

NINETEENTH DIVISION

[CA-G.R. SP No. 08321, February 27, 2015]

MARLAW M. MARMAY, PETITIONER, VS. BOUNTY AGRO-VENTURES INC./ RONALD MASCARINAS-PRESIDENT, DANTE SAMONTE-MANAGER AND NLRC, RESPONDENTS.

D E C I S I O N

QUIJANO-PADILLA, J.:

This petition for *certiorari*^[1] seeks to reverse the Decision^[2] and Resolution^[3] dated July 31, 2013 and November 29, 2013, respectively, of the National Labor Relations Commission, 7th Division, Cebu City in NLRC Case No. VAC-04-000228-2013 [RAB Case No. VII-10-1649-12] which reversed the Decision^[4] dated February 5, 2013 of the Regional Arbitration Branch No. VII, Cebu City, for Illegal Dismissal, Service Incentive Leave with prayer for Damages and Attorney's Fees.

The Antecedents

This case stemmed from an amended Complaint^[5] for Unfair Labor Practice, Illegal Dismissal, Holiday Pay, Unpaid 13th Month Pay, Service Incentive Leave Pay, Backwages, Separation Pay and Damages filed by petitioner Marlaw M. Marmay against the respondents Bounty Agro-Ventures, Inc. and its President Ronald R. Mascarinas and Manager Dante C. Samonte.

As the respondents were not amenable to enter into settlement with herein petitioner, both parties were directed to submit their respective position papers.

Version of the Petitioner^[6]

The petitioner was hired by the respondents as their supervisor back in May 2, 2002.

The respondent-company, Bounty Agro-Ventures, Inc. is a member of the Bounty Fresh Group of Companies. The said company is involved in the production of commercial feeds. The petitioner's job entails him to oversee the transport and safekeeping of the said products.

Individual respondents impleaded in this complaint are Ronald Mascarinas and Dante Salmonte in their respective corporate capacities as president and manager of the respondent-company.

At the onset of the petitioner's employment up to the year 2009, the respondent-company had Grand Bulwark as its "tooling partner."

Under the said partnership, the petitioner undertook his supervisory duties solely.

When the respondents switched to another tooling partner, namely Producer Feeds, in 2010, the petitioner was unofficially demoted; Cery Velez of Producer Feeds took over most of the petitioner's supervisory duties and for all practical purposes, he was under Velez' supervision.

After some seven years of employment with the respondents, the petitioner kept working for them in spite of the respondents' unappreciative treatment towards the petitioner.

He continued to display diligence in his work. In fact, wary of the safety of the products that he was in charge of, the petitioner had strongly suggested to the respondents the need for additional work force that would help in the security of the cargo.

During his employment, no security guard was particularly assigned to keep an eye on the respondents' massive warehouse. Likewise, the petitioner would always remind the respondents of the need to have a checker that would accompany the delivery truck to the destination.

All these reasonable suggestions were not acted upon by the respondents.

Earlier in 2012, the respondents used another weighing scale for their products. Having formerly subscribed to the CENAPRO calibration, the same respondents decided to use the OPASCOR (Oriental Port and Allied Services Corporation) scale.

It was shortly thereafter that the petitioner noticed a variance in the weight.

Dutifully, the petitioner brought the weight variance issue to the attention of the private respondents. This is evidenced by his letter^[7] to Dave Alu, Marketing Officer for OPASCOR.

When an investigation, in reaction to the above issue was launched, the petitioner was suspected by the respondents as the personnel behind an alleged pilferage.

By late July 2012, the petitioner was not allowed to work by the respondents, on account of mere suspicion for the above allegation.

The petitioner answered the Memo Charge of the respondents in a Letter Explanation^[8] addressed to respondent Dante Samonte dated July 28, 2012.

Regardless of which, the respondents decided to dismiss the petitioner by August 24, 2012.^[9]

The petitioner filed a complaint^[10] for illegal dismissal on October 29, 2012. On December 6, 2012, the petitioner filed his position paper.^[11]

Version of the Respondents^[12]

Respondents on the other hand declared, that Bounty Agro Ventures Inc. is engaged

in the production, distribution and sale of poultry products all over the country with Ronald R. Mascarinas as its President and Jerome G. Cinco as the Assistant Vice President-Operations for Central and Eastern Visayas.

Petitioner Marlaw Marmay was employed by respondents as Feed Mill Supervisor assigned at the latter's warehouse in Barangay Opao, Mandaue City and tasked to perform the following duties:

1. Secure the company's product such as Australian wheat, US Soya and other raw materials stored at respondents' warehouse;
2. Implement measures to prevent the pilferage of stocks;
3. Monitor the stocks from the time of its arrival at the pier until the same are delivered to the warehouse or at the intended feed mills.

In July 2012, respondents' Bacolod Feeds warehouse received a request from Cebu Feed Mills for the supply of Australian wheat. However, respondents' record shows that Cebu Feed Mills has sufficient supply thereof since a total of 1, 037, 480 kilos of Australian wheat on board M/V Comfort have been delivered to the Opao warehouse from 26 June 2012 to 5 July 2012. Triggered by the said incident, respondents authorized its employees, Dante Samonte and Arnold Ilagan, to conduct an investigation on the matter. After proper accounting and reconciliation of all pertinent stock documents, the investigation reveals that there is a stock variance of 199, 410 kilos of Australian wheat and 32, 052 kilos of US Soya with an approximate value of Three Million Two Hundred Thousand Pesos (P3,200,000.00).

On 27 July 2012, a Charge Memo was served to herein petitioner, wherein the latter was required to explain in writing the variance. In the same Memo, petitioner was informed of a scheduled administrative hearing on 4 August 2012.

In petitioner's Answer to the Charge Memo dated 28 July 2012, he failed to substantially explain the loss of respondents' stocks amounting to Three Million Two Hundred Thousand Pesos. Instead, petitioner simply made general denials of the charges hurled against him. Further, petitioner failed to attend the scheduled administrative hearing.

Taking into consideration the available documents, the result of the investigation and petitioner's explanation, respondents believe that herein petitioner failed to exercise the necessary diligence expected of him in protecting respondents' interest. As Feed Mill Supervisor, petitioner is expected to observe the company's basic Standard Operating Procedure to prevent massive losses of company properties in his custody. Further, records show that herein petitioner conspired with his co-employee, Felix Cabaron, and the warehouse security guard to make it appear that forty-two trucks containing Australian wheat were delivered to respondents' warehouse in Opao, Mandaue, when in truth, only forty trucks were delivered. In order to conceal petitioner's malicious act, the security guard's logbook was falsified by inserting Way Bill 57071 and 57072. Also, respondents asseverate that genuine Way Bills 57067, 57068 and 57070 were duly signed and dated by Felix Cabaron while Way Bills 57071 and 57072 were unsigned and undated.

After complying with the requisites of due process, respondents decided to terminate the services of herein petitioner due to serious misconduct and betrayal of

the trust and confidence reposed on him. ^[13]

Ruling of the Labor Arbiter

On 5 February 2013, the Office of the Regional Arbitration Branch VII of Cebu City thru Labor Arbiter Bertino A. Ruaya, Jr. rendered the Decision^[14] which reads

"WHEREFORE, judgment is hereby rendered declaring the complainant to have been illegally dismissed.

Consequently, respondents Bounty Agro-Ventures Inc./Ronald Mascarinas and Dante Salmonte are hereby directed to jointly and solidarily pay the complainants the amount of TWO HUNDRED FIFTEEN THOUSAND FIVE HUNDRED PESOS (215,500.00).

All other claims are dismissed for lack of merit.

SO ORDERED."^[15]

The respondents, not satisfied with the decision of the Labor Arbiter, appealed^[16] to the National Labor Relations Commission Seventh Division on April 15, 2013.

On July 31, 2013, the NLRC promulgated a Decision^[17] granting the respondents' appeal. Consequently, the Decision of the Labor Arbiter was reversed and a new one entered finding complainant to have been validly dismissed, viz

"WHEREFORE, premises considered, the Decision of Labor Arbiter Bertino Ruaya, Jr. dated 5 February 2013, is hereby REVERSED and new one entered finding complainant to have been validly dismissed. Thus, the award of backwages and separation pay is **DELETED** while the award of service incentive leave pay **STAYS**.

SO ORDERED."^[18]

On the same occasion, Commissioner Violeta Ortiz-Bantug rendered her Dissenting Opinion^[19] from the majority.

Not in accord with the NLRC Decision dated July 31, 2013, petitioner filed a motion for reconsideration^[20] on October 29, 2013.

On December 23, 2011, the NLRC rendered a Resolution,^[21] thus:

WHEREFORE, premises considered, complainant's motion for reconsideration is hereby **DENIED**. The questioned Decision, promulgated on 31 July 2013, **STANDS**.

SO ORDERED.^[22]

With the denial of his Motion for Reconsideration, petitioner sought recourse to this Court via the present Petition for Certiorari,^[23] raising the following issues:

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION OR LACK OR IN EXCESS OF JURISDICTION WHEN IT REVERSED THE LABOR ARBITER'S DECISION AS TO THE PETITIONER'S ILLEGAL DISMISSAL WHEN THE PRIVATE RESPONDENTS DID NOT ASSIGN THE SAID ISSUE AS AN ERROR.

II

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION OR LACK OR IN EXCESS OF JURISDICTION WHEN IT REVERSED THE LABOR ARBITER'S DECISION AND INSTEAD FOUND THAT THE PETITIONER WAS VALIDLY DISMISSED BY THE PRIVATE RESPONDENTS AND AS A RESULT, HE SHOULD NOT BE GRANTED THE SEPARATION PAY AND BACKWAGES HE PRAYED FOR.

III

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION OR LACK OR IN EXCESS OF JURISDICTION WHEN IT UPHELD ITS FORMER DECISION THAT THE PETITIONER IS NOT ENTITLED TO THE PAYMENT OF THE MONEY CLAIMS AND DAMAGES THAT HE PRAYED FOR.^[24]

This Court's Ruling

The petition has merit.

In a number of cases,^[25] this Court put emphasis on the right of an employer to exercise its management prerogative in dealing with its company's affairs including its right to dismiss its erring employees. We recognized the right of the employer to regulate all aspects of employment, such as the freedom to prescribe work assignments, working methods, processes to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers.^[26] It is a general principle of labor law to discourage interference with an employer's judgment in the conduct of his business. As already noted, even as the law is solicitous of the welfare of the employees, it also recognizes employer's exercise of management prerogatives. As long as the company's exercise of judgment is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.^[27]

However, a company's exercise of its management prerogatives is not absolute.^[28] It cannot exercise its prerogative in a cruel, repressive, or despotic manner.^[29] In *F.F. Marine Corp. v. NLRC*, it was held:

This Court is not oblivious of the significant role played by the corporate sector in the country's economic and social progress. Implicit in turn in the success of the corporate form in doing business is the ethos of business autonomy which allows freedom of business determination with minimal governmental intrusion to ensure economic independence and