

## SECOND DIVISION

[ G.R. No. 152166, October 20, 2010 ]

**ST. LUKE'S MEDICAL CENTER, INC. AND ROBERT KUAN,  
CHAIRMAN, PETITIONERS, VS. ESTRELITO NOTARIO,  
RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

Before the Court is a petition for review on *certiorari* seeking to set aside the Decision<sup>[1]</sup> dated September 21, 2001 and Resolution<sup>[2]</sup> dated February 12, 2002 of the Court of Appeals (CA), Second Division, in CA-G.R. SP No. 58808, entitled *St. Luke's Medical Center, Inc. and Robert Kuan, Chairman v. National Labor Relations Commission and Estrelito Notario*, which affirmed the Resolutions dated January 19, 2000<sup>[3]</sup> and March 20, 2000<sup>[4]</sup> of the National Labor Relations Commission (NLRC), Third Division, in NLRC NCR Case No. 00-03-02177-97. The NLRC Resolution dated January 19, 2000 reversed and set aside the Decision<sup>[5]</sup> dated November 11, 1998 of the Labor Arbiter dismissing respondent's complaint for illegal dismissal against petitioners, St. Luke's Medical Center, Inc. and its Chairman, Robert Kuan, and ordered them to reinstate respondent to his former position, without loss of seniority rights and other benefits and full backwages from the date of dismissal until actual reinstatement, and should reinstatement be no longer feasible, to further pay him separation pay equivalent to one (1) month's pay for every year of service, with the following monetary award, namely, backwages of P250,229.97 and separation pay of P31,365.00, or a total amount of P281,594.97.

The antecedent facts are as follows:

On June 23, 1995, St. Luke's Medical Center, Inc. (petitioner hospital), located at Quezon City, employed respondent as In-House Security Guard. In August 1996, Nimaya Electro Corporation installed a closed-circuit television (CCTV) system in the premises of petitioner hospital to enhance its security measures<sup>[6]</sup> and conducted an orientation seminar for the in-house security personnel on the proper way of monitoring video cameras, subject to certain guidelines.<sup>[7]</sup>

On December 30, 1996, respondent was on duty from 6:00 p.m. to 6:00 a.m. of the following day, December 31, 1996. His work consisted mainly of monitoring the video cameras. In the evening of December 30, 1996, Justin Tibon, a foreigner from Majuro, Marshall Island, then attending to his 3-year-old daughter, Andanie De Brum, who was admitted since December 20, 1996 at room 257, cardiovascular unit of petitioner hospital, reported to the management of petitioner hospital about the loss of his mint green traveling bag, which was placed inside the cabinet, containing, among others, two (2) Continental Airlines tickets, two (2) passports, and some clothes. Acting on the complaint of Tibon, the Security Department of petitioner

hospital conducted an investigation. When the tapes of video camera recorder (VCR) no. 3 covering the subject period were reviewed, it was shown that the VCR was focused on camera no. 2 (Old Maternity Unit), from 2103H to 2215H [or 9:03 p.m. to 10:15 p.m.] of December 30, 1996, and camera no. 1 (New Maternity Unit), from 0025H to 0600H [or 12:25 a.m. to 6:00 a.m.] of December 31, 1996. The cameras failed to record any incident of theft at room 257.

On January 6, 1997, petitioner hospital, through Abdul A. Karim, issued a Memorandum<sup>[8]</sup> to respondent, the CCTV monitoring staff on duty, directing him to explain in writing, within 24 hours upon receipt thereof, why no disciplinary action should be taken against him for violating the normal rotation/sequencing process of the VCR and, consequently, failed to capture the theft of Tibon's traveling bag at room 257.

In his letter<sup>[9]</sup> dated January 6, 1997, respondent explained that on the subject dates, he was the only personnel on duty as nobody wanted to assist him. Because of this, he decided to focus the cameras on the Old and New Maternity Units, as these two units have high incidence of crime.

Finding the written explanation of respondent to be unsatisfactory, petitioner hospital, through Calixton, served on respondent a copy of the Notice of Termination,<sup>[10]</sup> dated January 24, 1997, dismissing him on the ground of gross negligence/inefficiency under Section 1, Rule VII of its Code of Discipline.

Thus, on March 19, 1997, respondent filed a Complaint<sup>[11]</sup> for illegal dismissal against petitioner hospital and its Chairman, Robert Kuan, seeking reinstatement with payment of full backwages from the time of his dismissal up to actual reinstatement, without loss of seniority rights and other benefits.

Petitioners countered that they validly dismissed respondent for gross negligence and observed due process before terminating his employment.

On November 11, 1998, the Labor Arbiter dismissed respondent's complaint for illegal dismissal against petitioners. He stated that a CCTV monitoring system is designed to focus on many areas in a programmed and sequential manner and should not be focused only on a specific area, unless the situation requires it. He concluded that during respondent's duty from December 30 to 31, 1996, he was negligent in focusing the cameras at the Old and New Maternity Units only and, consequently, the theft committed at room 257 was not recorded. He said that respondent's infraction exposed petitioners to the possibility of a damage suit that may be filed against them arising from the theft.

On appeal by the respondent, the NLRC issued a Resolution dated January 19, 2000, reversing the Decision of the Labor Arbiter. It stated that petitioners failed to submit proof that there was an existing Standard Operating Procedure (SOP) in the CCTV monitoring system, particularly on the focusing procedure. It observed that respondent was not negligent when he focused the cameras on the Old and New Maternity Units, as they were located near the stairways and elevators, which were frequented by many visitors and, thus, there is the likelihood that untoward incidents may arise. If at all, it treated the matter as a single or isolated act of simple negligence which did not constitute a just cause for the dismissal of an

employee. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the decision dated November 11, 1998 is hereby SET ASIDE and a new one entered ordering respondents-appellees to reinstate complainant-appellant to his former position without loss of seniority rights and other benefits, with full backwages from the date of dismissal until actual reinstatement. Should reinstatement be no longer feasible, to further pay complainant-appellant separation pay equivalent to one (1) month pay for every year of service.

As computed, complainant-appellant's monetary award as of this date of decision are as follows:

Backwages .....	P250,229.97
Separation Pay.....	<u>+ 31,365.00</u>
Total .....	P281,594.97

SO ORDERED.<sup>[12]</sup>

On February 14, 2000, petitioners filed a Motion for Reconsideration, but the same was denied by the NLRC in its Resolution dated March 20, 2000.

On September 21, 2001, the CA dismissed petitioners' petition for *certiorari*, affirming the NLRC's finding that while respondent may appear to be negligent in monitoring the cameras on the subject dates, the same would not constitute sufficient ground to terminate his employment. Even assuming that respondent's act would constitute gross negligence, it ruled that the ultimate penalty of dismissal was not proper as it was not habitual, and that there was no proof of pecuniary injury upon petitioner hospital. Moreover, it declared that petitioners failed to comply with the twin notice rule and hearing as what they did was to require respondent to submit a written explanation, within 24 hours and, thereafter, he was ordered dismissed, without affording him an opportunity to be heard.

As their motion for reconsideration was denied in the CA's Resolution dated February 12, 2002, petitioners filed this present petition.

Petitioners allege that, by not focusing the CCTV cameras on the different areas of the hospital, respondent committed gross negligence which warrants his dismissal. According to them, there was no need to prove that the act done was habitual, as the occurrence of the theft exposed them to possible law suit and, additionally, there might be a repetition of a similar incident in the future if respondent would remain in their employ.

Respondent maintains that he was not negligent in the discharge of his duties. He said that there was no actual loss to petitioner hospital as no complaint or legal action was taken against them and that the supposed complainant, Tibon, did not even report the matter to the police authorities.

Contrary to the stance of petitioners, respondent was illegally dismissed without just cause and compliance with the notice requirement.

Article 282 (b) of the Labor Code provides that an employer may terminate an employment for gross and habitual neglect by the employee of his duties. Corollarily, regarding termination of employment, Section 2(a) and (d), Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code, as amended, provides that:

Section 2. *Security of Tenure.* (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.

x x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

x x x x

To effectuate a valid dismissal from employment by the employer, the Labor Code has set twin requirements, namely: (1) the dismissal must be for any of the causes provided in Article 282 of the Labor Code; and (2) the employee must be given an opportunity to be heard and defend himself. This first requisite is referred to as the substantive aspect, while the second is deemed as the procedural aspect.

[13]

An employer can terminate the services of an employee only for valid and just causes which must be supported by clear and convincing evidence. The employer has the burden of proving that the dismissal was indeed for a valid and just cause.

[14]

A perusal of petitioner hospital's CCTV Monitoring Guidelines,<sup>[15]</sup> disseminated to all

in-house security personnel, reveals that that there is no categorical provision requiring an in-house security personnel to observe a rotation sequence procedure in focusing the cameras so that the security monitoring would cover as many areas as possible.

This fact is corroborated by Tito M. Maganis, petitioners' former In-House Security Department Head, in his Affidavit<sup>[16]</sup> dated October 28, 1997, stating, among others:

x x x x

2. That as Department Head of the In-House Security of SLMC [St. Luke's Medical Center], I am familiar with the standard operating procedures governing the conduct and operation of equipment and devices for observance by all security personnel of SLMC to secure the premises;

3. That to the best of my personal knowledge, there had been no rules on rotation/sequencing process of CCTVs disseminated for observance by security personnel;

4. That in the past, there were occasions when the CCTVs were focused on specific areas where untoward incidents usually happen; That no penalty of dismissal had been imposed, thus far, on any security personnel found focusing these CCTVs; and

x x x x

Further, the Certification<sup>[17]</sup> dated April 14, 1998, issued by Himaya Electro Corporation, indicating respondent as one of the participants in the orientation conducted for in-house security personnel<sup>[18]</sup> contradicted the joint statement,<sup>[19]</sup> dated April 15, 1998, by therein participants, which excluded respondent as one of the attendees. Thus, the certification cannot support petitioners' theory that respondent ought to know the rudiments of monitoring the CCTV cameras on the basis that he was one of the participants in the said orientation. Probably, respondent was listed as one of the participants, but he failed to attend.

For his part, respondent denied having attended the said orientation and being informed of the SOP of CCTV cameras. Despite the foregoing, respondent had been efficiently performing his assigned task. In fact, in the Letter of Commendation<sup>[20]</sup> dated December 8, 1996, petitioner hospital, through Alfredo D. Calixton, Jr., commended the vigilance of respondent and other four in-house security personnel in preventing the occurrence of thefts and thwarting the loss of the personal belongings of a confined patient.

Under Article 282 (b) of the Labor Code, an employer may terminate an employee for gross and habitual neglect of duties. Neglect of duty, to be a ground for dismissal, must be both gross and habitual. Gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. A single or isolated act of negligence does not constitute a just cause for the dismissal