

SECOND DIVISION

[G.R. NO. 169231, February 15, 2007]

**TEOFILO CESAR N. ECHEVERRIA, PETITIONER, VS. VENUTEK
MEDIKA, INC., RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

Assailed via petition for review are issuances of the Court of Appeals in CA-G.R. SP No. 80966, to wit: a) Decision^[1] dated April 27, 2005, which granted respondent's petition for certiorari, thereby setting aside the decision of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 034523-03 and reinstating Labor Arbiter Elias H. Salinas' decision in NLRC Case No. 00-05-02975-02; and b) Resolution^[2] dated August 5, 2005, which denied petitioner's motion for reconsideration.

Teofilo Cesar N. Echeverria (petitioner) was an employee of Venutek Medika, Inc. (respondent), a corporation engaged in the business of trade and distribution of hospital supplies and equipment and an affiliate of the Dispophil Group of Companies (Dispophil Group). At the time of his termination from employment which is the subject of the present petition, he held the position of assistant marketing manager with a salary of P23,150 a month.

As a matter of policy, the marketing personnel of the various companies in the Dispophil Group hold a joint marketing cut-off monthly meeting to review the sales and marketing performance of the companies and discuss ways and means to improve them. Sheila Vinuya (Sheila), an assistant regional sales manager, is in charge of conducting the monthly meetings.^[3]

Prior to the meeting scheduled on May 2, 2002, petitioner approached Sheila and asked her if he could join the meeting so he could give a short discussion of his vision of corporate "oneness" which he believed would help the Dispophil Group generate sales. And he also asked Sheila if he could invite other division heads. Finding the request reasonable, Sheila agreed to let petitioner speak after the meeting.^[4]

Petitioner thereupon requested Lemford Suarez (Suarez), a product assistant, to invite all product assistants to attend the May 2, 2002 meeting, informing him that plans and programs to improve collection and product segmentation^[5] would be discussed.

During the meeting, Sheila, noting the presence of other product assistants and the absence of division heads, went to petitioner's office to inform him thereof. Petitioner readily admitted that he no longer invited the division heads.

Out of courtesy to petitioner who gave the impression that his discussion of his vision on corporate "oneness"^[6] was sanctioned by the president and chairman of the Dispophil Group, Sheila allowed him to speak at the beginning of the meeting.

Petitioner was well-prepared for his discussion, bringing with him slides and other paraphernalia.^[7] In the course of his discussion, it became apparent that his "vision and mission" differed from that of respondent. Moreover, he made disparaging remarks about one of the senior officers of respondent, Assistant Vice President Marlene Orozco (Marlene), criticizing her character, competency and performance,^[8] prompting one of the marketing managers to question his authority to "preside" over the meeting.^[9]

Respondent thus issued a memorandum dated May 3, 2002 requiring petitioner to explain in writing why no disciplinary action should be taken against him, he having uttered during the said meeting, his participation of which was unofficial and unauthorized, "unpleasant things" about one of its key officers, causing confusion among the employees-attendees.^[10]

In accordance with the May 3, 2002 memorandum of respondent, petitioner explained in writing the objectives of the meeting as well as the topics discussed, and he denied having mentioned "unpleasant things" thereat.^[11]

Respondent later issued another memorandum, dated May 7, 2002, requiring petitioner to show cause why he should not be dismissed from employment for violation of Article 282 of the Labor Code,^[12] specifically: for serious misconduct, commission of a crime or offense against the respondent, and willful breach of trust,^[13] in that he used the meeting to unjustifiably insult Marlene, his superior, and to insinuate that the Chairman and President of the Dispophil Group, Jose L. Tambunting, along with his wife, bribed petitioner to execute and attest to an affidavit filed before the Pasig Prosecutor's Office in a criminal complaint, docketed as I.S. No. 02-03-03111, which acts caused respondent to lose the trust and confidence reposed upon him.^[14]

In connection with the May 2, 2002 meeting, it appears that Sheila and Suarez were also directed to submit explanations, hence, they submitted letters dated May 7, 2002 and May 8, 2002, respectively.^[15]

Petitioner, in compliance with respondent's May 7, 2002 memorandum, reiterated in writing his good intention behind the meeting and his denial of the charges against him.

Finding petitioner's explanation unsatisfactory, respondent served upon him a letter dated May 9, 2002 dismissing him from employment effective immediately.^[16]

Petitioner thus filed on May 10, 2002 a complaint for illegal dismissal, non-payment of salaries and benefits, damages and attorney's fees.^[17]

Labor Arbiter Elias H. Salinas, by Decision of January 10, 2003, dismissed

petitioner's complaint for lack of basis and merit. He, however, ordered respondent to pay him his pro rata 13th month pay for the year 2002 in the amount of P8,295.41. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for illegal dismissal for lack of basis and merit. However, respondent Venutek Medika, Inc. is hereby ordered to pay complainant his pro rata 13th month pay for the year 2002 in the amount of P8,295.41.^[18]

On appeal by petitioner, the NLRC, finding him to have been illegally dismissed, reversed and set aside the Labor Arbiter's Decision. Thus it disposed:

WHEREFORE, premises considered, the Decision of Labor Arbiter Elias H. Salinas dated January 10, 2003, is hereby declared VACATED and SET ASIDE. Let another one (be) entered, declaring Complainant-Appellant ILLEGALLY DISMISSED. The Respondents are hereby directed to immediately REINSTATE Complainant-Appellant to his former position without loss of seniority rights, with full backwages, from the time of his illegal dismissal up to the finality of this Decision, and to pay his proportionate 13th month pay for the year 2002, the unpaid commission in the amount of P30,000.00, plus 10% attorney's fees. It is however understood, that the Respondents shall be jointly and severally liable to Complainant-Appellant in case of monetary awards.

SO ORDERED.^[19]

Its motion for reconsideration having been denied, respondent filed a petition for certiorari with the Court of Appeals, arguing that the NLRC committed grave abuse of discretion in not finding that petitioner committed serious misconduct and willful breach of trust and confidence, as well as in awarding petitioner's monetary claims.

The Court of Appeals set aside the decision of the NLRC and reinstated that of the Labor Arbiter's. The dispositive portion of the appellate court's decision reads:

WHEREFORE, premises considered, the petition is hereby GRANTED, and the assailed Decision and Resolution of the NLRC are hereby SET ASIDE. In lieu thereof, the Decision of Labor Arbiter Elias Salinas, finding that petitioner Venutek Medika, Inc. had legally dismissed the private respondent Teofilo Cesar N. Echeverria III although awarding him his pro rata 13th month pay for the year 2002, is hereby REINSTATED.

SO ORDERED.^[20]

Hence, the instant petition for review which raises the following issues:

- a) Whether the Court of Appeals may review and set aside the findings of fact made by the NLRC; and
- b) Whether the Court of Appeals erred in finding that there is substantial evidence to support petitioner's dismissal.

The petition fails.

On the first issue, it is settled that the Court of Appeals, in view of its expanded jurisdiction over labor cases which are elevated to it through a petition for certiorari, may look into the records of the case and re-examine the questioned findings if it considers the same to be necessary to arrive at a just decision;^[21] and when factual findings of the NLRC are contrary to those of the Labor Arbiter, as in the present case.^[22]

On the second issue, petitioner claims he is not guilty of serious misconduct, maintaining that the May 2, 2002 meeting was conducted with good intention and was approved by respondent through Sheila.

Further, petitioner contends that there was no substantial evidence that he made any derogatory remarks against Marlene as even respondent's witnesses did not state any such remarks attributed to him; that any remarks he made about Marlene were mere "constructive criticisms" which were not meant to insult or offend her; and the meeting was not work-related, hence, it may not be used by respondent to justify his dismissal on the ground of loss of trust and confidence.

Petitioner's position fails.

Misconduct has been defined as an improper or wrong conduct; a transgression of some established and definite rule of action; a forbidden act; a dereliction of duty. It implies wrongful intent and not mere error of judgment. To be categorized as serious, it must be of such grave and aggravated character and not merely trivial and unimportant. And to constitute just cause for an employee's separation, it must be in connection with his work.^[23]

To justify the termination of an employee's services, loss of trust and confidence as basis thereof must be based on a willful breach of the trust reposed in him by his employer. Ordinary breach will not suffice.

A breach of trust is willful if it is done intentionally, knowingly and purposely without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.^[24]

As correctly found by the Court of Appeals, there is substantial evidence of petitioner's misconduct, hence, it was grave abuse of discretion on the part of the NLRC to ignore the same. Thus the appellate court observed:

The records of the case are rife with proof that the private respondent committed acts which are inimical to the interests and stability, not only of management, but of the corporation itself. Private respondent did so, through devious and deceitful means and methods, aimed at sowing discord and instability among the officers of the petitioner Venutek, and discrediting top officers of the corporation, particularly the Assistant Vice President of Marketing, who is private respondent's superior in rank.

In the explanation (p. 45, Rollo) submitted by Sheila D. Vinuya, Assistant Regional Sales Manager, who was supposed to conduct the monthly cut-