

FIRST DIVISION

[G.R. No. 163270, September 11, 2009]

**EDUARDO M. TOMADA, SR., PETITIONER, VS. RFM
CORPORATION-BAKERY FLOUR DIVISION AND JOSE MARIA
CONCEPCION III, RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review^[1] assailing the Decision^[2] promulgated on 23 December 2003 as well as the Resolution^[3] promulgated on 19 April 2004 of the Court of Appeals (appellate court) in CA-G.R. SP Nos. 69901 and 70069. The appellate court dismissed the petition filed by Eduardo M. Tomada, Sr. (Tomada) and partially granted the petition filed by RFM Corporation-Bakery Flour Division and Jose Maria Concepcion III (respondents). The appellate court affirmed the decision of the National Labor Relations Commission (NLRC) with the modification that RFM Corporation should pay Tomada P127,660 as separation pay.

The Facts

The appellate court narrated the facts as follows:

On February 24, 1998, [Tomada] filed a complaint for illegal dismissal against RFM Corporation Bakery Flour Division and Jose Ma. Concepcion, Jr.

The case was subsequently assigned to Labor Arbiter Daniel C. Cueto who required both parties to submit their respective position papers. In his position paper, [Tomada] alleged:

"x x x x x x x x x

2. That I have worked with the said company since March 9, 1979 and my latest salary therein is P491.00 per day;

3. That the company dismissed me from work because I was allegedly sleeping on my job during my working time and in the process, I failed to detect the fire which was taking place inside my work area;

4. That I was not sleeping however and was never negligent in

my job;

5. That on November 22, 1997, there was no certified operator manning the third floor of the flour mill. What was present there was only a trainee;

6. Since there was no certified operator in the third floor, I was forced to go up to the said area whenever there was trouble even if my assigned area was only at the second floor where I was head spoutman;

7. At about 9:00 in the evening of November 22, 1997, the B3A Plan Sifter at the 3rd Floor choked up. I was therefore forced to go up to the said area to assist the trainee (Fernando Filarea) to attend to the said trouble;

8. After attending to the choke-up, I went up to the Fourth Floor to inspect the cyclone if it had trouble also;

9. After seeing that the cyclone was in good condition, I went down to the second floor but felt the call of nature so I entered the screen room from where I could proceed to the comfort room;

10. That at the screen room, I tried to fight the urge to relieve myself and it was at this point in time when Ver Ignacio, the duty shift miller arrived and told me that there was a fire at the bran grinder;

11. That I assisted in putting out said fire but Ver Ignacio eventually charged me with sleeping on my job which resulted to my dismissal on January 26, 1998;

12. That as I have explained earlier, I was not sleeping on my job. I was not also negligent. If ever I was not at the vicinity of the bran grinder at the time of the fire, it was because I attended to a trouble at the 3rd floor and inspected the 4th floor due to the lack of available personnel therein;

13. That under the circumstances, it is clear that my dismissal was illegal."

For their part, RFM and Jose Ma. Concepcion made the following allegations in their position paper:

1. The complainant was a former employee of the respondent, assigned to the position headspoutman of the Flour Milling Department at the time of his termination;

2. As headspoutman of the Flour Milling Department, the

complainant was assigned at the second floor and is in-charge of the bran grinding machine on the same floor;

3. Sometime on November 22, 1997, at about 9:00 in the evening, Aries Lazaro, a contractual employee assigned at the Semolina Tipping, noticed the thick smoke coming from the bran;

4. That when he made an investigation, the said employee noticed that smoke was coming from the bran grinding machine and the bran being grounded inside the machine was already smoldering;

5. That immediately, Aries Lazaro went down to the ground floor to seek assistance and found Heronico Mancilla;

6. Together, they went back upstairs to the second floor to try to contain the fire;

7. It was then that Heronico Mancilla instructed Aries Lazaro to go down and call Virgilio F. Ignacio, the Shift Miller on duty;

8. That Virgilio F. Ignacio hurriedly ran upstairs and found that the fire was already growing rapidly;

9. That immediately, Virgilio F. Ignacio went down to the ground floor panel board to shut down mills II and IA;

10. That when Virgilio F. Ignacio returned to the bran grinding machine at the second floor, he found Heronico Mancilla, Fernando Felarca and a number of flour packers were already trying to stop the fire with the use of fire extinguishers;

11. Realizing that the packing area and the screen room were still operating, Virgilio F. Ignacio ran to the panel board of the packing area to shut down the machine and then to the screen room, likewise with the intention of shutting off the screen room machine;

12. That it was in the screen room, an air-conditioned room, where Virgilio F. Ignacio found the complainant [Tomada] who was supposed to be at the second floor watching and monitoring the machine thereat, soundly asleep on top of two (2) units of automatic voltage regulators (AVR);

13. That it was only after Virgilio F. Ignacio woke the complainant up did the latter proceed to the bran grinding machine room on the second floor;

14. The following day, November 23, 1997, Virgilio F. Ignacio submitted a memorandum report of the incident, a copy of which is hereto attached as Annex `1';

15. That same day, a memorandum was likewise issued to the complainant, requiring him to explain within 48 hours why no disciplinary action should be taken against him for violating company rules and regulations, a copy of the memorandum is hereto attached as Annex `2';

16. In compliance [with] the aforesaid memorandum, the complainant submitted his written explanation dated November 27, 1997, a copy of which is hereto attached as Annex `3';

17. In a memorandum dated December 4, 1997, the complainant was served notice that his case was set for administrative investigation on December 6, 1997 and that he was directed to attend the said investigation, a copy of the memorandum is hereto attached as Annex `4';

18. The investigation and hearings were set three (3) times where the complainant was apprised of the nature and the cause of the charges against him; afforded the opportunity of confronting the witness against him; and full opportunity to present his side duly assisted by a representative of his own choice;

19. After hearing, investigation and evaluation of complainant's case, management found him guilty of violating company rules and regulations #32, that of sleeping on company time outside of work area with adverse effect or damage, and his services were terminated. A copy of the Memorandum dated February 21, 1998 is hereto attached as Annex `5.'

Both parties filed their respective Reply to the Position Papers and Rejoinder to Reply. Thereafter, the case was submitted for decision.^[4]

The Labor Arbiter's Ruling

In his Decision dated 4 May 2000, the Labor Arbiter dismissed Tomada's case for lack of merit. The Labor Arbiter found that Tomada was grossly remiss in performing his assigned duties and his separation from work was justified. The Labor Arbiter further stated that:

Precisely, personnel rules and regulations are promulgated as a vital component in sound personnel administration and for as long as the rules and regulations are reasonable in character and in application, this Office should not interfere in the matter of its exercise. Such is part and parcel of the duly recognized prerogatives of management in instilling discipline to its employees that should not be interfered [sic] into by this Tribunal.