup>[8]</sup> Since Lado was under preventive suspension, the notice was sent to his residence. Lado, however, was not at home and his housemaid refused to receive the notice.<sup>[9]</sup>

On September 10, 1998, Lado submitted to Lim a detailed explanation.<sup>[10]</sup> He stated that when the buyer learned that 68 bundles were available, she expressed her intention to buy all the 68 instead of just 60 bundles. He explained that the buyer only paid for 60 bundles because her cash was only sufficient for 60 bundles and would have paid the excess by a personal check, but Manalo refused to accept payment by check.

As scheduled, the petitioner conducted its investigation of the incident on September 11, 1998 at 4:00 p.m. Present were Lim, Manalo, Ruby Ortiz (recorder), Andy Saclot (dumptruck driver), Jerry "Bobong" Enemenzo (laborer), Jimmy Ponce (security guard), Cristituto "Cris" Gasan (laborer), and Joelito Doromal (security guard).<sup>[11]</sup>

On September 14, 1998, Lado filed a complaint for illegal suspension against the petitioner and Lim.

On September 15, 1998, Lim issued Lado a Notice of Termination,<sup>[12]</sup> dismissing him from the service effective upon receipt, for "serious misconduct, dishonesty, willful breach of trust, fraud, loss of confidence and other grounds," based on the results of the investigation and after considering his written explanations dated September 9, 1998 and September 10, 1998. Lado received the Notice of Termination on September 18, 1998.<sup>[13]</sup>

Lado filed a complaint for illegal dismissal against the petitioner and Lim. The cases

for illegal suspension and illegal dismissal were consolidated.

In defense, the petitioner alleged that Lado was validly dismissed for loss of trust and confidence due to dishonesty and fraud in the release of the excess 400 empty sacks, as well as for other infractions, such as extortion from laborers under his supervision in exchange for overtime work, habitual tardiness and absenteeism. It also claimed that Lado was afforded due process when he was required to submit his written explanations on the empty-sacks incident; when he was preventively suspended and duly informed of the investigation to be conducted on September 11, 1998 (which he did not attend); and when he received the Notice of Termination on September 18, 1998.

### **THE COMPULSORY ARBITRATION DECISIONS**

Labor Arbiter (*Arbiter*) Arturo P. Aponesto dismissed the complaints for lack of merit.

[14] The Arbiter gave weight to the affidavits of the petitioner's witnesses regarding Lado's involvement and noted that they were not motivated by ill-will and did not testify falsely against Lado. He found that Lado committed fraud or willful breach of his employer's trust in releasing 3,400 pieces of empty sacks despite Manalo's note stating that only 3,000 pieces were to be purchased by Manzo. The Arbiter also found that Lado was afforded due process, rejecting Lado's contention that he was not notified of the investigation that led to his dismissal.

The National Labor Relations Commission (*NLRC*) reversed the Arbiter's decision on appeal, [15] ruling that Lado had been illegally dismissed. It found that Lado had no intention to defraud the petitioner and that the petitioner's accusation of fraud for releasing 68 bundles of empty sacks was a "product of unrestrained imagination." The *NLRC* ordered Lado's reinstatement with full backwages from September 10, 1998 until full reinstatement, plus 10% of the total award as attorney's fees.

The petitioner moved for reconsideration. [16] In its Resolution [17] of August 8, 2000, the *NLRC* granted the motion, set aside its May 29, 2000 Resolution, and reinstated the Arbiter's dismissal of Lado's complaint. The *NLRC* concurred with the Arbiter's view that the petitioner's witnesses were not motivated by any ill-will and did not testify falsely against Lado.

Lado moved [18] but failed [19] to secure a reconsideration of the *NLRC* Resolution of August 8, 2000. He then sought relief from the CA through a petition for *certiorari* [20] under Rule 65 of the Rules of Court, charging the *NLRC* with grave abuse of discretion in holding that fraudulent intent attended the release of 68 bundles of empty sacks, and in recognizing loss of trust and confidence without explaining the facts supporting this conclusion.

### **THE CA DECISION**

In its Decision [21] of August 21, 2002, the CA set aside the *NLRC* Resolutions and ruled that Lado had been illegally dismissed. It found no basis for Lado's dismissal for loss of trust and confidence because the release of the excess 400 empty sacks was not made with fraudulent intent. It held that the release of the excess sacks

was due to lack of communication; the loading of the 68 bundles was an anticipatory move on the part of Lado (due to Manzo's expressed intention to buy 68 bundles); and the unloading was not properly communicated and was not carried out due to time constraints.

The appellate court also found that the petitioner failed to accord Lado due process because he did not receive the notice for the investigation conducted on September 11, 1998. Neither was he properly informed of the additional charges leveled against him.

Accordingly, the CA ordered Lado's reinstatement with full backwages from September 10, 1998 until he is actually reinstated, plus 10% attorney's fees and the costs of suit.

The petitioner came to us through the present petition after it failed to secure a reconsideration of the CA Decision. [22]

### **THE PETITION**

The petitioner submits that Lado was validly dismissed since his separation from the service was based on the release to the buyer under fraudulent circumstances of more than the empty sacks paid for and authorized. It insists that since Lado's position involved trust and confidence in the care and custody of the petitioner's properties, his actions in Manzo's purchase of the empty sacks led to the conclusion that he intended to defraud the company. The petitioner stresses that Lado's dismissal satisfied the requirements of due process since he was given the opportunity to explain his side through the two (2) show-cause letters, the formal notice of preventive suspension, and the notice of employment termination.

### **THE CASE FOR THE RESPONDENT**

Lado, on the other hand, contends that the petitioner raised no new matters to merit the Court's favorable consideration, and that the arguments and evidence presented by both parties were duly considered and evaluated by the CA. He submits that the petitioner failed to prove his supposed fraudulent intent and likewise failed to afford him due process when he was not informed by the two (2) inter-office memoranda that his infractions would cost him his job of more than 16 years.

### **THE ISSUES**

The core issue focuses on loss of trust and confidence. In the context of the Rule 65 petition before the CA, the issue is whether the CA correctly found that the NLRC committed grave abuse of discretion in ruling that Lado was legally dismissed for loss of trust and confidence.

### **THE COURT'S RULING**

## **We find the petition meritorious.**

At the outset, we clarify that we are generally precluded in a Rule 45 petition from reviewing factual findings of the CA; we are not triers of facts. However, the conflicting factual findings of the Arbiter and the NLRB, on one hand, and the CA, on the other, compel us to depart from this general rule, and to wade into the consideration of the presented evidence. [23]

Under the Labor Code, the requirements for the lawful dismissal of an employee are two-fold, consisting of substantive and procedural aspects. Not only must the dismissal be for a just or authorized cause; the basic requirements of procedural due process - notice and hearing - must likewise be observed before an employee may be dismissed. Without the concurrence of the two, the termination is illegal in the eyes of the law, for employment is a property right that the holder cannot be deprived of without due process. [24] The burden of proof rests on the employer to show that the employee's dismissal has met these due process requirements. The case of the employer must stand or fall on its own merits and not on the weakness of the employee's defense. [25]

### ***On the just cause issue***

Lado's notice of termination of employment, contained in the petitioner's memorandum of September 15, 1998, [26] stated that Lado was separated from the service due to serious misconduct, dishonesty, willful breach of trust, fraud, loss of confidence and other grounds. In the assailed CA decision, the CA held that based on the evidence presented, the petitioner failed to discharge the burden of proof that Lado's dismissal was for a valid and authorized cause. An excerpt from the challenged decision declared:

On the supposed fraudulent intent which became the basis for lack of trust and confidence, fraud as a just cause for terminating an employee's services, particularly for lack of trust and loss of confidence, being defined as any act, omission or concealment which involves a breach of legal duty, trust or confidence justly reposed and is injurious to another, implies willfulness or wrongful intent.

In fact, under Article 283 (c) of the Labor Code, the breach of trust must be willful and a breach is willful, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly and inadvertently (*Atlas Consolidated Mining Development Corp. v. National Labor Relations Commission*, 290 SCRA 479).

In this case at bar, the release of the excess 400 empty sacks by herein petitioner could not and cannot be considered with fraudulent intent considering that it was not willful although done intentionally and knowingly but with justifiable reason x x x.

**We do not agree that the evidence presented did not support the conclusion that a valid cause for dismissal existed.**