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THIRD DIVISION

[G.R. No. 163210, August 13, 2008]

LEPANTO CONSOLIDATED MINING COMPANY, PETITIONER, VS. MORENO DUMAPIS, ELMO TUNDAGUI AND FRANCIS LIAGAO, RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the November 7, 2003 Decision[1] and April 15, 2004 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 75860.

The antecedents of the case are as follows:

Lepanto Consolidated Mining Corporation (petitioner), a domestic juridical entity engaged in mining, employed Moreno Dumapis and Elmo Tundagui as lead miners; and Francis Liagao, as load, haul and dump (LHD) machine operator (respondents).[3] All three were assigned at the 850 level, underground, Victoria Area in Lepanto, Mankayan, Benguet. This is a known "highgrade" area where most of the ores mined are considered of high grade content.[4]

In the afternoon of September 15, 2000, at 2:00 p.m., Dwayne Chambers (Chambers), one of its foreign consultants who was then acting as Assistant Resident Manager of the Mine, went underground at the 850 level to conduct a routinary inspection of the workers and the working conditions therein. When he went to the various stopes of the said level, he was surprised to see that nobody was there. However, when he went to the 8k stope, he noticed a group of workers sitting, sorting, and washing ores believed to be "highgrade." Realizing that "highgrading"[5] was being committed, Chambers shouted. Upon hearing his angry voice, the workers scampered in different directions of the stope.[6] Chambers then reported the incident to the security investigation office.[7]

After investigating, Security Investigators Paul Pespes, Jr. and Felimon Ringor (Security Investigators) executed a Joint Affidavit, which reads as follows:

> x x x x
>
> At about 3:40 PM of September 15, 2000, while we were at the Lepanto Security Investigation office, we received a report that the LMD Asst. Resident Manager, **Mr. Dwayne Chambers saw and surprised several unidentified miners** at 8K Stope, 850 level committing Highgrading activities therein;

Consequently, all miners assigned to work therein including their supervisor and **SG Ceasarion Damoslog**, an element of the Mine Security Patrol posted therein as stationary guard were called to this office for interrogation regarding this effect;

In the course of the investigation, we eventually learned that the highgrading event really transpired somewhere at the roadway of 8K Stope, 850 level at about 2:00 o'clock PM of September 15, 2000. That the involved participants were all miners assigned to work at 7K Stope, 8K Stope, 240 E, Cross Cut South level drive, all located at 850 mine level. Likewise, the detailed stationary guard assigned thereat and some mine supervisors were also directly involved in this activity;

Security Guard Ceasarion Damoslog honestly confessed his direct participation then claimed that he was allegedly convinced by Mr. Joel Gumatin, one of the miners assigned at Panel No.1-est-North, 8K Stope, 850 level to cooperate with them to commit Highgrading. **He revealed his companions to be all the miners assigned at 8K stope, namely**, Joel Gumatin, Brent Suyam, Maximo Madao, **Elmo Tundagui** and Daniel Fegsar. He also included those who were assigned to work at 240 E, XCS, namely: Thomas Garcia (immediate supervisor), John Kitoyan, **Moreno Dumapis**, and Marolito Cativo. He enumerated also messrs. Benedict Arocod, Samson Damian, and Dionisio Bandoc, 7K Stope, 850 level assigned miners and shiftboss, respectively;

Mr. Pablo Daguio, the shiftboss of 240 E, XCS, 850 level also **positively confirmed the Highgrading activity**. He added that actually he came upon the group and even dispersed them when he went therein prior to the arrival of Mr. Chambers;

Furthermore, we also learned from the **confession of Mr. Maximo Madao** that its was messrs. Joel Gumatin and Brent Suyam who took their issued rock drilling machine then drilled holes and blasted the same at the 8K Stope roadway with the **assistance of** Thomas Garcia, John Kitoyan, Benedict Arocod, Samsom Damian, Daniel Fegsar and **Francisco Liagao**. That SG Ceasarion Damoslog was present on the area standing and watching the group during the incident;

That we are executing this joint affidavit to establish the foregoing facts and to support any complaint that may be filed against respondents;

IN WITNESS WHEREOF, we have hereunto set our hands and affix our signature this 28th day of September 2000, at Lepanto, Mankayan, Benguet.[8](Emphasis supplied)

On October 24, 2000, petitioner issued a resolution finding respondents and their co-accused guilty of the offense of highgrading and dismissing them from their employment.[9]

On November 14, 2000, respondents together with the nine other miners, filed a Complaint for illegal dismissal with the Labor Arbiter (LA), docketed as NLRC Case

No. 11-0607-00 against petitioner.[10] On August 21, 2001, the LA dismissed the complaint for lack of merit.

On September 22, 2001, the miners appealed the decision of the LA to the National Labor Relations Commission (NLRC). On August 30, 2002, the NLRC rendered a Decision, declaring the dismissal of herein respondents as illegal, but affirming the dismissal of the nine other complainant miners. The dispositive portion of the NLRC Decision insofar as respondents are concerned, reads:

> WHEREFORE, premises considered, the DECISION dated August 21, 2001 is hereby MODIFIED declaring the dismissal of complainants [herein respondents] Moreno Dumapis, Elmo Tundagui and Francis Liagao illegal and ordering respondent to pay them backwages in the total amount of four hundred eighty thousand one hundred eighty two pesos and 63/100 (P480, 182.63) and separation pay in the total amount of four hundred seventeen thousand two hundred thirty pesos and 32/100 (P417,230.32) as computed in the body of the decision.
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> x x x x
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> SO ORDERED.[11]

Petitioner filed a motion for reconsideration which was denied for lack of merit by the NLRC in its Resolution dated on November 22, 2002.[12]

Petitioner then filed a petition for *certiorari* under Rule 65 of the Rules of Court with the CA assailing the aforementioned decision and resolution of the NLRC. The CA affirmed the decision of the NLRC[13] and denied petitioner's Motion for Reconsideration.

Hence, herein petition on the following grounds:

> **THE HONORABLE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN AFFIRMING THE NATIONAL LABOR RELATIONS COMMISSION'S DECISION DATED AUGUST 30, 2002 WHICH DECLARED AS ILLEGAL THE DISMISSAL FROM SERVICE OF HEREIN RESPONDENTS.**[14]
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> A. **The Court of Appeal's strict application of the hearsay rule under Section 36, Rule 130 of the Rules of Court to the present case is uncalled for.**
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> B. **In cases of dismissal for breach of trust and confidence, proof beyond doubt is not required, it being sufficient that the employer has reasonable ground to believe that the employees are responsible for the misconduct which renders them unworthy of the trust and confidence demanded by their position.**[15]

The petition is devoid of merit.

In finding the dismissal of respondents illegal, the CA upheld the NLRC in

considering the Joint Affidavit of the Security Investigators (Joint Affidavit) as hearsay and therefore inadmissible, to wit:

> We subscribed to the conclusion of the NLRC that the Joint Affidavit of Security Investigators Paul D. Pespes, Jr. and Felimon Ringor is hearsay and thus, inadmissible. Their narration of factual events was not based on their personal knowledge but on disclosures made by Chambers and Daguio. Section 36, Rule 130 of the Rules of Court defined the nature of hearsay:
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> Witness can testify only to those facts which he knows of his personal knowledge, that is, which are derived from his own perception, except as otherwise provided in these rules.[16]

Arguing for the admissibility of the Joint Affidavit, petitioner cites Article 221 of the Labor Code, as amended, which provides:

> Article 221. Technical rules not binding and prior resort to amicable settlement. **In any proceeding before the Commission or any Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling** and it is the spirit and intention of the Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and **without regard to the technicalities of law or procedure**, all in the interest of due process. x x x (Emphasis supplied)

We agree with the petitioner.

Administrative bodies like the NLRC are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law. Indeed, the Revised Rules of Court and prevailing jurisprudence may be given only stringent application, *i.e.,* by analogy or in a suppletory character and effect.[17]

In a number of cases,[18] this Court has construed Article 221 of the Labor Code as permitting the NLRC or the LA to decide a case on the basis of position papers and other documents submitted without necessarily resorting to technical rules of evidence as observed in the regular courts of justice. Rules of evidence are not strictly observed in proceedings before administrative bodies like the NLRC.[19]

In *Bantolino v. Coca-Coca Bottlers Phils., Inc*.[20] the Court ruled that although the affiants had not been presented to affirm the contents of their affidavits and be cross-examined, their affidavits may be given evidentiary value; the argument that such affidavits were hearsay was not persuasive. Likewise, in *Rase v. National Labor Relations Commission*,[21] this Court ruled that it was not necessary for the affiants to appear and testify and be cross-examined by counsel for the adverse party. To require otherwise would be to negate the rationale and purpose of the summary nature of the proceedings mandated by the Rules and to make mandatory the application of the technical rules of evidence.

Thus, the CA and the NLRC erred in ruling that the Joint Affidavit is inadmissible for being hearsay. The Joint Affidavit of the Security Investigators is admissible for what

it is, an investigation report.

However, the admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue.[22] Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.[23] The distinction is clearly laid out in *Skippers United Pacific, Inc. v. National Labor Relations Commission*.[24] In finding that the Report of the Chief Engineer did not constitute substantial evidence to warrant the dismissal of Rosaroso, this Court ruled:

> According to petitioner, the foregoing Report established that respondent was dismissed for just cause. The CA, the NLRC and the Labor Arbiter, however, refused to give credence to the Report. **They are one in ruling that the Report cannot be given any probative value as it is uncorroborated by other evidence and that it is merely hearsay, having come from a source, the Chief Engineer, who did not have any personal knowledge of the events reported therein**.
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> x x x x
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> The CA upheld these findings, succinctly stating as follows:
>
> Verily, the report of Chief Engineer Retardo is utterly bereft of probative value. It is not verified by an oath and, therefore, lacks any guarantee of trusthworthiness. **It is furthermore, and this is crucial, not sourced from the personal knowledge of Chief Engineer Retardo.** It is rather based on the perception of "ATTENDING SUPT. ENGINEERS CONSTANTLY OBSERVING ALL PERSONNELS ABILITY AND ATTITUDE WITH REGARDS TO OUR TECHNICAL CAPABILITY AND BEHAVIOURS WITH EMPHASY [sic] ON DISCIPLINE" who " NOTICED 3/E ROSAROSO AS BEING SLACK AND NOT CARING OF HIS JOB AND DUTIES x x x." **Accordingly, the report is plain hearsay. It is not backed up by the affidavit of any of the "Supt." Engineers who purportedly had first-hand knowledge of private respondents supposed "lack of discipline," "irresponsibility" and "lack of diligence" which caused him to lose his job**. x x x
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> The Courts finds no reason to reverse the foregoing findings.[25] (Emphasis supplied)

While it is true that administrative or quasi-judicial bodies like the NLRC are not bound by the technical rules of procedure in the adjudication of cases, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. The evidence presented must at least have a modicum of admissibility for it to have probative value.[26] Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. Substantial evidence is more than a mere scintilla.[27] It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[28] Thus, even though technical rules of evidence are not strictly