

FIRST DIVISION

[G.R. No. 176671, June 20, 2012]

APO CEMENT CORPORATION, PETITIONER, VS. ZALDY E. BAPTISMA, RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

In labor cases, all that is required is for the employer to show substantial evidence to justify the termination of the employee.

This Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assails the Decision^[2] dated November 15, 2006 and the Resolution^[3] dated February 6, 2007 of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 01220.

Factual Antecedents

On June 16, 1998, respondent ZalDY E. Baptisma was employed by petitioner Apo Cement Corporation, a duly registered corporation maintaining and operating a cement manufacturing plant in Tinaan, Naga, Cebu.^[4]

Sometime in September 2003, petitioner received information from one of its employees, Armando Moralda (Moralda), that some of its personnel, including respondent who was then the manager of petitioner's Power Plant Department, were receiving commissions or "kickbacks" from suppliers.^[5] To ascertain the veracity of the information given by Moralda, the top management of petitioner conducted an investigation during which Jerome Lobitaña (Lobitaña), one of petitioner's accredited suppliers, doing business under the name and style "Precision Process," came forward to corroborate the statement of Moralda.^[6]

On October 10, 2003, Moralda and Lobitaña executed separate affidavits^[7] to substantiate their claims. Pertinent portions of the affidavits read:

Moralda's Affidavit:

x x x x

3. As a Buyer/Canvasser at the Purchasing Department enjoying the trust and confidence of Mr. Tinoco, I was privy to several anomalous practices and transactions involving the procurement of various supplies and services for the Company. Among the various modus operandi employed by some people in Apo are the following:

x x x x

e. *10% to 20% of the quoted price usually set aside as bribe money for certain personnel.* Suppliers would often factor-in an additional 10% to 20% in their quoted price which would be used to bribe certain Apo personnel. A canvasser like me would get about 1% to 3% of the quoted price from the winning supplier. Some suppliers would categorically inform me how much has been promised to other Apo personnel who would help facilitate the award of the contract in their favor. Among those who receive bribes from suppliers aside from Mr. Tinoco are Mr. Jose Cruz, the Mechanical Maintenance Manager and Zaldy Baptisma, Apo Power Plant Manager.

x x x x^[8]

Lobitaña's Affidavit:

x x x x

8.1. There were times when Mr. Tinoco himself talked directly to the end-user [to] negotiate for the amount or percentage of the kickback that they would get from me. There was one time when Mr. Tinoco informed me that he has negotiated with Mr. Zaldy Baptisma, the Power Plant Manager, and committed to give him a ten percent (10%) "commission" or kickback for all transactions which would be awarded to me. Upon the award of the contract amounting to approximately Two Hundred Thousand Pesos (P200,000.00) and the remittance by Apo of the payment, I met with Mr. Baptisma outside the Apo plant and personally handed to him his ten percent (10%) "commission"/ kickback in cash.

x x x x^[9]

Having been implicated in the irregularities, respondent, on November 3, 2003, received a Show Cause Letter with Notice of Preventive Suspension^[10] from Plant Director Ariel Mendoza.^[11]

On November 5, 2003, respondent submitted his written explanation^[12] denying the accusations hurled against him.^[13]

To further afford respondent ample opportunity to defend himself, petitioner conducted a series of administrative investigation hearings during which respondent was able to face his accusers.^[14] This time, Lobitaña gave a more detailed narration of the events that transpired in August and September 2002. He said:

x x x x

(a) That [on] two (2) separate occasions, I personally handed over to

Mr. Baptisma some amounts representing the latter's ten [percent] (10%) "commission" and/or "kickbacks." The first instance took place sometime around the first or second week of August 2002, where I met with Mr. Baptisma at the Papa's Grill, a native restaurant located in V. Rama Avenue, Cebu City. Mr. Baptisma's two (2) subordinates, Mr. Reno Cedeño and Bobby Banzon, were also present. After our dinner, I personally handed over to Mr. Baptisma the amount of P37,701.81 (cash), which was 10% of the aggregate contract price of P377,018.19 for three (3) purchase orders I got from Apo, i.e. P.O. ON-00028642 (P159,090.91), ON-000-28630 (P168,181.82), and ON-00030162 (P49,745.46). Mr. Baptisma readily received the amount from me.

(b) That the second instance took place sometime in the second week of September 2002. I again met with Mr. Baptisma and his two (2) subordinates, Mr. Reno Cedeño and Bobby Banzon, at the same Papa's Grill Restaurant. After our dinner, I personally handed over to Mr. Baptisma the amount of P15,909.09, which was 10% of the total contract price of P159,090.91 under P.O. No. ON-00030067 dated 8 June 2002 which I got from Apo.

(c) That I submitted to the Investigating Committee copies of the Purchase Orders corresponding to the transactions I had with Apo out of which Mr. Baptisma received "commissions" and/or "kickbacks" from me, as follows:

x x x x

(d) That I maintain a notebook where I could enter the details of my dealings with Apo personnel who have been receiving "commissions" and/or "kickback[s]" from me. During the administrative investigation held on 9 December 2003, I showed to the Investigating Committee the particular portion of my notebook where I recorded the total amount of P53,610.00 representing the "commission[s]" and/or "kickbacks" that I gave to the "Power Plant Boys," in connection with the transactions I had with Apo covered by aforementioned Purchase Orders. One of the "Power Plant Boys" I referred to in my notebook was Mr. Baptisma.

x x x x^[15]

For his part, respondent presented his co-employees Bobby Banzon (Banzon), Reno Cedeño (Cedeño) and Christopher Navarro.^[16] Banzon testified that sometime in December 2002, he, along with respondent and other Apo employees, went to Papa's Grill; that on said occasion, he saw Lobitaña with some companions at another table; and that Lobitaña did not approach them but only gave food and bottles of beer through a waiter.^[17] Cedeño, on the other hand, denied meeting Lobitaña at Papa's Grill.^[18]

On March 22, 2004, respondent received the Notice of Termination^[19] dated March 19, 2004 informing him of his dismissal from employment effective immediately on the ground of loss of trust and confidence.^[20] At the time of his termination,

respondent was a Power Plant Manager earning a monthly salary of P71,100.00.^[21]

On March 31, 2004, respondent filed with the Regional Arbitration Branch VII of the National Labor Relations Commission (NLRC) in Cebu City a complaint for illegal dismissal with claims for non-payments of salaries, 13th month pay, service incentive leave, damages, and attorney's fees, docketed as RAB Case No. VII-03-0701-04, against petitioner and its Vice-President for Human Resources, Atty. Maria Virginia Ongkiko-Eala.^[22]

Ruling of the Labor Arbiter

On January 5, 2005, Labor Arbiter Jose G. Gutierrez rendered judgment in favor of respondent. The Labor Arbiter opined that since respondent was not involved in the canvassing and purchasing of supplies, he could not have entered into any irregular arrangement with suppliers.^[23] The Labor Arbiter likewise considered the testimony of Moralda as hearsay and the testimony of Lobitaña as self-serving and doubtful.^[24] Hence, he ruled that there was "no justifiable ground to support the validity of [respondent's] dismissal x x x."^[25] The decretal portion of his Decision^[26] reads:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered declaring the [respondent] illegally dismissed from his employment. [Petitioner and Atty. Eala] are therefore, directed to reinstate the complainant to his former position without loss of seniority rights and other privileges. Further, [petitioner and Atty. Eala] are directed to jointly and severally pay [respondent] the following:

I.	Backwages	----- P668,184.60
II.	13 th Month Pay	----- 71,200.00
III.	Unpaid Salaries	----- <u>16,450.00</u>
		P755,834.60

plus P79,141.53 or ten (10%) percent attorney's fees or a total aggregate amount of PESOS: EIGHT HUNDRED THIRTY ONE THOUSAND FOUR HUNDRED EIGHTEEN & 06/100 (P831,418.06). The amount awarded to [respondent] however should be recomputed when this decision becomes final and executory.

[Petitioner's] counter-claim is dismissed for lack of merit.

SO ORDERED.^[27]

Aggrieved, petitioner filed an appeal with the NLRC,^[28] docketed as NLRC Case No. V-000248-2005.

Respondent, on the other hand, filed a Motion for Issuance of a Writ of Execution.^[29]

On February 21, 2005, the Labor Arbiter ordered petitioner to reinstate respondent

as Power Plant Manager of its plant at Tinaan, Naga, Cebu,^[30] prompting petitioner to file an Urgent Motion for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction with the NLRC,^[31] docketed as NLRC INJ. Case No. 000001-2005.

Ruling of the National Labor Relations Commission

On July 11, 2005, the NLRC reversed the ruling of the Labor Arbiter. It ruled that respondent's "personal and direct involvement in the irregularities complained of renders him unworthy of the trust and confidence demanded [of] his position."^[32] The fallo of the Decision^[33] reads:

WHEREFORE, premises considered the decision of the Labor Arbiter is hereby **SET ASIDE** and **VACATED** and a new one entered dismissing the complaint.

SO ORDERED.^[34]

Respondent moved for reconsideration but his motion was denied by the NLRC in a Resolution^[35] dated August 25, 2005. Thus, respondent elevated the matter to the CA.

Ruling of the Court of Appeals

On November 15, 2006, the CA reinstated the Decision of the Labor Arbiter. It ruled that petitioner failed to prove the existence of a just cause to warrant the termination of respondent as the alleged loss of trust and confidence was not based on established facts.^[36] It decreed:

IN LIGHT OF ALL THE FOREGOING, the petition filed in this case is hereby **GRANTED**. The assailed decision dated July 11, 2005 promulgated by the National Labor Relations Commission (Fourth Division) and its subsequent resolution dated August 25, 2005 in NLRC Case No. V-000248-2005 and NLRC INJ. Case No. V-000001-2005 are hereby **SET ASIDE**. The decision dated January 5, 2005 of Labor Arbiter Jose G. Gutierrez is hereby **REINSTATED**.

IT IS SO ORDERED.^[37]

On reconsideration, the CA stood pat on its finding that there was no basis for petitioner's loss of trust and confidence in respondent.^[38] It, however, modified the dispositive portion of its Decision, in this wise:

WHEREFORE, [petitioner's] Motion for Reconsideration is hereby **PARTIALLY GRANTED**. Our Decision, dated November 15, 2006,