

## FIRST DIVISION

[ G.R. No. 166365, September 30, 2005 ]

**DUTY FREE PHILIPPINES, PETITIONER, VS. ROSSANO J. MOJICA,  
RESPONDENT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

This petition for review on certiorari<sup>[1]</sup> under Rule 45 of the Rules of Court seeks to annul and set aside the August 31, 2004 Decision<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 76995, and its December 13, 2004 Resolution<sup>[3]</sup> denying the motion for reconsideration.

The antecedent facts show that on November 28, 1997, the Discipline Committee of Duty Free Philippines (DFP) rendered a decision<sup>[4]</sup> in DISCOM Case No. 97-027 finding Stock Clerk Rossano A. Mojica guilty of Neglect of Duty by causing considerable damage to or loss of materials, assets and property of DFP. Thus, Mojica was considered forcibly resigned from the service with forfeiture of all benefits except his salary and the monetary value of the accrued leave credits.<sup>[5]</sup>

Mojica was formally informed of his forced resignation on January 14, 1998. Thereupon, he filed a complaint for illegal dismissal with prayer for reinstatement, payment of full back wages, damages, and attorney's fees, against DFP before the National Labor Relations Commission (NLRC).

On February 2, 2000, Labor Arbiter Facundo L. Leda rendered a Decision finding that Mojica was illegally dismissed. The dispositive portion of the Decision reads:

WHEREFORE, decision is hereby rendered declaring the dismissal of complainant Rossano J. Mojica to be illegal such that respondent Duty Free Philippines is directed to reinstate him to his former or substantially equivalent position without loss of seniority rights and other privileges and to pay him the amount of TWO HUNDRED FIFTY NINE THOUSAND SEVENTEEN PESOS & 08/100 (P259,017.08) representing his backwages and attorney's fees, both awards being subject to further computation until actual reinstatement.

SO ORDERED.<sup>[6]</sup>

The NLRC reversed the ruling of the arbiter. It found that the dismissal was valid and with just cause.

Mojica's motion for reconsideration was denied,<sup>[7]</sup> hence he filed a Petition for Certiorari under Rule 65 of the Rules of Court before the Court of Appeals, docketed

as CA-G.R. SP No. 76995.

The appellate court agreed with the arbiter that Mojica was not guilty of gross or habitual negligence that would warrant his dismissal. It found that there was no convincing evidence to prove that Mojica connived with other personnel in pilfering the stocks of DFP.

Hence, this petition.

Respondent Mojica is a civil service employee; therefore, jurisdiction is lodged not with the NLRC, but with the Civil Service Commission.

DFP was created under Executive Order (EO) No. 46<sup>[8]</sup> on September 4, 1986 primarily to augment the service facilities for tourists and to generate foreign exchange and revenue for the government. In order for the government to exercise direct and effective control and regulation over the tax and duty free shops, their establishment and operation was vested in the Ministry, now Department of Tourism (DOT), through its implementing arm, the Philippine Tourism Authority (PTA).<sup>[9]</sup> All the net profits from the merchandising operations of the shops accrued to the DOT.

As provided under Presidential Decree (PD) No. 564,<sup>[10]</sup> PTA is a corporate body attached to the DOT. As an attached agency, the recruitment, transfer, promotion and dismissal of all its personnel was governed by a merit system established in accordance with the civil service rules.<sup>[11]</sup> In fact, all PTA officials and employees are subject to the Civil Service rules and regulations.<sup>[12]</sup>

Accordingly, since DFP is under the exclusive authority of the PTA, it follows that its officials and employees are likewise subject to the Civil Service rules and regulations. Clearly then, Mojica's recourse to the Labor Arbiter was not proper. He should have followed the procedure laid down in DFP's merit system and the Civil Service rules and regulations.

PD No. 807 or *The Civil Service Decree of the Philippines*<sup>[13]</sup> declared that the Civil Service Commission shall be the central personnel agency to set standards and to enforce the laws governing the discipline of civil servants.<sup>[14]</sup> It categorically described the scope of Civil Service as embracing every branch, agency, subdivision, and instrumentality of the government, including every government-owned or controlled corporation whether performing governmental or proprietary function.<sup>[15]</sup> It construed an agency to mean any bureau, office, commission, administration, board, committee, institute, corporation, whether performing governmental or proprietary function, or any other unit of the National Government, as well as provincial, city or municipal government, except as otherwise provided.<sup>[16]</sup>

Subsequently, EO No. 180<sup>[17]</sup> defined "government employees" as all employees of all branches, subdivisions, instrumentalities, and agencies, of the Government, including government-owned or controlled corporations with original charters.<sup>[18]</sup> It provided that the Civil Service and labor laws shall be followed in the resolution of complaints, grievances and cases involving government employees.<sup>[19]</sup>