

SECOND DIVISION

[G.R. NO. 148205, February 28, 2005]

**COCA-COLA BOTTLERS, PHILS., INC., PETITIONER, VS.
KAPISANAN NG MALAYANG MANGGAGAWA SA COCA-COLA-FFW
AND FLORENTINO RAMIREZ, RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

This is a petition for review of the Resolution^[1] of the Court of Appeals in CA-G.R. SP No. 58012 reversing the Resolution of the National Labor Relations Commission (NLRC) in NLRC NCR CASE CA 018341-99.

The Antecedents

Petitioner Coca-Cola Bottlers Phil., Inc. is a domestic corporation engaged in the manufacture, sale and distribution of softdrinks. It maintains plants in various areas of the country, among others, in Calamba and Sta. Rosa, Laguna, in Lipa City and Balayan, Batangas; in Sta. Cruz, Gumaca; in San Pablo City and Lucena City, Quezon Province; in Las Piñas City, and Dasmariñas, Cavite.

On July 1, 1982, the petitioner hired Florentino Ramirez as "driver-helper" with the following duties:

- (a) as driver, he checks the truck's oil, water, wheels, etc.;
- (b) as helper, he is charged of loading and unloading truck's load; putting bottles in the coolers and displays company products to each outlet or customer's store.^[2]

Ramirez became a member of the respondent *Kapisanan ng Malayang Manggagawa Sales Force Union*, the bargaining representative of the rank- and-file employees of the petitioner company. In 1996, he was the "shop steward" of the union at the company's Batangas Sales Office.^[3]

Sometime in October 1996, it happened that the route salesman for Route M11 was unavailable to make his usual routes. Since Ramirez had been driving for the route salesman for so long, the petitioner company decided to assign him as temporary replacement of the regular route salesman for routes M11, AMC and LPR. Thereafter, in a Letter dated December 5, 1996, the Officer-in-Charge of the Batangas Sales Office, Victor C. dela Cruz, informed the Officer-in-Charge of DSS-District 44, Rolando Manzanares, that a review of the copies of the invoices relating to the transactions of Ramirez in Rt. M11 revealed the following discrepancies: (a) the number of cases delivered to customers; (b) empty bottles retrieved from them, and (c) the amounts in Sales Invoices Nos. 3212215, 3288587, 3288763, 3288765 and 3288764, thus:

- a. Finance and Customer's Copies of Sales Invoice No. 3288765 showing the deliberate omission in the finance copy of the delivery of 25 cases of Sprite (8 ounces) and the absence in the Customer's Copy of the retrieval of 10 cases of Coke (1.5 liters).
- b. Finance and Customer's Copies of Sales Invoice No. 3288764, a comparison of which shows that the retrieval of empty bottles amounting to Two Thousand Two Hundred Fifty Pesos (P2,250.00) reflected in the Finance Copy as having been collected was not reflected in the Customer's Copy.
- c. Finance and Customer's Copies of Sales Invoice No. 3212215 which shows that the refund of thirty-three (33) cases was reflected only in the Finance Copy.

Ramirez received a Memorandum from District Office Nos. 44 and 45 requiring him to report to the said office starting December 5, 1996 until such time that he would be notified of the formal investigation of the charges against him.^[4]

During the formal investigation conducted by a panel of investigators on December 20, 1996, Ramirez was not represented by counsel. He also manifested that he was waiving his right to be represented by counsel when the members of the panel asked him about it. Ramirez was then asked to explain the discrepancies subject of the charges, and narrated the following:

(a) Re: Sales Invoice No. 3212215. Ramirez unloaded the products from the delivery truck in the morning and delivered the same to the customer. He then gave a copy of the sales invoice to the customer, which showed the quantity and prices of the products delivered. He told the customer to prepare the payment and that he would return later in the evening to collect the same. Because the customer did not have enough money on hand, he covered the deficit by returning 33 cases of empty bottles, which was reflected in the copy of the sales invoice forwarded to the sales department. Ramirez reasoned that he failed to note the return of the empty bottles in the copy of sales invoice he later delivered to the customer because the latter informed him that such copy had been misplaced. Besides, Ramirez and the customer had agreed that he (Ramirez) would just note the return of the empty bottles on the customer's copy of the sales invoice the following day. Ramirez pointed out that the petitioner company did not suffer any loss because the empty bottles were turned over to it.

(b) Re: Sales Invoice No. 3288587 dated October 12, 1996. Ramirez admitted that there the customer made an overpayment of P504.00. He claimed, however, that he returned the amount to the customer from his own money, and retained the P504.00 by way of reimbursement for the amount he had earlier given to the customer. Hence, the petitioner company and the customer did not suffer any loss.

(c) Re: Sales Invoice No. 3288763 dated October 14, 1996. Ramirez claimed that he had erroneously written Sales Invoice No. 3288763 instead of Sales Invoice No. 3288765 (customer's copy) in his RHF Report dated October 14, 1996. He also claimed to have overlooked Sales Invoice No. 3288763 when he issued a receipt to customers "Iglesia or Dolor Hernandez," and mistakenly issued Sales Invoice No. 3288763. He also declared that he failed to include Sales Invoice No. 3288765 in his RHF Report as one of the cancelled invoices because it was already too late in the evening.

(d) Re: Sales Invoice No. 3288764. Ramirez declared that it was only after he had unloaded and delivered the products to the customer and had given a copy of the sales invoice to the latter that he realized that the customer had returned several cases of empty bottles worth P2,250.00. He pointed out that he indicated the same in the copy of the sales invoice he submitted to the company, but failed to do so in the customer's copy of the sales invoice.

On February 11, 1997, Ramirez received a notice from the company informing him that his services were being terminated; that based on the investigation, it was clearly established that he violated Sections 10 and 12 of the CCBPI Employees' Code of Disciplinary Rules and Regulations (Red Book); and that coupled with his prior infractions, his employment was terminated effective February 12, 1997.

On March 17, 1997, Ramirez and the union filed a Complaint^[5] for unfair labor practice and illegal dismissal against the company with the Arbitration Branch of the NLRC, docketed as RAB-IV-3-8862-97-B. Ramirez claimed that although he was merely an acting salesman, the alleged violations for which he was dismissed, *i.e.*, Sections 10 and 12 of the petitioner company's rules and regulations, particularly designated as fictitious sales and falsification of company reports, were normally only for full-fledged salesmen. He pointed out that:

Firstly, respondent company's act of grounding individual complainant on alleged shortage in the bodega, has no factual basis, as no actual inventory was conducted; and

Secondly, individual complainant was terminated for violations which are alien to his official functions and designation; and

Lastly, as officer of the union, individual complainant was terminated at the time the collective bargaining negotiations was underway and at its critical stage.

These facts clearly establish a classic case of an employer harassing an official of the union, which we humbly submit as a clear case of interference by an employer in the right of the workers to self-organization and to collective bargaining.^[6]

Ramirez likewise claimed that he was denied of his right to due process, based on the following grounds:

Firstly, individual complainant was dismissed without having been first issued a "notice of dismissal" which supposedly should contain the charges against him, which would be made as basis for his termination.

Secondly, individual complainant was dismissed without affording him an ample opportunity to defend himself, as he was not notified in advance of the subject of the administrative investigation.

Thirdly, individual complainant was terminated without just and valid cause, and in gross violation of his right to due process.

Lastly, individual complainant was terminated by respondents in utter bad faith, as the decision on the said termination was arrived at, without any just and valid cause. Simply put, respondents simply acted oppressively, malevolently, and with grave abuse of prerogatives.^[7]

For its part, the petitioner company alleged that the dismissal of Ramirez was based on the facts unearthed during the formal investigation, and that he was guilty of serious misconduct, a valid ground for termination of employment. Even if he was occupying the position of route driver/helper, he was nevertheless performing the functions and duties of a route salesman, and, as such, he not only committed fraud, but also willfully breached the trust and confidence reposed on him by the petitioner company. According to the petitioner company, considering the sanctions imposed on Ramirez for prior breaches of company rules, his dismissal from employment was with basis. The petitioner company also insisted that Ramirez was accorded his right to due process: he was notified of the charges against him, was subjected to a formal investigation during which he was allowed to explain the discrepancies, and was notified of the outcome thereof, as well as the bases of the termination of his employment.

On July 31, 1998, the Labor Arbiter (LA) rendered judgment^[8] dismissing the complaint for lack of merit. The LA found that based on the evidence, there was a justifiable basis for the dismissal of Ramirez. According to the LA, it was of no moment that the official designation of Ramirez was "driver-helper," since he committed the infractions while he was performing the functions of an "acting salesman." The LA further found that due process had been complied with.^[9]

Aggrieved, Ramirez appealed the decision to the NLRC, docketed as NLRC NCR CASE CA 018341-99.

Ramirez argued that any errors or discrepancies he may have committed while he was assigned as route salesman were excusable. He pointed out that he was merely a driver/helper and had no formal training as route salesman before such temporary designation. He averred that the petitioner company dismissed him because of the on-going collective bargaining negotiations which were then in a critical stage.

On September 20, 1999, the NLRC rendered a Resolution^[10] affirming the decision of the LA. It declared that the petitioner company had adduced documentary evidence to show that Ramirez failed to justify why the amount of P2,250.00 was not reflected in the customer's copy of Sales Invoice No. 3288764. According to the NLRC, Ramirez also failed to justify the omission of the return of 33 cases of company products in the customer's copy of Sales Invoice No. 3212215. The NLRC found the same to be sufficient basis for a finding of grave misconduct, which rendered Ramirez unworthy of the trust and confidence demanded of his position as an "acting salesman." Citing the ruling of this Court in *Philippine Commercial International Bank v. Jacinto*,^[11] the NLRC declared that Ramirez's claim that the penalty of dismissal was too harsh and disproportionate on account of his being a mere "acting salesman," was untenable.

The NLRC, likewise, rejected Ramirez's plea of denial of due process, declaring that he was accorded the chance to be heard on the complaint against him and to adduce evidence on his behalf. It ruled that Ramirez failed to prove ill-motive on the

part of the petitioner company for dismissing him.

Upon the denial of his motion for reconsideration, Ramirez filed a petition for certiorari under Rule 65 of the Rules of Court with the Court of Appeals (CA), docketed as CA-G.R. SP No. 58012 wherein he alleged the following:

1. THE HONORABLE PUBLIC RESPONDENT SERIOUSLY ERRED, THEREBY COMMITTING GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION, IN AFFIRMING THE LABOR ARBITER'S DECISION UPHOLDING THE LEGALITY OF INDIVIDUAL PETITIONER'S DISMISSAL, CONSIDERING THAT:
 - A. INDIVIDUAL PETITIONER WAS OFFICIALLY DESIGNATED AS "DRIVER-HELPER," A POSITION WHICH DOES NOT INVOLVED (sic) THE ELEMENT OF "TRUST AND CONFIDENCE," YET, WAS TERMINATED FOR ALLEGED "LOSS OF TRUST AND CONFIDENCE;"
 - B. INDIVIDUAL PETITIONER, AS A "DRIVER-HELPER" WAS MERELY TEMPORARILY ASSIGNED AS "ACTING SALESMAN" WHEN THE ALLEGED DISCREPANCY IN THE TRANSACTION DOCUMENTS TOOK PLACE;
 - C. INDIVIDUAL PETITIONER WAS NOT SPECIFICALLY TRAINED AS "SALESMAN," THUS, CANNOT BE EXPECTED TO PERFORM IN THE SAME MANNER AS AN OFFICIAL ONE, WHO ARE PRECISELY "TRAINED" FOR THE ENDEAVOR.
 2. THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION, IN FINDING THAT INDIVIDUAL PETITIONER WAS VALIDLY DISMISSED FOR LOSS OF TRUST AND CONFIDENCE, AS, EVEN IF THE SAID GROUND REALLY EXISTS, HE COULD HAVE BEEN ALLOWED TO CONTINUE HIS EMPLOYMENT, AS "DRIVER-HELPER" – HIS OFFICIAL DESIGNATION, **A POSITION WHICH DOES NOT INVOLVE AN ELEMENT OF "TRUST AND CONFIDENCE."**
 3. THE HONORABLE PUBLIC RESPONDENT, LIKE THE HONORABLE LABOR ARBITER A *QUO*, COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION, IN DECLARING THAT "COMPLAINANT'S DESIGNATION AT THE TIME OF THE INFRACTION IS OF NO MOMENT."
 4. IN SUM, THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION, IN NOT FINDING PRIVATE RESPONDENT GUILTY OF ILLEGAL DISMISSAL AND UNFAIR LABOR PRACTICE; AND IN NOT ORDERING PRIVATE RESPONDENT TO REINSTATE INDIVIDUAL PETITIONER TO HIS FORMER POSITION AS "DRIVER-HELPER," AND TO PAY FULL BACKWAGES, DAMAGES AND ATTORNEY'S FEES.
- [12]

In a Decision dated October 25, 2000, the CA dismissed the petition.^[13] It ruled that the petitioner's designation at the time of the infraction was of no moment; when he agreed to be an "acting salesman" for Route M11, AMC and LPR, he actually performed the duties of a salesman, and in so doing, assumed the responsibilities of the position. The CA further ratiocinated that notwithstanding Ramirez's lack of training, he had assumed and performed the duties of a salesman;