

## SECOND DIVISION

[ G.R. NO. 158232, March 31, 2005 ]

**FUJITSU COMPUTER PRODUCTS CORPORATION OF THE PHILIPPINES AND ERNESTO ESPINOSA, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, VICTOR DE GUZMAN AND ANTHONY P. ALVAREZ, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

This is a petition for review under Rule 45 of the Rules of court assailing the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 71324 reversing the decision of the National Labor Relations Commission (NLRC) in NLRC NCR CA NO. 024541-00 dismissing respondents Victor De Guzman and Anthony P. Alvarez from employment, and the Resolution dated May 14, 2003 denying the motion for reconsideration thereof.

#### The Facts of the Case

Petitioner Fujitsu Computer Products Corporation of the Philippines (FCPP) is a corporation organized and existing under Philippine laws with business address at the Special Export Processing Zone, Carmelray, Canlubang, Calamba, Laguna. It is engaged in the manufacture of hard disc drives, MR heads and other computer storage devices for export.<sup>[2]</sup>

Respondent Victor de Guzman began working for FCPP on September 21, 1997 as Facilities Section Manager. As of 1999, he was also holding in a concurrent capacity the position of Coordinator ISO 14000 Secretariat and was receiving a monthly salary of P43,100.00<sup>[3]</sup>

Respondent Allan Alvarez, on the other hand, was employed as a Senior Engineer on April 21, 1998. He was assigned at the Facilities Department under the supervision of respondent De Guzman, and was then earning P16,800.00.<sup>[4]</sup>

The garbage and scrap materials of FCPP were collected and bought by the Saro's Trucking Services and Enterprises (Saro's). On January 15, 1999, respondent De Guzman as Facilities Section Manager, for and in behalf of FCPP, signed a Garbage Collection Agreement<sup>[5]</sup> with Saro's, and the latter's signatory therein was its owner and general manager, Larry Manaig.

Sometime in the third week of July 1999, petitioner Ernesto Espinosa, HRD and General Affairs Director of FCPP, received a disturbing report from Manaig. Manaig reported that respondent De Guzman had caused the "anomalous disposal of steel [purlins]<sup>[6]</sup> owned by FCPP."<sup>[7]</sup> Two of Manaig's employees, Roberto Pumarez<sup>[8]</sup> and Ma. Theresa S. Felipe,<sup>[9]</sup> executed written statements detailing how respondent De

Guzman had ordered the steel purlins to be brought out.

Thereafter, petitioner Espinosa sent a two-page Inter-Office Memorandum dated July 24, 1999 to respondent De Guzman, effectively placing him under preventive suspension. He was likewise directed to submit his written explanation on the charges against him. The Memorandum is worded as follows:

This refers to the report we have received from Mr. Larry Manaig, owner of Saro's Trucking Services, FCPP's garbage/scrap contractor.

It was disclosed to us that sometime in the first week of July 1999, you personally approached Mr. Roberto Pumarez, Supervisor of Saro's, and intimated to him your interest in the scrap metals which were taken from Building B which at present is undergoing renovation. You allegedly told him that since Saro's is paying FCPP P2.50 per kilo of metal, you will buy it from Saro's for P3.00 per kilo. Thereafter, on July 10, 1999, Mr. Adrian Camcaman, one of your staff in the Facilities Section, ordered Mr. [Pumarez] to send a truck to pick up the scrap metals which you had earlier pointed to Mr. [Pumarez]. These assorted metals were covered by Scrap/Garbage Gate Pass Receipt No. 3413.

From these assorted metals, it was revealed to us that approximately 2,800 kgs. were delivered by Saro's, per your instruction, to Sta. Rosa Baptist Church. After this, on July 12, 1999, the remaining scrap metals were again picked up by Saro's. This time, the assorted metals were covered by Scrap/Garbage Pass NO. 3419. From these assorted [metals] 1,230 kgs. were purposely excluded from the gross weight to be reported and paid to FCPP. Again, these excluded metals were delivered to the same Baptist Church, per your instruction. According to Mr. Manaig, despite several demands from you, you have not yet remitted to him the payment for those assorted scrap metals which you caused to be delivered to Sta. Rosa Baptist Church.

In addition to the foregoing, it was likewise reported by Mr. Manaig that there were previous occasions in the past where you solicited from him empty drums, pails, and corrugated cartons, which were all part of those picked up from FCPP. Attached hereto are the statements given by the concerned employees of Saro's.

Clearly, your above actions constitute qualified theft, grave abuse of authority, and willful breach of trust and confidence.

In view of the foregoing, you are hereby directed to submit your written explanation within forty-eight (48) hours from your receipt hereof why no disciplinary sanction should be imposed against you, including dismissal from the service. Should you fail to do so, as hereby directed, we shall be compelled to assess and evaluate your case based on available records. In the meantime, you are hereby placed under preventive suspension effective immediately, pending further investigation of your case.<sup>[10]</sup>

Thereafter, Cesar Picardal, the Security Manager of FCPP, interviewed employees of SNK Philippines, Inc. (SNK), a building contractor then working in the premises of

FCPP. Rolando P. Astillero,<sup>[11]</sup> Maurice Victoriano<sup>[12]</sup> and Nat Balayan<sup>[13]</sup> voluntarily executed handwritten statements on the matter.

According to their respective accounts of what transpired on July 10, 1999, a 10-wheeler truck arrived at the company warehouse at around 1:00 p.m. Assorted scrap materials were then hauled into the truck, including steel purlins. Knowing that they could still be used as braces for hepa-filter box hangers, SNK Mechanical Supervisor Balayan asked his superior, Nobuaki Machidori, if the hauling could be stopped, to which the latter consented. Balayan approached the driver of the truck and told him not to include the steel purlins; the warehouse helpers then began separating the steel purlins from the other scrap materials to be hauled.

Astillero had also requested the men to stop the hauling. SNK Engineer Victoriano had apparently told him that the steel purlins would still be used for construction. At around 2:00 p.m., respondent De Guzman called Victoriano and asked whether the scrap materials at the Fuji Electric Warehouse could already be collected by the scrap dealer. Victoriano assented, but requested that "the existing c-purlins be dismantled" and that "20 lengths would be used as additional bracket support for heap box/FCU installation."<sup>[14]</sup>

Adrian Camcaman, an employee of the Facilities Department under respondent De Guzman, then arrived and informed Astillero that Victoriano had already given permission for the hauling to commence.<sup>[15]</sup> Camcaman also executed a written statement<sup>[16]</sup> regarding the matter.

In his Explanation<sup>[17]</sup> dated July 26, 1999, respondent De Guzman alleged the following in his defense:

Sometime in the first week of July 1999, I came to know from Rev. Mario de Torres, Pastor of St. Rosa Bible Baptist Church that they are in need of some steel [purlins] to be used by the church for its roof deck construction. I told him that I know a scrap dealer where he could possibly buy the said materials. I told him that Saro's Trucking Services is the regular buyer of FCPP's scrap materials and they can buy from them. I referred the matter therefore to Mr. Roberto [Pumarez], Supervisor of Saro's and told him of the intension of the Sta. Rosa Bible Baptist Church (SRBBC) to buy scrap metal. I further told him that since Saro's is paying FCPP P2.60 of scrap metal, Sta. Rosa Bible Baptist Church can buy it from Saro's at P3.00 per kilo a price higher than FCPP. The statement of Mr. [Pumarez] which says that "I will buy" it from Saro's was not correct which I strongly object. Acknowledging that Mr. [Pumarez] is amenable to sell the scrap to Sta. Rosa Bible Baptist Church after consultation from his boss I advised the Pastor of Sta. Rosa Bible Baptist Church that Saro's agreed. My part of the transaction ended there. Thereafter, as reported by my staff the scrap metals were delivered to the church by the Saro's Trucking Services on July 10, 1999 covering the net weight of 2,860 kilos based on the submitted weighing scale ticket numbers 37830 and 37844 from ANGLO-WATSONS PHILS., INC., the weighing bridge company. These were covered by gate pass number 3413. On July 12, 1999, it was reported that the remaining scrap metals were again delivered to the Sta. Rosa Bible Baptist Church covered by gate pass number 3419 but

the exact weight could not be determined yet pending the scale ticket submission. As of July 24, 1999 the weight scale ticket of the last delivery was not yet confirmed [or] submitted to FCPP.

It is not true that Mr. Larry Manaig demanded to me "several times" the payment of the scrap because his secretary followed up to me only once and I told her that the church is still awaiting for the actual quantity and value of the metal scrap. When my staff Mr. Camcaman returned from his two weeks nightshift duty and reported for dayshift duty he submitted to me the scale ticket of the first delivery (see Exhibit I). Please note that the scale ticket of the second delivery was not yet submitted by Saro's and only verbally communicated that the weight delivered to the Sta. Rosa Bible Baptist Church is approximately 1,230 kgs.<sup>[18]</sup>

Respondent De Guzman also pointed out that he could not be charged for qualified theft since he merely issued gate passes to Saro's after the scrap metals were declared ready for disposal by SNK, the company in charge thereof. The scrap metals in question were all accounted for and collected by Saro's, and upon collection would be considered sold to the latter. Respondent De Guzman theorized that the latter initiated the complaint against him since he was now in charge and had recently implemented measures to monitor and confirm the actual weighing of all the scrap materials which had not been done before. Saro's had apparently been previously free to haul all the scrap materials without field supervision from petitioner FCPP.

On July 28, 1999, respondent Alvarez sent an e-mail message to his co-employees, expressing sympathy for the plight of respondent De Guzman. Respondent Alvarez used a different computer, but the event viewer system installed in the premises of petitioner FCPP was able to trace the e-mail message to him. Thus, on even date, petitioner Espinosa issued an Inter-Office Memorandum addressed to respondent Alvarez, worded as follows:

TO : MR. ALLAN ALVAREZ

FROM : HRD and General Affairs Department

SUBJECT : SENDING OF E-MAIL MESSAGE SYMPATHETIC

TO MR. DE GUZMAN

DATE : July 28, 1999

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This is in reference to the July 28, 1999 E-mail message sent to all E-mail users from R. "Sato" ...this morning.

Upon investigation, records reveal that you used the computer assigned to Shirley Bagnes and sent a message "hi" to yourself. Moreover, the event viewer-system showed that you logged at 7:19:58 (also using the computer of Shirley Bagnes).

Please explain in writing within 48 hours why no disciplinary action

should be filed against you, including dismissal, for grossly presenting information which [is] highly confidential while an investigation on Mr. De Guzman is going on. Moreover, your action of obtaining the sympathy of employees through the use of the E-mail goes against your role as a key person holding a highly responsible position in the Facilities Section.

(Sgd.)

ERNESTO G. ESPINOSA

HRD and General Affairs Director<sup>[19]</sup>

Respondent Alvarez submitted a written Explanation dated September 29, 1999 where he apologized, readily admitted that he was the sender of the e-mail message in question, and claimed that he "acted alone with his own conviction." He alleged, however, that he was only expressing his sentiments, and that he was led by his desire to help a friend in distress. He further explained:

I'm not [meddling] with the case of our boss but as Facilities member, we are sympathetic to the "case" against him. If the hearsay (sic) is true, that he is [charged] on the ground of manipulating the scrap management, then we totally disagree. It was "said" that he was charged with "qualified theft" due to pull-out of metal scrap for his church.

Our basis is pure hearsay but in all indication, we feel that the case is going against our boss. It was frustrating for us to be kept on dark side, helplessly waiting to defend him. We are afraid that one day, the case is already closed and we even have not said what we have to say. Sorry to have [caused] the e-mail just to be heard (I regret but the damage has been done and could not do anything about it).

We [believe] that the action of the hauler is premeditated and hastily done to pin down our boss. The transaction between the Hauler and the Church has been transparent to us. Though the action has been immediate due to request of hauler to get the metal scrap, verbal agreement has been made. We had arranged hastily the hauling with the consent of Construction Contractor and know about the request of the Church. As agreed by the Church and [Hauler], the payment will be P3.00/kg plus hauling fee. Hence, the Hauler will profit P0.40/kg (already deducted their normal payment to our company of P2.60/kg). However, for an obvious reason, the hauler had not accepted the payment to make it look that he asked for the favor. And as hearsay, the case filed against him is very strong with [pre-arranged] evidence. We believe that the evidence has no merit at all. In fact, the Hauler had to pay the company on its entirety as we had recorded the full scale of scrap. It is the business and full responsibility of Hauler to sell its [goods] or donate [them] for "free." The church has no liability to our company but only the Hauler who have to settle all its account. The timing of these charges as we believe could be attributed to the improved waste management of our company. Beginning June, the hauler had to pay a bigger amount for scrap (P0.25 million/month) against its previous billing of P15,000/month. As ISO 14001 Promotion Secretariat, we are mandated