

## SECOND DIVISION

[ G.R. No. 174593, August 25, 2010 ]

**ALEX GURANGO, PETITIONER, VS. BEST CHEMICALS AND PLASTICS INC. AND MOON PYO HONG, RESPONDENTS.**

### DECISION

**CARPIO, J.:**

#### **The Case**

This is a petition<sup>[1]</sup> for review on certiorari under Rule 45 of the Rules of Court. The petition challenges the 20 July 2006 Decision<sup>[2]</sup> and 11 September 2006 Resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. SP No. 94004. The Court of Appeals set aside the 17 October 2005<sup>[4]</sup> and 24 January 2006<sup>[5]</sup> Resolutions of the National Labor Relations Commission (NLRC) in CA No. 044428-05, affirming the 6 July 2004 Decision<sup>[6]</sup> of the Labor Arbiter in NLRC NCR Case No. 05-06181-03.

#### **The Facts**

Respondent Best Chemicals and Plastics, Inc. (BCPI) is a corporation engaged in the manufacture of biaxially oriented polypropylene and related products. Respondent Moon Pyo Hong (Hong) is the president and chief executive officer of BCPI.

Petitioner Alex R. Gurango (Gurango) and Romeo S. Albao (Albao) worked as boiler operator and security guard, respectively, in BCPI. In a memorandum<sup>[7]</sup> dated 2 May 2003, BCPI prohibited its employees from bringing personal items to their work area. Erring employees would be suspended for six days. BCPI stated that:

Please be reminded of the following existing rules and regulations that all employees are expected to strictly observe and adhere to:

x x x x

Bringing in to work station/area of personal belongings other than those required in the performance of one's duty which disrupt/obstruct Company's services and operations, except those authorized by higher authorities. This offense shall include the following items [sic]: radios, walkman, discman, make-up kits, ladies' bags, workers' knapsacks and the like which must be left behind and safe kept [sic] in the employees' respective lockers. This being a Serious Offense, the penalty of which is six (6) days suspension from work without pay.<sup>[8]</sup>

Gurango and Albao presented two conflicting sets of facts as to what happened on 5 May 2003.

According to Gurango, at 4 a.m., he performed his routine check-up inside the production area. He had in his pocket a camera without film. On his way out of the production area, he saw Albao standing near the bundy clock. Albao pulled him, grabbed his pocket, and tried to confiscate the camera. Gurango refused to give the camera because there was no reason to surrender it.

Albao held Gurango's arm and punched him on the face. Gurango shouted for help. Another security guard, Rodenio I. Pablis (Pablis), arrived. Instead of pacifying Albao, Pablis joined in punching and kicking Gurango. Albao and Pablis banged Gurango's head against the floor and provoked him to fight back.

Gurango's co-worker, Elvin Juanitas (Juanitas), saw what happened and asked Albao and Pablis to stop hitting Gurango. Albao and Pablis brought Gurango to the guardhouse. Officer-in-charge Rommel M. Cordero (Cordero) locked the guardhouse, then ordered Albao and Pablis to continue hitting Gurango. Freddie Infuerto arrived at the guardhouse and asked the security guards to stop hitting Gurango. Gurango agreed to surrender the camera on the condition that the security guards would prepare a document acknowledging receipt of the camera.

Albao, on the other hand, alleged that he was on duty at the main entrance of the production area from 7 p.m. of 4 May 2003 to 7 a.m. of 5 May 2003. At 4:20 a.m., Gurango tried to enter the production area bringing a camera. Albao told Gurango that he could not bring the camera inside the production area. Gurango got mad and tried to grab Albao's gun. Albao and Gurango engaged in a fistfight. Cordero, Pablis, and another security guard, Fredrick Lañada, arrived and stopped the fight.

On 5 May 2003, at 8:35 a.m., Gurango went to Dr. Homer L. Aguinaldo (Dr. Aguinaldo) for examination and treatment. Dr. Aguinaldo issued a medical report<sup>[9]</sup> and advised Gurango to rest for three days.

In a letter<sup>[10]</sup> dated 5 May 2003, BCPI asked Gurango to explain in writing why no disciplinary action should be taken against him and then placed him under preventive suspension effective 6 May 2003. On 6 May 2003, Gurango wrote a letter<sup>[11]</sup> to BCPI narrating what happened. On 8 May 2003, Gurango wrote another letter<sup>[12]</sup> to BCPI stating that:

I already explained my side of the story regarding the alleged fistfight between Romeo Albao and me. I would like to reiterate that I was never involved in any fistfight nor commit any violation of our Company's Code of Discipline.

Another issue is the preventive suspension I'm undergoing with [sic]. I would like to question the propriety of such action. Be reminded that you are putting me under indefinite preventive suspension.

Under the law, an employee may be placed under preventive suspension

only if his continued employment poses a serious and imminent threat to the life and property of the employer or of his co-employees. Consequently, without this kind of threat, preventive suspension is improper.<sup>[13]</sup>

On 9 May 2003, Juanitas wrote a letter<sup>[14]</sup> to BCPI narrating what he saw. Juanitas stated that:

*Noong May 5 bandang alas 4:20 ng madaling araw ako po ay lumabas ng electral [sic] shop upang pumunta sa production upang mag monitor. Ng sa bandang locker room pa lang ako may nakita ako tatlong tao na nakasuot ng kulay puti na nagpaikot-ikot (sa harapan banda ng bandi [sic] clock). Medyo madilim pa kaya hindi ko nakita si Alex Gurango kasi nakasoot sya ng kulay dark blue na T-shirt. Ng medyo malapit na ako nakarinig ako ng boses na (tama na nasasaktan na ako) at may sumagot na ibigay mo na masasaktan ka lang. Ng makalapit na ako sa kanila nakita ko na iniipit na ng kanang braso ni Albao (Guard) ang leeg ni Alex. Akala ko nagbibiroan lang sila. Tinanong ko kung ano yan pero bago ako tumanong sa kanila nakita ko na nasasaktan na si Alex dahil sa pagkaipit sa kanyang leeg. Sagot ni Alex sa akin pre (ako) kinukuha nila ang kamera sa akin to eh. Sabi pa ni Alex hindi ko to ibibigay sa inyo kahit ako'y saktan nyo, hindi ako lalaban sa inyo. May pagbibigyan ako, ibibigay ko to sa management. Sabi ko ano ba yan nasasaktan na ang tao. Nagtataka naman ako sa kanila ni Pables at Lañada bakit hindi nila inaawat, nakatingin lang sila at kasamahan pa nila. Ako naman natatakot akong paghiwalayin sila kasi may baril si Albao na naka sabit sa beywang nya baka pag inawat ko baka sasabihin ni Albao na kumampi ako kay Alex dahil parehas kaming maintenance. Sinabihan ko si Albao na bitiwang mo si Alex ayusin natin to. Hindi pa rin binitiwang ni Albao ang pagkaipit sa leeg ni Alex hanggang sa naitulak ko sila papunta sa guardhouse. Ng sa loob na ng guardhouse hindi pa rin binitiwang ni Albao si Alex kaya hinahanap ko ang kanilang O.I.C. Para ayusin na. Maya maya lumabas si Cordero (O.I.C.). Sabi ko awatin niya si Albao pero hindi manlang nya inawat pati na ang kanyang mga kasama dahil nandoon pa rin sa loob ng guardhouse sina Pables, Lañada at Cordero. Lumabas ako at tinawag ko si Pong sa kanilang shop. Bumalik ako sa guardhouse kasama si Pong, ganon pa rin nakakapit pa rin ang braso ni Albao sa leeg ni Alex. Ngayon naglakas loob na lang ako na paghiwalayin sila. Nahirapan ako dahil malakas si Albao. Napaghiwalay ko sila pero muntik pa nga ako tamaan ng kamay ni Albao at ng maghiwalay na pinaupo ko si Alex sa upuan sa tabi at hinarang ko si Albao dahil gusto pa nyang lumapit kay Alex at nagsabi ako kay Pong na bantayan mo si Alex dahil tatawag ako ng Korean o supervisor para ayusin.<sup>[15]</sup>*

On 10 May 2003, BCPI wrote a letter to Gurango finding him guilty of engaging in a fistfight and violating company policy by bringing a camera. On 14 May 2003, Gurango wrote a letter<sup>[16]</sup> to BCPI stating that:

I again would like to reiterate that I was never involved nor commit [sic] any violation of Company's Code of Discipline.

For me to further explain, could you please be more specific what company policies are you referring to when you said that bringing of camera inside the production area and refusal to surrender the same camera constitute infractions of company policy.<sup>[17]</sup>

On 15 May 2003, Gurango filed with the 5th Municipal Circuit Trial Court (MCTC), Carmona, Cavite, a criminal complaint<sup>[18]</sup> against Albao, Cordero and Pablis for slight physical injury.

In a letter<sup>[19]</sup> dated 19 May 2003, BCPI dismissed Gurango effective 20 May 2003. BCPI stated that:

After a thorough evaluation and intensive deliberation on the facts attendant to your case, Management has found you to have committed the following Offenses under the Company's Code of Discipline:

1. Concealing and bringing in to work station/area of personal belongings (e.g., a camera), other than those required in the performance of one's duty which disrupt/obstruct Company services and operations, except those authorized by higher authorities. (Table II, Serious, No. 10 of Code of Discipline);
2. Utter disregard for or refusal to submit to reasonable inspection connected within [sic] the Company premises by authorized Company security personnel in the conduct of their business. (Table IV, Minor, No. 1 of Code of Discipline);
3. Starting or provoking a fight, i.e., involvement in a fist fight with a security guard last May 5, 2003. (Table I, Grave, No. 6 of Code of Discipline);
4. Attempting to inflict or inflicting bodily injury upon any Company official (e.g., security guard who is a peacekeeping officer of the company) or employee. (Table I, Grave, No. 05 of Code of Discipline); and
5. Intentionally causing personal injury to another person (i.e., the security guard) within the Company premises. (Table I, Grave, No. 12 of Code of Discipline).

x x x x

Based on the foregoing, and in view of the gravity of the offenses that you have committed which constitute gross misconduct, the Company is

constrained to terminate your employment for cause effective May 20, 2003, at the close of business hours.<sup>[20]</sup>

On 26 May 2003, Gurango filed with the NLRC a complaint against BCPI and Hong for illegal dismissal.

### **The Labor Arbiter's Ruling**

In his 6 July 2004 Decision, the Labor Arbiter found BCPI liable for illegal dismissal. The Labor Arbiter ordered BCPI to pay Gurango backwages and separation pay. The Labor Arbiter held that:

I find that the complainant was illegally dismissed from employment.

He was dismissed from [sic] trying to bring an alleged prohibited item, a camera, inside the Production Area but company rules did not prohibit the bringing of camera.

How can an unloaded camera be said to "disrupt/obstruct company services and operations"? It cannot.

As to the alleged fistfight between the complainant and security guard Albao, I am more inclined to believe and find credible complainant's version that he was mauled by Albao and, later, by some of the guards.

His letter/statement was made on May 6, 2003, or only a day after the incident. The statement of guard Albao was made on May 28, 2003, several days after the incident.

I find that complainant's statement is freshly unblemished, and, therefore, very credible while Albao's contradictory statement is the fruit of afterthought.

Moreover, I don't find the complainant was foolish enough to try to snatch the gun of Albao during the incident. I am convinced Albao lied in his statement.

x x x x

In the present case, no solid cause exists to dismiss complainant from employment as to warrant a dismissal.<sup>[21]</sup>

BCPI and Hong appealed to the NLRC.

### **The NLRC's Ruling**

In its 17 October 2005 Resolution, the NLRC affirmed in toto the Labor Arbiter's 6 July 2004 Decision. The NLRC held that: