



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SAMAR-MED DISTRIBUTION,
Petitioner,

G.R. No. 162385

Present:

-versus-

SERENO, C.J.,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR, and
REYES, JJ.

**NATIONAL LABOR
RELATIONS COMMISSION,
AND JOSAFAT GUTANG,**
Respondents.

Promulgated:

JUL 15 2013

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DECISION

BERSAMIN, J.:

Although an employer may legally dismiss an employee for a just cause, the non-observance of the requirements of due process before effecting the dismissal leaves the employer liable for nominal damages.

The Case

The employer appeals the decision promulgated on November 24, 2003¹ whereby the Court of Appeals (CA) in CA-G.R. SP No. 74561 annulled and set aside the resolution dated February 28, 2001 of the National Labor Relations Commission (NLRC) in Cebu City dismissing the complaint for illegal dismissal,² and declared respondent Josafat Gutang to have been illegally dismissed. Consequently, the CA reinstated the decision of the Labor Arbiter, and ordered the remand of the claim to the Labor Arbiter for the proper computation of the monetary awards.

¹ Rollo, pp. 29-35; penned by Associate Justice Juan Q. Enriquez, Jr. (retired), with Associate Justice Roberto A. Barrios (retired/deceased) and Associate Justice Arsenio J. Magpale (retired/deceased) concurring.

² Id. at 47-53.

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Antecedents

Samar-Med Distribution, a sole proprietorship registered in the name of Danilo V. Roleda (Roleda), engaged in the sale and distribution of intravenous fluids (IVs) in Region VIII (comprised by the several Samar and Leyte provinces). Gutang was hired for a basic salary of ₱7,000.00/month and an allowance of ₱2,000.00/month, and had the task of supervising the company's sales personnel and sales agents, and of representing Samar-Med in transactions with the government in Region VIII.³

On August 16, 1996, Gutang filed a complaint for money claims against Roleda/Samar-Med in the NLRC. He refiled the complaint on March 4, 1999 because the records were misplaced.⁴ He claimed that Samar-Med had difficulty paying his compensation during his employment, resulting in his not being paid salaries since November 1995, allowances since June 1994, and commissions from sales and 13th month pay in 1996; that Samar-Med made illegal deductions in June 1994 and February 1995; that he had no knowledge of any infraction that had caused his dismissal; that he did not receive any notice informing him of the cessation of Samar-Med's business operations; and that he had been compelled to look for other sources of income beginning on March 26, 1996 in order to survive.⁵

Roleda/Samar-Med denied liability for Gutang's monetary claims, contending that Gutang was not his employee but an employee of the City Council of Manila; that Gutang had approached and asked him if he could assist in the operation of the business of Samar-Med in order to have extra income; that Gutang was thus permitted to sell Samar-Med's products in his own hometown in Region VIII; that Gutang stopped selling and no longer returned to Manila after he was tasked to conduct an investigation of the shortage in sales collections;⁶ that there was no dismissal of Gutang, to speak of, but abandonment on his part; and that the complaint was a harassment suit to retaliate for the criminal case he (Roleda) had meanwhile filed against Gutang for misappropriating Samar-Med's funds totaling ₱3,302,000.71, as reflected in the demand letter dated May 15, 1996.

Decision of the Labor Arbiter

In his decision dated October 29, 1999,⁷ Executive Labor Arbiter Vito C. Bose (ELA Bose) declared Gutang an employee of Samar-Med, and ruled that he had been illegally dismissed. ELA Bose further ruled that Roleda's allegation of abandonment by Gutang could not be believed

³ Id. at 48.

⁴ Id. at 89-90.

⁵ Id. at 68-71.

⁶ Id. at 49.

⁷ Id. at 37-46.

because no written notice was served on Gutang to substantiate the allegation; that the immediate filing of the complaint in 1996 disproved the claim of abandonment; that Gutang was forced to obtain interim employment elsewhere in March 1996 because Samar-Med failed to pay his salary beginning November 1995; that Roleda, as the proprietor of Samar-Med, had to pay Gutang backwages fixed at one year only and separation pay in lieu of reinstatement in the total amount of ₱171,000.00: ELA Bose also ruled, however, that Gutang's claim for 13th month pay could not be granted because he had been a managerial employee exempted from the coverage of Presidential Decree No. 851; and that Gutang's other monetary claims lacked of factual and legal bases.

Ruling of the NLRC

The NLRC initially denied Roleda's appeal on August 14, 2000 for his failure to post the required appeal bond.

Upon Roleda's motion for reconsideration, the NLRC gave due course to the appeal through its resolution of February 28, 2001, and dismissed the complaint of Gutang,⁸ viz:

On the other hand, We find in the records copies of Official Receipts signed and issued by the complainant, a copy of a Purchase Order as well as a Voucher for the payment of the Order which clearly shows his participation in the transactions (pp. 71-79, Records). However, upon close examination, We find no conflict between the Certification and the Receipts, Purchase Order and Voucher. The certification shows that complainant was employed by City Hall Manila from July 16, 1992 to April 30, 1994, while the Purchase Order was dated September 9, 1994 (p. 78, records). Clearly, the transactions entered into by complainant were made after his employment with City Hall Manila. Indubitably, complainant was an employee of respondent. Moreover, contrary to respondent's later denials, it already admitted complainant's status as a managerial employee when it stated in its position paper that "as discussed above, complainant is a managerial employee." (p. 13, Records).

That notwithstanding, We simply cannot gloss over the fact that complainant stands charged of embezzling not just a few thousand pesos, but Three Million (P3,000,000.00) Pesos. While the Official Receipts, Purchase Order and Voucher proved his status as a managerial employee, it likewise shows that he received sums of money in behalf of respondent including the One Million, Six Hundred Thirty-Six Thousand, Seven Hundred Seventy-seven and Fifty-seven Centavos (1,636,777.57) paid by the Province of Leyte as evidence by his signature (p. 79, records). Obviously, complainant failed to account for the money hence the demand letter by respondent's counsel dated May 15, 1996 (p. 98, records). When complainant failed to pay, the proper complaint was filed in the Provincial Prosecutor's Office Cavite, who conducted the preliminary investigation

⁸ Id. at 47-53.

before filing the appropriate Information for Estafa in Court. Indeed, the certification appended to the Information signed by Manuel Tano, Asst. Provincial Prosecutor, reads as follows: "It is hereby certified as shown by the records that the preliminary investigation in this case has been conducted by the Asst. City Prosecutor Mary June P. Orquiza; that upon review of the records, there is reasonable ground to believe that the crime charged has been committed and that the accused is probably guilty thereof." (p. 26-27, records). Such findings made by a fellow government agency especially tasked with resolving criminal complaints filed before it is persuasive and deserves full weight and credence. Pursuant thereto, a Warrant of Arrest was issued by the RTC, Branch 20, Imus, Cavite (p. 28, records).

Under the above circumstances, respondent has sufficient reasons to lose its trust and confidence on the complainant. More so, in this case where complainant is a managerial employee. "When an employee accepts a promotion to a managerial position or to an office requiring full trust and confidence, she gives up some of the rigid guarantees available to an ordinary worker. Infraction which if committed by others would be overlooked or condoned or penalties mitigated, may be visited with more serious disciplinary action." (Metro Drug Corporation vs. NLRC, 143 SCRA 132).

Complainant claimed that he had elevated on appeal to the Department of Justice the findings of the Provincial Prosecutor. Whatever the outcome, the fact remains that the trust and confidence reposed on him by respondent has been breached as respondent has ample reasons to distrust him. "it has been repeatedly held by this Court in a long line of decisions that where an employee has been guilty of breach of trust or his employer has ample reason to distrust him, a labor tribunal cannot deny the employer the authority to dismiss the employee. Loss of trust and confidence by management justifies grant of clearance to dismiss. Indeed, it is an established principle that an employer cannot be compelled to continue in employment an employee guilty of acts inimical to the interests of the employer and justifying loss of confidence in him. (San Miguel Corp. vs. Deputy Minister of Labor and Employment, 145 SCRA 196).

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"Loss of confidence as a ground for dismissal does not entail proof beyond reasonable doubt of the employee's misconduct. It is enough that there be "some basis" for such loss of confidence or that "the employer has reasonable grounds to believe, if not to entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position." (Tabacalera Insurance Co. vs. NLRC, 152 SCRA 667).

WHEREFORE, premises considered, Our decision is hereby **MODIFIED**, reinstating and giving due course to respondent's appeal. The decision of the Executive Labor Arbiter is hereby **SET ASIDE** and a new one entered **DISMISSING** the complaint for illegal dismissal.

SO ORDERED.

Gutang sought reconsideration, but the NLRC denied his motion.

Ruling of the CA

Gutang then assailed the outcome in the NLRC through a petition for *certiorari* that he filed in the CA, submitting the following issues, namely:

WHETHER OR NOT THE NLRC GRAVELY ABUSED ITS DISCRETION WHEN IT ADMITTED PRIVATE RESPONDENT'S APPEAL DESPITE THE LATE POSTING OF AN APPEAL BOND.

WHETHER OR NOT PETITIONER WAS ILLEGALLY DISMISSED.

On November 24, 2003, the CA promulgated its decision,⁹ to wit:

The petition is partly meritorious.

On the first issue, this Court finds that the NLRC did not abuse its discretion when it considered private respondent's appeal as perfected. Indeed, the Supreme Court has relaxed the requirement of posting a supersedeas bond for the perfection of appeal when there is a substantial compliance with the rules (*Star Angel Handicraft v. NLRC*, 236 SCRA 580, *Globe General Services and Security Agency v. NLRC*, 249 SCRA 408).

It appears from the records that private respondent filed a manifestation to allow the late filing of a surety bond within the period to appeal. Thereafter, it filed the surety bond on March 8, 2000. As such, the NLRC acted within its discretion when it reconsidered its resolution dismissing the appeal for failure to post a bond and considered petitioner's manifestation as a motion to reduce bond. It is worthy to note that the purpose of the posting of a bond is to assure the workers that if they finally prevail in the case the monetary award will be given to them upon dismissal of the employer's appeal. It is further meant to discourage employers from using the appeal to delay or evade payment of their obligations to the employees (*Coral Point Development Corporation v. NLRC*, 336 SCRA 554).

On the second issue, however, the Court finds the same meritorious. It is clear from the records that there is an employer-employee relationship between the parties. As such, a valid termination of the same by the employer may only be had after the latter has complied with both the substantive and procedural requirements of the law. The Labor Code in Articles 282 and 283 provide for the just and authorized causes for termination while the procedural requirement pertains to the two notices and hearing requirements. These requirements provide that the employer must: 1) serve notice to the employee informing him/her of the grounds

⁹ Supra note 1.

for his/her possible termination, 2) give the employee a chance to be heard, and 3) serve termination notice to the employee therefore (*Rules Implementing the Labor Code, Rule XXIII, Section 2*). The employer has the burden of proving the same.

Based on the foregoing requirements, petitioner's termination from employment is illegal. Private respondent submitted that it was petitioner who abandoned his job. The records, however, is bereft of proof to show abandonment on the part of petitioner. It is settled that for abandonment to be a just cause for termination, the following requisites must concur: 1) the employee's intention to abandon employment, and 2) overt acts from which such intention may be inferred – as when the employee shows no desire to resume work (*Hyatt Taxi Service, Inc. v. Catinoy, 359 SCRA 686*). It is well to note that petitioner looked for another source of income after he was not paid his salary for several months. Thereafter, he filed a complaint for money claims against private respondent only several months after he decided to look for other sources of income. This circumstance would show that petitioner had no intention to abandon his work.

Moreover, even granting that petitioner abandoned his job, private respondent still failed to provide petitioner with the procedural due process required by law consisting of the two notices and hearing requirements. Thus, since private respondent failed to prove the valid termination of petitioner, the decision of the Labor Arbiter granting the money claims of petitioner including his backwages and separation pay is proper.

WHEREFORE, based on the foregoing, the instant petition is hereby **GRANTED**. The assailed decision and resolution of the NLRC are **ANNULLED** and **SET ASIDE**. The decision of the Labor Arbiter is hereby **REINSTATED**. The records of the case are remanded to the Labor Arbiter for proper computation of the monetary awards.

SO ORDERED.

As stated, the CA denied Roleda's motion for reconsideration.¹⁰

Issues

Hence, this appeal by petition for review, with Roleda urging for our consideration the following issues:

1. Whether the fact that respondent's complaint against Samar-Med before the Labor Arbiter did not include "illegal dismissal" as his cause of action means that the instant case does not involve the issue of "illegal dismissal";
2. Whether the fact that respondent crossed out the word "dismissed" and replaced it with the word "stopped" is indicative that he voluntarily

¹⁰ Supra note 2.

abandoned his work and had no intention to continue employment with Samar-Med;

3. Whether the notice requirement was complied with when respondent received the demand letter from Samar-Med to return the amount of P3,302,000.71;
4. Assuming that respondent was dismissed, the same was justified as he was guilty of loss of trust and confidence and/or abandonment;
5. Whether there was a need for the CA to determine anew the facts of the case considering that NLRC's decision and findings were supported by substantial evidence.¹¹

In sum, Roleda harps on whether or not Gutang's dismissal was a proper issue even if he had not raised it in his complaint; and on whether or not Gutang's dismissal had been justified on the ground of the latter's abandonment and/or breach of trust and confidence.

Ruling of the Court

The petition is partly meritorious.

At the outset, we must stress that only questions of law may be raised in and resolved in this appeal under Rule 45 of the *Rules of Court*. The Court is not a trier of facts and does not routinely re-examine the evidence presented by the contending parties. Nonetheless, although the question of whether or not Gutang had been illegally dismissed from employment or had abandoned his job was factual and should not now be delved into, the divergence in the findings of fact by the Labor Arbiter and the NLRC is a basis for the Court to open and scrutinize the records to determine whether the CA, in the exercise of its *certiorari* jurisdiction, erred in annulling and setting aside the decision of the NLRC.

Firstly, petitioner's contention that the validity of Gutang's dismissal should not be determined because it had not been included in his complaint before the NLRC is bereft of merit. The complaint of Gutang was a mere checklist of possible causes of action that he might have against Roleda. Such manner of preparing the complaint was obviously designed to facilitate the filing of complaints by employees and laborers who are thereby enabled to expediently set forth their grievances in a general manner.¹² But the non-inclusion in the complaint of the issue on the dismissal did not necessarily mean that the validity of the dismissal could not be an issue. The rules of the NLRC require the submission of verified position papers by the parties should they fail to agree upon an amicable settlement, and bar the inclusion

¹¹ Id. at 10-11.

¹² *Tegimenta Chemical Phils. v. Buensalida*, G.R. No. 176466, June 17, 2008, 554 SCRA 670, 675-676.

of any cause of action not mentioned in the complaint or position paper from the time of their submission by the parties. In view of this, Gutang's cause of action should be ascertained not from a reading of his complaint alone but also from a consideration and evaluation of both his complaint and position paper.¹³ With Gutang's position paper having alleged not only the bases for his money claims, but also that he had been "compelled to look for other sources of income in order to survive" and that his employment had not been formally terminated, thereby entitling him to "full backwages aside from his other claims for unpaid monies,"¹⁴ the consideration and ruling on the propriety of Gutang's dismissal by the Labor Arbiter and the NLRC were proper.

Secondly, Roleda assails the conclusion that Gutang had been illegally dismissed from his employment, insisting instead that he had voluntarily stopped working and had thus abandoned his job.

The *onus* of proving that an employee was not dismissed or, if dismissed, his dismissal was not illegal fully rests on the employer, and the failure to discharge the *onus* would mean that the dismissal was not justified and was illegal.¹⁵ In Gutang's case, Roleda tendered no showing outside of his mere allegations to substantiate his averment of abandonment by Gutang. Moreover, although Gutang had undoubtedly stopped working for Samar Med, his doing so had been for a justifiable reason, consisting in the non-payment of his salary since November 1995 and his being forced to stop working for Samar Med to enable him to seek employment elsewhere, albeit temporarily, in order to survive.

Thirdly, the CA concluded that Gutang's termination from employment had been illegal. It buttressed its conclusion on the absence of proof of abandonment of his employment by Gutang. It observed that Gutang had not been shown to have had no desire to resume work; and that instead Gutang had been forced to look for another gainful employment primarily because of Roleda's non-payment of his salary for several months, which actually proved that Gutang had no intention to abandon his work.

It is plain, however, that the NLRC did not gravely abuse its discretion in concluding that Gutang's dismissal had been warranted. We note that Gutang was a managerial employee whom Roleda had vested with confidence on delicate matters, such as the custody, handling, care and protection of Samar Med's properties and funds, as well as its operations and transactions in Region VIII. Gutang was shown to have failed to account for and to turn over his sales collections. In that regard, Roleda's filing of the

¹³ Id. at 676-677.

¹⁴ Supra note 7.

¹⁵ *Great Southern Maritime Services Corporation v. Acuña*, G.R. No. 140189, February 28, 2005, 452 SCRA 422, 437.

criminal case against Gutang and the public prosecutor's finding of a *prima facie* case for the offense charged after preliminary investigation amounted to substantial evidence of Gutang's breach of the trust and confidence reposed in him, a just cause to terminate the employment based on loss of trust and confidence.¹⁶

Under Article 282(c) of the *Labor Code*, an employer may terminate an employee's employment on the ground of the latter's fraud or wilful breach of the trust and confidence reposed in him. For loss of trust and confidence to constitute a sufficient ground for termination, the employer must have a reasonable ground to believe, if not to entertain the moral conviction, that the employee was responsible for the misconduct, and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position.¹⁷ Those requirements were undeniably met in Gutang's case.

The finding of a just cause to dismiss Gutang notwithstanding, we also find that he was not accorded due process. Roleda as the employer had the obligation to send to him two written notices before finally dismissing him. Article 277 of the *Labor Code*, as amended, enunciated this requirement of two written notices, viz:

Article 277. *Miscellaneous provisions.* – x x x

x x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, **the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment.** Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The Secretary of the Department of Labor and Employment may suspend the effects of the termination pending resolution of the dispute in the event of a *prima facie* finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious

¹⁶ *Concepcion v. Minex Import Corporation/Minerama Corporation*, G.R. No. 153569, January 24, 2012, 663 SCRA 497, 507, citing *Batangas Laguna Tayabas Bus Co. (BLTB Co.) v. NLRC*, No. L-69875, October 28, 1988, 166 SCRA 721, 726.

¹⁷ *Jerusalem v. Keppel Monte Bank*, G.R. No. 169564, April 6, 2011, 647 SCRA 313, 323.

labor dispute or is in implementation of a mass lay-off.¹⁸ (Bold underscoring supplied for emphasis)

X X X X

The requirement was also imposed in Section 2¹⁹ and Section 7,²⁰ Rule I, Book VI of the *Implementing Rules of the Labor Code*.

The first written notice would inform Gutang of the particular acts or omissions for which his dismissal was being sought. The second written notice would notify him of the employer's decision to dismiss him. But the second written notice must not be made until after he was given a reasonable period after receiving the first written notice within which to answer the charge, and after he was given the ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desired.²¹ The requirement was mandatory.²²

Gutang's receipt of the demand letter from Samar-Med to return the amount of ₱3,302,000.71 was certainly not even a substantial compliance with the twin-notice requirement, because the purpose of the demand letter was different from those defined for the sending of the required notices. Nor was he thereby allowed a meaningful opportunity to be heard or to be notified of his impending termination.

Conformably with the ruling in *Agabon v. National Labor Relations Commission*,²³ the lack of statutory due process would not nullify the dismissal or render it illegal or ineffectual when the dismissal was for just cause. But the violation of Gutang's right to statutory due process clearly warranted the payment of indemnity in the form of nominal damages, whose

¹⁸ As amended by Section 33, Republic Act No. 6715, March 21, 1989.

¹⁹ Section 2. *Security of Tenure*. – x x x

x x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i) **A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.**

(ii) **A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.**

(iii) **A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.**

x x x x

²⁰ Section 7. *Termination of employment by employer*. – The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective bargaining agreement with the employer or voluntary employer policy or practice.

²¹ *Lim v. National Labor Relations Commission*, G.R. No. 118434, July 26, 1996, 259 SCRA 485, 498.

²² *Colegio de San Juan de Letran-Calamba v. Villas*, G.R. No. 137795, March 26, 2003, 399 SCRA 550, 559; *Equitable Banking Corporation v. NLRC*, G.R. No. 102467, June 13, 1997, 273 SCRA 352, 378.

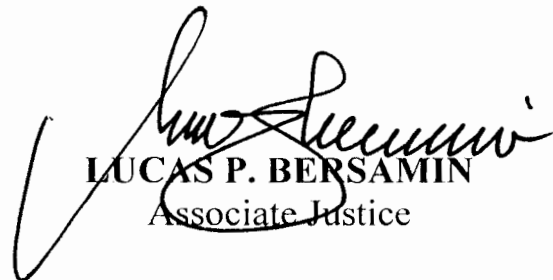
²³ G.R. No. 158693, November 17, 2004, 442 SCRA 573, 616-617.

amount is addressed to the sound discretion of the Court taking into account the relevant circumstances. Accordingly, the Court deems the amount of ₱30,000.00 as nominal damages sufficient vindication of Gutang's right to due process under the circumstances.

WHEREFORE, the Court **PARTIALLY GRANTS** the petition for review; **REVERSES AND SETS ASIDE** the decision promulgated on November 24, 2003; and **REINSTATES** the resolution dated February 28, 2001 of the National Labor Relations Commission in Cebu City, subject to the **MODIFICATION** that the petitioner shall pay respondent Josafat N. Gutang the sum of ₱30,000.00 by way of nominal damages for non-compliance with statutory due process.


No pronouncements on 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



MARTIN S. VILLARAMA, JR.
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