

SECOND DIVISION

[G.R. No. 181688, June 05, 2009]

**DAIKOKU ELECTRONICS PHILS., INC., PETITIONER, VS.
ALBERTO J. RAZA, RESPONDENT.**

DECISION

VELASCO JR., J.:

In this petition for review under Rule 45, Daikoku Electronics Phils., Inc. (Daikoku) assails and seeks to set aside the Decision^[1] dated September 26, 2007 and Resolution^[2] dated February 7, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 96282, effectively dismissing Daikoku's appeal from the resolutions dated May 31, 2006^[3] and July 31, 2006,^[4] respectively, of the National Labor Relations Commission (NLRC) in NLRC CA No. 044001-05.

The Facts

In January 1999, Daikoku hired respondent Alberto J. Raza as company driver, eventually assigning him to serve as personal driver to its president, Mamuro Ono (Ono, hereafter). By arrangement, Alberto, at the end of each working day which usually starts early morning and ends late at night, parks the car at an assigned slot outside of Ono's place of residence at Pacific Plaza Condominium in Makati City.

On July 21, 2003, at around 8:00 p.m., Alberto, after being let off by Ono, took the company vehicle to his own place also in Makati City. This incident did not go unnoticed, as Ono asked Alberto the following morning where he parked the car the night before. In response, Alberto said that he parked the car in the usual condominium parking area but at the wrong slot.

On July 24, 2003, Alberto received a show-cause notice why he should not be disciplined for dishonesty. A day after, Alberto submitted his written explanation of the incident, owning up to the lie he told Ono and apologizing and expressing his regret for his mistake.

Following an investigation, the investigation committee recommended that Alberto be suspended for 12 days without pay for the infraction of parking the company vehicle at his residence and for deliberately lying about it. The committee considered Alberto's voluntary admission of guilt and apology as mitigating circumstances. Daikoku's general affairs manager, however, was unmoved and ordered Alberto dismissed from the service effective August 14, 2003. "Dishonesty" and "other work related performance offenses" appeared in the corresponding notice of termination as grounds for the dismissal action.

Alberto sought reconsideration but to no avail, prompting him to file a case for

illegal dismissal.

The Ruling of the Labor Arbiter

On January 15, 2005, the labor arbiter, on the finding that Alberto's dismissal was predicated, among others, on offenses he was neither apprised of nor charged with, rendered judgment for Alberto, disposing as follows:

WHEREFORE, finding the complainant's dismissal unlawful, respondents are hereby directed to reinstate complainant to his former position without loss of seniority rights and other benefits and further ordered solidarily to pay complainant backwages from the time of his dismissal up to actual reinstatement minus the salary corresponding to the suspension period of twelve days, plus 10% of the total award for attorney's fees, computed as follows:

FULL BACKWAGES

A. Basic Pay		
From 8/14/03		
to 1/14/05		
P12,000 x	=	P 204,360.00
17.03		
B. 13 th month		
pay		
P	=	17,030.00
204,360/12		
C. Service		
Incentive		
Leave Pay		
P12,000/30 x 5	=	2,838.33
days x 17.03/12		

		P 224,228.33
Less: P12,000/30 x	=	4,800.00
12 days		

TOTAL		P 219,428.33
		=====
Attorney's fee of		P 21,942.83
P219,428.33		
x 10%		=====
SO ORDERED.		

The labor arbiter also determined that while some form of sanction against Alberto was indicated, the ultimate penalty of dismissal was not commensurate to the offense actually committed and charged.

From the labor arbiter's ruling, Daikoku appealed to the NLRC, its recourse docketed as NLRC CA No. 044001-05.

For his part, Alberto, thru counsel, wrote Daikoku demanding reinstatement, either actual or payroll, as decreed in the labor arbiter's appealed decision. Daikoku then

asked Alberto to report back to work on May 10, 2005 which the company later moved to June 6, 2005.

On July 11, 2005, pending resolution of Daikoku's appeal, Alberto filed before the NLRC a *Motion to Cite Respondents in Contempt and to Compel Them to Pay Complainant* for the company's alleged refusal to reinstate him. In his accompanying affidavit, Alberto alleged, among other things, that he reported back to work on June 24, 2005. But instead of being given back his old job or an equivalent position, he was asked to attend an orientation seminar and undergo medical examination, at his expense. To compound matters, the company deferred payment of his backwages and some other benefits. These impositions, according to Alberto, impelled him to stop reporting for work.

The Ruling of the NLRC

Initially, the NLRC, by resolution of August 31, 2005, dismissed Daikoku's appeal for failure to perfect it in the manner and formalities prescribed by law. Acting on Daikoku's motion for reconsideration, however, the NLRC issued a Resolution dated **May 31, 2006**, reinstating Daikoku's appeal, setting aside the arbiter's January 15, 2005 appealed decision, and denying Alberto's motion to cite the company for contempt. But for Daikoku's failure to reinstate Alberto pending appeal, the NLRC ordered the payment of Alberto's backwages, at the basic rate of PhP 8,790 a month, corresponding the period indicated in the resolution of May 31, 2006 which dispositively reads:

WHEREFORE, premises considered, [Daikoku's] Motion for Reconsideration is GRANTED. [Alberto's] Motion to Cite Respondents in Contempt is DENIED for lack of merit.

The assailed Decision dated January 15, 2005 of the Labor Arbiter is REVERSED and SET ASIDE and a new one is hereby entered declaring that **complainant was validly dismissed from his employment**. Nevertheless, for failure to reinstate complainant Alberto J. Raza pursuant to the Labor Arbiter's Decision, respondent DAIKOKU ELECTRONICS PHILS., INC. is hereby ordered to pay him his wages from 11 March 2005 up to the promulgation of this Resolution, provisionally computed as follows:

[Basic] pay:

(3/11/05 -

5/11/06)

(P8,790.00 x 14 months)	=	P 123,060.00
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13th month pay:

(P123,060.00 / 12 mos.)	=	10,255.55
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Service Incentive

Leave Pay:

(P8,790 / 30 x 5 days x 14	=	1,709.17
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mos./12)

TOTAL

P 135,024.72

SO ORDERED. (Emphasis added.)

Alberto sought reconsideration of the above ruling. Daikoku also moved for reconsideration on the backwages aspect of the NLRC resolution. On **July 31, 2006**, the NLRC issued a resolution explicitly denying only Alberto's motion.

Obviously on the belief that the NLRC's July 31, 2006 resolution also constituted a denial of its own motion for reconsideration, Daikoku went to the CA via a petition for certiorari, docketed as CA-G.R. SP No. 96282, to assail the NLRC Resolutions dated May 31, 2006 and July 31, 2006. The same NLRC resolutions were also assailed in Alberto's similar petition to the appellate court, docketed as CA-G.R. SP No. 100714. Both petitions, while involving the same parties and practically the same subject and issues, were not consolidated in the CA.

Meanwhile, on October 30, 2006, Alberto filed before the CA a Motion for Summary Dismissal and to Cite Petitioner in Direct Contempt, alleging that the assailed NLRC resolutions of May 31 and July 31, 2006 have become final as against Daikoku which filed out of time a prohibited second motion for reconsideration.

The Ruling of the CA

On September 26, 2007, the appellate court rendered the assailed decision dismissing Daikoku's appeal as well as denying Alberto's contempt motion. The *fallo* reads:

WHEREFORE, premises considered, the petition is DENIED and is, accordingly, DISMISSED. The motion to cite petitioner in contempt is, likewise, DENIED for lack of merit.

SO ORDERED.

The CA anchored its denial of Daikoku's petition on the interplay of the following stated grounds or premises: (1) prematurity of the petition for certiorari, the NLRC not having yet resolved Daikoku's motion for reconsideration of the NLRC's May 31, 2006 resolution; (2) even if the matter of prematurity is to be disregarded, the NLRC May 31, 2006 resolution has become final and executory as to Daikoku as its motion for reconsideration was filed out of time; and (3) there is no compelling reason for the relaxation of procedural rules.

Following the CA's denial on February 7, 2008 of its motion for reconsideration, Daikoku interposed this petition.

The Issues