

# FIRST DIVISION

[ G.R. No. 235865, February 03, 2021 ]

**JEROME M. BAUTISTA, PETITIONER, VS. ELI LILLY PHILIPPINES, INC.; RESPONDENT.**

## DECISION

**CAGUIOA, J:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> (Petition) under Rule 45 of the Rules of Court assailing the Decision<sup>[2]</sup> dated August 17, 2017 and Resolution<sup>[3]</sup> dated November 22, 2017 of the Court of Appeals (CA) in CA G.R. SP No. 136537. The CA reversed the National Labor Relations Commission's (NLRC) Decision<sup>[4]</sup> dated November 19, 2013 and ruled that petitioner Jerome M. Bautista (Bautista) was validly dismissed from his employment because of dishonesty.

### *Facts*

Bautista was hired by respondent Eli Lilly Philippines, Inc. (ELPI) in 1998 as a Professional Sales Representative. After several promotions, he was retrenched in 2003. He was rehired in 2005 and last held the position of Sales and Marketing Services Manager in 2011.<sup>[5]</sup>

On November 4, 2011, ELPI issued a Show-Cause Letter, charging Bautista with violation of the company rules and breach of trust and confidence. Allegedly, on May 14, 2008, Bautista simulated the purchase of four tires from Babila Tire Supply (BTS) and claimed reimbursement for the cost. He was placed under preventive suspension for 30 days. ELPI did not reveal the source of the damning information against Bautista.<sup>[6]</sup>

Bautista submitted his explanation and questioned ELPI's failure to identify the source of the damaging information. In response, ELPI attached a copy of Official Receipt No. 000475 issued by BTS, Sales Invoice No. 27274, and Car Repairs Request No. 8911.<sup>[7]</sup>

Bautista then submitted a certification dated December 7, 2011 issued by Lilia C. Babila (Lilia), proprietress of BTS, stating that she issued Official Receipt No. 000475 dated May 14, 2008 under the name of ELPI for the purchase of four tires.<sup>[8]</sup> ELPI, during the formal investigation, confronted Bautista with a notarized certification dated December 17, 2011 from Arnulfo Babila (Arnulfo), husband of Lilia, stating that Bautista did not purchase tires from BTS. Arnulfo would, however, issue another statement dated December 20, 2011 acknowledging that he lacked knowledge of the sale and that it was his wife who issued the official receipt.<sup>[9]</sup>

On December 21, 2011,<sup>[10]</sup> Bautista was issued a Notice of Termination, prompting

him to file a Complaint for illegal dismissal and suspension before the Labor Arbiter (LA).<sup>[11]</sup> Bautista prayed for the payment of separation pay in lieu of reinstatement, backwages, damages, and attorney's fees, among others.<sup>[12]</sup>

### LA Decision

In a Decision dated October 1, 2012, the LA dismissed the Complaint, ruling that Bautista was validly dismissed for dishonesty and that his preventive suspension was valid. Moreover, the LA held that Bautista was accorded due process and he was ordered to pay his admitted financial obligations to ELPI.<sup>[13]</sup> The dispositive portion of the LA Decision states:

"WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for lack of merit. Respondent's compulsory counterclaims are likewise dismissed for lack of merit.

However, complainant is directed to pay his admitted outstanding obligations to Eli Lily for the total amount of P24,500.00[.]

SO ORDERED."<sup>[14]</sup>

Bautista brought an appeal before the NLRC.

### NLRC Decision

In a Decision<sup>[15]</sup> dated November 19, 2013, the NLRC granted the appeal, vacated the LA's Decision, and ruled that Bautista's dismissal and preventive suspension were illegal. The dispositive portion of the NLRC Decision states:

**WHEREFORE**, complainant's appeal is **GRANTED** and the 01 October 2012-Decision is vacated and set aside. Complainant is declared to have been illegally suspended and dismissed. Consequently, respondent Eli Lilly Philippines, Inc. is ordered to pay complainant his salary equivalent to the period of his preventive suspension (i.e., 04 November 2011 to 03 December 2011 ), his full backwages from date of termination until finality of the decision and separation pay of one month per year of service as well as attorney's fees equivalent to 10% of his total monetary awards. Complainant's separation pay and backwages are tentatively computed as follows:

#### A) Backwages

- |                     |                   |              |
|---------------------|-------------------|--------------|
| 1) Basic Salary     |                   |              |
| 65,000.00 X 22.22 = | 1,480,050.00      |              |
| 2) 13th month pay   |                   |              |
| 1,480,050.00 / 12 = | <u>123,337.50</u> | 1,603,387.50 |

#### B) Separation pay (9 yrs)

65,000.00 x 9 yrs. =	585,000.00
----------------------	------------

C) Salary for 11/4/2011 to 12/3/2011	<u>65,000.00</u>	2,253,387.50
D) 10% Attorney's Fee 2,123,387.50 X .10 =	<u>212,338.75</u>	<u><b>2,335.726.25</b></u>
<b>TOTAL AWARD=</b>		<b>P2,478,726.25</b>

**SO ORDERED.**<sup>[16]</sup>

ELPI filed a motion for reconsideration.

In its Resolution<sup>[17]</sup> dated May 30, 2014, the NLRC partly granted the motion for reconsideration as regards its finding on the illegality of Bautista's suspension. The NLRC ruled that Bautista failed to assail the LA's finding that his suspension was illegal, thus the LA's findings as to this issue had already attained finality. 18 The NLRC likewise made revisions in its computation, which it attached to the Resolution. 19 The dispositive portion of the Resolution states:

**WHEREFORE**, the motion for reconsideration is **PARTLY GRANTED**. The 19 November 2013-Decision is **MODIFIED** in that the award pertaining to complainant's salary covering his preventive suspension is **DELETED**; and the 01 October 2012-Decision of Labor Arbiter Jonalyn M. Gutierrez insofar as the aspect directing complainant to pay Eli Lilly Philippines, Inc. the amount of Twenty-Four Thousand Five Hundred [Pesos] (P24,500.00) representing his admitted outstanding obligation to the latter is **REINSTATED**. All the other monetary awards in the 19 November 2013-Decision are **AFFIRMED**.

No motion of similar nature shall hereafter be entertained.

**SO ORDERED.**<sup>[20]</sup>

Only ELPI filed a petition for *certiorari* before the CA to assail the NLRC's Decision and Resolution.

#### **CA Decision**

In the assailed Decision, the CA granted the petition, set aside the NLRC's Decision and Resolution, and reinstated the LA's Decision. The dispositive portion of the Decision states:

**WHEREFORE**, premises considered, We **GRANT** this petition. The NLRC Decision and Resolution dated November 19, 2013 and May 30, 2014, respectively are hereby **SET ASIDE** and the Decision of the Labor Arbiter dated October 1, [2012] is hereby **REINSTATED**.

**SO ORDERED.**<sup>[21]</sup>

The CA ruled that ELPI was able to establish the factual bases for its loss of trust and confidence in Bautista arising from his dishonesty, making the latter's dismissal valid.

Bautista filed a motion for reconsideration, but this was denied.

Hence, this Petition. In due course, ELPI filed its Comment<sup>[22]</sup> and Bautista also filed his Reply.<sup>[23]</sup>

### ***Issue***

Whether the CA was correct in setting aside the NLRC's Decision and Resolution and in ruling that Bautista's dismissal was valid.

### ***The Court's Ruling***

The Petition is granted.

***The NLRC was correct in ruling that ELPI failed to prove that Bautista's dismissal was valid.***

In a petition for review on *certiorari* arising from labor cases, the Court is limited to the examination of whether the CA correctly determined the existence of grave abuse of discretion on the part of the NLRC.<sup>[24]</sup> In fact, the Court has ruled that even the CA does not have to assess and weigh the sufficiency of evidence on which the NLRC bases its decision. The CA only has to determine the existence of grave abuse of discretion.<sup>[25]</sup>

Grave abuse of discretion may arise when the NLRC violates or contravenes the Constitution, the law or existing jurisprudence.<sup>[26]</sup> It is "such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."<sup>[27]</sup>

It is settled that the employer has the right to terminate the services of an employee for a just or authorized cause. The dismissal of employees must, however, be made within the parameters of law and pursuant to the tenets of fair play.<sup>[28]</sup> As the Court held in *Mayon Hotel & Restaurant v. Adana*:<sup>[29]</sup> "in termination disputes, the burden of proof is always on the employer to prove that the dismissal was for a just or authorized cause.

Where there is no showing of a clear, valid and legal cause for termination of employment, the law considers the case a matter of illegal dismissal."<sup>[30]</sup>

Here, the CA found that the NLRC committed grave abuse of discretion when the NLRC found ELPI to have failed to prove by substantial evidence that it had just cause to terminate Bautista's employment.

The CA's finding is based on the following pieces of evidence which the CA considered as sufficient to support ELPI's termination of Bautista's employment:

- a. The affidavit of Timothy Jerome S. Ong (Ong) dated December 18, 2011 where he narrated that Bautista directed him to give Bautista a receipt for the purchase of tires so Bautista can claim reimbursement for it. He alleged that he obtained the receipt from BTS and gave it to Bautista who, in turn, used it to obtain reimbursement.<sup>[31]</sup>
- b. The affidavit of Sojit Du (Du) dated December 19, 2011 where Du narrated that sometime in 2009, Ong told Du that Bautista had directed him to produce a receipt and that if he failed to do so, Bautista would be angry. He also narrated that Ong was very afraid at that time of their conversation.<sup>[32]</sup>
- c. Official Receipt No. 00475 dated May 14, 2008 with a BIR permit number issued on August 10, 1999, which Bautista submitted to support his request for reimbursement cannot be relied on in light of receipt number 0851 dated April 22, 2008, which had a BIR permit number issued on April 18, 2008, which Ong presented. The CA found that the fact that Bautista presented an old receipt which was valid for the year 1999 cast doubt as to the genuineness of the sale.<sup>[33]</sup>

As against these findings of the CA, the NLRC had, in finding that ELPI had failed to show through substantial evidence that Bautista simulated the sale, relied on the following:

- a. The official receipt, the sales invoice, and the certification of Lilia that the receipt was issued for the purchase of tires on May 14, 2008 show that there was a genuine sale transaction.<sup>[34]</sup> The official receipt is likewise presumed to be regular and in accordance with the ordinary course of business pursuant to Rule 131, Section 3(p) and (q) of the Rules of Court.<sup>[35]</sup>
- b. The testimonies of Ong and Du are incredible. Ong indeed narrated that he obtained Official Receipt No. 000475 from the owner of BTS, but he failed to account for the corresponding Sales Invoice No. 27274 which Bautista submitted together with the official receipt.<sup>[36]</sup> On the other hand, Du's allegations that despite the lapse of one year since Ong obtained the receipt, Ong was still afraid of Bautista was hard to believe. Both affidavits were also only shown to Bautista at the time ELPI submitted its Position Paper.<sup>[37]</sup> This cast doubt on the credibility of their testimonies in addition to the fact that they were still employees of ELPI at the time they executed the affidavits.<sup>[38]</sup>
- c. The Car Repairs Request No. 8911 was approved by ELPI through its Human Resource Department (HRD) Manager, who had the duty to first ascertain that repairs were actually conducted on the car.<sup>[39]</sup> The approval of the Repair Request shows that ELPI's HRD Manager confirmed that the tires were purchased for Bautista's company-issued