

## FIRST DIVISION

[ G.R. No. 169999, July 26, 2010 ]

**NEW PUERTO COMMERCIAL AND RICHARD LIM, PETITIONERS,  
VS. RODEL LOPEZ AND FELIX GAVAN, RESPONDENTS.**

### D E C I S I O N

**DEL CASTILLO, J.:**

In order to validly dismiss an employee, he must be accorded both substantive and procedural due process by the employer. Procedural due process requires that the employee be given a notice of the charge against him, an ample opportunity to be heard, and a notice of termination. Even if the aforesaid procedure is conducted after the filing of the illegal dismissal case, the legality of the dismissal, as to its procedural aspect, will be upheld provided that the employer is able to show that compliance with these requirements was not a mere afterthought.

This Petition for Review on *Certiorari* seeks to reverse and set aside the Court of Appeal's (CA's) June 2, 2005 Decision<sup>[1]</sup> in CA-G.R. SP. No. 83577, which affirmed with modification the October 28, 2003 Decision<sup>[2]</sup> of the National Labor Relations Commission (NLRC) in NCR CA No. 034421-03, and the September 23, 2005 Resolution<sup>[3]</sup> denying petitioners' motion for partial reconsideration.

#### ***Factual Antecedents***

Petitioner New Puerto Commercial hired respondent Felix Gavan (Gavan) as a delivery panel driver on February 1, 1999 and respondent Rodel Lopez (Lopez) as roving salesman on October 12, 1999. Petitioner Richard Lim is the operations manager of New Puerto Commercial.

Under a rolling store scheme, petitioners assigned respondents to sell goods stocked in a van on cash or credit to the sari-sari stores of far-flung *barangays* and municipalities outside Puerto Princesa City, Palawan. Respondents were duty-bound to collect the accounts receivables and remit the same upon their return to petitioners' store on a weekly basis.

On November 3, 2000, respondents filed a Complaint<sup>[4]</sup> for illegal dismissal and non-payment of monetary benefits against petitioners with the Regional Office of the Department of Labor and Employment in Puerto Princesa City. On November 20, 2000, a conciliation conference was held but the parties failed to reach an amicable settlement. As a result, the complaint was endorsed for compulsory arbitration at the Regional Arbitration Branch of the NLRC on February 13, 2001.

Previously or on November 28, 2000, petitioners sent respondents notices to explain why they should not be dismissed for gross misconduct based on (1) the alleged misappropriation of their sales collections, and (2) their absence without leave for

more than a month. The notice also required respondents to appear before petitioners' lawyer on December 2, 2000 to give their side with regard to the foregoing charges. Respondents refused to attend said hearing.

On December 6, 2000, petitioners filed a complaint for three counts of estafa before the prosecutor's office against respondents in connection with the alleged misappropriation of sales collections.

Thereafter, petitioners sent another set of notices to respondents on December 7, 2000 to attend a hearing on December 15, 2000 but respondents again refused to attend. On December 18, 2000, petitioners served notices of termination on respondents on the grounds of gross misconduct and absence without leave for more than one month.

On February 5, 2001, an information for the crime of estafa was filed by the city prosecutor against respondents with the Municipal Trial Court in Puerto Princesa City.

In due time, the parties submitted their respective position papers.

### ***Labor Arbiter's Ruling***

On August 29, 2002, Labor Arbiter Cresencio G. Ramos, Jr. rendered a Decision<sup>[5]</sup> dismissing the complaint for illegal dismissal but ordering petitioners to pay respondents' proportionate 13<sup>th</sup> month pay:

WHEREFORE, in the light of the foregoing premises, the above case for illegal dismissal is hereby DISMISSED for being devoid of legal merit. Respondents, however, are directed to pay herein complainants their proportionate 13<sup>th</sup> month pay for the year 2002<sup>[6]</sup> [sic] as follows:

- (1.) Rodel Lopez- P2,998.67
- (2.) Felix Gavan- P2,998.67

SO ORDERED.<sup>[7]</sup>

The Labor Arbiter ruled that there is substantial evidence tending to establish that respondents committed the misappropriation of their sales collections from the rolling store business. These acts constituted serious misconduct and formed sufficient bases for loss of confidence which are just causes for termination. The records also showed that respondents were given opportunities to explain their side. Both substantive and procedural due processes were complied with, hence, the dismissal is valid. Petitioners, however, failed to prove that they paid the proportionate amount of 13<sup>th</sup> month pay due to respondents at the time of their dismissal. Thus, the Labor Arbiter ordered petitioners to pay respondents the same.

### ***National Labor Relations Commission's Ruling***

On October 28, 2003, the NLRC rendered a Decision affirming the ruling of the

Labor Arbiter, viz:

WHEREFORE, the appeal is DENIED. The Decision of the Labor Arbiter dated August 29, 2002 is AFFIRMED *en toto*.

SO ORDERED.<sup>[8]</sup>

The NLRC agreed with the Labor Arbiter that respondents' act of misappropriating company funds constitutes gross misconduct resulting in loss of confidence. It noted that respondents never denied that (1) they failed to surrender their collections to petitioners, and (2) they stopped reporting for work during the last week of October 2000. Further, respondents admitted misappropriating the subject collections before the hearing officer of the Palawan labor office during the

conciliation conference on November 20, 2000. The NLRC also observed that the investigation on the misappropriation of company funds was not a mere afterthought and complied with the twin-notice rule. Last, it ruled that damages cannot be awarded in favor of respondents because their dismissal was for just causes.

### ***Court of Appeal's Ruling***

The CA, in its June 2, 2005 Decision, affirmed with modification the ruling of the NLRC, viz:

**WHEREFORE**, in view of the foregoing, the Decision of the NLRC dated 29 August 2002<sup>[9]</sup> is hereby **MODIFIED** in that private respondents are ordered to pay petitioners nominal damages of P30,000.00 each. The decision is affirmed in all other respect.

**SO ORDERED.**<sup>[10]</sup>

The appellate court held that it was bound by the factual findings of the NLRC because a petition for *certiorari* is limited to issues of want or excess of jurisdiction, or grave abuse of discretion. Thus, the failure of respondents to report for work and their misappropriation of company funds have become settled. These acts constitute grave misconduct which is a valid cause for termination under Article 282 of the Labor Code.

While the dismissal was for just cause, the appellate court found, however, that respondents were denied procedural due process. It held that the formal investigation of respondents for misappropriation of company funds was a mere afterthought because it was conducted after petitioners had notice of the complaint filed before the labor office in Palawan. In consonance with the ruling in *Agabon v. National Labor Relations Commission*,<sup>[11]</sup> respondents are entitled to an award of

P30,000.00 each as nominal damages for failure of petitioners to comply with the twin requirements of notice and hearing before dismissing the respondents.

From this decision, only petitioners appealed.

### **Issues**

Petitioners raise the following issues for our resolution:

1. Whether x x x the Court of Appeals erred in construing that the investigation held by petitioners is an afterthought; and
2. Whether x x x the Court of Appeals erred in awarding the sum of P30,000.00 each to the respondents as nominal damages.<sup>[12]</sup>

### ***Petitioners' Arguments***

Petitioners contend that the investigation of respondents was not an afterthought. They stress the following peculiar circumstances of this case: First, when the labor complaint was filed on November 3, 2000, respondents had not yet been dismissed by petitioners. Rather, it was respondents who were guilty of not reporting for work; Lopez starting on October 23, 2000 and Gavan on October 28, 2000. Second, at this time also, petitioners were still in the process of collecting evidence on the alleged misappropriation of company funds after they received reports of respondents' fraudulent acts. Considering the distance between the towns serviced by respondents and Puerto Princesa City, it took a couple of weeks for petitioners' representative, Armel Bagasala (Bagasala), to unearth the anomalies committed by respondents. Thus, it was only on November 18, 2000 when Bagasala finished the investigation and submitted to petitioners the evidence establishing that respondents indeed misappropriated company funds. Naturally, this was the only time when they could begin the formal investigation of respondents wherein they followed the twin-notice rule and which led to the termination of respondents on December 18, 2000 for gross misconduct and absence without leave for more than a month.

Petitioners lament that the filing of the labor complaint on November 3, 2000 was purposely sought by respondents to pre-empt the results of the then ongoing investigation after respondents got wind that petitioners were conducting said investigation because respondents were reassigned to a different sales area during the period of investigation.

### ***Respondents' Arguments***

Respondents counter that their abandonment of employment was a concocted story. No evidence was presented, like the daily time record, to establish this claim. Further, the filing of the illegal dismissal complaint negates abandonment. Assuming *arguendo* that respondents abandoned their work, no proof was presented that petitioners' served a notice of abandonment at respondents' last known addresses as required by Section 2, Rule XVI, Book V of the Omnibus Rules Implementing the Labor Code. According to respondents, on November 3, 2000, petitioners verbally advised them to look for another job because the company was allegedly suffering from heavy losses. For this reason, they sought help from the Palawan labor office which recommended that they file a labor complaint.