

FIRST DIVISION

[G.R. No. 185255, March 14, 2012]

**NORKIS DISTRIBUTORS, INC. AND ALEX D. BUAT, PETITIONERS,
VS. DELFIN S. DESCALLAR, RESPONDENT.**

D E C I S I O N

VILLARAMA, JR., J.:

Before us is a petition for review on certiorari assailing the March 31, 2008 Decision^[1] and October 24, 2008 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 00363. The CA had set aside the Resolution^[3] of the National Labor Relations Commission (NLRC) and reinstated the decision of the Labor Arbiter holding petitioners liable for illegally dismissing respondent.

The facts are as follows.

On April 26, 1993, respondent Delfin S. Descallar was assigned at the Iligan City Branch of petitioner Norkis Distributors, Inc., a distributor of Yamaha motorcycles. He became a regular employee on February 1, 1994 and was promoted as Branch Manager on June 30, 1997. He acted as branch administrator and had supervision and control of all the employees. Respondent was also responsible for sales and collection.

In a memorandum dated June 20, 2002, petitioners required respondent to explain in writing within forty-eight (48) hours why he should not be penalized or terminated for being absent without official leave (AWOL) or rendering under-time service on certain dates from April 3, 2002 to June 11, 2002.^[4] On June 21, 2002, respondent submitted his written explanation wherein he stated that he reported to the office on those dates, but he either went to the bank or followed-up on prospects. As he was still within city limits, he did not file any official leave or travel record. He added that on June 11, 2002, he was at the pier pulling out ten units of MC stocks.^[5]

On July 5, 2002, Norkis conducted an investigation through Mr. Edmund Y. Pingkian. Finding that respondent was not able to prove that he was really in the branch or on official travel, petitioners suspended him for fifteen (15) days without pay beginning July 8, 2002. According to petitioners, respondent admitted during the investigation that he used company time for his personal affairs, but only for a few hours and not the whole day.^[6]

While respondent was still serving his suspension, the Internal Auditor of the company made a random operational review and audit of the Iligan City Branch. Several findings against respondent were noted by the auditor, to wit:

1. Refusal to accept redemption payment from customer Gamboa on their deposited motorcycle unit and unauthorized use of said deposited motorcycle unit;
2. Requiring customer Amy Pastor to pay an amount in excess of her account balance;
3. Disbursement of sales commissions to unauthorized persons;
4. Application of sales commission on the down payments of several walk-in customers.^[7]

On July 20, 2002, petitioners asked respondent to explain the findings against him within four (4) hours from receipt of notice. Respondent found the time given to be cruel but nevertheless submitted his written explanation on the same day.^[8]

Later, respondent and Branch Control Officer Rosanna Lanzador received a memorandum dated July 23, 2002, informing them that during a cash count conducted on July 12, 2002, a shortage of P800 in the company's TNT fund was discovered. Likewise, an irregularity was found in the disbursement of sales commissions amounting to P1,700. These amounts were charged equally to the accounts of respondent and Lanzador.^[9]

Thereafter, in another memorandum dated July 25, 2002, respondent was placed under preventive suspension for fifteen (15) working days without pay.^[10]

On August 12, 2002, petitioners issued a "Notice to Show Cause" to respondent. The notice reads:

x x x x

It has been reported that during the audit of your branch last July 2002, serious adverse findings were noted against you as follows:

- a) Refusal to accept redemption payment made by customer Gamboa on their deposited motorcycle unit which was traced later sold to one Marvin Joseph Gealon allegedly your nephew;
- b) Unauthorized use of deposited motorcycle unit owned by Ludy Gamboa;
- c) Requiring customer Amy Pastor to pay excessive amount over her account balance;
- d) Disbursement of sales commissions to unauthorized persons;
- e) Doing personal business of selling safety helmets using the facility of the branch.

Further, it is so disappointing to note that despite management support and cooperation, your branch performance continuously failed to reach to an acceptable level as illustrated below:

YEAR	SALES QUOTA	ACTUAL AVERAGE SALES	ACCEPTABLE COLLEX	ACTUAL AVERAGE COLLEX
2001 (Jan-Dec)	13 units	5 only	70%	43% only
2002 (Jan-Jun)	13 units	5 only	70%	39% only

Please take note that adverse audit findings above coupled with inefficiency are sufficient grounds for termination. In this light therefore, you are commanded to explain in writing within 24 hours upon receipt of this notice to show cause why you will not be terminated from your service with the company. Failure on your part to response shall be construed as waiver of your right to be heard.

x x x x^[11]

On August 21, 2002, petitioners terminated respondent's services for loss of trust and confidence and gross inefficiency.^[12]

Aggrieved, respondent filed a complaint for illegal suspension and illegal dismissal before the Sub-Regional Arbitration Branch X in Iligan City.

On March 14, 2003, Labor Arbiter Quintin B. Cueto III rendered a Decision,^[13] finding respondent to have been illegally dismissed. The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, in the light of all the foregoing, judgment is hereby rendered declaring the termination of complainant Delfin Descallar to be illegal and respondent NORKIS Distributor, Inc. is ordered to pay complainant separation pay equivalent to one (1) month for every year of service plus backwages from the time he was illegally suspended until the promulgation of this decision computed as follows:

Unpaid Wages:

July 1-6, 2002
July 24, 2002
Aug. 13-22, 2002

P8,773.00/mo. @ 17days ----- P 5,736.19

Backwages:

July 8, 2002 to July 23, 2002
July 25, 2002 to Aug. 10, 2002
Aug. 11, 2002 to March 10, 2003

P8,773 x 8 mos. ----- P70,184.00

13th Month Pay:

P70,184.00 + P5,736.19 x 1/12 ----- P
6,326.68

Separation Pay (April 26, 1993 – March 10, 2003)

P8,773 x 10 yrs. ----- P 87,730.00

Or in the total amount of P169,976.87.

Respondent is likewise ordered to pay ten (10%) percent of the total award representing attorney's fees.

Other claims are hereby ordered dismissed for lack of merit.

SO ORDERED. ^[14]

Not satisfied, petitioners appealed to the NLRC. In a Resolution^[15] dated November 30, 2004 the NLRC reversed the Labor Arbiter's decision and found respondent to have been validly dismissed. The NLRC, however, upheld the Labor Arbiter's finding that petitioners are liable to respondent for unpaid wages. The NLRC held:

WHEREFORE, foregoing considered, the questioned decision is MODIFIED in favor of the finding that complainant was validly suspended, thence, dismissed for just cause and after due process. Accordingly, he is not entitled to awards of back wages, separation pay and even 13th month pay. Respondent is only ordered to pay the complainant the unpaid wages as stated above in the amount of P5,736.19.

SO ORDERED. ^[16]

Respondent's motion for reconsideration having been denied, he filed with the CA a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

In a Decision dated March 31, 2008, the appellate court reinstated with modification the decision of the Labor Arbiter, to wit:

WHEREFORE, the assailed Resolution dated November 30, 2004 of public respondent is hereby SET ASIDE. The Decision of the Labor Arbiter is hereby REINSTATED with the MODIFICATION that the following be DELETED:

1. The award of 13th month pay.
2. The award of backwages for the period July 8, 2002 to July 23, 2002.

All other awards in the Decision of the Labor Arbiter are affirmed.

SO ORDERED.^[17]

Respondent filed a motion for clarification as to the awards of separation pay and back wages while petitioners filed a motion for reconsideration.

On October 24, 2008, the CA issued a Resolution stating that as regards respondent's motion for clarification, the separation pay and back wages shall be reckoned from the time respondent was illegally suspended until finality of the March 31, 2008 Decision. The CA likewise denied petitioners' motion for reconsideration in the same resolution.

Hence, petitioners filed the present petition.

Essentially, petitioners argue that the CA gravely erred in not giving weight to the affidavits and sworn certifications of their witnesses, and in finding that they relied entirely on the affidavits of their witnesses in terminating respondent. Likewise, petitioners claim that the CA committed grave error in holding that the failure of respondent to reach his monthly sales quota is not a valid basis for loss of trust and confidence.

On the other hand, respondent points out that the issues raised in this petition are factual as they are solely focused on the probative value of the affidavits of petitioners' witnesses. He contends that questions of fact cannot be raised in this mode of appeal considering that the Supreme Court is not a trier of facts. Thus, respondent submits that the instant petition deserves outright denial.

We dismiss the petition for lack of merit.

Loss of trust and confidence as a ground for termination of an employee under Article 282^[18] of the Labor Code requires that the breach of trust be willful, meaning it must be done intentionally, knowingly, and purposely, without justifiable excuse.^[19] The basic premise for dismissal on the ground of loss of confidence is that the employees concerned holds a position of trust and confidence. It is the breach of this trust that results in the employer's loss of confidence in the employee.

Here, there is no question that as petitioners' Branch Manager in Iligan City, respondent was holding a position of trust and confidence. He was responsible for the administration of the branch, and exercised supervision and control over all the employees. He was also incharge of sales and collection.

Now, petitioners terminated his employment on the ground of loss of trust and confidence for supposedly committing acts inimical to the company's interests. However, in termination cases, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause and failure to do so would necessarily mean that the dismissal was illegal.^[20] The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. Moreover, the quantum of