792 Phil. 594

FIRST DIVISION

[G.R. No. 220998, August 08, 2016]

HOLCIM PHILIPPINES, INC., PETITIONER, VS. RENANTE J. OBRA, RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Before the Court is a petition for review on *certiorari,*[1] filed by petitioner Holcim Philippines, Inc. (petitioner), assailing the Decision[2] dated February 13, 2015 and the Resolution[3] dated September 7, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 136413, which affirmed the Decision[4] dated March 31, 2014 and the Resolution[5] dated April 30, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 03-000696-14(8) / NLRC CN. RAB-I-09-1102-13(LU-I), holding that respondent Renante J. Obra (respondent) was illegally dismissed and, thereby, ordering petitioner to pay him separation pay amounting to P569,772.00 in lieu of reinstatement.

The Facts

Respondent was employed by petitioner as packhouse operator in its La Union Plant for nineteen (19) years, from March 19, 1994[6] until August 8, 2013.[7] As packhouse operator, respondent ensures the safe and efficient operation of rotopackers, auto-bag placers, and cariramats, as well as their auxiliaries.[8] At the time of his dismissal, he was earning a monthly salary of P29,988.00.[9]

On July 10, 2013, at around 4 o'clock in the afternoon, respondent was about to exit Gate 2 of petitioner's La Union Plant when the security guard on duty, Kristian Castillo (Castillo), asked him to submit himself and the backpack he was carrying for inspection.[10] Respondent refused and confided to Castillo that he has a piece of scrap electrical wire in his bag.[11] He also requested Castillo not to report the incident to the management, and asked the latter if respondent could bring the scrap wire outside the company premises; otherwise, he will return it to his locker in the Packhouse Office.[12] However, Castillo did not agree, which prompted respondent to turn around and hurriedly go back to the said office where he took the scrap wire out of his bag.[13] Soon thereafter, a security guard arrived and directed him to go to the Security Office where he was asked to write a statement regarding the incident.[14]

In his statement,[15] respondent admitted the incident, but asserted that he had no intention to steal.[16] He explained that the 16-meter electrical wire was a mere scrap that he had asked from the contractor who removed it from the Packhouse

Office.[17] He also averred that as far as he knows, only scrap materials which are to be taken out of the company premises in bulk required a gate pass and that he had no idea that it was also necessary to takeout a piece of loose, scrap wire out of the company's premises.[18] Respondent also clarified that he hurriedly turned around because he had decided to just return the scrap wire to the said office.[19]

On July 16, 2013, respondent received a Notice of Gap[20] requiring him to explain within five (5) days therefrom why no disciplinary action, including termination, should be taken against him on account of the above-mentioned incident.[21] He was also placed on preventive suspension for thirty (30) days effective immediately.[22] In a statement[23] dated July 23, 2013, respondent reiterated that he had no intention to steal from petitioner and that the scrap wire which he had asked from a contractor was already for disposal anyway.[24] He also expressed his remorse over the incident and asked that he be given a chance to correct his mistake.[25] Meetings of petitioner's Review Committee were thereafter conducted, with respondent and the security guards concerned in attendance.[26]

On August 8, 2013, petitioner issued a Decision/Resolution Memo[27] dismissing from service respondent for serious misconduct.[28] Petitioner found no merit in respondent's claim that he was unaware that a gate pass is required to take out a piece of scrap wire, pointing out that the same is incredulous since he had been working thereat for nineteen (19) years already.[29] It also drew attention to the fact that respondent refused to submit his bag for inspection, which, according to petitioner, confirmed his intention to take the wire for his personal use.[30] Further, petitioner emphasized that respondent's actions violated its rules which, among others, limit the use of company properties for business purposes only and mandate the employees, such as respondent, to be fair, honest, ethical, and act responsibly and with integrity.[31]

In a letter[32] dated August 14, 2013, respondent sought reconsideration and prayed for a lower penalty, especially considering the length of his service to it and the lack of intent to steal.[33] However, in a Memo[34] dated August 28, 2013, petitioner denied respondent's appeal. Hence, on September 30, 2013, respondent filed a complaint[35] before the NLRC for illegal dismissal and money claims, docketed as NLRC Case No. (CN) RAB-I-09-1102-13(LU-I), averring that the penalty of dismissal from service imposed upon him was too harsh since he had acted in good faith in taking the piece of scrap wire.[36] Respondent maintained that there was no wrongful intent on his part which would justify his dismissal from service for serious misconduct, considering that the contractor who removed it from the Packhouse Office led him to believe that the same was already for disposal.[37]

Meanwhile, petitioner countered that respondent's taking of the electrical wire for his personal use, without authority from the management, shows his intent to gain.[38] In addition to this, it was highlighted that respondent refused to submit himself and his bag for inspection and attempted to corrupt Castillo by convincing him to refrain from reporting the incident to the management.[39] These, coupled with his sudden fleeing from Gate 2, bolster the charge of serious misconduct against him.

[40] With respect to respondent's claim that the contractor who removed the wire from the Packhouse Office led him to believe that the same was already for disposal, petitioner pointed out that the contractor's personnel have issued statements belying respondent's claim and categorically stated that they did not give away any electrical wire to anyone.[41]

The Labor Arbiter's Ruling

In a Decision[42] dated January 24, 2014, the Labor Arbiter (LA) dismissed respondent's complaint and held that the latter was validly dismissed from service by petitioner for committing the crime of theft, and therefore, not entitled to reinstatement, backwages, and other money claims.[43]

The NLRC Ruling

In a Decision[44] dated March 31, 2014, the NLRC reversed the LA's ruling and held that the penalty of dismissal from service imposed upon respondent was unduly harsh since his misconduct was not so gross to deserve such penalty.[45] It found merit in respondent's defense that he took the scrap wire on the belief that it was already for disposal, noting that petitioner never denied the same.[46] The NLRC also emphasized that petitioner did not suffer any damage since respondent was not able to take the wire outside the company premises.[47] Moreover, he did not hold a position of trust and confidence and was remorseful of his mistake, as evidenced by his repeated pleas for another chance.[48] These, coupled with the fact that he had been in petitioner's employ for nineteen (19) years, made respondent's dismissal from service excessive and harsh.[49] Considering, however, the strained relations between the parties, the NLRC awarded separation pay in favor of respondent in lieu of reinstatement.[50]

Petitioner moved for reconsideration,[51] which was, however, denied in a Resolution[52] dated April 30, 2014.

The CA Ruling

In a Decision[53] dated February 13, 2015, the CA dismissed the petition for *certiorari* and affirmed the ruling of the NLRC. It agreed with the NLRC's observation that respondent was illegally dismissed, pointing out that petitioner failed to prove that it prohibited its employees from taking scrap materials outside the company premises. Besides, respondent's taking of the scrap wire did not relate to the performance of his work as packhouse operator.[54]

The CA also drew attention to respondent's unblemished record in the company where he had been employed for nineteen (19) years already, adding too that bad faith cannot be ascribed to him since he volunteered the information about the scrap wire to Castillo and offered to return the same if it was not possible to bring it outside of the company premises.[55] According to the CA, respondent's acts only constituted a lapse in judgment which does not amount to serious misconduct that would warrant his dismissal from service.[56]

Dissatisfied, petitioner moved for reconsideration,[57] which was denied by the CA in its Resolution[58] dated September 7, 2015; hence, the present petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA erred in affirming the ruling of the NLRC.

The Court's Ruling

The petition is partly meritorious.

There is no question that the employer has the inherent right to discipline, including that of dismissing its employees for just causes.[59] This right is, however, subject to reasonable regulation by the State in the exercise of its police power.[60] Accordingly, the finding that an employee violated company rules and regulations is subject to scrutiny by the Court to determine if the dismissal is justified and, if so, whether the penalty imposed is commensurate to the gravity of his offense.[61]

In this case, the Court agrees with the CA and the NLRC that respondent's misconduct is not so gross as to deserve the penalty of dismissal from service. As correctly observed by the NLRC, while there is no dispute that respondent took a piece of wire from petitioner's La Union Plant and tried to bring it outside the company premises, he did so in the belief that the same was already for disposal. Notably, petitioner never denied that the piece of wire was already for disposal and, hence, practically of no value. At any rate, petitioner did not suffer any damage from the incident, given that after being asked to submit himself and his bag for inspection, respondent had a change of heart and decided to just return the wire to the Packhouse Office. Respondent has also shown remorse for his mistake, pleading repeatedly with petitioner to reconsider the penalty imposed upon him.[62]

Time and again, the Court has held that infractions committed by an employee should merit only the corresponding penalty demanded by the circumstance.[63] The penalty must be commensurate with the act, conduct or omission imputed to the employee.[64]

In *Sagales v. Rustan 's Commercial Corporation,*[65] the dismissal of a Chief Cook who tried to take home a pack of squid heads, which were considered as scrap goods and usually thrown away, was found to be excessive. In arriving at such decision, the Court took into consideration the fact that the Chief Cook had been employed by the company for 31 years already and the incident was his first offense. Besides, the value of the squid heads was a negligible sum of P50.00 and the company practically lost nothing since the squid heads were considered scrap goods and usually thrown away. Moreover, the ignominy he suffered when he was imprisoned over the incident, and his preventive suspension for one (1) month was enough punishment for his infraction.

Similarly, in *Farrol v. CA,M*[66] a district manager of a bank was dismissed after he incurred a shortage of P5 0,985.3 7, which sum was used to pay the retirement

benefits of five (5) employees of the bank. Despite being able to return majority of the missing amount, leaving a balance of only P6,995.37, the district manager was dismissed on the ground that under the bank's rules, the penalty therefor is dismissal. According to the Court, the "dismissal imposed on [him] is unduly harsh and grossly disproportionate to the infraction which led to the termination of his services. A lighter penalty would have been more just, if not humane,"[67] considering that it was his first infraction and he has rendered 24 years of service to the bank.

Meanwhile, in the earlier case of *Associated Labor Unions-TUCP v. NLRC,*[68] the dismissal of an employee, who was caught trying to take a pair of boots, an empty aluminum container, and 15 hamburger patties, was considered excessive. The Court ruled that the employee's dismissal would be disproportionate to the gravity of the offense committed, considering the value of the articles he pilfered and the fact that he had no previous derogatory record during his two (2) years of employment in the company. According to the Court, while the items taken were of some value, such misconduct was not enough to warrant his dismissal.

As in the foregoing cases, herein respondent deserves compassion and humane understanding more than condemnation, especially considering that he had been in petitioner's employ for nineteen (19) years already, and this is the first time that he had been involved in taking company property, which item, at the end of the day, is practically of no value. Besides, respondent did not occupy a position of trust and confidence, the loss of which would have justified his dismissal over the incident. As packhouse operator, respondent's duties are limited to ensuring the safe and efficient operation of rotopackers, auto-bag placers, and cariramats, as well as their auxiliaries.[69] He is not a *managerial employee* vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions, or one who, in the normal and routine exercise of his functions, *regularly handles significant amounts of money or property.* [70]

Neither can respondent's infraction be characterized as a serious misconduct which, under Article 282 (now Article 297) of the Labor Code,[71] is a just cause for dismissal. Misconduct is an improper or wrong conduct, or a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.[72] To constitute a valid cause for dismissal within the text and meaning of Article 282 (now Article 297) of the Labor Code, the employee's misconduct must be serious, *i.e.,* of such grave and aggravated character and not merely trivial or unimportant, [73] as in this case where the item which respondent tried to takeout was practically of no value to petitioner. Moreover, ill will or wrongful intent cannot be ascribed to respondent, considering that, while he asked Castillo not to report the incident to the management, he also volunteered the information that he had a piece of scrap wire in his bag and offered to return it if the same could not possibly be brought outside the company premises sans a gate pass.

The Court is not unaware of its ruling in *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM) – KATIPUNAN,*[74] which was cited in the petition,[75] where an employee was dismissed after being caught hiding six (6) Reno canned goods