

SECOND DIVISION

[G.R. No. 184011, September 18, 2013]

**REYNALDO HAYAN MOYA, PETITIONER, VS. FIRST SOLID
RUBBER INDUSTRIES, INC., RESPONDENT.**

D E C I S I O N

PEREZ, J.:

Before the Court is a Petition for Review on *Certiorari*^[1] of the Decision^[2] of the Special Third Division of the Court of Appeals in CA-G.R. SP No. 99500 dated 30 April 2008, modifying the Decision of the National Labor Relations Commission (NLRC) by deleting the award of separation pay in favor of Reynaldo Hayan Moya (Moya). The dispositive portion of the assailed decision reads:

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The Resolutions dated January 31, 2007 and April 24, 2007 of the National Labor Relations Commission in NLRC NCR CA No. 048653-06 (NLRC NCR Case No. 00-11-12626-2004) affirming the Decision dated February 28, 2006 of the Labor Arbiter Pablo C. Espiritu[,] Jr. is **MODIFIED** by deleting the award for separation pay in favor of private respondent Reynaldo Hayan Moya.^[3]

The facts as gathered by this Court follow:

On 25 January 2005, Moya filed before the NLRC-National Capital Region a complaint for illegal dismissal against First Solid Rubber Industries, Inc. (First Solid) and its President Edward Lee Sumulong. In his complaint-affidavit,^[4] Moya alleged that:

1. Sometime in May 1993, he was hired by the company First Solid, a business engaged in manufacturing of tires and rubbers, as a machine operator;
2. Through years of dedication to his job, he was promoted as head of the Tire Curing Department of the company;
3. On October 15, 2004, he reported an incident about an undercuring of tires within his department which led to the damage of five tires;
4. The company conducted an investigation of the incident and he was later required to explain;
5. In his explanation, he stated that the damage was caused by machine failure and the incident was without any fault of the operator;
6. Despite his explanation of what transpired, he was terminated by the company

through a letter dated November 9, 2004.

From the foregoing, he prayed that payment of backwages, separation pay, moral damages and exemplary damages be adjudged in his favor due to the illegal dismissal he suffered from the company.

Moya, through his Reply,^[5] added that his termination fell short of any of the just causes of serious misconduct, gross and habitual neglect of duties and willful breach of trust. He pointed out that the company failed to prove that his act fell within the purview of improper or wrong misconduct, and that a single act of negligence as compared to eleven (11) years of service of good record with the company will not justify his dismissal.

First Solid, in its Position Paper,^[6] Reply^[7] and Memorandum,^[8] admitted that Moya was a former employee of the company and was holding the position of Officer-in-Charge of the Tire Curing Department until his valid dismissal. However, it denied that it illegally dismissed Moya and maintained that his severance from the company was due to a valid exercise of management prerogative.^[9] The company insisted on its right to validly dismiss an employee in good faith if it has a reasonable ground to believe that its employee is responsible of misconduct, and the nature of his participation therein renders him absolutely unworthy of the trust and confidence demanded by his position.^[10]

Opposing the story of Moya, the company countered that Moya, who was exercising supervision and control over the employees as a department head, failed to exercise the diligence required of him to see to it that the machine operator, Melandro Autor, properly operated the machine. This act is considered as a gross and habitual neglect of duty which caused actual losses to the company.^[11]

During the initial investigation, Moya, in his Explanation Letter^[12] dated 15 October 2004, insisted that the cause of the damage of five (5) tires was due to premature hauling of the tires below curing time. Unsatisfied with the explanation, the company sent Moya a Letter^[13] dated 26 October 2004 stating that he failed to explain what really transpired in the undercuring of tires. The company informed Moya that the damage was caused by the operator's unlawful setting of the timer from manual to automatic without Moya's permission. To make the matter worse, Moya failed to disclose the real situation that the operator was at fault.

Moya was given twenty-four (24) hours to defend himself and explain the matter. In response, Moya admitted in a letter dated 29 October 2004 his mistake of not disclosing the true incident and explained that he found it more considerate to just let the operator be suspended and be fined for the damage committed. He denied any willful intention to conceal the truth or cover up the mistake of his employee. Finally, he asked for the company's forgiveness for the fault he had committed.^[14] In a letter dated 3 November 2004, Moya reiterated his plea for forgiveness and asked for another chance to continue his employment with the company.^[15]

Procedural due process, through issuance of twin notices, was also complied with by the company. Moya was informed of the charges against him through a memorandum^[16] indicating his violation and was given an opportunity to answer or

rebut the charges. After giving his explanation through several letters to the company, a notice was sent informing him of the management's decision of his dismissal and termination from services on 9 November 2004 based on serious misconduct, gross and habitual neglect of duty and willful breach of trust reposed upon him by the company.^[17]

On 28 February 2006, Labor Arbiter Pablo C. Espiritu, Jr. rendered a judgment^[18] finding sufficient and valid grounds to dismiss Moya for concealing and lying to First Solid about the factual circumstances leading to the damage of five (5) tires on 15 October 2004. However, it ruled that the dismissal from service of the complainant was too harsh as a penalty since it was a first offense and there was no willful and malicious intention on his part to cause damage. The dispositive portion reads:

WHEREFORE, judgment is hereby rendered ordering Respondents First Solid Rubber Industrial, Inc. and Edward Lee Sumulong to jointly and severally pay complainant separation pay in lieu of reinstatement the amount of **P63, 654.00**.

All other claims whether monetary or otherwise are hereby **DISMISSED** for lack of merit.^[19]

In justifying his decision, the Labor Arbiter explained that the length of time during which the complainant was deprived of employment was sufficient penalty for the act he had committed against the company. As a result, his reinstatement without backwages to his former position was in order. However, since the employment was already strained and Moya was no longer seeking to be reinstated, he decided that it was for the best interest of both parties to award instead a separation pay of one (1) month salary for every year of credited service less the total of cash advances of the complainant amounting to P19,000.00.^[20]

Not in total accord with the outcome of the decision, First Solid filed its partial appeal before the NLRC on 13 April 2006. The company assailed as error on the part of the Labor Arbiter the grant of separation pay in favor of Moya despite the finding that there was a just cause for the employee's dismissal from service. It was submitted that the complainant's length of service to the company cannot be invoked to justify the award. It was argued that Moya was dismissed for just causes; hence, to award separation pay would be tantamount to giving a prize for disloyalty and breach of trust.^[21]

On 31 January 2007, the NLRC affirmed the Decision of the Labor Arbiter in its entirety.^[22]

The NLRC affirmed the finding of the Labor Arbiter that a separation pay should be given to Moya in lieu of reinstatement citing primarily his length of service and years of contribution to the profitable business operation of the company. It also noted that this transgression was the first mistake of Moya in the performance of his functions. Finally, it cited as justification the Court's ruling in *St. Michael's Institute v. Santos*,^[23] wherein the Court held that "even when an employee is found to have transgressed the employer's rules, in the actual imposition of penalties upon the erring employee, due consideration must still be given to his length of service and the number of violations committed during his employment."^[24]

In its Motion for Reconsideration,^[25] First Solid insisted that length of service cannot mitigate breach of trust which is penalized with dismissal.

On 24 April 2007, the NLRC denied the motion of First Solid as it found no compelling justification to overturn its findings.^[26]

In its Petition for *Certiorari* before the Court of Appeals, the company reiterated its previous arguments that separation pay cannot be awarded to validly dismissed employees and that length of service was not a ground to reduce the penalty of dismissal due to breach of trust.^[27]

In his Comment^[28] and Memorandum,^[29] Moya capitalized on the pronouncement of the Labor Arbiter that his alleged infraction does not merit a penalty of dismissal from service given his length of service to the company as well as the failure of the company to prove that he acted maliciously and with the intention to cause damage.

First Solid, in its Reply^[30] and Memorandum,^[31] argued that Moya, being a supervisor, the company reposed on him its trust and confidence. He was expected to remain loyal and trustworthy and promote the best interest of the company. His act of concealing, by making a fraudulent report to the company regarding the transgression of the machine operator under him, is a valid basis for dismissal based on breach of trust and confidence. The company further contended that the award of separation pay made by the labor tribunals was contrary to law and jurisprudence.

In its Decision,^[32] the Court of Appeals ruled in favor of the company and reversed the decisions of the labor tribunals. The dispositive portions reads:

WHEREFORE, premises considered, the petition is **GRANTED**. The Resolutions dated January 31, 2007 and April 24, 2007 of the National Labor Relations Commission in NLRC NCR CA No. 048653-06 (NLRC NCR Case No. 00-11-12626-2004) affirming the Decision dated February 28, 2006 of the Labor Arbiter Pablo C. Espiritu[,] Jr. is **MODIFIED** by deleting the award for separation pay in favor of private respondent Reynaldo Hayan Moya.^[33]

The appellate court ruled that an employee found to be guilty of serious misconduct or other acts reflecting his moral character is not entitled to separation pay. Moya who held a supervisory position as the Head of the Curing Department breached the trust reposed upon him when he did not disclose what was actually done by the machine operator which eventually caused the damage. It was only when the company discovered that the report was not in accordance with what really transpired that Moya admitted its mistake. In sum, the appellate court agreed that First Solid presented substantial proof to consider Moya as dishonest and disloyal to the company.

It took the position that instead of being a basis for the award of separation pay, Moya's length of service should have been taken against him. The reason for his dismissal was his lack of integrity and loyalty to the company reflecting upon his moral character.