

## FOURTH DIVISION

[ CA-G.R. SP No. 134821, March 13, 2015 ]

### ERIC P. GARDANOSO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND LUISITA GOLF AND COUNTRY CLUB, INC., RESPONDENTS.

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

##### ABDULWAHID, J.:

Assailed in this petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure are the following issuances of public respondent National Labor Relations Commission (NLRC), viz: 1) Decision<sup>[1]</sup> promulgated on November 27, 2013, which reversed and set aside the Decision of the Labor Arbiter in NLRC CASE NO. RAB-III-08-19181-12 , and in turn, dismissed the complaint for illegal dismissal filed by petitioner Eric Gardanosos; and 2) Resolution<sup>[2]</sup> promulgated on January 30, 2014, which denied the motion for reconsideration thereof, for lack of merit.

Petitioner Eric Gardanosos is a regular employee of private respondent Luisita Golf and Country Club, Inc., holding the position of dishwasher/helper/cook for 17 years, with a salary of P9,300.00 per month. On August 22, 2012, he filed with the Labor Arbiter a Complaint<sup>[3]</sup> for illegal dismissal against private respondent. He alleged that on July 14, 2012, while he was at the club house, he and a co-worker Allan Nabong were having fun at the coffee brewer area. Since it was lull at their work period, petitioner jokingly got a bottle of Gatorade from the chiller, placed it in his pocket and told Allan that it will be charged to his account. At that moment, their supervisor suddenly came and asked petitioner what was in his pocket. Petitioner readily told his supervisor it was Gatorade and removed it from his pocket. His supervisor grabbed the bottle and told him, "*wag mo nang uulitin.*" Petitioner explained that he did not intend to get the Gatorade, and that he was simply having fun with his co-employee. This fact was confirmed by Allan during the investigation. Three days later or on July 17, 2012, petitioner was given a notice to explain and preventive suspension<sup>[4]</sup> effective immediately. He was required to submit a written explanation with which he complied. On July 28, 2012, the preventive suspension was further extended to twenty-days (23) days pending resolution of the case.<sup>[5]</sup> Within the said period, he was dismissed from work without just or authorized cause.

Petitioner contended that there was no theft or misappropriation of property. The placing of the Gatorade bottle in petitioner's pocket was part of a playful joke he and Allan were having. There was also no spot report on the incident. The suspension and subsequent termination were merely afterthought of private respondent. Petitioner added that his length of service should likewise be taken into consideration in imposing the penalty for his alleged infraction. Petitioner prayed that after due hearing, judgment be rendered declaring him illegally dismissed and

that private respondent be ordered to reinstate him to his former position with full backwages, without loss of seniority and other benefits.<sup>[6]</sup>

Private respondent refuted petitioner's allegations, stating that on July 14, 2012, the Food and Beverage Supervisor, Rebecca Alingod caught petitioner getting a bottle of Gatorade from the chiller. She also witnessed petitioner hiding the bottle in his apron's pocket. When Alingod confronted him, petitioner's response was that it was merely an empty bottle of PYP Purified Water. The incident was reported on July 16, 2012.<sup>[7]</sup> Accordingly, a Notice to Explain and Preventive Suspension<sup>[8]</sup> dated July 17, 2012 was issued and served on petitioner on the same date. He was directed to submit within 120 hours a written explanation as to why he should not be terminated from service for committing theft. He was also placed under preventive suspension for seven days. On the same date, petitioner submitted the Written Explanation<sup>[9]</sup>, apologizing for his action and asserted that he was merely fooling around with Allan. He further declared that it would not happen again. At the administrative hearing held on July 27, 2012, those present were petitioner, Allan Nabong and Rebecca Alingsod. Allan declared that at the time of the incident, he was at the dining area attending to several guests and was completely unaware of being the object of petitioner's alleged practical joke. On July 28, 2012, the preventive suspension was extended for twenty-three (23) days.<sup>[10]</sup>

On August 16, 2012, a Notice of Decision<sup>[11]</sup> was served on petitioner but the latter refused to receive it. Private respondent argued that petitioner's allegation that he was merely fooling around with his co-employee after he was caught stealing and lying, is a convenient excuse and afterthought. The preventive suspension was also proper as a measure of self-protection, considering the nature of the offense committed by petitioner. Private respondent further alleged that it has afforded petitioner due process before his termination. He was given the opportunity to explain in writing and a hearing was set for further investigation. A final notice of termination was served on petitioner but the latter refused to acknowledge the same. Petitioner's employment record is also not unblemished as he has several violations<sup>[12]</sup> of company policies which bolstered the ground of serious misconduct as basis for his termination. Likewise, private respondent averred that the length of service cannot erase the gravity of betrayal exhibited by a malfeasant employee. However, it did not deny that petitioner is entitled to the proportionate amount of his 13<sup>th</sup> month pay from January 2012 until his termination.<sup>[13]</sup>

After all pleadings were submitted, the Labor Arbiter rendered a Decision<sup>[14]</sup> dated June 25, 2013, declaring petitioner to have been illegally dismissed. The act of taking the bottle of Gatorade the content of which was not consumed nor was it taken away from the premises of the club house, is not considered substantial nor legal to justify dismissal of an employee based on serious misconduct. The Labor Arbiter, thus, ruled that petitioner is entitled to reinstatement and payment of full backwages and other monetary benefits from the time of his illegal dismissal up to the date of the decision. The dispositive portion of the decision reads, as follows:

**WHEREFORE, judgment is hereby rendered declaring the complainant to be ILLEGALLY SUSPENDED and latter (sic) ILLEGALLY DISMISSED from his work as "Dishwasher" to be reinstated to his former or equivalent position and be entitled to**

**all the benefits and privileges attached to his position.**

**Concomitantly, respondent, LUISITA GOLF AND COUNTRY CLUB, INC. is hereby directed to reinstate the complainant to his former or equivalent position under the same terms and conditions prevailing during the time of his employment without loss of seniority rights, benefits and privileges. The reinstatement is immediately executory and respondent LUISITA GOLF AND COUNTRY CLUB, INC. is directed to submit a report of compliance thereof within ten (10) calendar days from receipt of this decision pursuant to the provisions of 2011 NLRC Rules of Procedure, as amended.**

**Respondent LUISITA GOLF AND COUNTRY CLUB, INC. is liable to pay the complainant the following:**

**1. BACKWAGES in the amount of ONE HUNDRED TWO THOUSAND THREE HUNDRED PESOS (P102,300.00);**

**2. 13<sup>th</sup> MONTH PAY FOR THE YEAR 2012 IN THE AMOUNT OF NINE THOUSAND THREE HUNDRED PESOS (P9,300.00); AND**

**3. All other claims of the complainant are hereby dismissed for lack of merit.**

**SO ORDERED.**

Private respondent appealed<sup>[15]</sup> the decision to public respondent NLRC, contending that the fact that petitioner was not able to consume the contents of the Gatorade nor was it brought out of the company premises does not mean that he is not guilty of serious misconduct. He was made to surrender the bottle not out of a voluntary act but because he was forced by circumstance when he was caught by Alingod hiding the said Gatorade in the pocket of his apron. Hence, there is substantial evidence to conclude that he had been validly dismissed due to serious misconduct. Private respondent likewise argued that the Labor Arbiter failed to appreciate the numerous infractions petitioner committed which further bolstered his dismissal.

In the assailed Decision<sup>[16]</sup> promulgated on November 27, 2013, public respondent NLRC reversed the decision of the Labor Arbiter, and in turn, dismissed petitioner's complaint. It declared that private respondent was able to prove by substantial evidence that petitioner committed theft. The detailed narration of the events made by Rebecca and Allan showed that petitioner intended to misappropriate the company property for his own benefit. The fact that petitioner had not consume the contents of the bottle nor was it taken it out of private respondent's premises does not make the offense less serious. In accordance with the company policy, the offense of theft is punishable by dismissal. Likewise, it constitutes serious misconduct which is a just cause for termination of employment. Public respondent also found that petitioner was afforded due process as he himself was given the opportunity to explain as can be gleaned from the notice to explain and during the administrative hearing. But, he was found guilty of the infraction and was served with the notice of termination. Public respondent also ruled that instead of

mitigating his liability, petitioner's length of service aggravates the offense. As a long-term employee, he was expected to be more loyal to his employer, but he disregarded it and stole property therefrom.

Petitioner's motion for reconsideration was also denied in the assailed public respondent NLRC Resolution<sup>[17]</sup> promulgated on January 30, 2014.

Aggrieved, petitioner filed the instant petition for certiorari, raising the lone issue, to wit:<sup>[18]</sup>

THE HONORABLE COMMISSION WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION ERRED IN FINDING THAT PETITIONER WAS JUSTLY DISMISSED FROM HIS JOB.

Petitioner contends that he did not commit theft or misappropriation of property and that he was merely joking when he placed the bottle of Gatorade in his pocket. Even his co-worker Allan Nabong never admitted that petitioner intent to steal the item from the chiller. Moreover, there was no spot report on the incident. Finally, petitioner pleaded that the penalty of dismissal is not justified since the law regards the workers with compassion.<sup>[19]</sup>

The petition is bereft of merit.

Article 282 of the Labor Code states:

ART. 282. *Termination by Employer.* — An employer may terminate an employment for any of the following causes:

- (a) **Serious misconduct** or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- (e) Other causes analogous to the foregoing.

Serious misconduct as a valid cause for the dismissal of an employee is defined simply as improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment. To be serious within the meaning and intendment of the law, the misconduct must be of such grave and aggravated character and not merely trivial or unimportant. However serious such misconduct, it must, nevertheless, be in connection with the employee's work to constitute just cause for his separation. The act complained of must be related to the performance of the employee's duties such as would show him to be unfit to