

SECOND DIVISION

[G.R. No. 221493, August 02, 2017]

**STERLING PAPER PRODUCTS ENTERPRISES, INC., PETITIONER,
VS. KMM-KATIPUNAN AND RAYMOND Z. ESPONGA,
RESPONDENTS.**

DECISION

MENDOZA, J.:

This is a petition for review on *certiorari* seeking to reverse and set aside the December 22, 2014 Decision^[1] and October 27, 2015 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 124596, which nullified the November 15, 2011 Decision^[3] and March 2, 2012 Resolution^[4] of the National Labor Relations Commission (NLRC) in NLRC CN. RAB-III-11-17024-10/ NLRC LAC No. 09-002429-11. The NLRC reversed and set aside the May 5, 2011 Decision^[5] of the Labor Arbiter (LA).

The Antecedents

On July 29, 1998,^[6] petitioner Sterling Paper Products Enterprises, Inc. (*Sterling*) hired respondent Raymond Z. Esponga (*Esponga*), as machine operator.

In June 2006, Sterling imposed a 20-day suspension on several employees including Esponga, for allegedly participating in a wildcat strike. The Notice of Disciplinary Action contained a warning that a repetition of a similar offense would compel the management to impose the maximum penalty of termination of services.^[7]

Sterling averred that on June 26, 2010, their supervisor Mercy Vinoya (*Vinoya*), found Esponga and his co-employees about to take a nap on the sheeter machine. She called their attention and prohibited them from taking a nap thereon for safety reasons.^[8]

Esponga and his co-employees then transferred to the mango tree near the staff house. When Vinoya passed by the staff house, she heard Esponga utter, "*Huwag maingay, puro bawal.*" She then confronted Esponga, who responded in a loud and disrespectful tone, "*Puro kayo bawal, bakit bawal ba magpahinga?*"^[9]

When Vinoya turned away, Esponga gave her the "dirty finger" sign in front of his co-employees and said "*Wala ka pala eh, puro ka dakdak. Baka pag ako nagsalita hindi mo kayanin.*" The incident was witnessed by Mylene Pesimo (*Pesimo*), who executed a handwritten account thereon.^[10]

Later that day, Esponga was found to have been not working as the machine assigned to him was not running from 2:20 to 4:30 in the afternoon. Instead, he

was seen to be having a conversation with his co-employees, Bobby Dolor and Ruel Bertulfo. Additionally, he failed to submit his daily report from June 21 to June 29, 2010.^[11]

Hence, a Notice to Explain, dated July 26, 2010, was served on Esponga on July 30, 2010, requiring him to submit his written explanation and to attend the administrative hearing scheduled on August 9, 2010.

On August 9, 2010, Esponga submitted his written explanation denying the charges against him. He claimed that he did not argue with Vinoya as he was not in the area where the incident reportedly took place. Esponga further reasoned that during the time when he was not seen operating the machine assigned to him, he was at the Engineering Department and then he proceeded to the comfort room.

The July 26, 2010 Notice to Explain, however, indicated a wrong date when the incident allegedly happened. Thus, an amended Notice to Explain, dated August 16, 2010, was issued to Esponga requiring him to submit his written explanation and to attend the administrative hearing scheduled on August 23, 2010. Esponga, however, failed to submit his written explanation and he did not attend the hearing.

In view of Esponga's absence, the administrative hearing was rescheduled. The hearing was reset several more times because of his failure to appear. The hearing was finally set on October 4, 2010. Esponga and his counsel, however, still failed to attend.

Having found Esponga guilty of gross and serious misconduct, gross disrespect to superior and habitual negligence, Sterling sent a termination notice, dated November 15, 2010. This prompted Esponga and KMM-Katipunan (*respondents*) to file a complaint for illegal dismissal, unfair labor practice, damages, and attorney's fees against Sterling.

The LA Ruling

In its May 5, 2011 Decision, the LA ruled that Esponga was illegally dismissed. It held that Sterling failed to discharge the burden of proof for failure to submit in evidence the company's code of conduct, which was used as basis to dismiss Esponga. The *fallo* reads:

WHEREFORE, premises considered, respondents are found to have failed to discharge their burden of proof, therefore, there is illegal dismissal.

Consequently, respondent corporation is hereby ordered to reinstate complainant to his former position without loss of seniority rights and other privileges, with full backwages initially computed at this time at P51,148.36.

The reinstatement aspect of this decision is immediately executory even as respondents are hereby enjoined to submit a report of compliance therewith within ten (10) days from receipt hereof.

Respondent corporation is likewise assessed 10% attorney's fee in favor of the complaint in the sum of P5,114.84.

All other claims are hereby dismissed for lack of merit.

SO ORDERED.^[12]

Not in conformity, Sterling elevated an appeal before the NLRC.

The NLRC Ruling

In its November 15, 2011 Decision, the NLRC *reversed and set aside* the LA ruling. It declared that Esponga's dismissal was valid. The NLRC observed that as a result of the June 26, 2010 incident, Esponga no longer performed his duties and simply spent the remaining working hours talking with his co-workers. It opined that Esponga intentionally did all these infractions on the same day to show his defiance and displeasure with Vinoya, who prohibited him from sleeping on the sheeter machine. It concluded that these were all violations of the Company Code of Conduct and Discipline, and constituted a valid cause for termination of employment under the Labor Code. The NLRC disposed the case in this wise:

WHEREFORE, premises considered, the appeal is GRANTED. The Decision appealed from is REVERSED and SET ASIDE, and a new one issued DISMISSING the complaint.

SO ORDERED.^[13]

Undeterred, respondents filed a motion for reconsideration. In its March 2, 2012 Resolution, the NLRC denied the same.

Aggrieved, the respondents filed a petition for *certiorari* with the CA.

The CA Ruling

In its assailed December 22, 2014 Decision, the CA *reinstated* the LA ruling. It held that the utterances and gesture did not constitute serious misconduct. The CA stated that Esponga may have committed an error of judgment in uttering disrespectful and provocative words against his superior and in making a lewd gesture, but it could not be said that his actuations were motivated by a wrongful intent. It adjudged that Esponga's utterances and gesture sprung from the earlier incident which he perceived as unfairly preventing him from taking a rest from work. As such, the CA ruled that Esponga's actuations could only be regarded as simple misconduct. The dispositive portion reads:

WHEREFORE, the Petition is GRANTED. The Decision dated November 15, 2011 and Resolution dated March 2, 2012 of the National Labor Relations Commission are SET ASIDE. The Decision dated May 5, 2011 of Labor Arbiter Leandro Jose is REINSTATED in full.

SO ORDERED.^[14]

Sterling moved for reconsideration, but the CA denied its motion in its assailed October 27, 2015 Resolution.

Hence, this petition for review.

ISSUE

WHETHER THE CAUSE OF ESPONGA'S DISMISSAL AMOUNTS TO SERIOUS MISCONDUCT

Sterling argues that Esponga's utterance of foul and abusive language against his supervisor, demonstrating a dirty finger, and defiance to perform his duties undeniably constitute serious misconduct. It added that Esponga's acts were not only serious, but they also related to the performance of his duties. Further, Sterling asserts that he was motivated by wrongful intent.

In his Comment,^[15] dated September 30, 2016, Esponga replied that Sterling failed to establish the validity of his dismissal by clear and convincing evidence. He insisted that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter because the employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.

In its Reply,^[16] dated January 30, 2017, Sterling contended that Esponga's failure to participate in the administrative investigation conducted on his infraction was a clear manifestation of his lack of discipline. It asserted that the existence of just and valid cause for Esponga's dismissal and its compliance with the due process requirements had been proven by clear, convincing and substantial evidence on record. Sterling reasoned that an employer has free rein and enjoys wide latitude of discretion to regulate all aspects of employment, including the prerogative to instil discipline in its employees and to impose penalties, including dismissal, upon erring employees.

The Court's Ruling

The petition is meritorious.

Pesimo's retraction has no probative value

In cases of illegal dismissal, the employer bears the burden of proof to prove that the termination was for a valid or authorized cause.^[17] In support of its allegation, Sterling submitted the handwritten statement of Pesimo who witnessed the incident between Esponga and Vinoya on June 26, 2010. Pesimo, however, recanted her statement.

A recantation does not necessarily cancel an earlier declaration.^[18] The rule is settled that in cases where the previous testimony is retracted and a subsequent different, if not contrary, testimony is made by the same witness, the test to decide which testimony to believe is one of comparison coupled with the application of the general rules of evidence. A testimony solemnly given in court should not be set aside and disregarded lightly, and before this can be done, both the previous testimony and the subsequent one should be carefully compared and juxtaposed, the circumstances under which each was made, carefully and keenly scrutinized, and the reasons and motives for the change discriminately analysed.^[19]