

THIRD DIVISION

[G.R. No. 148256, November 17, 2004]

**ADELINO FELIX, PETITIONER VS. NATIONAL LABOR RELATIONS
COMMISSION (NLRC) 3RD DIVISION AND REPUBLIC ASAHI
GLASS CORPORATION, RESPONDENTS.**

D E C I S I O N

CARPIO MORALES, J.:

From the Court of Appeals Decision^[1] of May 21, 2001 affirming that of the National Labor Relations Commission which dismissed petitioner Adelino Felix's complaint for illegal dismissal against Republic Asahi Glass Corporation (the company), petitioner comes to this Court on a petition for review on certiorari.

Petitioner was hired by the company on October 1, 1980 as a Cadet Engineer. In 1983 he became a supervisor, a position he held until January 1992.^[2] In January 1992, he was designated as Marketing Officer II, a position at the company's Fabricated Glass Division Marketing (FGD Marketing).^[3]

FGD Marketing promotes market expansion, solicits purchase orders, monitors inventory and update of records, finds sources of automotive laminated glass products, regularly visits customers' warehouse and production line, receives customers' complaints, and initiates the return of vacated wooden crates in customers' warehouses.^[4] It likewise coordinates with other departments of the company including the Production Planning Control Department for the scheduling of tempered glass production, the Logistics Department for delivery requirements and schedule, and the Credit and Collection Department for establishment of credit lines and terms for new customers.^[5]

Sometime in 1992, petitioner was offered a chance to train and qualify for the position of Assistant Manager but as he was content with his position as Marketing Officer II, he declined and waived the opportunity to the one who was next-in-line.^[6]

As Marketing Officer II of the FGD Marketing, the bulk of petitioner's functions related to sales, which required him to perform his duties away from the principal place of business of the company.^[7] He handled the accounts of Philippine Automotive Manufacturing Corporation (PAMCOR), Universal Motors Corporation (UMC), Honda Cars Philippines, Inc., and Francisco Motors Corporation (FMC) and reported directly to the Manager of FGD Marketing, Ms. Marilyn Encinares.^[8]

By petitioner's claim, sometime in July 1994, he was asked by certain officers of the company, particularly Ms. Encinares and Mr. Roberto G. Agustin, Assistant Vice President, Manpower Technical Services, to resign and accept a separation package,

failing which he would be terminated for loss of confidence.^[9]

Petitioner, however, refused to resign and accept separation benefits, drawing the officers of the company to, by his claim, start harassing him.^[10] Thus, he was not given work^[11] and another employee, Mr. Elmer Tacata, was assigned to take over his post and function.^[12] And one morning, he found on his desk a newspaper clipping of a job opening for a "Tempering Glass Supervisor" in the Middle East.^[13]

Unable to withstand the manner by which he was being treated by the company, he, through his lawyer, warned it by letter of August 16, 1994 about the illegality of its actions. The letter reads:

Gentlemen:

I am writing in behalf of my client, MR. ADELINO L. FELIX, your Marketing Officer, Fabricated Glass Division.

It appears that you have been unlawfully compelling him to voluntarily resign with a separation package otherwise you will terminate him due to alleged loss of trust and confidence.

I have also been informed that no formal charges have been officially furnished him which constitute[s] your alleged grounds for termination. My client is also being subjected to undue mental torture because you deliberately refuse to assign any tasks to him these past few weeks despite his being always present at work.

I need not tell you that what you have been doing to my client is illegal and malicious. You are hereby put on notice that unless the necessary rectifications are made to the wrong done to my client, we shall file the necessary legal action/s against you for the redress of his grievances, impleading in the intended case/s your responsible officers.^[14]

Upon receipt of petitioner's letter also on August 16, 1994, the company transferred him from his position as Marketing Officer II of the FGD Marketing to Supervisor IV of the Technical Services Division (TSD).^[15] And replying to petitioner's letter, the company emphasized that given the series of irresponsible and inefficient acts he had committed which justified the initiation of an administrative proceeding against him,^[16] it instead offered him a separation package upon his resignation in order to give him an opportunity to opt for a graceful exit^[17]. The company went on to declare that it had finally decided to initiate disciplinary action against him in view of, in the main, his irresponsibility in sending the August 16, 1994 letter which pre-empted management prerogatives.^[18]

Thus the company, by letter of September 27, 1994, directed petitioner to explain in writing within 48 hours from receipt thereof why his services should not be terminated for loss of trust and confidence, viz:

Dear Mr. Felix:

At the outset, you are reminded that you held a position of trust and

confidence as a Marketing Officer of the Fabricated Glass Division.

On various dates and occasions, you breached the trust reposed in you by the Management in that you committed, among other(s), the following:

1. Absence Without Leave (AWOL) for six (6) working days from **May 29 to June 5, 1992.**
2. Lingering unnecessarily or killing time at the place of customers. Worse, engaging employees and officers of [the] customers in argument[s] and quarrel[s] to the extent that you were interfering in their functions and antagonizing them.
3. Going to or visiting UMC (Mandaluyong) only when called upon to do so.
4. Always not attending the regular morning meetings at FGD Production Office.

The over-all assessment of customers you have dealt with is that you are an irresponsible and ineffective representative of the Company. As a customary management functions (sic), and considering that you are an officer, your case has been discussed, and necessarily your transfer or even your voluntary resignation and other probabilities were mentioned unofficially and informally. In other words, by your own acts, you constrained Management to evaluate you at this stage.

Management then expected you to act as an officer. Instead you wrote that letter dated 12 August 1994 and followed by the letter of your lawyer dated 16 August 1994. These letters are both premature and designed to pre-empt Management prerogative. This merely confirms your irresponsibility. Your action is unworthy of being a trusted officer of the company.

Management has come to the conclusion that you can no longer be vested with functions that are central to the effective operations of the Company. In short, it has lost its confidence in you.

You are hereby directed to explain in writing within 48 hours from receipt hereof why your services should not be terminated for loss of trust and confidence and therefore, for cause. You may engage the advice of your counsel, if you desire, in preparing your explanation. Your failure to submit your explanation in writing within the period required shall be construed as a waiver on your part and the Management will proceed to act accordingly.^[19] (Underscoring and emphasis supplied)

By letter of September 28, 1994, petitioner denied the charges against him. He explained that his absence for 6 days from May 29 to June 5, 1992 was occasioned by some problems at home which he had to personally attend to, information for which absence he relayed to his office; and that upon reporting for work, he submitted a written explanation to Ms. Encinares who accepted it as shown by her

signature on his admission slip.^[20]

On the charge that he was "lingering unnecessarily or killing time at the place of customers," he, denying the same, proffered that he valued his work and would not do anything to jeopardize his employment in the company which had given him a good source of income for the past 14 years.^[21]

Likewise denying the charge that he visited the UMC plant only when called upon to do so, petitioner proffered that he made it a point to regularly visit the plant, and when technical problems arose, he attended to them immediately.^[22]

On the charge that he had not attended the daily 3 minutes meeting^[23] at the FGD Production Office, petitioner, denying the same, explained that the Warehouse and Production Department preferred to talk to only one person and if there were matters or concerns that needed to be addressed by the FGD Marketing, he coursed them through Engr. Raymond Santayana who was chosen to act as the representative during those meetings.^[24]

Petitioner attributed the company's harassment against him to his being a member of the supervisory union then being formed.^[25]

The company subsequently terminated petitioner's services for loss of trust and confidence by letter of September 30, 1994 reading:

Dear Mr. Felix:

We received on 29 September your letter explanation dated 28 September 1994.

A perusal of your letter-explanation shows that you have not actually clarified much less satisfied management why it should not lose its trust and confidence reposed in you as an officer of the company. You did not even respond to the finding of Management that you were "irresponsible and ineffective representative of the Company" which is disappointing to say the least.

It is amusing but also disappointing that you, like an ordinary rank and filer (sic), is now trying to hide under the skirt of "unionism" to cover your shortcomings. We are not aware of the formation of any such supervisory union. The stand of the Company in unionism is clear. Unionism has nothing to do with your case and you know that.

We regret to advise you therefore that the Company is terminating your services for loss of trust and confidence and therefore for cause effective upon receipt hereof. You are further directed to turn over all papers, documents and other property of the Company to your department head.

For your compliance.^[26] (Underscoring supplied)

Petitioner thus lodged on October 10, 1994 a complaint for illegal dismissal.^[27]

Petitioner claims that he was terminated because of his active participation in the formation of a supervisory union, and that the so-called "due process" afforded to him was a sham because the company had decided to terminate his employment before his receipt of the September 27, 1994 show-cause letter.^[28] To support his claim, petitioner referred to a circular dated August 15, 1994 sent by the company to its clients, informing them that petitioner had been relieved of his position as Marketing Officer II effective August 1, 1994.^[29]

On the other hand, the company denied that it harassed petitioner and that he was dismissed for his union activities,^[30] it maintaining that aside from the 4 grounds it stated in its September 27, 1994 show-cause letter to him, he had incurred frequent absences as early as in 1991 which were not due to emergency reasons but to his personal endeavors such as attending to his duties as *barangay kagawad*, or to his "*palayan*" or piggery or "*palaisdaan*."^[31] Additionally, it complained that petitioner did not utilize company time effectively as he would go home directly after making calls on customers even if there remained 3 or 4 hours of company time.^[32]

To substantiate its claim that petitioner was dismissed for cause, the company submitted the following documentary evidence.

1. A letter sent to petitioner by M.S. Encinares dated June 16, 1992 regarding the six (6) days vacation leave from May 29 to June 5, 1992.^[33]
2. A memorandum dated March 11, 1994 prepared by M.S. Encinares regarding petitioner's absence in the daily three (3) minute meeting of the Marketing Associates and Staff with the Production Group.^[34]
3. A report dated August 18, 1994 submitted by M.S. Encinares on a meeting held by Francisco Motors Corp. (FMC) with its suppliers including Republic Glass Asahi Company, citing the report^[35] of Elmer Tacata, the company's representative to the meeting, that FMC complained of delayed deliveries and irregular visits of the company representative.^[36]
4. A report dated September 19, 1994 prepared by N.B. Galpa on his trip to Nissan Motors, FMC, Universal Motors, PAMCOR and Honda Cars Philippines about some of its products being rejected and returned due to scratches, distortion, "chipping and no-hole," mispacking and handling procedure.^[37]
5. Affidavit of M.S. Encinares dated November 15, 1995 on petitioner's work ethics and behavior.^[38]

Relying on the documentary evidence submitted by the company, the Labor Arbiter, by Decision of October 16, 1996, dismissed petitioner's complaint in this wise:

In the present case, sufficient factual basis has been established to justify the dismissal of complainant on the ground of loss of trust and confidence, Complainant's six-day absence without official leave had been