

THIRD DIVISION

[G.R. No. 145417, December 11, 2003]

**FLORENCIO M. DE LA CRUZ, JR., PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION (4TH DIVISION) SHERBERG
MARKETING CORPORATION AND ERNESTO U. DACAY, JR.,
RESPONDENTS.**

DECISION

CORONA, J.:

Before us is a petition for review on certiorari seeking to set aside the decision^[1] of the Court of Appeals dated July 11, 2000, affirming with modification the two resolutions of the National Labor Relations Commission (NLRC) dated July 9, 1999^[2] and November 19, 1999,^[3] which awarded to petitioner Florencio de la Cruz, Jr., the amount of P23,900 representing his unpaid wages and indemnity.

The facts follow.

On May 27, 1996, petitioner Florencio M. de la Cruz, Jr. was hired by private respondent Shemberg Marketing Corporation (Shemberg) as senior sales manager with a monthly salary of P40,500. Shemberg was engaged in the business of manufacturing, trading, distributing and importing various consumer products. The position of senior sales manager was then newly created in line with Shemberg's objective of product positioning in the consumer market. Its duties included, among others, the supervision and control of the sales force of the company. The senior sales manager was also vested with some discretion to decide on matters within the scope of his functions, including the appointment of district sales representatives and the reshuffling of salesmen to achieve sales targets.

However, on September 14, 1996, Shemberg's human resource department manager, Ms. Lilybeth Y. Llanto, summoned petitioner and informed him of the management's decision to terminate his services. Petitioner asked Llanto for the reason but the latter merely informed him that it had something to do with the drop in the company's sales. Petitioner then requested a meeting with Shemberg's vice president, Ernesto U. Dacay, Jr., but was told that the decision of the management was final. His request to be furnished a 30-day written notice was also denied by the management. Hence, petitioner filed a complaint for illegal dismissal, non-payment of salary, backwages, 13th month pay and damages against Shemberg, Ernesto Dacay, Jr. and Lilybeth Llanto.

Respondents answered that petitioner's dismissal was premised on the following: (1) his poor performance as evidenced by the steady and substantial drop in company sales since his assumption as senior sales manager; (2) the dissatisfaction of his subordinates over his management style and dealings with the company's

distributors which resulted in the low morale of Shemberg's sales force, as evidenced by the joint affidavit^[4] of two of his subordinates, Ruel O. Salgado and Joel D. Sol; (3) his unauthorized use of company cellular phone for overseas personal calls^[5] and (4) the unauthorized reimbursement of the plane tickets of his wife and child.^[6] In short, petitioner was terminated for his failure to meet the required company standards and for loss of trust and confidence.

In a decision dated August 25, 1997, labor arbiter Ernesto F. Carreon ruled that petitioner Florencio de la Cruz was illegally dismissed and granted his claim for separation pay, backwages and unpaid wages:

WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent Shemberg Marketing Corp. to pay the complainant Florencio de la Cruz the following:

1. Separation pay	P40,500.00
2. Backwages	379,350.00
3. Unpaid wages	<u>18,900.00</u>
TOTAL	P438,750.00

The other claims and the cases against respondents Ernesto Dacay, Jr. and Lilybeth Llanto are dismissed for lack of merit.

So ordered.

On appeal by respondents, the NLRC dismissed the appeal in a decision dated May 13, 1998.^[7]

Respondents moved for reconsideration, presenting additional evidence to support its claim: (1) an affidavit executed on July 11, 1998^[8] by Ms. Lily Joy M. Sembrano, Shemberg's vice president for operations; (2) petitioner's letter of appointment dated July 8, 1996 as senior sales manager;^[9] (3) petitioner's job description;^[10] (4) memorandum dated July 30, 1996 addressed to petitioner, sternly warning him about the huge drop in company sales^[11] and (5) an undated memorandum requiring petitioner to explain why he was claiming reimbursement for his wife's and child's plane tickets.^[12]

Petitioner opposed the motion for reconsideration and questioned the authenticity of the additional evidence submitted by the respondents.^[13]

On July 9, 1999, the NLRC partially granted the motion for reconsideration and modified its previous resolution:

WHEREFORE, premises considered, the Motion for Reconsideration filed by the respondents-appellants is PARTIALLY GRANTED. The decision of this Commission promulgated on 13 May 1998 is ABANDONED. The decision of Labor Arbiter Ernesto F. Carreon dated 25 August 1997 is MODIFIED and a new one is entered, to wit:

Ordering respondent Shemberg Marketing Corporation to pay

complainant Florencio dela Cruz, Jr., the amount of Twenty Three Thousand Nine Hundred Pesos (P23,900.00), broken down as follows:

Unpaid Wages	P18,900.00
Indemnity	<u>5,000.00</u>
TOTAL	P23,900.00

So ordered. [14]

Petitioner filed a motion for reconsideration of the above resolution but the same was denied by the NLRC on November 19, 1999.[15]

Petitioner elevated the case to the Court of Appeals on a petition for *certiorari* but it was dismissed for lack of merit.[16] His subsequent motion for reconsideration was likewise denied on September 8, 2000.[17]

Hence, this petition.

Petitioner raises the following assignments of error:[18]

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT REFUSED TO AWARD BACKWAGES NOTWITHSTANDING ITS FACTUAL FINDING THAT RESPONDENTS FAILED TO COMPLY WITH THE TWO-NOTICE REQUIREMENT, CONTRARY TO THE NEW DOCTRINE IN "SERRANO VS. NLRC AND ISETANN DEPT. STORE, G.R. NO. 117040, 27 JANUARY 2000" WHEREBY THE HONORABLE SUPREME COURT EN BANC RULED THAT AN EMPLOYEE WHO WAS NOT GIVEN NOTICE MUST BE PAID BACKWAGES FROM HIS TERMINATION UNTIL IT IS FINALLY DETERMINED THAT IT WAS FOR A JUST CAUSE.

II

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT THE SUBMISSION BY PETITIONER OF PLANE TICKETS FOR REFUND CONSTITUTED UNAUTHORIZED USE OF COMPANY FUNDS, DESPITE ABSENCE OF EVIDENCE ON A SPECIFIC PROHIBITION REGARDING SUCH REQUEST, AND CONSIDERING THAT THE SAME WAS RESPONDENTS' AFTERTHOUGHT FOR NOT BEING RAISED IN THE ORIGINAL POSITION PAPER BEFORE THE LABOR ARBITER.

III

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT FAILED TO AWARD DAMAGES AS WELL AS ATTORNEY'S FEES.

The petition is without merit.

Petitioner insists that the Court of Appeals committed grave abuse of discretion in ruling that the submission of his family's plane tickets for reimbursement was

tantamount to fraud and deceit which justified the employer's loss of trust and confidence in him. He contends that private respondents' attempt to impute fraud and deceit to him was a mere afterthought, considering that it was only raised by private respondents for the first time on appeal and not in the original position papers submitted to the labor arbiter.

Petitioner was holding a managerial position in which he was tasked to perform key functions in accordance with an exacting work ethic. His position required the full trust and confidence of his employer. While petitioner could exercise some discretion, this obviously did not cover acts for his own personal benefit. As found by the court *a quo*, he committed a transgression that betrayed the trust and confidence of his employer — reimbursing his family's personal travel expenses out of company funds. Petitioner failed to present any persuasive evidence or argument to prove otherwise. His act amounted to fraud or deceit which led to the loss of trust and confidence of his employer.

We reiterate the well-established rule that findings of fact of the Court of Appeals are conclusive on the parties and are not generally reviewable by this Court when supported by substantial evidence.^[19] The rationale is that this Court, not being a trier of facts, relies in good part on the assessment and evaluation of evidence by the lower courts. We thus subscribe to the following findings of the Court of Appeals in affirming the NLRC decision, that petitioner's dismissal was for a just cause:

With respect to the unauthorized use of company funds, there appears to be substantial evidence to show that petitioner indeed is guilty of the same - but only with respect to the reimbursement of plane ticket fares.

Although the cellular phone bill statement with the alleged unauthorized overseas calls were reflected was submitted in evidence, it does not prove that petitioner was the one who made those calls. Petitioner claimed that the said mobile unit was not at all times used by him. This was not controverted by respondents. Furthermore, there was no evidence presented to prove that the recipient of the overseas call was not at all connected with the company as the calls could actually be official business calls. Mere presentation of a cellular phone bill statement would not suffice to charge petitioner with unauthorized use of company phone especially in the light of the memorandum sent by the cellular phone company warning its subscribers of illegal activities perpetuated by unauthorized individuals posing as their employees.

But this cannot be true insofar as the prosecution of the plane tickets of petitioner's family is concerned. Respondents insist that petitioner submitted these tickets and reimbursed the cost of the same from the respondent corporation without authority or permission from management. On the other hand, petitioner merely denied having reimbursed the costs of the tickets or of using company funds to buy them. We find that petitioner's denial cannot prevail over the actual presentation of the plane ticket in the name of petitioner and his family and terminal fee stubs bearing three (3) different serial numbers but similarly dated. The possession by respondent corporation of the plane tickets of petitioner's wife and child clearly shows that the same were submitted to management for reimbursement along with the other