

SECOND DIVISION

[G.R. NO. 171927, June 29, 2007]

**KEPHILCO MALAYA EMPLOYEES UNION AND LEONILO BURGOS,
PETITIONERS, VS. KEPCO PHILIPPINES CORPORATION,
RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

Petitioners challenge the January 13, 2006 Decision and the March 3, 2006 Resolution of the Court of Appeals^[1] finding grave abuse of discretion on the part of the National Labor Relations Commission (NLRC) in reversing the labor arbiter's decision.

Kepeco Philippines Corporation (respondent), a subsidiary of Korea Electric Power Corporation (KEPCO), is engaged in the business of power generation as an independent power producer which operates the Malaya Thermal Power Plant in Pililla, Rizal.

On January 16, 1996, respondent employed petitioner Leonilo Burgos (Burgos) as a first class turbine operator with a monthly salary of P38,758. Four years later, Burgos became the president of co-petitioner Kephilco Malaya Employees Union (the union), the certified collective bargaining agent of respondent's rank-and-file employees.

Sometime in November 2002, the president of KEPCO visited the plant site and granted the employees the sum of US\$1,000 as a sign of goodwill, which amount Burgos accepted in his capacity as union president.

At the union's general membership meeting on February 7, 2003, Burgos made the following remarks in response to a question raised on the floor concerning the status of the US\$1,000 gift: "What is the problem if the US\$1,000 is with me. It is intact. Don't worry. Just wait because we will buy gifts for everybody. The amount of US\$1,000 is a small amount compared to a KIA plus P700,000, which was possibly offered in exchange for the CBA during the negotiation but which I did not show any interest in."^[2] (Underscoring supplied)

On the directive of respondent after learning of Burgos' remarks, an initial investigation was conducted, the results of which became the basis of the filing of an administrative charge against Burgos for violation of the following sections in respondent's Company Code of Employee Discipline:

7.33 Initiating and[/]or engaging in any kind of activity (collective and[/]or individual) which causes damage and/or prejudice to the Company, its officers and employees (i.e. instigation)

7.34 Sending and/or disseminating letters or communications which tends [sic] to discredit or cause damage to the Company, its officers or its employees.^[3] (Underscoring supplied)

Giving his side on the matter, Burgos, in a letter to the KEPCO president which was quoted in his verified Position Paper, recalled the conversation that transpired between him and respondent's personnel manager bearing on his above-questioned remarks about a "Kia plus P700,000" as follows:

Sometime in June 2000, Mr. K.Y. Kim, the Personnel Manager then, requested for a meeting with the KMEU officers. It was scheduled at 1:00 PM. Among the officers, I was the first to arrive. Mr. K.Y. Kim also arrive[d] ahead. Mr. Kim and I talked with each other. During the conversation, he casually asked me: "Do you have a service?" I answered: "Yes, I have: two (2) cars, one (1) brand new and one (1) second hand." Then he said: "How about my KIA PREGIO plus P700,000.00?" Thinking that he was testing me (*sinusubukan ako*), I said with a smile: "For what? For CBA exchange?" He laughed at my answer but did not make any reply. He just told me that he was leaving for Korea for good in August or September.^[4] (Underscoring supplied)

Respondent, on the other hand, proffered that Kim denied Burgos' allegation. It presented no written statement of Kim, however.

After notice and hearing,^[5] respondent found Burgos guilty of violating Section 7.34 (disseminating communications which tend to discredit or cause damage to the company, its officers or its employees), punishable by outright dismissal. It accordingly terminated his employment effective at the close of business hours of July 1, 2003, by notice of termination dated June 30, 2003.^[6]

Conciliation before the National Conciliation and Mediation Board having failed, Burgos filed on August 29, 2003 a complaint for illegal dismissal, unfair labor practice, and damages, docketed as NLRC NCR Case No. 08-10165-03.

By Decision of March 31, 2004, the labor arbiter upheld the legality of the dismissal but awarded separation pay to Burgos in the interest of justice. The dispositive portion of the decision reads:

WHEREFORE, respondent-KEPCO PHILIPPINES CORPORATION is hereby directed to pay complainant's separation pay equivalent to one month's salary for every year of service in the total amount of (P271,306.00) TWO HUNDRED SEVENTY ONE THOUSAND THREE HUNDRED AND SIX PESOS (P38,658.00 X 7 years).

SO ORDERED.^[7]

Petitioners appealed to the NLRC while respondent partially appealed with respect to the grant of separation pay.

By Resolutions of April 28, 2005 and June 30, 2005,^[8] the NLRC reversed the

decision of the labor arbiter and denied respondent's motion for reconsideration, respectively. The dispositive portion of the main resolution reads:

WHEREFORE, the assailed decision of 31 March 2004 is REVERSED and SET ASIDE. Accordingly, the respondent company is hereby ordered to immediately reinstate complainant-appellant LEONILO C. BURGOS to his former position without loss of seniority rights and other benefits and to pay him full backwages from the time his salary was illegally withheld from him up to the date of his actual reinstatement, which is computed as of the date of the promulgation of this Resolution in the total amount of NINE HUNDRED FIFTEEN THOUSAND THREE HUNDRED THIRTY FOUR and 77/100 (P915,334.77) PESOS plus ten (10%) percent of the total monetary award in the amount of NINETY ONE THOUSAND FIVE HUNDRED THIRTY THREE AND 48/100 (P91,533.48) PESOS as and by way of attorney's fees.

For lack of factual or legal basis, all other claims are dismissed.

SO ORDERED.^[9]

Respondent elevated the case via petition for certiorari to the Court of Appeals which granted the same by the assailed decision and resolution which reversed those of the NLRC.

The dispute boils down to the issue of whether Burgos' remarks in the course of a union meeting constitute serious misconduct to warrant his dismissal from employment.

The petition is impressed with merit.

Serious misconduct is defined as the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment.^[10] To be serious within the meaning and intendment of the law, the misconduct must be of such grave and aggravated character and not merely trivial or unimportant.^[11]

The labor arbiter observed that Burgos' remarks could spark unrest of dire consequences and ignite a nationwide dispute of disastrous effects. Other than the irrelevant fact that preventive mediation failed, however, the labor arbiter cited no substantial evidence to support the sweeping conclusion.

In reversing the labor arbiter's decision, the NLRC found that in making the questioned remarks, Burgos could have sought to prove his sincerity to the union members and disabuse their minds of any allusion of misappropriation by laying stress on his personal disinterest in pecuniary matters and by citing, in the interest of transparency, what he must have believed was an attempt at subornation, which he deemed put his integrity to the test.

It is settled doctrine that in controversies between a worker and his employer, doubts reasonably arising from the evidence or in the interpretation of agreements and writings should be resolved in the worker's favor.^[12]