

SECOND DIVISION

[G.R. No. 165153, September 23, 2008]

**CARLOS C. DE CASTRO, PETITIONER, VS. LIBERTY
BROADCASTING NETWORK, INC. AND EDGARDO QUIOGUE,
RESPONDENTS.**

DECISION

BRION, J.:

Before us is the Petition for Review on *Certiorari*^[1] filed by petitioner Carlos C. de Castro (*petitioner*) to annul, reverse and/or set aside the Decision^[2] dated May 25, 2004 and the Resolution^[3] dated August 30, 2004 of the Former Special Third Division of the Court of Appeals (CA) in CA-G.R. SP No. 79207 entitled "*Liberty Broadcasting Network, Inc. and Edgardo B. Quiogue v. National Labor Relations Commission and Carlos C. de Castro.*"

FACTUAL BACKGROUND

The facts of the case as gathered from the records are briefly summarized below.

The petitioner commenced his employment with respondent Liberty Broadcasting Network, Inc. (*respondent company*) as Building Administrator on August 7, 1995. On May 16, 1996, the respondent company, through its HRM Senior Manager (*Personnel Manager*) Bernard Mandap, sent a notice to the petitioner requiring him to explain within forty-eight (48) hours why he should not be made liable for violation of the Company Code of Conduct for acts constituting serious misconduct, fraud and willful breach of the trust reposed in him as a managerial employee.^[4]

In his answer, the petitioner denied the allegations against him contained in the affidavits of respondents' witnesses, Vicente Niguidula (*Niguidula*) and Gil Balais (*Balais*).^[5] The petitioner labeled all of the respondents' accusations as completely baseless and sham, designed to protect Niguidula and Balais who were the favorite boys of respondent Edgardo Quiogue (*Quiogue*), the Executive Vice President of the respondent company. At the petitioner's request, the respondent company scheduled a formal hearing at 2:00 p.m. of May 28, 1996. However, the petitioner sent a notice that he would not participate when he learned through his wife that criminal cases for *estafa* and qualified theft had been filed against him at the Makati Prosecutor's Office. He felt that the hearing was a "*moro-moro*" investigation. On May 24, 1996, the respondent company further charged the petitioner with "Violation of Company Code of Conduct," based on the affidavits of Balais, Cristino Samarita (*Samarita*), and Jose Aying (*Aying*).^[6]

On May 31, 1996, the respondent company issued a Notice of Dismissal to the petitioner based on the following grounds: ^[7]

1. Soliciting and/or receiving money for his own benefit from suppliers/dealers/traders Aying and Samarita, representing "commissions" for job contracts involving the repair, reconditioning and replacement of parts of the airconditioning units at the company's Antipolo Station, as well as the installation of fire exits at the Technology Centre;
2. Diversion of company funds by soliciting and receiving on different occasions a total of P14,000.00 in "commissions" from Aying for a job contract in the company's Antipolo Station;
3. Theft of company property involving the unauthorized removal of one gallon of Delo oil from the company storage room;
4. Disrespect/discourtesy towards a co-employee, for using offensive language against Niguidula;
5. Disorderly behavior, for challenging Niguidula to a fight during working hours within company premises, thereby creating a disturbance that interrupted the normal flow of activities in the company;
6. Threat and coercion, for threatening to inflict bodily harm on the person of Niguidula and for coercing Balais, a subordinate, into soliciting money in his (the petitioner's) behalf from suppliers/contractors;
7. Abuse of authority, for instructing Balais to collect commissions from Aying and Samarita, and for requiring Raul Pacaldo (*Pacaldo*) to exact 2%-5% of the price of the contracts awarded to suppliers; and
8. Slander, for uttering libelous statements against Niguidula.

The petitioner filed a complaint for illegal dismissal against the respondents with the National Labor Relations Commission (*NLRC*) Arbitration Branch in the National Capital Region. At the arbitration, he denied committing the offenses charged. He maintained that: he could not encourage solicitation of commissions from suppliers considering that he was quite new in the company; the accusations are belated because the imputed acts happened in 1995; the one gallon of Delo oil he allegedly carted away was at the room of Balais at the time, which circumstance he immediately relayed to Mandap; the affidavits of Niguidula and Balais are not reliable because he had altercations with them; in the first week of May 1996, he reprimanded Balais for incurring unnecessary overtime work, which Balais resented; on May 9, 1996, Niguidula verbally assaulted and challenged him to a fight, which he reported to respondent Quiogue and to the Makati Police. Attached to the petitioner's position paper were the affidavits^[8] of Aying and Ronalisa O. Rosana, a telephone operator of the company.

On April 30, 1999, Labor Arbiter Felipe Pati rendered a Decision in the petitioner's favor, holding the respondent company liable for illegal dismissal.^[9] Arbiter Pati disbelieved the affidavits of Niguidula, Balais, Pacaldo, Samarita, and Aying in view

of the circumstances prior to their execution. The Arbiter noted that Niguidula and Balais had altercations with petitioner prior to the issuance of the notice of violation to the latter; the affidavit of Samarita showed that it was not petitioner who personally asked commission from him but Balais; Aying's credibility had been placed in serious doubt because he recanted his previous affidavit and issued another stating that the petitioner did not actually ask commission from him; and Pacaldo's affidavit should not also be believed because he was a subordinate of Niguidula who had an ax to grind against the petitioner.

On appeal, the NLRC reversed the Labor Arbiter's decision and adopted the findings of Labor Arbiter Tamayo who had reviewed the appeal on the NLRC's instructions. [10] It ruled that Arbiter Pati erred in disregarding the affidavits of the respondents' witnesses.

The petitioner filed a motion for reconsideration which the NLRC granted in a Resolution promulgated on September 20, 2002. [11] The NLRC held that the charges against petitioner "were never really substantiated other than by the 'bare allegations' in the affidavits of witnesses" who were the company's employees and who had altercations with petitioner prior to the execution of their affidavits.

The NLRC turned down the motion for reconsideration that the respondent company subsequently filed. [12] The respondent company thus elevated the case to the CA via a petition for *certiorari* under Rule 65 of the Rules of Court. The CA granted the petition in its Decision promulgated on May 25, 2004, [13] thereby effectively confirming the validity of the petitioner's dismissal. The appellate court found that the NLRC gravely abused its discretion when it disregarded the affidavits of all the respondents' witnesses, particularly those of Balais, Samarita, Niguidula, and Pacaldo who were one in saying that the petitioner demanded commissions from the company's job contractors. The CA observed that it could not have been possible that Balais and Niguidula (who had previous altercations with the petitioner), and Samarita (who did not previously know Quiogue) all committed perjury to execute respondent Quiogue's scheme of removing the petitioner from the company.

The petitioner moved but failed to secure a reconsideration of the CA Decision; hence, he came to us through the present petition.

THE PETITION

The petitioner submits that the CA erred when it acted as a trial court and interfered without sufficient basis with the NLRC's findings. Citing our ruling in *Cosmos Bottling Corporation v. NLRC, et al.*, [14] he points out that factual findings of the NLRC, particularly when they coincide with those of the Labor Arbiter, are accorded respect and finality and should not be disturbed if they are supported by substantial evidence.

The petitioner points out, too, that Rule 65 of the Rules of Court finds full application only when an administrative tribunal has acted with grave abuse of discretion amounting to lack of or in excess of jurisdiction, or when such finding is not supported by the evidence. He argues that the respondent company failed to raise any jurisdictional question of jurisdiction or grave abuse of discretion before the CA. What the respondent company effectively sought from the CA, citing our ruling in

Flores v. NLRC,^[15] was a judicial re-evaluation of the adequacy or inadequacy of the evidence on record - an improper exercise of power outside the scope of the extraordinary writ of *certiorari*.

The petitioner further argues that the CA erred when it substituted its judgment for that of the Labor Arbiter and the NLRC who were the "triers of facts" who had the opportunity to review the evidence extensively.

The petitioner theorizes that his termination from employment was a hatchet job maliciously concocted by the respondents, with Quiogue at the helm. He had offended Quiogue when he questioned the latter's award of the fire exit contract to Samarita; as a result, Quiogue fabricated charges against him, using his underlings Niguidula and Balais. He particularly questions the charge that he conspired with his fellow managers (such as Niguidula, Pacaldo and even Personnel Manager Mandap) in December 1995, and asks why his investigation and the supporting evidence came only in May 1996.

The petitioner likewise cites Aying's change of statement as evidence that the respondents' charges have been concoctions. He belies that he slandered and challenged Niguidula to a fight; it was in fact Niguidula who had defamed him. He stresses that he complained in writing to respondent Quiogue about the incident immediately after it happened, copy furnished B. P. Mandap, F. A. Domingo and R. M. Moreno, the Personnel Manager, Head of Human Relations and President of the company, respectively. He likewise reported the matter to the police and to the barangay covering the workplace, and lodged a complaint for grave oral defamation against Niguidula before the Makati Prosecutor's Office. His co-employee, Ronalisa Rosana, corroborated all these allegations. He points out that Niguidula never reported the incident to Quiogue or to anyone for that matter, thus, proving the falsity of his (Niguidula's) complaint.

Finally, the petitioner draws attention to Quiogue's failure to act on his complaint against Niguidula, only to resurrect it under the Notice of Violation served on him on May 16, 1996.^[16] This time, however, Niguidula was already the victim. As to the notice of violation itself, the petitioner laments that although he was given 48 hours to explain, Quiogue, in bad faith, immediately filed complaints for *estafa* and qualified theft against him. Mandap even went to his residence and warned his wife not to file charges against the company, or else, Quiogue would file cases against him in the regular courts.

THE CASE FOR THE RESPONDENTS

The respondents submit that the CA correctly ruled as the NLRC committed grave abuse of discretion when it flip-flopped in its factual findings. They further stress that the positive testimonies of Balais, Pacaldo, and Samarita should be given credence over the negative testimony of the petitioner. Even granting that the testimony of Niguidula was tainted with malice and bad faith, the affidavit of Balais should stand because no evidence supports the petitioner's claim that Balais also had altercations with him before he (Balais) executed his two affidavits.

With respect to the testimony of Samarita, the respondents point out that Samarita stated in no uncertain terms that he was forced to increase his quotation for the