

THIRD DIVISION

[G.R. No. 165359, July 14, 2008]

HONDA CARS MAKATI, INC., PETITIONER, VS. COURT OF APPEALS AND MICHAEL P. BASSI, RESPONDENTS.

DECISION

AUSTRIA-MARTINEZ, J.:

Before us is a Petition for *Certiorari* under Rule 65 seeking to annul the Resolutions dated March 31, 2004^[1] and August 3, 2004^[2] issued by the Court of Appeals (CA) in CA-G.R. SP No. 82812.

Honda Cars Makati, Inc. (petitioner) is engaged in the sale and service of brand new Honda cars. Michael P. Bassi (private respondent) was employed by petitioner on September 2, 1996 as Tinsmith II until he became petitioner's car body repair leadman, a position in which he was given access to and was entrusted with tools and spare parts in petitioner's Body and Paint Shop (BPS) premises, particularly in the tinsmith crib room which he was tasked to maintain, with a monthly salary of P11,300.00.

On June 2, 2001, JT Abrazado (Abrazado), petitioner's BPS Service and Administration Supervisor, submitted an Incident Report regarding the pull-out of scrap parts from petitioner's premises. The Report narrated that on June 2, 2001, private respondent was seen with a certain Robert Maglalang (Maglalang), a scrap buyer of People's General Insurance Corporation, walking around petitioner's tinsmith crib area checking several units under repair. This crib room was a restricted area, as only authorized personnel were allowed therein. Private respondent hauled a box from the tinsmith crib room and handed it to Maglalang. Upon receiving the box from private respondent, Maglalang then instructed a certain Tony Cordova (Cordova) of the City Service to pull out the box. Cordova then loaded the box in a pick-up driven by Noel Martinez, parts expediter, and they drove until they reached the area where Maglalang's L-300 van was parked. Cordova then unloaded the big box behind Maglalang's van. Maglalang then went to his van and opened its rear door, and when he was about to load the box in his van, Abrazado stopped him and asked for the gate pass but Maglalang could not present any. Thus, Abrazado called the attention of the guard officer in charge as well as Almario Afaible, BPS Manager, who personally went to the area. The Incident Report also stated that initial investigation showed that the items enumerated in the material gate pass being signed by Afaible while the big box was being pulled out were not similar with those of the parts in the big box; and that the items turned over by private respondent to Maglalang were not scrap parts for disposal but items with minimum damage and supposed to be stored in the recycled parts area.

Private respondent was made to explain in writing why no disciplinary action should be taken against him for the incident. He submitted his written explanation denying

the accusation as without any truth and basis in fact. Private respondent attended and participated in the formal hearing conducted by the Investigation Committee.

In a Memorandum^[3] dated June 14, 2001, private respondent was asked to explain the incident on June 8, 2001 regarding a spot inspection of his locker and personal belongings conducted in his presence which yielded different old and new tools and car spare parts.

On August 1, 2001, private respondent was served a Notice of Dismissal^[4] dated July 20, 2001 for willful breach of management's trust and confidence based on the recommendation submitted by the Investigation Committee, thus:

On July 5, 2001, the Investigation Committee submitted its Investigation Report, finding and recommending as follows:

"Although Mike denied the allegation that he gave Mr. Maglalang the box nor connived with the guard-on-duty for the release of the parts/items without appropriate authorization/documentation, it was evident that he played a significant part in the execution of a pre-conceived plan to pull out the said box for Mr. Maglalang's use and/or personal gain. This was established when he allowed Mr. Maglalang to survey the contents of the crib room and the workshop area despite the fact that he knew that both areas are considered restricted to authorized personnel only. Furthermore, he allowed Mr. Maglalang to instruct Tony Cordova of City Service to bring the box to the L300 van and pull out the said box without the required material gate pass. He was negligent of his duty for failing to ensure that all scrap materials are well disposed of to protect the company from individuals who would take advantage."

OFFENSE: Breach of Management's Trust and Confidence.

RECOMMENDED SANCTION: Termination ^[5]

Private respondent then filed with the Labor Arbiter (LA) a complaint for illegal dismissal, payment of incentive for perfect attendance for five years, and damages. Private respondent alleged that there was no valid cause for his dismissal; that the basis of petitioner's loss of trust and confidence must be real, not imaginary or out of fear; that there was no concrete basis for his dismissal; and that he had worked at his level best and often received commendations for his satisfactory performance.

In its Reply, petitioner argued that private respondent's attempt to commit qualified theft or pilferage in connivance with Maglalang, together with the spot inspection on private respondent's locker and shoe box, which yielded old and new tools and spare parts, created a reasonable ground for petitioner to believe that private respondent was involved in theft and pilferage of reusable items; that he could no longer be

trusted, as his position gave him unhampered access to said items, thus, the decision to terminate him; and that his commendations referred to perfect health condition and attendance and an "extra mile" award in the name of service, but did not involve honesty and integrity matters.

On July 31, 2002, the LA rendered his Decision,^[6] the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is entered FINDING respondent company to have illegally dismissed complainant thus, ORDERING it to reinstate him to his former position without loss of seniority rights and privileges and to pay him full backwages inclusive of 13th month pay, leave benefits and/or 5-day SILP per year of service, allowances and to his other benefits or their monetary equivalent reckoned from date of illegal dismissal on 20 July 2001 until actually reinstated, tentatively computed as basic salary P135,600.00 (P11,300.00 x 12 months), plus 13th month pay P11,300.00 (1/12 of basic salary), plus 5 day SILP of P1,883.00 (P11,300.00/30 days x 5), total as of date of this decision to P148,783.33.

All other claims of complainant are dismissed for lack of merit. ^[7]

The LA found that the fact that private respondent was seen incidentally in the company of Maglalang and that he was seen by his immediate superior Abrazado as the one who took the subject box from the tinsmith crib room, where all the replaced parts were kept, and handed it to Maglalang, was not the kind of substantial evidence that would lead to a reasonable conclusion that private respondent was indeed in complicity in the attempt to take out the unauthorized contents of the box from the premises; these pieces of evidence are not direct, but mere suppositions and conjectures.

The LA further found that on June 4, 2001, private respondent was authorized by Manager Afable to go to the dismantled parts storage room to determine which scrap materials may be disposed and those which may be reused; that if ever private respondent erred in his determination as to the scrap items, since Abrazado declared that the contents of the box were only of "minimum damage" and ought not to have been disposed of, such could not be immediately attributed to him as his supposed complicity in the attempted theft; and that even if the contents of the box varied with the contents listed in the gate pass submitted for the approval of Afable, it was not private respondent who made the gate pass or the one charged to do the inspection/inventory and listing of items for gate pass purposes. The LA concluded that it would be incredible to believe that private respondent would just destroy his track record of exemplary performance and promotions, as there was no proven past offense of similar nature.

On appeal, the National Labor Relations Commission (NLRC) in its Decision^[8] dated October 21, 2003 dismissed the appeal and affirmed the LA decision.

The NLRC found that although petitioner averred that Abrazado actually saw private

respondent hand the box to Maglalang to prove private respondent's direct complicity in the attempt to pull out a box containing reusable parts from petitioner's premises, Abrazado's averment was not supported by his affidavit; that under the NLRC rules, the affidavit of witnesses shall take the place of the latter's direct testimony; thus, failure to present his direct testimony in the form of affidavit made his averment hearsay, which cannot be considered as evidence; that private respondent's alleged breach of duty when he gave out a box containing items that were not scrap parts for disposal, anchored on the presumption that said box was indeed handed by private respondent to Maglalang, was not proven since the only evidence respecting this factual averment was also the hearsay testimony of Abrazado.

The NLRC also found that even the report submitted by petitioner's Investigation Committee did not categorically state that private respondent handed any box to Maglalang; that the Committee's finding that private respondent allowed Maglalang to walk around the crib room and workshop areas despite the fact that said place was considered restricted did not prove that private respondent knew of Maglalang's intention to pull out a box of allegedly reusable parts; and that the Committee's finding that private respondent allowed the pulling out of the box without gate a pass was not proven, as no evidence was shown that it was part of private respondent's duty to prepare or even oversee the preparation of the gate pass.

The NLRC denied petitioner's motion for reconsideration in a Resolution^[9] dated December 15, 2003.

Petitioner filed with the CA a petition for *certiorari* assailing the NLRC ruling. On March 31, 2004, the CA issued its assailed resolution as follows:

A perusal of the Petition for Certiorari at bar reveals that petitioner did not append the Complaint and Decision dated July 3, 2002 of the Labor Arbiter. Section 1, Rule 65 of the 1997 Rules of Civil Procedure, as amended, which governs petitions of this nature requires that the instant petition shall be accompanied by copies of all the pleadings and documents relevant and pertinent thereto and undoubtedly, the aforementioned Complaint and Decision dated July 3, 2002 are material and relevant to the resolution of the instant petition. The petition being fatally defective, the same must fail.^[10]

Petitioner subsequently filed a Compliance and Motion for Reconsideration and for Admission of Attached Complaint and Decision, which was denied by the CA in its Resolution dated August 3, 2004.

Hence, herein petition on the following grounds:

I. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING HCMI'S PETITION AND IN SUBSEQUENTLY DENYING HCMI'S MOTION FOR RECONSIDERATION OF THE RESOLUTION OF DISMISSAL;