

## SECOND DIVISION

**[ G.R. No. 149628, November 22, 2005 ]**

**EDGARDO B. ALCAZAREN, PETITIONER, VS. UNIVET  
AGRICULTURAL PRODUCTS, INC., RESPONDENT.**

### DECISION

**CALLEJO, SR., J.:**

Before us is a petition for review on *certiorari* of the Court of Appeals (CA) Decision<sup>[1]</sup> in CA-G.R. SP No. 51311 which set aside the Decision<sup>[2]</sup> of the National Labor Relations Commission (NLRC) in NLRC Case No. V-0261-97.

Sometime in 1982, Univet Agricultural Products, Inc. (Univet) employed Edgardo B. Alcazaren as a casual employee performing the work of a sales representative in Capiz and Aklan. Over time, he was promoted to different positions. In November 1994, he was promoted as sales supervisor in the West Visayas Area.<sup>[3]</sup>

On July 3, 1996, Alcazaren was transferred as sales supervisor from West Visayas to East Visayas via an inter-office Memorandum of Operations Manager Romeo Savella.<sup>[4]</sup> However, despite attempts to serve the memorandum on Alcazaren, he refused to receive the same.<sup>[5]</sup> On July 10, 1996, Savella ordered Alcazaren to participate in the mid-year meeting of sales supervisors of the West Visayas Area at the Amigo Hotel, Iloilo City scheduled on July 15, 1996<sup>[6]</sup> and in a meeting set on July 16, 1996 at the Montebello Hotel, Cebu City. Alcazaren failed to attend the meetings.

On July 16, 1996, Savella ordered Alcazaren to report to his supervisor, OVP General Manager Conrado S. Baylon, at the Montebello Hotel, Cebu City either that day or the following day, July 17, 1996.<sup>[7]</sup> Alcazaren read the directive but refused to receive it.

On July 20, 1996, Savella issued a Memorandum<sup>[8]</sup> requiring Alcazaren to explain, in writing, within 48 hours from notice thereof why no disciplinary sanction should be imposed on him for his failure to attend the conference despite notice. On July 27, 1996, the Personnel Committee issued a Memorandum<sup>[9]</sup> requiring Alcazaren to explain within 48 hours why he should not be meted disciplinary actions for his failure to comply with the July 16 and 20, 1996 Memoranda of Savella.

On August 5, 1996, Alcazaren submitted his written explanation.<sup>[10]</sup> He claimed that his grandmother Ecspectacion Bacero died on July 7, 1996 and he had to attend her burial in President Roxas, Capiz on July 15, 1996. He alleged that he received notice of the July 15, 1996 meeting in Iloilo City only on July 11, 1996; he immediately contacted Baylon by long distance, who advised him to just try and catch up and attend the meeting even after the burial. He narrated that he arrived in Iloilo City on July 15, 1996 at around 7:30 p.m. and attended the meeting only to

be berated by Savella. He left the meeting to avoid further complications. He explained that he failed to attend the July 16, 1996 meeting because the burial of his grandmother was reset to July 17, 1996. He informed Ernie Poral that he needed to attend the burial of his grandmother. He averred that he should not be faulted for his failure to submit his explanation to the July 20, 1996 Memorandum of Savella because he received it only on July 29, 1996 in Bacolod City when it was given to him by his housemaid.<sup>[11]</sup>

On August 12, 1996, Alcazaren was directed to report to Univet at Mandaluyong City on August 13, 1996 and to turn over to Ernie Poral or Rolly<sup>[12]</sup> Banson all accountable forms in his possession and the service vehicle assigned to him<sup>[13]</sup> described as Toyota Corolla, Model 1990 with Plate No. PRX-856 to Dr. Rey Labaco. However, Alcazaren failed to turn over the vehicle to Dr. Labaco.

The Personnel Committee issued a Memorandum<sup>[14]</sup> to Alcazaren, on August 14, 1996, requiring him to explain why he should not be disciplined for his unauthorized absences in his area from July 15-20, 22-27, 29-31, 1996, and August 1-3, 5-10, 1996, and for his failure to turn over the company vehicle to Dr. Rey Labaco.

The Committee pointed out that under Page 1, Article A, Paragraph 1, subparagraph (b) of the Company House Rules, absence without leave (AWOL) for six consecutive working days is meted with the penalty of dismissal; and that under Article 282(b) of the Labor Code of the Philippines, gross and habitual neglect by the employee of his duties is also punishable by dismissal. The Committee also pointed out that Page 6, Paragraph G, Article 4 of the Company House Rules provides a 15-day suspension with warning of dismissal as a penalty for insubordination or willful disobedience in carrying out reasonable requests or instructions of superior, or acts of grave misconduct/disrespect towards superior.<sup>[15]</sup>

On the same date, August 14, 1996, Alcazaren submitted his explanation to the Memorandum of the Personnel Committee.<sup>[16]</sup> He also submitted a separate explanation to the charge of his being AWOL.<sup>[17]</sup> He reiterated his explanation contained in his August 5, 1996 letter to the Committee.

The Personnel Committee conducted an investigation of the matter and, on August 16, 1996, ruled that Alcazaren was guilty of an infraction. He was suspended for 15 days effective August 19-24, 26-30, 1996 and September 2-5, 1996, and warned that a more severe penalty would be meted against him for future violations.<sup>[18]</sup>

However, Alcazaren still refused to turn over the company vehicle to Dr. Labaco or to Univet. On September 3, 1996, Alcazaren informed Univet that he would be reporting to the East Visayas Area on September 6, 1996 after the expiration of his suspension, but that he will bring with him the service vehicle. He claimed that he had already acquired certain rights over the said car pursuant to existing company rules regarding his option to buy the same.<sup>[19]</sup>

On September 4, 1996, Alcazaren received a Memorandum from the Personnel Committee of Univet directing him to claim his plane ticket at the Iloilo Depot and to report at Univet's office in Mandaluyong City on September 6, 1996. Univet also reiterated its directive for him to turn over the service vehicle to Ernie Poral or Rolly

Banson, including the sample stocks and accountable forms in his possession.<sup>[20]</sup> Alcazaren still refused to turn over the vehicle to Dr. Labaco; worse, Alcazaren had the vehicle shipped to Cebu City.

In a Memorandum<sup>[21]</sup> dated September 6, 1996, the Personnel Committee ordered Alcazaren to appear before the Committee the following day to answer violations of the Company House Rules, particularly insubordination and continuous noncompliance with home office directives. When he received the directive on September 7, 1996, Alcazaren had the service vehicle parked at the Unilab Depot compound in Mandaue City.<sup>[22]</sup>

In a Memorandum<sup>[23]</sup> dated September 9, 1996, the Personnel Committee informed Alcazaren that Univet had already lost its trust and confidence in him as a result of his continuous and repeated violations of company rules and regulations, and deliberate defiance of legitimate orders from superiors. He was required to explain in writing within 5 days from receipt of said Memorandum why his services should not be terminated. In the meantime, he was further placed under preventive suspension effective September 16, 1996 to October 15, 1996.<sup>[24]</sup>

On September 10, 1996, the Personnel Committee reiterated its directive for Alcazaren to turn over the service vehicle for shipment to Iloilo City and all sample stocks in his possession intended for West Visayas.<sup>[25]</sup> Finally, Alcazaren relented and turned over all accountables in his possession to Mario Dueñas and released the key of the service vehicle to David Pinor.<sup>[26]</sup>

On September 19, 1996, Alcazaren submitted to the Personnel Committee his explanation. He claimed that he had not received the August 21, 1996 Order directing him to turn over the service vehicle because he was already suspended at the time. He claimed that when Mr. Winston Young went to Iloilo, he, together with Poral, forcibly entered his (Alcazaren's) residence. He also claimed that he advised Univet about his reporting to East Visayas Area after the expiration of his suspension on September 5, 1996 and that he held the service vehicle in his possession because he was under the impression that he had already acquired certain rights over it; when the service vehicle he shipped arrived in Cebu, he immediately placed the same in the possession of the security guard on duty at the Unilab Depot. He claimed that he was already in Cebu when Univet's instructions dated September 4, 1996 arrived in Bacolod, thus, it was impossible for him to comply with the said directives. He also requested Baylon of Univet if he could report on September 9 instead of September 7, 1996, which was apparently granted. He pointed out that he had already complied with the memorandum directing him to turn over the service vehicle and other accountables in his possession.

Alcazaren asserted that his previous 15-day suspension and the current 30-day preventive suspension imposed upon him were devoid of factual and legal bases and that he had not been afforded due process. He also claimed that despite the expiration of his 15-day suspension, Univet had not given him any work assignment, thus he felt that "he had been placed in a freezer." He was convinced that he was being harassed, threatened and intimidated by management for acts which did not constitute valid causes or grounds for severance of his employment.

On September 23, 1996, Alcazaren filed his complaint<sup>[27]</sup> against Univet and its officers before the NLRC Regional Arbitration Branch No. VI in Bacolod City. It was docketed as RAB Case No. 06-09-10506-96. Alcazaren alleged, *inter alia*, that he had been illegally suspended, that he was illegally dismissed (constructive dismissal), that his salaries were not paid, and that he would like to exercise his option to buy the service vehicle assigned to him. He prayed for his reinstatement with full backwages from date of dismissal until reinstatement, payment of unpaid salaries/wages, moral damages, exemplary damages and attorney's fees.<sup>[28]</sup>

On October 5, 1996, Poral submitted his Answer<sup>[29]</sup> to the above letter-explanation of Alcazaren, and alleged that he and Young had not broken into Alcazaren's house but were allowed entry by the latter's cousin.

Although he had already filed his complaint with the NLRC, Alcazaren requested Univet home office, on October 2, 1996, to send him P10,000.00 as traveling allowance so that he could attend the meeting on October 3, 1996 at the Univet Office in Mandaluyong City.<sup>[30]</sup> Still unaware of the complaint of Alcazaren, Univet advised Alcazaren, on October 4, 1996, that his plane ticket had already been delivered at his residence in Bacolod on October 2, 1996 as reflected on LBC air cargo records. Enclosed in the letter was a check amounting to P10,000.00. Univet informed Alcazaren that the meeting was reset to October 8, 1996.<sup>[31]</sup>

On October 5, 1996, Alcazaren notified Univet that he had already filed a complaint for illegal/constructive dismissal against it before the NLRC.<sup>[32]</sup>

On October 15, 1996, the Personnel Committee issued its Memorandum<sup>[33]</sup> terminating Alcazaren's employment due to violations of company house rules and the Labor Code.

Univet, in its position paper,<sup>[34]</sup> asserted, *inter alia*, that there was no constructive discharge or illegal dismissal of Alcazaren. As a sales supervisor, he was vested with the unqualified trust and confidence of the higher management, and was entrusted with the custody and care of various company properties. It pointed out that he had not only breached the trust and confidence reposed on him, but continuously and habitually broke the rules. Univet further averred that Alcazaren's acts constituted serious

misconduct, and can be described as willful disobedience to lawful orders in connection with his work. Moreover, his explanations were flimsy - he could always attend the scheduled meetings since Iloilo was only about 3 hours away from Capiz. Univet further claimed that it had been accommodating to Alcazaren as it considered his availability on scheduled conferences. However, he went AWOL from July 15 to August 10, 1996.

On June 30, 1997, the Labor Arbiter rendered a Decision<sup>[35]</sup> ordering the dismissal of the complaint. The decretal portion of the decision reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered:

- a) DISMISSING the complaint for constructive dismissal and illegal dismissal for lack of merit;

- b) DISMISSING the complaint for moral and exemplary damages for lack of merit;
- c) DISMISSING all other claims for lack of merit;
- d) As a measure of social and compassionate justice, ORDERING respondent Univet Agricultural Products, Inc. to pay separation pay as form of financial assistance to the complainant Edgardo Alcazaren the sum of TWO HUNDRED EIGHTY-SEVEN THOUSAND FOUR HUNDRED TWO PESOS & 22/100 (P287,402.22) and attorney's fee in the amount of TWENTY-EIGHT THOUSAND SEVEN HUNDRED FORTY PESOS & 22/100 (P28,740.22) or in the total sum of THREE HUNDRED SIXTEEN THOUSAND ONE HUNDRED FORTY-TWO PESOS & 44/100 (P316,142.44) to be deposited with this Office within ten (10) days from receipt of this decision; and
- e) DISMISSING all claims and causes of action against respondents Unilab Inc., Winston Young, Conrado S. Baylon, Wan Lian Tan and Dr. Delfin Samson for lack of merit.

SO ORDERED. <sup>[36]</sup>

Alcazaren appealed the decision to the NLRC which rendered judgment granting the appeal and reversing the decision of the Labor Arbiter. The NLRC declared that the refusal of Alcazaren to turn over his service vehicle cannot be considered as willful disobedience since the said vehicle is "retirable" after a year, and that Alcazaren had "ample grounds to initially hold on to said vehicle" under Univet's Revised Motor Vehicle Replacement Policy. Further, the NLRC stated that although Alcazaren committed an infraction relative to said turn over, considering that he had been an employee of Univet for 14 years, the penalty of dismissal was too harsh and highly disproportionate to the offense committed. Alcazaren felt that he was being harassed and that he had not been given any work assignment after the expiration of his 15-day suspension. Thus, the NLRC found that Alcazaren was illegally and constructively dismissed entitling him to be reinstated with backwages. The *fallo* of its decision reads:

WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby SET ASIDE and VACATED and a new one entered declaring complainant to have been illegally and constructively dismissed. Respondent Univet Agricultural Products is hereby ordered to reinstate complainant to his former position without loss of seniority rights and other privileges and to pay him the following:

1. Backwages (Sept. 6/96 to Dec. 31/97)  
1 year, 3 months & 25  
days
- a) Basic Salary: