

## SECOND DIVISION

[ G.R. No. 244144, January 27, 2020 ]

**HERMA SHIPPING AND TRANSPORT CORPORATION AND  
HERMINIO S. ESGUERRA,<sup>[\*]</sup> PETITIONERS, VS. CALVIN JABALLA  
CORDERO, RESPONDENT,**

[G.R. No. 244210, January 27, 2020]

**CALVIN JABALLA CORDERO, PETITIONER, VS. HERMA SHIPPING  
AND TRANSPORT CORPORATION AND HERMINIO S. ESGUERRA,  
RESPONDENTS.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in these consolidated cases<sup>[1]</sup> are the Decision<sup>[2]</sup> dated April 20, 2018 and the Resolution<sup>[3]</sup> dated January 14, 2019 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 151737 which affirmed with modification the February 28, 2017 Decision<sup>[4]</sup> and the April 27, 2017 Resolution<sup>[5]</sup> of the National Labor Relations Commission (NLRC) in NLRC LAC No. 02-000457-17 NLRC NCR Case No. 05-05780-16, directing Herma Shipping and Transport Corporation (HSTC) and Herminio S. Esguerra (Esguerra) to pay Calvin Jaballa Cordero (Cordero) separation pay equivalent to one (1) month salary for every year of service.

#### **The Facts**

Cordero was employed on March 31, 1992 as Able Seaman by HSTC, a corporation engaged in the business of hauling, shipping and/or transporting oil and petroleum products in Philippine waters, on board one of its vessels. During his employment, Cordero was part of the complement of *M/Tkr Angat*, where one of his primary duties entailed being a Helmsman or a duty look-out during vessel navigation.<sup>[6]</sup>

Sometime in 2015, HSTC discovered significant losses of the oil and petroleum products transported by *M/Tkr Angat* during its past twelve (12) voyages. Consequently, HSTC conducted an investigation and sent a Notice to Explain/Show Cause Memo on January 28, 2016 to five (5) crew members, including Cordero, requiring them to submit a written explanation for allegedly committing: (a) violation of HSTC's Code of Discipline; (b) Serious Misconduct; and (c) Willful Breach of Trust and Confidence. Pending the investigation, the five (5) crew members were placed on preventive suspension.<sup>[7]</sup>

In his defense, Cordero denied the allegations against him and claimed that he did not see anything unusual or suspicious during the voyages, and that if there were any such case, he did not see them due to his poor eyesight.<sup>[8]</sup> After HSTC found Cordero's explanation insufficient, he was dismissed from employment through a

Notice of Termination dated March 8, 2016.<sup>[9]</sup> This prompted Cordero to file a complaint<sup>[10]</sup> for illegal dismissal and payment of 13<sup>th</sup> month pay, separation pay, damages, and attorney's fees against HSTC and Esguerra, as its Chief Executive Officer, <sup>[11]</sup> before the NLRC.

For their part, HSTC and Esguerra contended that the significant losses in the oil and petroleum products were confirmed after using a Four Point Analysis, an accepted formula adopted in the oil shipping industry to determine oil/petroleum loss during a sea voyage. Moreover, a suspicious event was captured and recorded by *M/Tkr Angat*'s CCTV camera, showing an unknown boat navigating its way at the side of the vessel, crew members coming out of their quarters, examining/investigating, and waving off the boat, and the blocking/covering of the CCTV camera for three (3) hours between December 26 and 27, 2015.<sup>[12]</sup> They maintained that Cordero, as *M/Tkr Angat*'s Helmsman/Watchman, was undoubtedly aware of the oil pilferage; having had a vantage point from the bridge of the vessel, he would not have missed any boat or vessel that will approach *M/Tkr Angat* from the side. Likewise, Cordero would have seen who removed the cover of the CCTV camera that was blocked. However, despite the incident, Cordero did not report any irregularity to HSTC.<sup>[13]</sup>

### **The Labor Arbiter Ruling**

In a Decision<sup>[14]</sup> dated November 21, 2016, the Labor Arbiter (LA) found Cordero's employment to have been validly terminated and thus, dismissed the complaint for lack of merit.<sup>[15]</sup> The LA ruled that there was substantial evidence to show that Cordero participated in the oil pilferage while navigating at sea. Hence, he committed Serious Misconduct and Willful Breach of Trust and Confidence when he perpetrated a serious infraction amounting to theft of property entrusted to him.<sup>[16]</sup>

Aggrieved, Cordero appealed<sup>[17]</sup> to the NLRC.

### **The NLRC Ruling**

In a Decision<sup>[18]</sup> dated February 28, 2017, the NLRC affirmed the LA's dismissal of the complaint<sup>[19]</sup> upon a finding that Cordero was validly dismissed for a just cause. It explained that for failure to call out the irregularity during his duty and report the same to HSTC, Cordero committed a dereliction of duty that amounted to Serious Misconduct.<sup>[20]</sup> Moreover, Cordero also committed Willful Breach of Trust and Confidence, since he was considered as a fiduciary rank-and-file employee who was entrusted with the care and custody of HSTC's vessel and the oil it transported.<sup>[21]</sup> Finally, the NLRC found that HSTC and Esguerra complied with the procedural due process rule in terminating Cordero's employment, having been apprised of the charges against him and given the opportunity to be heard.<sup>[22]</sup>

Dissatisfied, Cordero moved for reconsideration,<sup>[23]</sup> which was denied in a Resolution<sup>[24]</sup> dated April 27, 2017. Hence, the matter was elevated to the CA *via* a petition for *certiorari*.<sup>[25]</sup>

### **The CA Ruling**

In a Decision<sup>[26]</sup> dated April 20, 2018, the CA affirmed the NLRC Decision with a modification directing HSTC and Esguerra to pay Cordero separation pay equivalent

to one (1)-month salary for every year of service from March 1992 until finality of judgment.<sup>[27]</sup> While the CA concurred with the labor tribunals' finding that Cordero's employment was validly terminated for a just cause, it found that the penalty of dismissal was too harsh under the following circumstances: (a) Cordero worked for HSTC for twenty-four (24) years; (b) the incident while he was on duty was his first offense; (c) he had no derogatory record; and (d) he was already preventively suspended for the infractions he committed.<sup>[28]</sup> Accordingly, the CA remanded the case to the LA for the proper computation of separation pay.<sup>[29]</sup>

Undeterred, both parties respectively moved for reconsideration.<sup>[30]</sup> In their motion for reconsideration, HSTC and Esguerra maintained that Cordero was validly dismissed; hence, there was no basis for the CA's award of separation pay. They likewise took exception to the CA's observation that the penalty of dismissal was "too harsh" under the circumstances, considering that there was just cause for the termination of Cordero's employment.<sup>[31]</sup> On the other hand, Cordero insisted in his motion for partial reconsideration that there was no just cause for dismissal, hence, he was illegally dismissed.<sup>[32]</sup>

Both motions were denied in a Resolution<sup>[33]</sup> dated January 14, 2019; hence, this petition.

### **The Issue Before the Court**

The present controversy revolves around the CA's award of separation pay in favor of Cordero.

In the petition docketed as **G.R. No. 244144**, HSTC and Esguerra submit that the CA erred in awarding separation pay in favor of Cordero, considering that there was just cause to validly dismiss him. Further, they disagree with the CA's ruling that the penalty of dismissal was "too harsh" under the circumstances for being contrary to law and prevailing jurisprudence. On the other hand, in the petition docketed as **G.R. No. 244210**, Cordero insists that the CA erred in affirming the labor tribunals' finding that he was validly dismissed and that he is not entitled to his monetary claims.

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

The petition in **G.R. No. 244144** is granted, while the petition in **G.R. No. 244210** is denied.

At the outset, the settled rule is that the Court's jurisdiction in a petition for review on *certiorari* is limited to resolving only questions of law. A question of law arises when doubt exists as to what the law is on a certain state of facts, while there is a question of fact when doubt arises as to the truth or falsity of the alleged facts.<sup>[34]</sup>

In this case, Cordero's petition in G.R. No. 244210 is anchored on his factual allegations that no just cause existed for HSTC and Esguerra to dismiss him validly from employment, as he continuously denies participation in the oil pilferage that transpired during the significant voyages in 2015.

Considering that questions of fact are generally proscribed in a Rule 45 petition, and that although there are jurisprudentially recognized exceptions<sup>[35]</sup> to this rule, none exists in the present case. The correctness of the labor tribunals' factual finding that

he had, in fact, participated in the oil pilferage while navigating at sea, which resulted in losses for HSTC, as affirmed by the CA, is upheld.

In this regard, it deserves mentioning that factual findings of quasi judicial bodies like the NLRC, if supported by substantial evidence, are accorded respect and even finality by this Court, more so when they coincide with those of the LA, as in this case.

Accordingly, in view of the existence of a just cause for termination, Cordero's dismissal was valid and his petition in G.R. No. 244210 is denied for lack of merit.

That being said, the Court now determines whether or not the CA correctly awarded separation pay in favor of Cordero "as a measure of compassionate justice" in the exercise of its "equity jurisdiction,"<sup>[36]</sup> which is the issue in G.R. No. 244144.

In *Manila Water Company v. Del Rosario (Manila Water Company)*,<sup>[37]</sup> the Court succinctly explained:

**As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282 of the Labor Code is not entitled to a separation pay.** Section 7, Rule I, Book VI of the Omnibus Rules implementing the Labor Code provides:

Sec. 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 the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

**In exceptional cases, however, the Court has granted separation pay to a legally dismissed employee as an act of "social justice" or on "equitable grounds." In both instances, it is required that the dismissal (1) was not for serious misconduct; and (2) did not reflect on the moral character of the employee.**<sup>[38]</sup> (Emphases and underscoring supplied)

Hence, in the cases of *Philippine Long Distance Telephone Company v. NLRC*<sup>[39]</sup> and subsequently, *Toyota Motor Phils. Corp. Workers Association v. NLRC*,<sup>[40]</sup> the Court stressed that "separation pay shall be allowed as a measure of social justice only in the instances where the employee is validly dismissed for causes **other than serious misconduct or those reflecting on his moral character.**" As the Court declared:

Where the reason for the valid dismissal is, for example, habitual intoxication or **an offense involving moral turpitude, like theft** or illicit sexual relations with a fellow worker, **the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.**