

## **THIRD DIVISION**

**[ G.R. No. 120616, January 14, 1998 ]**

**LONGINO BUHISAN, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION, FIFTH DIVISION, AND SAN MIGUEL  
CORPORATION, RESPONDENTS.**

### **D E C I S I O N**

**ROMERO, J.:**

Once again, the resolution of this case hinges on the credibility of the witnesses. Is it the company that dismisses an employee on accusations of arson and estafa, or such disgruntled employee who denies the charges and insists that he is being framed? As in all controversies which call for this Court's just and impartial wisdom, this case must be examined on the basis of the evidence.

Petitioner worked for private respondent San Miguel Corporation (SMC) from March 1, 1978, until April 29, 1991, when his employment was terminated for alleged irregularities amounting to serious misconduct. At the time, he was a warehouse assistant (WA) at SMC's Beer Sales Office in General Santos City primarily tasked with receiving from route salesmen cash and check collections which he deposited in the company's United Coconut Planter's Bank (UCPB) account.

The conflict began on March 6, 1991, when, after comparing company and bank records, SMC Region Finance Officer (RFO) Joel D. Jumalon observed that company funds were not immediately deposited in SMC's UCPB account. He thus confronted petitioner and warehouse operations supervisor (WOS) Danilo Fernandez who both offered apparently unconvincing explanations on the matter. Verification with the bank confirmed that the deposit of daily sales remittances was delayed, sometimes by as much as four days. Later, at around 7:24 p.m., petitioner left for home after making sure that he locked the vault where company funds were kept and the door of the sales office.

At around 8:45 p.m., a fire broke out in the sales office which appeared to have originated from petitioner's office. The walls, ceilings and furniture in his office were damaged, but the cabinet where the vault was kept was still intact. A container of paint thinner was found under petitioner's table and the office reeked with the stench of kerosene. Upon his arrival at the scene an hour before midnight, the vault was immediately opened and the cash was counted. The vault contained P218,713.02, which later turned out to have a shortfall of P101,602.20.

The following day, March 7th, petitioner was relieved of his functions, a situation which became permanent on April 29, 1991, when he was dismissed for allegedly misappropriating company funds in the amount of P101,602.20 and destroying company property through arson. Petitioner was accused of deliberately starting the fire on March 6, 1991, in order to destroy company records which would have

revealed that he had been systematically embezzling company funds instead of faithfully depositing them in SMC's account. Consequently, he was charged with arson and estafa before the City Fiscal's Office.

On the other hand, petitioner initiated a case for illegal dismissal with claim for moral and exemplary damages, attorney's fees and back wages against SMC. He alleged, inter alia, that SMC was desirous of getting rid of his services for being one of the union leaders involved in a failed certification. In explaining the delayed deposit of sales remittances, he said that since a UCPB representative usually picks up their deposit from the sales office, company records reflecting the date when he turned over the deposit to the latter may at times differ from bank records disclosing the date said representative actually deposited the money.

As regards the charge of arson, he pointed out that while the fire began at around 8:45 p.m., he left company premises more than an hour earlier at 7:24 p.m., after turning over the day's collection to his supervisor, Fernandez, and placing it in the vault. When the fire was finally contained that same night, the money in the vault was counted by Jumalon, Fernandez, and accounting supervisor Isidro Estoesta; petitioner was merely made to watch about three meters away. Later, he was asked to sign the cash count sheet, but he was informed of the deficiency in the collection only after two days.

To counter SMC's charge of misappropriation of company funds, petitioner also clarified SMC's control procedure in sales collection and remittance. Route salesmen would submit to the WA (in this case, petitioner) their collection, the supporting sales reports, invoices, and denomination slips. If everything is in order, he would prepare a consolidated denomination slip which, together with the total collection and other supporting documents, would be turned over to the WOS (in this case, Fernandez). In the absence of any discrepancy between the cash and the summary, everything would be deposited inside the vault of the sales office. The WA would lock the inner door of the vault with a key which he shared with the manager of sales operations, then the outer door would be locked by the WOS who alone knew its numerical combination. The vault would be opened only the following day by the WOS and the WA when the bank representative arrives to pick up the deposit.

In the case below, petitioner categorically stated that the collection for March 6, 1991, as well as the sales reports, invoices, and denomination slips prepared by the salesmen were all in order when he handed the same to WOS Fernandez, who reviewed the documents and counted the money before placing it in the vault. SMC tried to dispute this latter claim by saying that the WOS now rarely counts the cash collection but merely glosses over the supporting documents, sometimes just before the money is deposited.<sup>[1]</sup>

On September 30, 1992, Labor Arbiter Arturo P. Aponesto rendered judgment, the dispositive portion of which reads as follows:

"WHEREFORE, finding that complainant (herein petitioner) Longino Buhisan was dismissed from employment without just or authorized cause, hence illegal, respondent San Miguel Corporation is hereby directed to pay complainant his separation pay and backwages for six (6) months in the total amount of P202,635.00.

Respondent company is further directed to pay his claim for attorney's fees in the sum of P20,263.50.

Thus the total monetary award in favor of complainant is TWO HUNDRED TWENTY TWO THOUSAND EIGHT HUNDRED NINETY EIGHT (P222,898.50) PESOS and 50/100.

The claim for damages (moral as well as exemplary) is however DISMISSED for reasons aforecited.

SO ORDERED."

Both parties appealed, with petitioner questioning the decision for not decreeing his reinstatement and granting only six months in back wages despite the finding of illegal dismissal. SMC assailed the judgment for ignoring the resolutions of the City Prosecutor finding petitioner prima facie guilty of estafa and arson, which would have bolstered its contention that his dismissal was not ill-motivated, and for awarding him separation pay, back wages, and attorney's fees.

On November 4, 1993, the National Labor Relations Commission (NLRC) dismissed petitioner's appeal for lack of merit, granted the appeal of SMC, reversed and set aside the labor arbiter's decision, and dismissed the complaint for lack of merit.

Presiding Commissioner Musib M. Buat (Commissioners Oscar N. Abella and Leon G. Gonzaga, Jr., concurring) opined and concluded that:

"x x x. (T)he documentary evidence adduced by respondents constitute substantial proof that the charges imputed against the complainant for acts of misappropriation and arson have been duly established with clear and convincing evidence. Indeed, the evidence of guilt of complainant is not only substantial but overwhelming. The evidence undoubtedly show that complainant would have the strongest motive of committing the arson on the company's properties to cover up for his defalcation of company funds. The discovery of the irregularity or discrepancies happened just before the burning incident and the evidence strongly indicate that the same was attributable to complainant. It has also been established by the evidence that it was complainant who was the last one who left the premises of the company before it was burned.

x x x. Moreover, the findings of the Inquest Fiscal should be given more weight as they required not mere substantial evidence nor preponderance of evidence but (were) based on probable cause establishing a prima facie cause (sic) that complainant has committed the crimes of estafa and arson, respectively (sic). In criminal cases, the quantum of proof required is greater than what is required in labor disputes."

Petitioner's motion for reconsideration was denied for lack of merit in the NLRC's resolution dated February 28, 1995. Petitioner is now before this Court claiming that the NLRC committed grave abuse of discretion in affirming SMC's charge that he committed misappropriation and arson.

After going through the records of this case, the Court finds that the acts attributed