

SECOND DIVISION

[G.R. No. 179563, April 30, 2009]

**BACOLOD-TALISAY REALTY AND DEVELOPMENT CORPORATION,
MR. MARIO GONZAGA IN HIS CAPACITY AS PRESIDENT OF
BACOLOD REALTY AND DEVELOPMENT CORPORATION, AND MR.
ERNESTO ALLEN LACSON, JR. IN HIS CAPACITY AS
ADMINISTRATOR OF BACOLOD REALTY AND DEVELOPMENT,
CORPORATION, PETITIONER, VS. ROMEO DELA CRUZ,
RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

From 1980 up to 1997, Romeo de la Cruz was employed at the Hacienda Gloria, a farm owned and managed by petitioner Bacolod-Talisay Realty and Development Corporation (BTRD). He was dismissed on July 3, 1997 at which time he was holding the position of overseer, in charge of the work of the laborers, checking their attendance, reporting the number of hours worked by each laborer for payroll purposes, checking in-coming and out-going cargo, and selling and receiving payments for seedpieces and canepoints. He was also entrusted with farm equipment and other farm property.

He was dismissed on charges of payroll padding, selling canepoints without the knowledge and consent of management and misappropriating the proceeds thereof, and renting out BTRD's tractor for use in another farm and misappropriating the proceeds thereof.

Respondent thus filed on July 10, 1997 a complaint for illegal suspension and illegal dismissal before the National Labor Relations Commission (NLRC)^[1] against petitioners BTRD et al.

In his Position Paper,^[2] respondent claimed that on June 4, 1997, he received a June 3, 1997 letter informing him that he was being suspended for the next 30 days due to the abovementioned charges and that there was an ongoing investigation thereof; and after 30 days his wife received a letter dated July 3, 1997 stating that he was terminated from the service on account of the charges.

In their Position Paper, petitioners claimed that as a result of the investigation of respondent's questioned acts, it was discovered that there were farm workers whose names were entered in the payroll even if they did not render services and the corresponding wages were not received by them; and while respondent committed to return the money intended for wages of those workers who rendered no services, he did not return them.

Petitioners further claimed that a company tractor was used in another farm, rental

fees of which were not remitted to BTRD, and when confronted, respondent admitted his wrongdoings and asked for forgiveness; and while a confrontation about the matter was held before the *barangay* council, no settlement was reached.
[3]

The Labor Arbiter dismissed respondent's complaint for lack of merit.^[4] And the NLRC dismissed respondent's appeal for not being verified.^[5]

By Decision^[6] of April 13, 2007, the Court of Appeals, brushing aside the lack of verification of respondent's appeal before the NLRC, found that petitioners "did not comply with the x x x guidelines for the dismissal of [the] employee"^[7] and accordingly reversed the NLRC decision, disposing as follows:

WHEREFORE, the petition is **GRANTED**. Accordingly, the subject resolutions of the National Labor Relations Commission are **REVERSED** and **SET ASIDE**. Petitioner is entitled to reinstatement without loss of seniority rights and benefits and to payment of backwages which shall not exceed three (3) years.^[8] (Emphasis in the original; underscoring supplied)

Hence, the present petition,^[9] petitioners faulting the Court of Appeals

I

x x x IN NOT DECIDING THAT PETITIONER SHOULD ONLY BE HELD LIABLE FOR NOMINAL DAMAGES PURSUANT TO THE AGABON DOCTRINE AND OTHER SUBSEQUENT CASES BUT THE DISMISSAL OF THE RESPONDENT SHOULD BE HELD AS VALID, THE CASE BEING ATTENDED BY JUST CAUSE FOR TERMINATION OF EMPLOYMENT.

II

x x x BY RULING THAT AN APPEAL CAN BE HAD WITH THE NLRC EVEN THOUGH NO VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING WAS ATTACHED TO THE APPEAL, AND EVEN THOUGH NO REASONS OR EXCUSE WAS ADVANCED BY THE RESPONDENT FOR THE NON-SUBMISSION OF THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING.

III

x x x IN REVERSING THE DECISION OF THE NLRC AND THE LABOR ARBITER A QUO ON THE BASIS OF MERE SPECULATION, CONJECTURE AND MERE SELF-SERVING STATEMENTS OF THE RESPONDENT.^[10] (Underscoring supplied)

That the Court of Appeals went on to give due course to respondent's petition despite the lack of verification in respondent's appeal before the NLRC is not erroneous. Lack of verification is not a fatal defect. Verification is only a formal, not a jurisdictional requirement.^[11] It could easily be corrected by directing compliance

therewith,^[12] its purpose being simply to secure an assurance that the allegations of the petition (or complaint) have been made in good faith, or are true and correct, not merely speculative.^[13]

The Court of Appeals, in finding for respondent, noted that the proper procedure in dismissing him was not observed; *ergo*, it ordered his "reinstatement . . ." **Oddly, the appellate court did not determine whether there was just cause for respondent's dismissal. For it is only when an employee's dismissal is not justified that reinstatement is, among other things, if still feasible, in order.** This brings the Court to pass on the merits of the case.

This Court finds that petitioners were able to establish with substantial evidence that just cause existed for the termination of respondent's employment. Consider the following documentary evidence they presented:

1. Excerpt from the official log book of the *barangay* council of Barangay Concepcion, Talisay, Negros Occidental dated May 30, 1997 documenting the statements of Federico Serie and Jonathan Quilla during a confrontation before the *barangay* counsel;^[14]
2. Petitioner Lacson's affidavit;^[15]
3. Joint Affidavit of petitioner Mario Gonzaga and the vice-president and secretary of BTRD;^[16]
4. Joint affidavit of Federico Serie, Jr. (Serie), Jonathan Quilla (Quilla), Eddie Sausa (Sausa), and Roberto Tortogo (Tortogo) claiming that they refused to sign the payroll which respondent prepared because it indicated that they received P256 although they received only P71;^[17]
5. Copies of payrolls for June 3-8, 1996 and June 10-15, 1996, with respondent's signature beside the name of Federico Serie who refused to sign;^[18]
6. Affidavit of John Trasmonte (Transmonte), in charge of keeping the payroll records and cash disbursement of workers' wages for June 1996, claiming that he prepared the payroll based on respondent's report and that he did not receive any return of excess wages for the cash disbursement from the said payroll;^[19]
7. Affidavit of Jose Racel Magbanua (Magbanua) stating that he saw respondent allowing the use of the hacienda's tractor in another farm and receiving rent therefrom;^[20]
8. Affidavit of Rodolfo Cañeso (Cañeso) stating that he saw respondent selling pieces of *patdan* and *drammy*;^[21] and
9. Affidavit of Ma. Leonisa Gonzaga claiming shortfalls in the proceeds of the sale of *drammy* and *patdan* as reported and remitted by respondent.^[22]

The above-listed documentary evidence of petitioner indubitably establishes that respondent committed payroll padding, sold canepoints without the knowledge and consent of management and misappropriated the proceeds thereof, and rented tractor to another farm and misappropriated the rental payments therefor. These acts constitute willful breach by the employee of the trust reposed in him by his employer â€" a ground for termination of employment.^[23]

In his appeal before the NLRC, respondent noted^[24] that affiants Sausa and Tortogo challenged their Joint Affidavit listed above, claiming that they did not understand