

SECOND DIVISION

[G.R. NO. 162871, January 31, 2007]

**NORSK HYDRO (PHILS.), INC. AND HANS T. NEVERDAL,
PETITIONERS, VS. BENJAMIN S. ROSALES, JR., RESPONDENT.**

DECISION

QUISUMBING, J.:

For review on certiorari is the Court of Appeals' Decision^[1] dated July 31, 2003 in CA-G.R. SP No. 69721, as well as its Resolution^[2] dated March 18, 2004, denying the motion for reconsideration. The Court of Appeals set aside the Decision^[3] dated December 13, 2001 of the National Labor Relations Commission (NLRC) which had dismissed respondent's appeal from the decision of the Labor Arbiter dismissing his complaint for illegal dismissal.

The facts, culled from the records, are as follows:

On November 27, 1986, petitioner Norsk Hydro (Philippines), Inc. employed respondent Benjamin S. Rosales, Jr. as Operations Supervisor. Rosales later became Assistant Operations Manager, and later on, Operations Manager before he was dismissed. As Operations Manager, Rosales was tasked to scout for properties in Poro Point, San Fernando, La Union and in Cagayan de Oro suitable for a company warehouse and fertilizer blending plant.

Sometime in July 1997, Rosales informed the president of Norsk Hydro, Hans Neverdal, of a seven-hectare land in Barangay Luz Banzon, Jasaan, Misamis Oriental offered by a real estate broker, Virgie Azcuna-Capulong. After inspection, Neverdal found the land suitable and instructed Rosales to check on it. After consultation with the broker, Rosales informed Neverdal that certain portions of the land were priced at P1,200 per square meter while the rest at P400 per square meter. Neverdal agreed to the purchase and instructed Rosales to close the deal. Accordingly, Deeds of Conditional Sale were executed by Virgie Azcuna-Capulong and Ismael Laya, who were the designated attorneys-in-fact of the landowners, in favor of the buyer, Norsk Hydro. The ownership was subsequently transferred to Norsk Hydro.

On September 1, 1999, one Pepito Abecia, a real estate broker from Misamis Oriental, wrote Neverdal claiming that Rosales participated in overpricing the aforementioned land. He executed an affidavit divulging that Rosales, the other real estate brokers and he agreed to markup the price, such that each of them would receive P100 for every square meter sold. Abecia said he told on the group because he was not paid his share of the overprice. He attached a copy of the complaint for estafa that he filed against the other real estate brokers.

Consequently, on October 18, 1999, Neverdal sent Rosales a show-cause

memorandum accusing the latter of serious misconduct and willful breach of the company's rules and regulations when he participated in the purchase of real properties by conniving to overprice the properties in a manner grossly disadvantageous to the company. Neverdal also sent Rosales a notice of preventive suspension for a period of 15 days and gave Rosales 72 hours within which to explain his side. An administrative hearing was conducted on October 28, 1999. On grounds of loss of trust and confidence, the company terminated the employment of Rosales on November 3, 1999.

On November 11, 1999, Rosales filed before the Labor Arbiter a complaint for illegal dismissal against Norsk Hydro. He claimed that there was no evidence showing that he defrauded the company. He also claimed that he was not given opportunity to go over the records incriminating him and that the investigation was hastily terminated.

Rosales alleged that upon receiving the show-cause memorandum, he requested permission to have access to his personal things and documents in the office to prepare his defense; permission to talk to other employees who could help him with his defense; investigation by objective and neutral persons; and extension of the 72-hour deadline to be counted from the time he finished examining the evidence against him. He claimed that the company did not respond to his requests, and it was only on the scheduled investigation on October 28, 1999, that he was furnished with copies of Abecia's letter, affidavit, and criminal complaint for estafa, as well as the memorandum of criminal investigation by the Office of the City Prosecutor. In addition, he said that the administrative hearing was terminated without giving him sufficient time to prepare and submit his written reply.

For their part, petitioners Norsk Hydro and Neverdal maintained that Rosales was dismissed for a just cause, having connived with the real estate brokers to overprice the properties and profited from it to the gross disadvantage of the company. They contended that Rosales was given time to explain. They had set a hearing, yet Rosales failed to answer the charges against him.

The Labor Arbiter dismissed the complaint. It held that the company was justified in terminating Rosales's employment on the ground of loss of trust and confidence.

The Labor Arbiter found Abecia's sworn statement sufficient basis for the company to lose its trust and confidence on Rosales. Moreover, the Labor Arbiter found nothing irregular in the manner Rosales was dismissed.

Rosales appealed to the NLRC, which affirmed^[4] the decision of the Labor Arbiter. The NLRC ruled that the issue of whether there was overpricing is secondary only to the issue of whether Rosales breached the trust and confidence reposed upon him by his employer.

The NLRC held that the requirements of notice and hearing have been sufficiently met when: (1) the show-cause memorandum was served upon Rosales requiring him to submit an explanation within 72 hours; and (2) notice was sent to him regarding an administrative hearing on October 28, 1999.

Undaunted, Rosales filed a petition for certiorari before the Court of Appeals ascribing grave abuse of discretion on the part of the NLRC because (1) there was no legal basis for his dismissal; and (2) his right to due process was violated.

The Court of Appeals granted certiorari notwithstanding the lack of a motion for