

## **FIRST DIVISION**

**[ G.R. No. 164423, June 16, 2009 ]**

**TRIUMPH INTERNATIONAL (PHILS.), INC., PETITIONER, VS.  
RAMON L. APOSTOL AND BEN M. OPULENCIA, RESPONDENTS.**

### **D E C I S I O N**

**CARPIO, J.:**

#### **The Case**

This is a petition for review<sup>[1]</sup> of the Court of Appeals' Decision<sup>[2]</sup> dated 20 February 2004 and Resolution dated 5 July 2004 in CA-G.R. SP No. 69280. The Court of Appeals reversed the Decision<sup>[3]</sup> dated 16 July 2001 and Order dated 20 December 2001 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 026159-00 (NLRC NCR Case No. 39-01-0422-00).

#### **The Antecedent Facts**

Respondent Ramon L. Apostol (Apostol) was hired as assistant manager by petitioner Triumph International (Phils.), Inc. (TIPI) in March 1991, and was holding the same position until TIPI's termination of his employment on 21 January 2000. On the other hand, respondent Ben M. Opulencia (Opulencia) was hired as a warehouse helper by TIPI sometime in 1990, and was the company's warehouse supervisor at the time of the termination of his employment on 21 January 2000. Apostol was the immediate superior of Opulencia.

On 14 and 15 August 1999, TIPI conducted an inventory cycle count of its direct and retail sales in its Muñoz warehouse. The inventory cycle count yielded discrepancies between its result and the stock list balance as forwarded on 14 August 1999. Consequently, Leonardo T. Gomez (Gomez), TIPI's Comptroller, issued a memorandum dated 24 August 1999, addressed to Virginia A. Sugue (Sugue), TIPI's Marketing Services Manager -Direct, and R.S. Silva, Marketing and Sales Manager-Retail, requesting for a reconciliation of the discrepancies. On 6 September 1999, Sugue issued a memorandum addressed to Gomez, explaining that the discrepancy could be attributed to pilferage of finished goods at the warehouse, as stated in the affidavit dated 31 August 1999 of Opulencia, TIPI's Warehouse Supervisor. Two days later, or on 8 September 1999, Sugue sent a "show-cause letter" to Apostol, TIPI's Assistant Manager-Warehouse and Distribution, requiring him to explain in writing the negative variance based on the inventory cycle count. The letter also placed Apostol on leave with pay, pending the investigation being conducted by TIPI. Sugue issued a similar letter to Opulencia. On 10 September 1999, Apostol sent a letter-memorandum to Sugue, explaining that the negative variance was due to pilferage of finished goods by Alfred Hernandez, a security consultant of TIPI. Apostol also objected to his being placed on leave with pay. On the same day, Gomez issued a memorandum addressed to Sugue, stating that in the reconciliation

of stock development report against stock list, he noted that significant adjustments were made by Oplencia and approved by Apostol.<sup>[4]</sup> Gomez asked Sugue if she approved such adjustments,<sup>[5]</sup> and at the same time, requested the latter to direct Oplencia and Apostol to explain the adjustments.

On 16 September 1999, Apostol issued a memorandum<sup>[6]</sup> addressed to Sugue, copy furnished Gomez, explaining the significant adjustments, to wit:

(1) Adjustments to conform against the physical existence of stock balance of 15,836 pcs. x x x

This is the adjustment made in accordance with the agreed cycle count during the Direct Sales coordination meeting with RSV, VAS and RLA of SMSD-Direct Sales. These are documented adjustments to correct the stocklist balance. This measure was agreed in order to address numerous complaints of dealers regarding unserved orders.

(2) Discrepancy on Stock transfer from Retail Sales to Direct Sales of 1,784 pcs. x x x

There are also adjustments to conform against the physical existence of stock balance of spot items mostly transfer fro Retail Sales. There are also documented adjustments and are meant to correct the stocklist balance.

For his part, Oplencia explained in another memorandum of the same date that the adjustments "were made to address the problem of variances between the stocklist balance and the actual stocks. These were covered by the usual stock adjustment reports which were approved by the Asst. Manager-Warehouse and Distribution [i.e., Apostol]."<sup>[7]</sup> Oplencia wrote Sugue a separate letter-memorandum objecting to his being placed on leave with pay.

On 22 October 1999, Sugue issued a memorandum<sup>[8]</sup> informing Apostol of the following findings of the TIPI investigation, to wit:

1. An inventory count was conducted at the Muñoz warehouse on the 14<sup>th</sup> and 15<sup>th</sup> of August 1999. The inventory count uncovered the pilferage of 15,574 pieces of finished products amounting to more or less P3.5 million;
2. Adjusting entries to the stock list totaling to (sic) 17,620 were made without proper investigation and reconciliation with the Accounting Department in conformity with the Company's records and accountability;
3. The warehouse keys, which should have been with (sic) Mr. Apostol's custody, were entrusted to the custody of contractual and/or regular employees in violation of the Company's Standard Operating Procedure;

4. Mr. Apostol failed to report the alleged fact of pilferage of Mr. Alfredo A. Hernandez, which act of pilferage having been committed under Mr. Apostol's area of control and supervision; and
5. On September 29, 1999, in a telephone conversation with Mr. Ralph Funtilla, Personnel Manager of the Company, Mr. Apostol uttered profane, indecent, abusive, derogatory remarks and indecorous words, and even threatened the former.

Sugue also required Apostol to show cause, within 24 hours, why he should not be terminated by TIPI for loss of confidence.<sup>[9]</sup> On 27 October 1999, Apostol issued a reply to Sugue's memorandum, stating the following:<sup>[10]</sup>

1. The variance uncovered by the inventory cycle count is caused by pilferage. He referred to the report of Ms. Sugue to Mr. Gomez stating such fact;
2. The adjustments were made with the full knowledge of the Accounting Department of the company as reflected in a Summary Transaction Report which said department has a copy and which it never questioned. The adjusting entries to the stock list were made in accordance with the agreed cycle count during the Direct Sales coordination meeting in order to correct the stock list balance. These adjustments were done in order to address the numerous complaints of dealers regarding unserved orders. The adjusting entries do not violate any company rule and regulation or any of the Company's internal control systems. This procedure has also been followed since the start of the Direct Sales operations where adjustments are made on the stock list to conform with the actual situation;
3. The entrusting of the keys to warehouse staff is a practice since 1990 and had been known to all concerned, and no objections were relayed with regard to this practice. Sufficient control had been imposed in order to ensure that the staff member who had custody of the key may not pilfer any stock;
4. The pilferage of Mr. Hernandez was reported to Ms. Sugue and Mr. Valderama; and
5. No profane, indecent, abuse (sic), derogatory language, or threats were uttered against Mr. Funtilla.

TIPI conducted administrative investigations on 20 December 1999 and 10 January 2000. On 21 January 2000, TIPI, through Sugue, served notices to Apostol and Opulencia, stating that their employment had been terminated for committing infractions of the company's rules and regulations. Specifically, Apostol was found to have committed Offense No. 3 (Fraud or willful breach by an employee of the trust reposed in him by the Company) and Offense No. 25 (Using, uttering or saying profane, indecent, abusive, derogatory and/or indecorous words or language against the employer or supervisor), while Opulencia was found to have committed Offense No. 3 only.

On 28 January 2000, Apostol and Opolencia filed with the Labor Arbiter a complaint for illegal dismissal and non-payment of salaries and other benefits against TIPI.

On 28 July 2000, the Labor Arbiter<sup>[11]</sup> rendered a Decision dismissing the Complaint for lack of merit.<sup>[12]</sup> On appeal, the NLRC affirmed the Decision of the Labor Arbiter.<sup>[13]</sup> Apostol and Opolencia filed a motion for reconsideration, but this was denied by the NLRC.<sup>[14]</sup>

### **The Court of Appeals' Ruling**

Apostol and Opolencia filed with the Court of Appeals a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, assailing the Decision of the NLRC. On 20 February 2004, the Court of Appeals rendered judgment, reversing and setting aside the NLRC Decision. The dispositive portion of the Court of Appeals' Decision reads:

**WHEREFORE**, the instant petition is **GRANTED**. The assailed Decision dated July 16, 2001 and Order dated December 20, 2001, of the public respondent NLRC, First Division, Quezon City in NLRC NCR CA No. 026159-00 (NLRC NCR CASE NO. 39-01-0422-00) are **REVERSED** and **SET ASIDE**. In lieu thereof, the private respondent is hereby ordered to reinstate the petitioners with full backwages from the time their employments were terminated on January 21, 2000 up to the time the decision herein becomes final. However, if reinstatement is no longer feasible, due to the strained relation between the parties, the private respondent is ordered to pay the petitioners their separation pay equivalent to one (1) month pay for every year of service and, in addition, to backwages.

SO ORDERED.<sup>[15]</sup>

TIPI filed a Motion for Reconsideration, but this was denied by the Court of Appeals in its Resolution of 5 July 2004.<sup>[16]</sup>

Hence, this appeal.

### **The Issues**

TIPI raises the following issues:

1. Whether the Court of Appeals exceeded its jurisdiction when it reversed the factual findings of the Labor Arbiter and the NLRC by reevaluating the evidence on record;
2. Whether the Court of Appeals contravened prevailing jurisprudence by requiring a higher quantum of proof for the dismissal of managerial employees on the ground of loss of trust; and
3. Whether the Court of Appeals gravely erred in ruling that respondents were illegally dismissed.

## **The Court's Ruling**

We find the appeal meritorious.

At the outset, respondents contend that the issues raised by TIPI in this case entail an evaluation of the factual findings of the Court of Appeals, which is proscribed in a petition for review on certiorari where only questions of law may be raised. Respondents refer to Section 1, Rule 45 of the 1997 Rules of Civil Procedure which states:

Section 1. Filing of petition with Supreme Court. -- A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. **The petition shall raise only questions of law which must be distinctly set forth.** (Emphasis supplied)

Applying the above rule, respondents maintain that the instant petition should be dismissed *motu proprio* by this Court.

As a general rule, petitions for review under Rule 45 of the Rules of Civil Procedure filed before this Court may only raise questions of law. However, jurisprudence has recognized several exceptions to this rule. In *Almendrala v. Ngo*,<sup>[17]</sup> we have enumerated several instances when this Court may review findings of fact of the Court of Appeals on appeal by certiorari, to wit:<sup>[18]</sup> (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

In this case, the factual findings of the Court of Appeals are different from those of the NLRC and the Labor Arbiter. These conflicting findings led to the setting aside by the Court of Appeals of the decision of the NLRC which affirmed the Labor Arbiter. In view thereof, we deem a review of the instant case proper.

### ***On whether the Court of Appeals exceeded its jurisdiction when it reversed the factual findings of the Labor Arbiter and the NLRC***

TIPI contends that a reevaluation of the factual findings of the NLRC is not within the province of a petition for certiorari under Rule 65. TIPI asserts that the Court of Appeals can only pass upon such findings if they are not supported by evidence on