373 Phil. 751

SECOND DIVISION

[G.R. No. 118647, September 23, 1999]

CONSOLIDATED FOOD CORPORATION/PRESIDENT JOHN GOKONGWEI, GEN. MGR. VICTORIO FADRILAN, JR., AND UNIT MGR. JAIME S. ABALOS, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND WILFREDO M. BARON, RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

This petition for certiorari under Rule 65 of the Rules of Court, as amended, assails the 8 July 1994 Decision of public respondent National Labor Relations Commission (NLRC) affirming the Labor Arbiter's decision which held that private respondent Wilfredo M. Baron was constructively dismissed from employment hence should be reinstated and paid his back wages and 13th month pay. It likewise assails the 9 September 1994 Resolution of the NLRC maintaining that private respondent was constructively dismissed.

Petitioner Consolidated Food Corporation (CFC) is a domestic corporation engaged in the sale of food products, e.g., Presto Ice Cream, with petitioner John Gokongwei as its President, Victorio V. Fadrilan Jr. as General Manager, and Jaime S. Abalos as Unit Manager for Northern Luzon. Private respondent Wilfredo M. Baron was a Bonded Merchandiser at CFC since November 1985 and received commendations for being a consistent member of the "millionaires group," a title given to provincial salesmen who filled sales quotas in their assigned areas. In March and December 1989, and February and April 1990, he was given commendations by Gen. Mgr. Victorio V. Fadrilan Jr. and Unit Mgr. Jaime S. Abalos for his good performance in sales.[1] Thereafter he was assigned as Acting Section Manager for Northern Luzon (NL) – 2 Area covering Baguio City, La Trinidad and Benguet. He was tasked, among others, to deliver for sale CFC Presto Ice Cream products to stores and outlets in Baguio City, make inventories thereof, replace or retrieve bad orders or damaged ice cream stocks, and to handle funds in relation to his functions. He received a basic salary of P3,300.00 per month plus commissions averaging monthly at P30,000.00 or one percent (1%) of his sales.[2]

On 16 July 1990 a killer earthquake hit Baguio City causing severe damage in the area. Power lines were cut off and the roads to and from the city became impassable. Hence, the Presto ice cream products in the possession of customers and sales outlets in Baguio were damaged and became bad orders.

On 1 August 1990 Unit Mgr. Abalos issued an *Action Plan for NL-2 Area* approved by Gen. Mgr. Fadrilan Jr. which provided among others the cut-off audit of Sec. Mgr. Wilfredo M. Baron to determine accountabilities that should be liquidated on account of non-sales operations due to fortuitous event, and a plan for the reorganization of the Northern Luzon Sections (NL-1, 3 and 4) to create only one (1) section from the existing outlets. It was proposed that Baron start with at least fifty (50) freezers to immediately service and develop potential outlets in the assigned area.[3]

On 15 August 1990 the Field Audit Group of CFC conducted an audit on the accountabilities of Baron that reflected a shortage of P1,985.12 in the cash purchase fund and expense allowance fund. On 8 October 1990 Unit Mgr. Abalos requested a field audit of the area to further evaluate private respondent's exposure, particularly on sales account, freezer and bad orders stocks.[4]

On 15 October 1990 Unit Mgr. Abalos issued a Memorandum directing Baron to temporarily stop routing in his assigned areas until such time that the complete audit of the customers' bad orders stocks within the area had been finished. Thereafter, Unit Mgr. Abalos issued another memorandum ordering the turnover of accountabilities of Baron to Branch Mgr. Josedario Calura, who should take over the route operation of Baguio City effective 15 October 1990 as private respondent's presence would be required in the audit being conducted on bad orders stocks caused by the earthquake.

On 1 December 1990 the field Audit Group submitted its report declaring that the quantity of bad orders stocks per Bad Orders Summary Sheets (BOSS) prepared by Baron was higher than the total quantity of bad orders stocks per confirmed customers' listings. Some customers claimed through written statements that Baron did not totally dispose of their bad orders stocks but instead loaded some in his truck. They could not, however, recall the quantity of bad orders stocks taken private respondent. These findings tended to indicate that Baron's funds presented for audit as of 15 August 1990 could have been manipulated to replace good stocks and/or cash with customers' bad orders stocks. The following discrepancies were noted:

a. Probable BO stocks returned to warehouse were in excess of truck BO stocks.

	Cases	Pieces	Amount
BO initially presented per audit as of August 15, 1990 – covered by BOSS Nos. 24379-80 dated August 1, 1990	642	841	87,202.27
Should be good stocks as of August 15, 1990 that would have turned B.O. and returned to warehouse (See Schedule II)	**216**	**111**	**22,461.71**
Excess BO returned to warehouse	426	730	64,740.56

b. The excess B.O. presented above could have been used to partially cover cash collections which he did not present as of August 15, 1990.

Upon examination of the sales transactions reflected in the Daily Sales Report (DSR) and other pertinent documents from 11-16 July 1990, it was further discovered that Baron had no sales operations from 16 July 1990 to 15 August 1990 per DSR. The following were further noted:

a. DSR (Daily Sales Report) was not accomplished prior to 9 July 1990. Had there been a cash balance at that time the amount of P33,908.30 which was not presented as of audit date could have been more.

b. Cash balance of Sec. Mgr. Baron was nil as of the cut-off audit on 15 august 1990.

c. Sec. Mgr. Baron did not make any remittance on 12 July 1990 (reporting day) though he had sales collection of P73,725.30 on 9-12 July 1990. PSTA No. 4721 dated 12 July 1990 amounting to P82,873.00 intended to Sec. Mgr. Baron was not paid/withdrawn instead said PSTA was cancelled.

If No. 1 and 2 findings were to be considered in the result of the audit on 15 August 1990 (Memo 09-C66-90 dated 3 September 1990), it would apparently show an amount of P66,725.68 (represented by cash/truck stocks) covered up through customer's BO. Sec. Mgr. Baron could have gained benefit from this thru illegitimate means. Details follow:

	15 August 1190 Audit	Should be
CPF Accountability	200,000.00	200,000.00
EAF	10,000.00	10,000.00P
Accountability	P210,000.00	210,000.00
Accounted for as follows:		
Cash---------------------		33,908.30
BO Stocks/Good Stocks ------	87,201.40	22,461.71
Turned B.O.		
Unrefunded B.O. stocks -------	7,763.96	7,763.96
Unserved PSTA ----------------	46,607.65	46,607.65
Unserved DP ------------------	2,959.46	2,959.46
Unreplenished 3% discount ---	3,221.41	3,221.41
Sales account ------------------	47,364,50	47,364.50

Unreplaced promo items-------	2,373.00	2,373.00
Unreplenished expenses--------	10,323.50	10,323.50
	208,014.88	177,183.49
		.87
	________	(33,908.30)
Net Shortage -------------------	P1,985.12	P66,725.68[5]

Thus, on 15 January 1991 a memorandum signed by Unit Mgr. Abalos and approved by Gen. Mgr. Fadrilan Jr. was sent to Baron informing him of the discrepancies appearing in the audit of accountabilities and giving him opportunity to explain his side in writing. Meanwhile, his normal sales route was temporarily suspended until further notice but he was instructed to report daily to the head office in Pasig City.[6]

On 28 January 1991 Unit Mgr. Abalos and Gen. Mgr. Fadrilan Jr. issued a memorandum requesting the Corporate Auditing Department to conduct a cut-off audit on Baron to determine the extent of his accountabilities which should be turned over to them pending result of the investigation of his case. On the same date, private respondent submitted his answer addressed to Gen. Mgr. Fadrilan Jr. explaining that the inventory of the bad orders stocks at the Trinidad Bakery was done in haste as he and his companions would all rush out of the building every time aftershocks were felt, and hesistantly return to resume the inventory-taking. He reasoned that circumstances then obtaining should be taken into consideration before concluding that funds were manipulated to replace good stocks/cash with customer's bad orders stocks, and that this was the first time that such a glaring error was ever committed by him.

On the alleged cash shortage of P33,908.30, Baron explained that on 14 July 1990 his total cash accountability per audit was P24,033.35 after remitting the amount of P81,087.05. The amount was intentionally not remitted because it was paid to Mr. Supermart to cover bad orders stocks thereby partially accounting for the difference between the BOSS and the customers' listings. The shortage of P1,985.12 could be attributed to the unusual circumstances then prevailing and not due to manipulation of his accountability.

On 18 February 1991 petitioners issued a memorandum assigning Sec. Mgr. Edgardo Hemosura from Greater Manila Area (Pasig, Marikina, Mandaluyong, Cainta) to NL-2 Area covering Baguio City which was the area assigned to Baron.

On 13 April 1991 private respondent received a memorandum from petitioners stating among others that they had carefully evaluated his written explanation and noted that he failed to categorically explain how he came to have excess Truck Bad Orders (TBOS) amounting to P87,202.27 when the should-be good stocks as of 15 August 1990 were worth P22,461.71 only. Such TBOS were returned to the Dairy Products Division (DPD) Bad Orders Warehouse and for which Baron withdrew replacement good stocks worth P87,201.10 under DR No. 24632 dated 18 August

1990. Petitioners further noted that in Baron's effort to explain the wehereabouts of cash totalling P33,908.30 which he failed to show during the audit, he mentioned about the P24,033.35 allegedly paid to Mr. Supermart, and another amount of P5,000.00 again to Mr. Supermart, Anniversary Promotion. These payments were absolutely not authorized by the Company and constituted personal use of company funds for purposes other than those for which the same were intended. Baron also failed to explain why even the balance of P4,874.95 was not accounted for during the audit. Petitioners declared however that before any decision could be formalized, private respondent should submit his written explanation on the points indicated within a period of seven (7) days from receipt of the memorandum. He was also requested to explain why no additional action should be taken against him for his continued absence from 18 March to 13 April 1991.

On 18 April 1991 petitioners sent notice to private respondent requiring him to explain within ten (10) days why he should not be dismissed from the service for having been absent without leave (AWOL). On 29 April 1991 Baron sent a letter to petitioners stating that he was advised by his doctor not to report for work because he was sick and would have to take his medication until 15 May 1991.

On 14 May 1991 private respondent Baron filed a complaint with the Labor Arbiter for constructive dismissal, non-payment of salaries, commissions, service incentive leave pay and allowances.[7] On 12 November 1993 the Labor Arbiter rendered a decision holding that private respondent was constructively dismissed due to the fact that he was subjected to audit after audit, uprooted from Baguio City which was his assigned area, floated and grounded in the head office in Pasig City thus depriving him of the opportunity to earn commissions. The Labor Arbiter also considered the audit reports as mere conjectures of the auditing team; that petitioners did not have a credible list of customers' bad orders stocks which could be the basis of the accusation that Baron bloated his Bad Orders Summary Sheet; that there was no proof of the number of stocks prior to 1 August 1990 which he replaced with new ones that were released to him by the Dairy Products Division (DPD); that this could not be the basis of the alleged excess bad orders amounting to P64,740.56; and, that finally, Baron was able to fully explain the shortage on his expense allowance fund.[8] For this reason, CFC was ordered to reinstate Baron without loss of seniority of rights, pay his back wages in the amount of P116,545.00 and lost commissions in the amount of P230,418.93.

Petitioner appealed the decision of the Labor Arbiter. On 8 July 1994 the NLRC upheld CFC's prerogative to investigate Baron and to reassign him to the main office, but considered his deprivation of salaries during the period as an indication of the Company's intent to dismiss him.[9] It affirmed the Labor Arbiter's finding that private respondent was constructively dismissed and further held that commissions should be included in the computation of the 13th month pay to be awarded to private respondent. Petitioner moved for the reconsideration of the decision. The NLRC granted the motion but only to the extent that it excluded the commission in the computation of the 13th month pay. The declaration that private respondent was constructively dismissed hence should be reinstated and paid his back wages, lost commissions and 13th month pay was maintained.

Petitioners now contend that public respondent NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that private