

THIRD DIVISION

[G.R. No. 167637, September 28, 2007]

METRO EYE SECURITY, INC., PETITIONER, VS. JULIE V. SALSONA, RESPONDENT.

DECISION

CHICO-NAZARIO, J.:

Submitted for decision is a Petition for *Certiorari* under Rule 45 of the Rules of Court assailing the Resolution^[1] dated 15 December 2004 in CA-G.R. SP No. 87537 of the Court of Appeals dismissing the petition of Metro Eye Security, Inc. for having been filed beyond the reglementary period and the Resolution^[2] dated 21 March 2005 of the same court denying petitioner's motion for reconsideration.

Respondent Julie Salsona was hired as a Security Officer beginning 4 October 1999 by the petitioner, a domestic corporation engaged as a security agency for AMA Group of Companies. On 11 July 2000, Salsona received a memorandum from petitioner requiring him to answer a complaint against him for allegedly working for a competitor as intelligence/investigation officer.^[3] Salsona promptly responded the next day, 12 July 2000, to the memorandum.^[4]

On 13 July 2000, petitioner sent another memorandum to Salsona requiring him to respond to a complaint for tampering with payroll documents and the pilferage of construction materials.^[5] Salsona also responded to the second memorandum. On 10 August 2000, petitioner, through its Human Resources Supervisor Filomeno Fabunan, Jr., issued a third memorandum to Salsona finding him guilty of tampering with payroll documents and dismissing him based on loss of confidence.^[6] From this, Salsona filed a complaint^[7] for illegal dismissal against petitioner with the National Labor Relations Commission (NLRC).

On 31 March 2003, the Labor Arbiter rendered a Decision on Salsona's case, the dispositive portion of which provides:

WHEREFORE, premises all considered, judgment is hereby rendered finding the dismissal illegal and ordering respondents to pay complainant back wages in the amount of P107,280.00 (P5,364.00 x 20 mos. = P107,280.00); separation pay in the amount of P5,364.00; service incentive pay in the amount of P1,117.50 (223.50 x 5 days = P1,117.00); 13th month pay in the amount of P3,472.00 (1/8 of P3,472.00) and 10% of the total monetary award by way of attorney's fees.^[8]

From the foregoing Decision of the Labor Arbiter, petitioner filed an Appeal with the NLRC. In a Decision dated 30 April 2004, the NLRC concurred in the finding of the

Labor Arbiter that the dismissal of Salsona was illegal. It held that the petitioner's accusation that Salsona tampered with his payroll documents was without basis. It likewise concluded that the charges against Salsona of tampering with payroll documents and pilferage of construction materials are without basis.^[9]

Thus, the NLRC ruled:

WHEREFORE, premises considered, the appealed Decision is hereby AFFIRMED with MODIFICATION only insofar as the dropping of individual respondents Amable Aguiluz and Ernesto Rioveros from the Decision.^[10]

Petitioner filed a motion for reconsideration which the NLRC denied in a Resolution dated 24 August 2004.^[11]

Petitioner elevated its case to the Court of Appeals *via* a Petition for *Certiorari* under Rule 65 of the Rules of Court.^[12] In a Resolution dated 15 December 2004, the Court of Appeals dismissed the petition for having been filed beyond the reglementary period.

Petitioner filed a Motion for Reconsideration of the dismissal of its Petition. The Motion was denied for lack of merit by the Court of Appeals in a Resolution dated 21 March 2005.

In denying petitioner's Motion for Reconsideration, the Court of Appeals explained that the original copy of the assailed Resolution dated 24 August 2004 issued by the NLRC indicates that counsel for the petitioner received a copy of the same on 13 September 2004,^[13] not on 15 September 2004 as alleged by petitioner in its Motion for Reconsideration. The Court of Appeals further made the observation that the photocopy^[14] of the same NLRC Resolution dated 24 August 2004 attached to petitioner's Motion for Reconsideration with the appellate court appears to have been doctored to indicate the date of receipt as "Sep 15 2004" to suit petitioner's posturing.^[15]

Hence, the present Petition wherein the following issues are raised for resolution:

- A. WHETHER OR NOT THERE ARE SUFFICIENT GROUNDS FOR THE DISMISSAL OF THE PETITION BY THE HONORABLE COURT OF APPEALS;
- B. WHETHER OR NOT TECHNICAL RULES OF PROCEDURE (sic) BE GIVEN MORE SIGNIFICANCE OVER THE CLEARLY MERITORIOUS ARGUMENTS OF THE PETITION.^[16]

According to the petitioner, the actual date of its receipt of the 24 August 2004 NLRC Resolution is 15 September 2004 and not 13 September 2004 as erroneously stamped on its copy by the secretary of petitioner's counsel. It has 60 days to file the Petition for *Certiorari* under Rule 65 of the Revised Rules of Court, with the Court of Appeals. He therefore had until 14 November 2004 to file the Petition for *Certiorari* with the Court of Appeals. Petitioner counted the date of filing of its petition based on its actual date of receipt of the assailed Resolution, 15 September 2004. Petitioner then filed its Petition for *Certiorari* with the Court of Appeals on 16

November 2004, which was still within the reglementary period for filing. To further prove its claim, petitioner presented a Certification from the Quezon City Central Post Office^[17] that it received the 24 August 2004 resolution on 15 September 2004.

As borne out by the records, the registry return card shows that indeed the counsel for the petitioner received the NLRC Resolution dated 24 August 2004 on 15 September 2004.^[18] This being so, the 60-day period to file the Petition for *Certiorari* ends on 14 November 2004 which is a Sunday. Petitioner should then have filed the petition on the succeeding business day, which is 15 November 2004, a Monday. However, 15 November 2004 was declared a special non-working day throughout the Country in observance of the Feast of Ramadhan.^[19] Thus, the filing of the petition with the Court of Appeals on 16 November 2004, Tuesday, was still within the reglementary period. On this point, no procedural *faux pas* may be attributed to the petitioner. The supposed delayed filing of the petition as found by the Court of Appeals is belied by the registry return card which shows that counsel for the petitioner indeed received the NLRC Resolution dated 24 August 2004 on 15 September 2004. The registry return card commands great weight because it is considered as the official record of the court.^[20]

That the petitioner's counsel received the NLRC Resolution dated 24 August 2004 on 15 September 2004 is fortified by the certification issued by the Quezon City Post Office to this effect. This certification carries the presumption of regularity in its issuance.^[21]

With this pronouncement, the proper recourse would have been to remand this case to the Court of Appeals and to give due course to the Petition for *Certiorari* under Rule 65 of the Revised Rules of Court filed by the petitioner. Be that as it may, since all the records of this case are before us, there is no need to remand the case to the Court of Appeals. On many occasions, the Court, in the public interest and for the expeditious administration of justice, has resolved actions on the merits, instead of remanding them for further proceedings, as where the ends of justice would not be sub-served by the remand of the case.^[22]

Hence, we now proceed to resolve the issue of whether or not Salsona was validly dismissed.

In resolving the controversy, the Court is guided by the basic principle that in termination cases, the employer bears the burden of proving that the employee was dismissed for a just or authorized cause.^[23]

A rule well articulated in our jurisprudence is that in labor cases, the employer has the burden of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, and failure to discharge the same would mean that the dismissal is not justified and therefore illegal.^[24]

In *Great Southern Maritime Services Corporation v. Acuña*,^[25] the Court ruled:

Time and again we have ruled that **in illegal dismissal cases like the present one, the *onus* of proving that the employee was not**

dismissed or if dismissed, that the dismissal was not illegal, rests on the employer and failure to discharge the same would mean that the dismissal is not justified and therefore illegal. Thus, petitioners must not only rely on the weakness of respondents' evidence but must stand on the merits of their own defense. A party alleging a critical fact must support his allegation with substantial evidence for any decision based on unsubstantiated allegation cannot stand as it will offend due process. x x x. (Emphasis supplied.)

Under the Labor Code, as amended, the requirements for the lawful dismissal of an employee by his employer are two-fold: the substantive and the procedural. Not only must the dismissal be for a valid or authorized cause as provided by law, but the rudimentary requirements of due process, basic to which are that an opportunity to be heard and to defend oneself must be observed before an employee may be dismissed.^[26]

Petitioner cites loss of trust and confidence as a basis for the dismissal of Salsona. In maintaining that Salsona was lawfully dismissed, petitioner presented the following:

- a) First Notice of Investigation (13 July 2000)
- b) Handwritten explanation of [Salsona]
- c) Daily Attendance Report
- d) Investigation Report dated July 16, 2000 finding [Salsona] guilty of gross dishonesty
- e) Notice of Termination dated August 10, 2000 ^[27]

Petitioner insists that there was substantial evidence to engender a well-founded belief that there was gross dishonesty on the part of Salsona. The investigation conducted by the panel is sufficient evidence to prove that he was guilty of gross dishonesty in tampering payroll documents. Atty. Yvonne Gaddi Festejo, who was then a member of the panel who investigated Salsona, executed an Affidavit to the effect that she looked into the "guard's logbook" and did not find Salsona's name therein. In the same Affidavit, Atty. Festejo likewise indicated that during the hearing, she interviewed some of the guards and found out that Salsona was not seen on 26 April 2000 in the premises of AMALAND. This, petitioner insists, constitutes substantial evidence of Salsona's gross dishonesty.

We now proceed to determine whether the dismissal of Salsona surpasses the requirement of substantial due process.

Briefly stated, petitioner bases its charge of gross dishonesty and loss of trust and confidence against Salsona on the following:

- (1) that Salsona intentionally inserted his name on the Daily Attendance Report^[28] to make it appear that he was present at his place of assignment at

Amaland on 26 April 2000; and

(2) Salsona is guilty of pilferage of construction materials stored at his place of assignment.

It is true that loss of trust and confidence can constitute a just and valid cause for an employee's dismissal. Article 282 of the Labor Code provides the basis for the right of an employer to dismiss an employee based on loss of trust and confidence.

Art. 282. *Termination by employer.* – An employer may terminate an employment for any of the following causes:

x x x x

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

Proof beyond reasonable doubt is not needed to justify the loss. It is sufficient that there be some basis for the same, or that the employer has reasonable ground to believe that the employee is responsible for the misconduct and that the latter's participation therein renders him unworthy of the trust and confidence demanded of his position.

Nonetheless, the right of an employer to dismiss employees on the ground of loss of trust and confidence must not be exercised arbitrarily and without just cause. Unsupported by sufficient proof, loss of confidence is without basis and may not be successfully invoked as a ground for dismissal. Loss of confidence as a ground for dismissal has never been intended to afford an occasion for the employer's abuse of prerogative, as the loss can easily be subject to abuse because of its subjective nature,^[29] as in the case at bar, and must be founded on clearly established facts sufficient to warrant the employee's separation from work.^[30]

Thus, we have held^[31] that the language of Article 282(c) of the Labor Code states that the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by his employer. Ordinary breach will not suffice; it must be willful. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Elsewise stated, it must be based on substantial evidence and not on the employer's whims or caprices or suspicions; otherwise, the employee would eternally remain at the mercy of the employer.^[32] A condemnation of dishonesty and disloyalty cannot arise from suspicion spawned by speculative inferences.^[33]

Mere uncorroborated assertions and accusations by the employer will not be sufficient;^[34] otherwise, the constitutional guarantee of security of tenure of the employee will be jeopardized.^[35]

In the present case, the petitioner did not base Salsona's dismissal on clearly established facts sufficient to warrant separation from work.

On the charge that Salsona inserted his name in the Daily Attendance Report when