

THIRD DIVISION

[G.R. No. 183399, March 20, 2017]

**ROGEL ORTIZ, PETITIONER, VS. DHL PHILIPPINES
CORPORATION, ET AL., RESPONDENTS.**

RESOLUTION

REYES, J.:

This is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court filed by Rogel Ortiz (petitioner), assailing the Decision^[2] dated October 27, 2006 and Resolution^[3] dated December 13, 2007 of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 00180, which affirmed with modification the ruling of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000499-2000.

Factual Antecedents

In September 1989, the petitioner was hired by DHL Philippines Corporation (DHL) as Courier/Driver at the Mactan Business Center in Cebu. In 1991, he was promoted to the position of Customs Representative and occupied the said position until 1995 when he was assigned at the Ramos Business Center (RBC). Thereafter, he held the position of a Manifest Clerk up to the time of his termination.^[4]

As a Manifest Clerk, the petitioner was specifically tasked to prepare manifest documents of the cargo before the same is forwarded to its destination. He was made to work from 11:00 a.m. until 8:00 p.m., with one-hour meal break and a 15-minute coffee break. On ordinary days, he and the other manifest clerks took charge of the office business from 6:00 p.m. to 8:00 p.m. since their Branch Supervisor, Marivic Jubay (Jubay) leaves by 6:00 p.m.^[5]

On March 2, 1999, a little past 7:00 p.m., Jubay dropped by the RBC and found out that the petitioner was not there. She inquired from his co-employees of his whereabouts but nobody knew where he was. She waited until the petitioner returned to the office at 8:55 p.m. to punch out his time card. She then asked him where he went and he told her that he had his tires fixed at a vulcanizing shop. She reprimanded the petitioner and told him to exercise more diligence at work. On the following day, however, the petitioner did not report for work.^[6]

On March 19, 1999, at around 6:00 p.m., the RBC Branch Manager, Ramon Tamondong (Tamondong), looked for the petitioner but he was not in his workplace and his co-employees would not know where he was. Tamondong then asked the security guard if he knew where the petitioner could be and the former answered that he went home to watch a Philippine Basketball Association (PBA) game. Thus, Tamondong called Jubay and directed her to investigate the matter. Jubay immediately called the office but the petitioner was still nowhere to be found. On the

following day, Jubay found out that the petitioner punched out his time card 8:46 p.m. on the previous day.^[7]

On March 25, 1999, the petitioner received a memorandum^[8] from Jubay, directing him to explain why he had left his post during office hours on March 19, 1999. Instead of showing repentance and admitting his faults, he arrogantly hurled invectives at his supervisor in front of his co-employees.^[9] On the following day, he submitted his written explanation,^[10] wherein he claimed that he only took his 15-minute break since he has yet to avail of the same that day. During the investigation, however, his officemates revealed that he had been regularly leaving the office before his shift ends, just right after their supervisor leaves the office, especially on Tuesdays and Thursdays, and whenever his brother-in-law, who plays for a PBA team, has a scheduled game. In those days, he would call from his residence and ask the security guard or his co-employee, Hubert Enad to punch out his time card. Due to these allegations, Jubay elevated the matter for further investigation to the Human Resources Manager for Visayas and Mindanao. The investigation conducted only confirmed the fact that the petitioner had been leaving the office early two to three times a week to practice basketball or watch PBA games. The security guards likewise disclosed that this practice had been going on for almost two years already. Upon learning that the security guards testified against him, he threatened to retaliate by making them lose their employment and revoke their agency's license.^[11]

After a series of memoranda and written explanations between the personalities involved, the petitioner was issued a notice of formal investigation to be conducted on May 4, 1999.^[12] During the confrontation, the petitioner apologized for his ill behavior in front of his supervisor and admitted to all the charges against him. When he was informed that his infractions may warrant his dismissal, he pleaded that he be imposed with suspension instead. He was, thus, advised to write a letter to the management to appeal for a lesser penalty for his infractions, which he submitted on May 5, 1999.^[13]

In a memorandum^[14] dated May 15, 1999, the management of DHL denied the petitioner's plea for a lesser penalty for his infractions. The memorandum pointed out that the gravity of the infractions and the fact that the same had been continuously committed for a period of two years amount to grave dishonesty and serious misconduct which deserved no less than dismissal. On June 4, 1999, the petitioner received a Notice of Dismissal^[15] dated May 29, 1999. Sometime thereafter, he filed a case for unfair labor practice and illegal dismissal, with claims for the payment of indemnity, damages and costs of suit against DHL and its responsible officers.

On February 3, 2000, the Labor Arbiter (LA) rendered a Decision,^[16] dismissing the complaint for lack of merit.

Ruling of the NLRC

On appeal, the NLRC, in its Decision^[17] dated May 7, 2003, affirmed with modification the decision of the LA in that the petitioner should be awarded separation pay in view of his long service to DHL. It ratiocinated, thus:

We find it strange that not a single complaint was made with respect to [the petitioner's] work performance. Indeed, respondent failed to show a single instance that a cargo was not dispatched on time because of [the petitioner's] failure to accomplish the necessary manifesting documents due to his going out of the office early. Indeed, we are inclined to believe [the petitioner's] allegation that he goes out early only when all his work had been accomplished or when there is no more work to be done. It is this circumstance that compels Us to mitigate [the petitioner's] offense. Indeed, where a penalty less punitive would suffice whatever misstep may have been committed by the worker ought not to be meted with a consequence so severe as dismissal without taking into consideration the worker's long and faithful years of service. x x x

x x x x

WHEREFORE, premises considered, the decision of the [LA] is **AFFIRMED** with **MODIFICATION** awarding [the petitioner] his separation pay computed at one month for every year of service.

SO ORDERED.^[18]

The petitioner filed a motion for reconsideration, but the NLRC denied the same in a Resolution dated October 12, 2004.^[19]

Unyielding, the petitioner filed a Petition for *Certiorari*^[20] with the CA, assailing the decision of the NLRC. He argued that the NLRC gravely abused its discretion in holding that his dismissal was with a valid cause and that he was accorded due process.

Ruling of the CA

Subsequently, on October 27, 2006, the CA rendered a Decision,^[21] affirming with modification the decision of the NLRC. It affirmed the finding that there was no illegal dismissal but deleted the award for separation pay. It, however, found that the dismissal failed to observe the requirements of procedural due process and awarded the petitioner with nominal damages in the amount of P30,000.00. The dispositive portion of the decision reads as follows:

WHEREFORE, premises considered, the assailed decision of the NLRC dated May 7, 2003 is hereby AFFIRMED with MODIFICATION. We affirm the finding of petitioner's dismissal to be with just cause, but no separation pay is awarded to petitioner. Respondent [DHL] (now known as Worldwide World Express, Inc.) is ordered to pay petitioner the amount of Thirty Thousand Pesos (P30,000.00) as nominal damages for non-compliance with statutory due process. The resolution dated October 12, 2004 denying petitioner's motion for reconsideration on the decision dated May 7, 2003 for lack of merit is likewise AFFIRMED.

SO ORDERED.^[22]

The petitioner filed a Motion for Partial Reconsideration,^[23] but the CA denied the same in its Resolution^[24] dated December 13, 2007. Thus, the filing of the instant petition.

Ruling of the Court

The petitioner argues that the CA gravely erred in ruling for his dismissal without a valid ground and in disregard of procedural due process. He contends that the CA erred in affirming his dismissal notwithstanding the lack of evidence, aside from his written admission of his infractions which was obtained through fraud and deception specifically by making him believe that this would help him merit the lesser penalty of suspension for 30 days.

The appeal lacks merit.

It is well settled that a valid dismissal necessitates compliance with substantive and procedural requirements. Specifically, in *Mantle Trading Services, Inc. and/or Del Rosario v. NLRC, et al.*,^[25] the Court emphasized that (a) there should be just and valid cause as provided under Article 282 of the Labor Code, and (b) the employee be afforded an opportunity to be heard and to defend himself.^[26]

After a careful examination of the facts and the records of this case, the Court finds that the petitioner's dismissal was founded on acts constituting serious misconduct and grave dishonesty which are grounds for a valid dismissal. In particular, he repeatedly committed the following serious violations of company policies, to wit:

- 1) Grave dishonesty and fraud by allowing/asking someone to punch out your timecard for a period of two years[;]
- 2) Deliberate disregard/disobedience of company rule by frequently leaving work area prior to scheduled dismissal time without permission[;]
- 3) Disrespect to immediate superior by uttering offensive and lewd remarks and[/]or misbehavior during confrontation last March 25, 1999[;and]
- 4) Threatening the two security guards on duty last April 9, 1999 and warning them against testifying about violations incurred which constitute an offense against persons[.]^[27]

The truthfulness of the charges against the petitioner was well established by the joint affidavits executed by his co-employees and corroborated by documentary evidence presented by DHL. For instance, the Joint Affidavit^[28] of Ernesto Genotiva and Flaviano Siaton Retada, Jr., security guards of the company, attested to the fact that it had been the petitioner's habit to leave the office early especially every Tuesdays, Thursdays and Fridays, and ask a co-employee to punch out his timecard. And indeed, an examination of the petitioner's timecard for the past two years disclosed the fact that on the mentioned days of the week, the petitioner punched out way past the end of his duty. Even then, he never submitted any request for overtime pay to the Accounting Department even when he punched out beyond his schedule.^[29]

Apart from the foregoing, the petitioner readily admitted to the infractions he