

SPECIAL TWENTY-FIRST DIVISION

[CA-G.R. SP NO. 04533-MIN, January 07, 2014]

RURAL TRANSIT (MINDANAO), INC., PETITIONER, VS. CARLOS OPAON AND NATIONAL LABOR RELATIONS COMMISSION, EIGHTH DIVISION, RESPONDENTS.

D E C I S I O N

FRANCISCO, J.:

Before Us is a Petition for Certiorari^[1] under Rule 65 of the Rules of Court questioning the Resolution,^[2] dated 27 May 2011, issued by the National Labor Relations Commission, Eighth Division, Cagayan de Oro City (hereafter NLRC) in a case docketed as NLRC No. MAC-03-011970-2011. The NLRC affirmed the Decision,^[3] dated 30 November 2010, rendered by the Regional Arbitration Branch X, Cagayan de Oro City in NLRC Case No. RAB-10-07-00370-2010 finding the private respondent, Carlos Opaon, to have been illegally dismissed by the petitioner, Rural Transit (Mindanao), Inc (hereafter RTMI).

The Antecedents

The private respondent, Carlos Opaon, was an employee of the petitioner, RTMI. At the time of his dismissal on 31 May 2010, the private respondent held the position of "shipment-in-charge".

The circumstances that led to the private respondent's dismissal are as follows:

On 14 January 2010, the private respondent was tasked to pick up 100 pcs. of angle bars (¼ x 1½ x 1½ x 6 m.) and 5 pcs. of checkered plates (3/16 x 4 ft. x 8 ft.) covered under Bill of Lading No. 57 from the warehouse of Solid Shipping Lines Corp. in Cagayan de Oro City.^[4] However, the 100 pcs. of angle bars were not delivered to the petitioner's Bulua Branch or Yacapin Branch.^[5]

On 13 May 2010, the petitioner issued a Notice to Investigate^[6] informing the private respondent that an investigation will be conducted on 15 May 2010 regarding his failure to withdraw the 100 pcs. of angle bars on 14 January 2010. The private respondent filed his Answer^[7] on 15 May 2010. In his Answer, the private respondent gave the following explanation:

x x x [O]n January 14, 2010 only 1 bdle of 5 pcs checker[e]d plates (3/16" x 4 x 8") together with the other heavy items as stated in Solid Shipping Corporation Cargo Release Order No. 340102, dated January 14, 2010, were only released and noted partial or with cargo balance (1 bdle 100 pcs equal angle bar ¼" x 1-1/2" x 1-1/2" x 6M), the reason [for] which [is that] our Flatbed Truck Plate No. KBD 848, was already full of heavy cargo items. The driver proceeded to our Bulua Main Office for delivery of the said items. The day after one of my co-employee[s]

informed me that our Flatbed Truck Plate No. KBD 848, delivered the heavy cargos from Bulua Main Office to Valencia City, but while on their way the Flatbed Truck Plate No. KBD 848 had (sic) encountered mechanical (differential) trouble, hence, repair[s] were made and it takes (sic) a month within which to deliver [the] cargos at (sic) Valencia City. The balance of 100 pcs. angle bar were deferred because only our Flatbed truck can load the same and the only available vehicle to load heavy cargos. After repair, the Flatbed truck [was] already available, so I came (sic) to Solid Shipping Container Yard in order to pull out the balance items but I was informed that their Crane bugged down and needs (sic) to [be] overhaul[ed] and it takes time thus caused [the] delay. Weeks after they looked [for] any remedy to pull out the said items because I demanded. The container yard in-charge informed me that they will use their heavy forklift to pull out those angle bars. So on March 4, 2010, as shown in the Cargo Release Order No. 340566, completed the release of Bill of Lading No. 057 the "1 bdle 100 pcs. Equal angle bar ¼" x 1-1/2" x 1-1/2" x 6M and the same was delivered by the driver of Flatbed Truck Plate No. KBD 848 to Bulua Main Office in the late afternoon. x x x^[8]

On 19 May 2010, the petitioner issued another Notice^[9] informing the private respondent that he was being placed on preventive suspension and that another investigation will be conducted on 26 May 2010 regarding the same incident.

Despite the private respondent's explanation, the petitioner issued a Dismissal Order^[10] dated 31 May 2010 informing him of his dismissal on the ground of fraud or willful breach of trust.

On 20 July 2010, the private respondent filed a complaint for illegal dismissal against the petitioner before the Regional Arbitration Branch X of Cagayan de Oro City.

In a Decision, dated 30 November 2010, the Labor Arbiter ruled that the private respondent was guilty of only gross negligence and, thus, he was illegally dismissed by the petitioner. The Labor Arbiter ordered petitioner RTMI to pay the private respondent the sum of Php 134,130.00 as separation pay.

Aggrieved, the petitioner filed an appeal before the NLRC.

On 27 May 2011, the NLRC issued the questioned Resolution dismissing the appeal of the petitioner. A Motion for Reconsideration^[11] subsequently filed by the petitioner was denied by the NLRC in a Resolution^[12] dated 15 August 2011.

Hence, this Petition for Certiorari.

Assignment of Error

The petitioner raises this lone assignment of error in this petition:

I. THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION, EIGHTH DIVISION, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE LABOR ARBITER'S DECISION IN HOLDING THAT PRIVATE RESPONDENT WAS

ILLEGALLY DISMISSED DESPITE THE PRESENCE OF PREPONDERANCE OF EVIDENCE PROVING OTHERWISE.^[13]

Our Ruling.

The only question to be resolved in this case is whether the petitioner had just cause to validly dismiss the private respondent.

We rule in the negative.

After a careful examination of the evidence on record, this Court concurs with the rulings of the Labor Arbiter and the NLRC.

It is a basic rule that for the dismissal of an employee to be considered legal, such dismissal must be based on a valid cause as provided under Article 282 of the Labor Code.^[14] The burden of proving that the dismissal of the employee was for a valid cause rests on the employer and the employer's failure to discharge such burden would mean that the dismissal was not justified and therefore illegal.^[15]

The petitioner dismissed the private respondent on the ground of fraud or willful breach of trust.

Under Article 282^[16] of the Labor Code, an employer may validly terminate the services of an employee on the ground of fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

The ground provided under Article 282(c) is applicable in cases where the employee concerned holds a position of trust and confidence, a situation which exists where such employee is entrusted by the employer with confidence on delicate matters, such as care and protection, handling or custody of the employer's property.^[17] Further, in order to constitute a just cause for dismissal, the act complained of must be work-related and must show that the employee is unfit to continue to work for the employer.^[18]

In this case, the private respondent held the position of "shipment-in-charge" whose tasks include the receiving and withdrawing of cargoes from shipping companies and signing of documents for and in behalf of the petitioner.^[19] The private respondent having held a position of trust, there is no question that Article 282(c) is applicable in the case at bar.

However, notwithstanding that he held a position of trust, it must be noted that the private respondent was only a rank-and-file employee of the petitioner. The Supreme Court has held that with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient.^[20] This is where the petitioner's case fails.

As gleaned from the Notice to Investigate,^[21] Notice of Preventive Suspension and Notice to Investigate^[22] as well as the Dismissal Order^[23] issued by the petitioner, the private respondent was dismissed for his failure to withdraw the 100 pcs. of angle bars Solid Shipping Corp. on 14 January 2010 and his failure to deliver the said items to the petitioner's Bulua or Yacapin Branch.

However, both the Labor Arbiter and the NLRC ruled that the petitioner failed to present the necessary evidence to prove the charge against the private respondent and to justify the latter's dismissal. The Labor Arbiter held:

A serious perusal of respondent's justification for complainant's dismissal would show that respondents failed to establish the fact of loss or non-delivery at (sic) its office of the 100 pieces of angle bars. Respondents fault complainant for the non-delivery of said materials because there is "no proof of evidence and/or official record by both MCD Bulua and Yacapin that the subject items was (sic) delivered and received on March 04, 2010, contrary to your allegation." To the mind of this Labor Arbiter, the official receipts are in the possession of respondents (petitioner herein) and the latter has the burden [of] proving that no official receipt was issued because there was no delivery at all. Or respondents would have presented affidavits executed by the receiving personnel or driver of the truck allegedly where (sic) the angle bars were allegedly loaded on to the effect that no delivery or no loading was made on March 04, 2010 of said angle bars.^[24]

For their part, the NLRC ruled:

Record shows that indeed complainant had withdrawn the 100 pcs. angle bars from Solid Shipping Lines on March 4, 2010. Significantly, complainant avers that after he loaded the said items in the flatbed truck with Plate No. KBD-848, the truck went on its way to Bulua while he went back to respondents' office at Yacapin Street while respondents (petitioner herein) assert that the 100 pieces angle bars were missing and were never delivered to respondents' office in Bulua nor in Yacapin. Allegedly, the flatbed truck No. KBD 484 never left the respondents' premises based on the security guards' record and Gate Pass file. Surprisingly, respondents' defenses are mere allegations. The security guards' record and Gate Pass file were surprisingly not submitted as evidence considering that these documents were in the possession and control of the respondents who could easily submit the same. Further, the assigned driver to the said truck to whom complainant turned over the said angle bars was never investigated nor his statement presented to prove that the truck left respondents' premises and the angle bars were never loaded to the truck. These are the best evidence to prove respondents charges but were not proffered on record. Undeniably though, respondents submitted an Internal Audit Department Report (IAD – 1007 -04) dated July 3, 2010 as evidence on complainant's alleged anomalies which was the basis for his dismissal. This piece of evidence comes too late in a day because complainant was already dismissed from employment on May 31, 2010 as could be gleaned from the Dismissal Order. Thus, respondents' insinuation that complainant loaded the missing angle bars on another truck was not substantiated by any evidence except by mere allegation, hence, must necessarily fall.

On the other hand, Solid Shipping Lines Supervisor and Checker categorically attested and certified that indeed the 100 pcs. [a]ngle bars were loaded in respondents' flatbed truck with Plate No. KVD-848 on March 4, 2010. We accord more weight to complainant's evidence as against respondents' insinuations that the said items were loaded in