Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NATHANIEL N. DONGON, Petitioner,	**G.R. No. 163431**
	Present:
-versus-	SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN, *MENDOZA, and REYES, *JJ.*
RAPID MOVERS AND FORWARDERS CO., INC., and/or NICANOR E. JAO, JR., Respondents.	Promulgated: AUG 2 8 2013

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D E C I S I O N

BERSAMIN, *J.*:

The prerogative of the employer to dismiss an employee on the ground of willful disobedience to company policies must be exercised in good faith and with due regard to the rights of labor.

The Case

By petition for review on *certiorari*, petitioner appeals the adverse decision promulgated on October 24, 2003,[1] whereby the Court of Appeals (CA) set aside the decision dated June 17, 2002 of the National Labor Relations Commission (NLRC) in his favor.[2] The NLRC had thereby reversed the ruling dated September 10, 2001 of the Labor Arbiter dismissing his complaint for illegal dismissal.[3]

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* Vice Associate Justice Martin S. Villarama, Jr., who is on leave, per Special Order No. 1502 dated August 8, 2013.

1 *Rollo*, at 21-30; penned by Associate Justice Andres B. Reyes, Jr. (now Presiding Justice), and concurred in by Associate Justice Buenaventura J. Guerrero (retired/deceased) and Associate Justice Regalado E. Maambong (retired/deceased).

2 Id. at 46-55; penned by Commissioner Victoriano R. Calaycay, and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan (now a Member of the Court of Appeals).

3 Id. at 62-70.

Antecedents

The following background facts of this case are stated in the CA's assailed decision, *viz*:

> From the records, it appears that petitioner Rapid is engaged in the hauling and trucking business while private respondent Nathaniel T. Dongon is a former truck helper leadman.
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> Private respondent's area of assignment is the Tanduay Otis Warehouse where he has a job of facilitating the loading and unloading [of the] petitioner's trucks. On 23 April 2001, private respondent and his driver, Vicente Villaruz, were in the vicinity of Tanduay as they tried to get some goods to be distributed to their clients.
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> Tanduay's security guard called the attention of private respondent as to the fact that Mr. Villaruz'[s] was not wearing an Identification Card (I.D. Card). Private respondent, then, assured the guard that he will secure a special permission from the management to warrant the orderly release of goods.
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> Instead of complying with his compromise, private respondent lent his I.D. Card to Villaruz; and by reason of such misrepresentation , private respondent and Mr. Villaruz got a clearance from Tanduay for the release of the goods. However, the security guard, who saw the misrepresentation committed by private respondent and Mr. Villaruz, accosted them and reported the matter to the management of Tanduay.
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> On 23 May 2001, after conducting an administrative investigation, private respondent was dismissed from the petitioning Company.
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> On 01 June 2001, private respondent filed a Complaint for Illegal Dismissal. x x x[4]

In his decision, the Labor Arbiter dismissed the complaint, and ruled that respondent Rapid Movers and Forwarders Co., Inc. (Rapid Movers) rightly exercised its prerogative to dismiss petitioner, considering that: (1) he had admitted lending his company ID to driver Vicente Villaruz; (2) his act had constituted mental dishonesty and deceit amounting to breach of trust; (3) Rapid Movers' relationship with Tanduay had been jeopardized by his act; and (4) he had been banned from all the warehouses of Tanduay as a result, leaving Rapid Movers with no available job for him.[5]

On appeal, however, the NLRC reversed the Labor Arbiter, and held that Rapid Movers had not discharged its burden to prove the validity of petitioner's dismissal from his employment. It opined that Rapid Movers did

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4 Id. at 22-23.
5 Id. at 62-70.

not suffer any pecuniary damage from his act; and that his dismissal was a penalty disproportionate to the act of petitioner complained of. It awarded him backwages and separation pay in lieu of reinstatement, to wit:

> WHEREFORE, the decision appealed from is REVERSED and SET ASIDE and a new one ENTERED ordering the payment of his backwages from April 25, 2001 up to the finality of this decision and in lieu of reinstatement, he should be paid his separation pay from date of hire on May 2, 1994 up to the finality hereof.
>
> SO ORDERED.[6]

Rapid Movers brought a petition for *certiorari* in the CA, averring grave abuse of discretion on the part of the NLRC, to wit:

> I.
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> x x x IN STRIKING DOWN THE DISMISSAL OF THE PRIVATE RESPONDENT [AS] ILLEGAL ALLEGEDLY FOR BEING GROSSLY DISPROPORTIONATE TO THE OFFENSE COMMITTED IN THAT NEITHER THE PETITIONERS NOR ITS CLIENT TANDUAY SUFFERED ANY PECUNIARY DAMAGE THEREFROM THEREBY IMPLYING THAT FOR A DISHONEST ACT/MISCONDUCT TO BE A GROUND FOR DISMISSAL OF AN EMPLOYEE, THE SAME MUST AT LEAST HAVE RESULTED IN PECUNIARY DAMAGE TO THE EMPLOYER;
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> II.
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> x x x IN EXPRESSING RESERVATION ON THE GUILT OF THE PRIVATE RESPONDENT IN THE LIGHT OF ITS PERCEIVED CONFLICTING DATES OF THE LETTER OF TANDUAY TO RAPID MOVERS (JANUARY 25, 2001) AND THE OCCURRENCE OF THE INCIDENT ON APRIL 25, 2001 WHEN SAID CONFLICT OF DATES CONSIDERING THE EVIDENCE ON RECORD, WAS MORE APPARENT THAN REAL.[7]

Ruling of the CA

On October 24, 2003, the CA promulgated its assailed decision reinstating the decision of the Labor Arbiter, and upholding the right of Rapid Movers to discipline its workers, holding thusly:

> There is no dispute that the private respondent lent his I.D. Card to another employee who used the same in entering the compound of the petitioner customer, Tanduay. Considering that this amounts to dishonesty and is provided for in the petitioning Company's *Manual of Discipline,* its imposition is but proper and appropriate.

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6 Id. at 54.

7 Id. at 39-40.

It is basic in any enterprise that an employee has the obligation of following the rules and regulations of its employer. More basic further is the elementary obligation of an employee to be honest and truthful in his work. It should be noted that honesty is one of the foremost criteria of an employer when hiring a prospective employee. Thus, we see employers requiring an NBI clearance or police clearance before formally accepting an applicant as their employee. Such rules and regulations are necessary for the efficient operation of the business.

Employees who violate such rules and regulations are liable for the penalties and sanctions so provided, e.g., the Company's Manual of Discipline (as in this case) and the Labor Code.

The argument of the respondent commission that no pecuniary damage was sustained is off-tangent with the facts of the case. The act of lending an ID is an act of dishonesty to which no pecuniary estimate can be ascribed for the simple reason that no monetary equation is involved. What is involved is plain and simple adherence to truth and violation of the rules. The act of uttering or the making of a falsehood does not need any pecuniary estimate for the act to gestate to one punishable under the labor laws. In this case, the illegal use of the I.D. Card while it may appear to be initially trivial is of crucial relevance to the petitioner's customer, Tanduay, which deals with drivers and leadmen withdrawing goods and merchandise from its warehouse. For those with criminal intentions can use another's ID to asport goods and merchandise.

Hence, while it can be conceded that there is no pecuniary damage involved, the fact remains that the offense does not only constitute dishonesty but also willful disobedience to the lawful order of the Company, e.g., to observe at all time the terms and conditions of the Manual of Discipline. Article 282 of the Labor Code provides:

> "Termination by Employer – An employer may terminate an employment for any of the following causes:
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> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
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> x x x." (Emphasis, supplied)

The constitutional protection afforded to labor does not condone wrongdoings by the employee; and an employer's power to discipline its workers is inherent to it. As honesty is always the best policy, the Court is convinced that the ruling of the Labor Arbiter is more in accord with the spirit of the Labor Code. "The Constitutional policy of providing full protection to labor is not intended to oppress or destroy management (***Capili vs. NLRC, 270 SCRA 488[1997].***" Also, in Atlas Fertilizer Corporation vs. NLRC, 273 SCRA 549 [1997], the Highest Magistrate declared that "The law, in protecting the rights of the laborers, authorizes neither oppression nor self-destruction of the employer."

> **WHEREFORE**, premises considered, the *Petition* is **GRANTED**. The assailed 17 June 2002 *Decision* of respondent Commission in NLRC CA-029937-01 is hereby **SET ASIDE** and the 10 September 2001 *Decision* of Labor Arbiter Vicente R. Layawen is ordered **REINSTATED**. No costs.
>
> **SO ORDERED.**[8]

Petitioner moved for a reconsideration, but the CA denied his motion on March 22, 2004.[9]

Undaunted, the petitioner is now on appeal.

Issue

Petitioner still asserts the illegality of his dismissal, and denies being guilty of willful disobedience. He contends that:

> THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN SUSTAINING THE DECISION DATED 10 SEPTEMBER 2001 OF LABOR ARBITER VICENTE R. LAYAWEN WHERE THE LATTER RULED THAT BY LENDING HIS ID TO VILLARUZ, PETITIONER (COMPLAINANT) COMMITTED MISREPRESENTATION AND DECEIT CONSTITUTING MENTAL DISHONESTY WHICH CANNOT BE DISCARDED AS INSIGNIFICANT OR TRIVIAL.[10]

Petitioner argues that his dismissal was discriminatory because Villaruz was retained in his employment as driver; and that the CA gravely abused its discretion in disregarding his showing that he did not violate Rapid Movers' rules and regulations but simply performed his work in line with the duties entrusted to him, and in not appreciating his good faith and lack of any intention to willfully disobey the company's rules.

In its comment,[11] Rapid Movers prays that the petition for *certiorari* be dismissed for being an improper remedy and apparently resorted to as a substitute for a lost appeal; and insists that the CA did not commit grave abuse of discretion.

In his reply,[12] petitioner submits that his dismissal was a penalty too harsh and disproportionate to his supposed violation; and that his dismissal

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8 Id. at 27-30.
9 Id. at 31.
10 Id. at 9.
11 Id. at 145-150.
12 Id. at 152-158.

was inappropriate due to the violation being his first infraction that was even committed in good faith and without malice.

Based on the parties' foregoing submissions, the issues to be resolved are, *firstly*: Was the petition improper and dismissible?; and, *secondly*: If the petition could prosper, was the dismissal of petitioner on the ground of willful disobedience to the company regulation lawful?

Ruling

The petition has merit.

1.
Petition should not be dismissed

In *St. Martin Funeral Home v. National Labor Relations Commission*,[13] the Court has clarified that parties seeking the review of decisions of the NLRC should file a petition for *certiorari* in the CA on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC. Thereafter, the remedy of the aggrieved party from the CA decision is an appeal via petition for review on *certiorari*.[14]

The petition filed here is self-styled as a petition for review on *certiorari*, but Rapid Movers points out that the petition was really one for *certiorari* under Rule 65 of the *Rules of Court* due to its basis being the commission by the CA of a grave abuse of its discretion and because the petition was filed beyond the reglementary period of appeal under Rule 45. Hence, Rapid Movers insists that the Court should dismiss the petition because *certiorari* under Rule 65 could not be a substitute of a lost appeal under Rule 45.

Ordinarily, an original action for *certiorari* will not prosper if the remedy of appeal is available, for an appeal by petition for review on *certiorari* under Rule 45 of the *Rules of Court* and an original action for *certiorari* under Rule 65 of the *Rules of Court* are mutually exclusive, not alternative nor successive, remedies.[15] On several occasions, however, the Court has treated a petition for *certiorari* as a petition for review on *certiorari* when: (*a*) the petition has been filed within the 15-day

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[13] G.R. No. 130866, September 16, 1998, 295 SCRA 494, 503-504.

[14] See *Talidano v. Falcon Maritime & Allied Services, Inc.*, G.R. No. 172031, July 14, 2008, 558 SCRA 279, 291; *Iloilo La Filipina Uygongco Corporation v. Court of Appeals*, G.R. No. 170244, November 28, 2007, 539 SCRA 178, 187-188; *Hanjin Engineering and Construction Co., Ltd., v. Court of Appeals*, G.R. No. 165910, April 10, 2006, 487 SCRA 78, 96.

[15] *Tible & Tible Company, Inc. v. Royal Savings and Loan Association*, G.R. No. 155806, April 8, 2008, 550 SCRA 562, 575; *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, G.R. No. 156067, August 11, 2004, 436 SCRA 123, 136.

reglementary period;[16] (*b*) public welfare and the advancement of public policy dictate such treatment; (*c*) the broader interests of justice require such treatment; (*d*) the writs issued were null and void; or (*e*) the questioned decision or order amounts to an oppressive exercise of judicial authority.[17]

The Court deems it proper to allow due course to the petition as one for *certiorari* under Rule 65 in the broader interest of substantial justice, particularly because the NLRC's appellate adjudication was set aside by the CA, and in order to put at rest the doubt that the CA, in so doing, exercised its judicial authority oppressively. Whether the petition was proper or not should be of less importance than whether the CA gravely erred in undoing and setting aside the determination of the NLRC as a reviewing forum *vis-à-vis* the Labor Arbiter. We note in this regard that the NLRC had declared the dismissal of petitioner to be harsh and not commensurate to the infraction committed. Given the spirit and intention underlying our labor laws of resolving a doubtful situation in favor of the working man, we will have to review the judgment of the CA to ascertain whether the NLRC had really committed grave abuse of its discretion. This will settle the doubts on the propriety of terminating petitioner, and at the same time ensure that justice is served to the parties.[18]

2.
Petitioner was not guilty of willful disobedience; hence, his dismissal was illegal

Petitioner maintains that willful disobedience could not be a ground for his dismissal because he had acted in good faith and with the sole intention of facilitating deliveries for Rapid Movers when he allowed Villaruz to use his company ID.

Willful disobedience to the lawful orders of an employer is one of the valid grounds to terminate an employee under Article 296 (formerly Article 282) of the *Labor Code.*[19] For willful disobedience to be a ground, it is required that: (*a*) the conduct of the employee must be willful or intentional; and (*b*) the order the employee violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties that he had been engaged to discharge.[20] Willfulness must be attended by a wrongful and

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[16] *Nuñez v. GSIS Family Bank*, G.R. No. 163988, November 17, 2005, 475 SCRA 305, 316; *Tichangco v. Enriquez*, G.R. No. 150629, June 30, 2004, 433 SCRA 324, 333.

[17] *Leyte IV Electric Cooperative, Inc. v. Leyeco IV Employees Union-ALU*, G.R. No. 157775, October 19, 2007, 537 SCRA 154, 166.

[18] *Dalton-Reyes v. Court of* Appeals, G.R. No. 149580, March 16, 2005, 453 SCRA 498, 509-510.

[19] Renumbered pursuant to Republic Act No. 10151 (*An Act Allowing The Employment of Night Workers, Thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, As Amended, Otherwise Known As The Labor Code of the Philippines*).

[20] *Coca-Cola Bottlers, Phils., Inc. v. Kapisanan ng Malayang Manggagawa sa Coca-Cola-FFW,* G.R. No. 148205, February 28, 2005, 452 SCRA 480, 497; *Dimabayao v. National Labor Relations Commission*, G.R. No. 122178, February 25, 1999, 303 SCRA 655, 659; *Carlos A. Gothong Lines, Inc. v.*

perverse mental attitude rendering the employee's act inconsistent with proper subordination.[21] In any case, the conduct of the employee that is a valid ground for dismissal under the *Labor Code* constitutes harmful behavior against the business interest or person of his employer.[22] It is implied that in every act of willful disobedience, the erring employee obtains undue advantage detrimental to the business interest of the employer.

Under the foregoing standards, the disobedience attributed to petitioner could not be justly characterized as willful within the contemplation of Article 296 of the *Labor Code*. He neither benefitted from it, nor thereby prejudiced the business interest of Rapid Movers. His explanation that his deed had been intended to benefit Rapid Movers was credible. There could be no wrong or perversity on his part that warranted the termination of his employment based on willful disobedience.

Rapid Movers argues, however, that the strict implementation of company rules and regulations should be accorded respect as a valid exercise of its management prerogative. It posits that it had the prerogative to terminate petitioner for violating its following company rules and regulations, to wit:

> *(a)* "*Pagpayag sa paggamit ng iba o paggamit ng maling rekord ng kumpanya kaugnay sa operations*, *maintenance or materyales o trabaho*" (Additional Rules and Regulations No. 2); and
>
> *(b)* "*Pagkutsaba sa pagplano o pagpulong sa ibang tao upang labagin ang anumang alituntunin ng kumpanya*" (Article 5.28).[23]

We cannot sustain the argument of Rapid Movers.

It is true that an employer is given a wide latitude of discretion in managing its own affairs. The broad discretion includes the implementation of company rules and regulations and the imposition of disciplinary measures on its employees. But the exercise of a management prerogative like this is not limitless, but hemmed in by good faith and a due consideration of the rights of the worker.[24] In this light, the management

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NLRC, G.R. No. 96685, February 15, 1999, 303 SCRA 164, 170; *Lagatic v. National Labor Relations Commission*, G.R. No. 121004, January 28, 1998, 285 SCRA 251, 257.

[21] *Lakpue Drug, Inc. v. Belga*, G.R. No. 166379, October 20, 2005, 473 SCRA 617, 624; *St. Michael's Institute v. Santos*, G.R. No. 145280, December 4, 2001, 371 SCRA 383, 393; *Escobin v. National Labor Relations Commission*, G.R. No. 118159, April 15, 1998, 289 SCRA 48, 67.

[22] Separate Opinion of J. Tinga in *Agabon v. National Labor Relations Commission*, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 693.

[23] *Rollo*, p. 78.

[24] *Julie's Bakeshop v. Arnaiz*, G.R. No. 173882, February 15, 2012, 666 SCRA 101, 115.

prerogative will be upheld for as long as it is not wielded as an implement to circumvent the laws and oppress labor.[25]

To us, dismissal should only be a last resort, a penalty to be meted only after all the relevant circumstances have been appreciated and evaluated with the goal of ensuring that the ground for dismissal was not only serious but true. The cause of termination, to be lawful, must be a serious and grave malfeasance to justify the deprivation of a means of livelihood. This requirement is in keeping with the spirit of our Constitution and laws to lean over backwards in favor of the working class, and with the mandate that every doubt must be resolved in their favor.[26]

Although we recognize the inherent right of the employer to discipline its employees, we should still ensure that the employer exercises the prerogative to discipline humanely and considerately, and that the sanction imposed is commensurate to the offense involved and to the degree of the infraction. The discipline exacted by the employer should further consider the employee's length of service and the number of infractions during his employment.[27] The employer should never forget that always at stake in disciplining its employee are not only his position but also his livelihood,[28] and that he may also have a family entirely dependent on his earnings.[29]

Considering that petitioner's motive in lending his company ID to Villaruz was to benefit Rapid Movers as their employer by facilitating the loading of goods at the Tanduay Otis Warehouse for distribution to Rapid Movers' clients, and considering also that petitioner had rendered seven long unblemished years of service to Rapid Movers, his dismissal was plainly unwarranted. The NLRC's reversal of the decision of the Labor Arbiter by holding that penalty too harsh and disproportionate to the wrong attributed to him was legally and factually justified, not arbitrary or whimsical. Consequently, for the CA to pronounce that the NLRC had thereby gravely abused its discretion was not only erroneous but was itself a grave abuse of discretion amounting to lack of jurisdiction for not being in conformity with the pertinent laws and jurisprudence. We have held that a conclusion or finding derived from erroneous considerations is not a mere error of judgment but one tainted with grave abuse of discretion.[30]

WHEREFORE, the Court **GRANTS** the petition; **REVERSES** and **SETS ASIDE** the decision promulgated by the Court of Appeals on October

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[25] *Mendiola v. Court of Appeals*, G.R. No. 159333, July 31, 2006, 497 SCRA 346, 360; *Unicorn Safety Glass, Inc. v. Basarte*, G.R. No. 154689, November 25, 2004, 444 SCRA 287, 297.

[26] *Hongkong and Shanghai Banking Corp. v. National Labor Relations Commission*, G.R. No. 116542, July 30, 1996, 260 SCRA 49, 56.

[27] *Coca-Cola Bottlers Phils., Inc. v. Daniel*, G.R. No. 156893, June 21, 2005, 460 SCRA 494, 509-510.

[28] *Pioneer Texturizing Corp. v. National Labor Relations Commission*, G.R. No. 118651, October 16, 1997, 280 SCRA 806, 816.

[29] *Almira v. B.F. Goodrich Philippines, Inc.*, No. L-34974, July 25, 1974, 58 SCRA 120, 131.

[30] *Varias v. Commission on Elections*, G.R. No. 189078, March 30, 2010, 617 SCRA 214, 229.

24, 2003; **REINSTATES** the decision of the National Labor Relations Commission rendered on June 17, 2002; and **ORDERS** respondents to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice