

SECOND DIVISION

[G.R. No. 151400, September 01, 2004]

**LITTON MILLS, INC. AND/OR JAMES L. GO, PETITIONERS, VS.
MELBA S. SALES, RESPONDENT.**

DECISION

CALLEJO, SR., J.:

Petitioner Litton Mills, Inc., represented by James Go, insists that this is a plain and simple case of an employee caught in *flagrante*. Respondent Melba S. Sales intractably contends the opposite, and maintains that she was a victim of a despicable frame-up. The Labor Arbiter and the National Labor Relations Commission (NLRC) sided with the petitioner herein, while the Court of Appeals gave credence to the stance of the respondent. The petitioner now comes before the Court for relief on a petition for review on *certiorari*.

The Antecedents

On September 20, 1999, petitioner Litton Mills, Inc. dismissed the respondent for theft of two (2) packs of miniature fuse links and a piece of cloth tape, found inside the latter's bag during an inspection at the exit gate of the petitioner's plant. On October 1, 1999, the respondent filed a Complaint against the petitioner for illegal dismissal with the NLRC docketed as NLRC-NCR-Case No. 00-10-090039-99.

The Case for the Petitioner

On April 22, 1983, the petitioner employed respondent Melba S. Sales and assigned her to the Spinning, Weaving and Finishing Department. As of September 5, 1999, she was assigned as a weaver at the Weaving Department with a daily wage of ₱326.29.^[1] At around 6:10 a.m. on September 5, 1999, Security Officer Noel A. Maallo was at Gate 2 of the plant site, inspecting the handbags of employees exiting the gate after their tours of duty. The practice of bag inspection whenever persons entered and exited the plant site had been a long-standing procedure of the petitioner.

When Maallo opened the respondent's bag, he found two packs of miniature fuse links inside a side pocket, as well as cloth tape hidden beneath and commingled with the respondent's soiled clothes. The fuse links had apparently been embedded in the machines at the Spinning, Weaving and Finishing Department, and without which such machines would not operate.^[2] Maallo made a written report^[3] of the incident to Johnson Robert Go, Jr. that day and reported the incident to the Pasig City Police. The report was placed in the police blotter.^[4] On September 6, 1999, the respondent was required by the petitioner, through its Assistant Vice-President, Rodolfo S. Mariño, to submit an explanation why no disciplinary action should be taken against her for stealing company property. The respondent was also informed that she was being placed under preventive suspension for fifteen (15) days

effective immediately.^[5] On September 7, 1999, the respondent submitted a handwritten explanation in which she denied the charges. She also stated therein that she had a talk with Maallo while in front of the door to the room of Atty. Mariño, and was told that the inspection of bags of employees that early morning of September 5, 1999 had been very strict because their office had earlier received information that a woman was about to bring out company property at the exit gate.^[6]

A formal investigation of the incident was conducted by Atty. Melvyn S. Florencio, who later submitted his Report to the President of the petitioner, Johnson Roberto Go, Jr., recommending the dismissal of the respondent for theft of company property which was one of the Offenses Subject to Disciplinary Action (OSDA), under Section 1 thereof.

The Case for the Respondent^[7]

The respondent adduced evidence that she was first employed by the petitioner Litton Mills, Inc. as a weaver on April 22, 1983. She had been the leading critic of the employees' union in the company and often criticized Emiliano Salonga, one of the members of the Board of Directors of the Union, in the presence of many persons.^[8] She was once invited by Salonga to attend an orientation conference at the behest of the union, but she just laughed at him.^[9] When the petitioner ordered a retrenchment, union president Ariel Villanueva supported the decision of the management. The respondent criticized the retrenchment, as well as the increase of union dues and special assessment of ₱200.00 after the execution of the Collective Bargaining Agreement between the union and the petitioner.^[10] At one time, Salonga told another employee, Zaida C. de Asis, that he would do anything to eliminate the respondent.^[11] The respondent averred that her criticism did not sit well with Sonia Mercado, who considered her (the respondent) very critical and outspoken of the leadership of the union.^[12] Mercado was also very angry with the respondent for another reason; she suspected the latter of calling her husband and telling him of her close relationship with Salonga.^[13] Even Alex Go, the manager of the Spinning, Weaving and Finishing Department, talked to her at 2:30 p.m. on April 27, 1999, and told the respondent that someone had reported that she had been leaving the working area and going to other departments during office hours. She vehemently denied the report and even reminded Go that she had a production rating of 80% to 95% compared to the failing rating of Mercado, who oftentimes talked with Salonga in the working area.

Not long after, or on September 3, 1999, the cloth tape and fuse links were found in the respondent's bag.

The respondent claimed that she was a victim of a frame-up. She averred that on September 4, 1999, a Saturday, she reported for work at the plant site and arrived there at 2:00 p.m. She brought a handbag in which she placed some clothes as she was scheduled to work overtime up to 6:00 a.m. the next day, September 5, 1999. She placed her bag inside her locker before reporting for work at the Weaving Department. However, she failed to lock her locker before she left. At around 4:30 a.m., Zaida de Asis, who was also assigned at the Weaving Department, saw Salonga hand over to Mercado a plastic bag about 3 inches long and 3 inches wide.

[14] At around 5:00 a.m., she returned to the locker room, got her bag from the locker and took out her clothes from the bag. She placed the bag on the bench as she changed her clothes. Also changing their clothes then with her were Zaida de Asis, Sonia Mercado and two other employees.[15] The respondent placed her soiled clothes inside her bag and returned her bag to her locker. She did not lock her locker, as she usually did, and returned to the working area.[16]

At around 6:00 a.m., the respondent left the working area and took out her bag from the locker. She did not notice anything unusual inside her bag. She then proceeded to Gate 2 of the plant where she saw two long lines formed, one for women employees and the other for male employees. The lines were manned by security officers, one of whom was Security Officer Maallo. She noticed that the inspection of the bags of male employees was lax compared to the inspection done on the women employees, which was unusually strict. She saw Salonga near the security guard being frisked, and then leave. She heard someone shout, "*May nagtip; may nagtip.*" Zaida de Asis' bag was inspected ahead of the others. Momentarily, Maallo announced, "*Sino ang gustong magpakapkap sa akin?*" She forthwith presented herself to Maallo and opened her bag for inspection. She was aghast when Maallo found the cloth tape and the two packs of miniature fuse links inside. Maallo ordered her to stay while he continued with his inspection of the bags of the other employees.

The respondent herein asserts that the miniature fuse links found in her bag were used in the Maintenance Department. After the incident, Union president Ariel Villanueva, spread word that he was even prepared to have his head cut off if the respondent would be reinstated to her position.

After the respondent rested her case, Mercado testified and identified her and Salonga's joint statement. She admitted that at about 2:30 p.m. to 3:00 p.m. on September 5, 1999, she placed a plastic bag containing pineapple pie from Salonga. [17] She denied the respondent's claim that she and Salonga instigated the alleged frame-up.

During the conciliation conference at the Arbitration Branch, the petitioner offered to pay the respondent separation pay if she agreed to resign from the company. The respondent, however, refused the offer.

On February 16, 2000, Labor Arbiter Jose G. de Vera, rendered a Decision dismissing the complaint but ordering the petitioner to pay her P6,559.35.[18]

The respondent appealed the decision to the NLRC which affirmed the decision of the Labor Arbiter.[19] The petitioner filed a motion for partial reconsideration of the decision, while the respondent filed her motion for reconsideration thereof. Both motions were denied by the NLRC.[20]

The respondent filed a petition for certiorari with the Court of Appeals which rendered judgment on September 28, 2001 setting aside and reversing the decision of the NLRC, ordering the reinstatement of the respondent and remanding the case of the Labor Arbiter for the computation of the monetary awards in favor of the respondent.

The petitioner comes before this Court and raises the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE RESPONDENT WAS ILLEGALLY DISMISSED.

II

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN DECLARING THAT THE RESPONDENT IS ENTITLED TO REINSTATEMENT TO HER FORMER POSITION WITH FULL BACKWAGES AND PAYMENT OF HER MONETARY CLAIMS.^[21]

The core issues are the following: (a) whether or not the petitioner adduced the requisite quantum of proof that the respondent stole the cloth tape and pieces of miniature fuse links owned by her employer, the petitioner; and (b) whether the penalty of dismissal meted against the respondent is appropriate in this case.

The general rule is that the factual findings of the NLRC affirming those of the Labor Arbiter are given high respect by the appellate court absent a showing of unfairness or arbitrariness in the process of their deduction from the evidence or grave abuse of discretion.^[22]

In this case, the Labor Arbiter, after calibrating the evidence of the respondent and Zaida de Asis, ratiocinated as follows:

The main issue for resolution in the instant case is whether or not there exists just and valid cause to justify the termination of the complainant.

The complainant, in her position paper, alleges that she was framed up. In particular, she accused union officers Emiliano Salonga and Sonia Mercado as the ones responsible in planting incriminatory evidences against her. She claims that she incurred the ire of the said union officers who suspected her of spreading rumors about an alleged amorous relationship between them. As proof of the alleged plot against her, complainant relied on the affidavit executed by Zaida de Asis who allegedly saw Emiliano Salonga gave Sonia Mercado a plastic bag containing small items which later was discovered inside complainant's bag.

The attendant circumstances in the instant case as found by this Arbitration Branch militate strongly against the complainant. She was caught red-handed by the security guard who inspected her bag as she was about to leave the company premises to be containing objects belonging to the respondent company.

While the complainant claimed innocence contending that she was completely unaware about what was implanted inside her bag by those who allegedly framed her up, her explanation nonetheless failed to convince this Arbitration Branch. Complainant's tale that some union

officers plotted her ouster from the company after she was suspected of spreading rumors about the alleged illicit relationship between them is at most an afterthought designed to extricate herself from a difficult bind.

Further, complainant relied on the sworn declaration of a co-employee identified as Zaida de Asis who testified that when the security guard inspected the bag of the complainant and found therein a plastic bag containing the fuse links, she allegedly recognized the plastic bag as the one she earlier saw being handed by Emiliano Salonga to Sonia Mercado at the vicinity of the locker room.

It is to be noted singularly that the above declarations of Ms. De Asis is inconsistent with the findings of the investigating officer, who in his report states as follows:

“Upon clarificatory questioning, she said that she’s acquainted with Ms. Melba Sales. She does not know if Ms. Melba Sales (*sic*) or Mr. Emiliano Salonga has personal animosity with Ms. Melba Sales. She is not in a position to comment on the charge filed by the security department of Litton Mills, Inc. against Ms. Melba Sales. She was with Ms. Melba Sales at the time the later (*sic*) was being inspected by Mr. Noel Maallo but does know (*sic*) what happened with Ms. Melba Sales while being searched by Mr. Maallo, as she had already left Gate 2.”

The foregoing statement of Ms. De Asis during the administrative investigation readily shows that she was no longer present at the time the security guard discovered the pilfered items inside the bag of the complainant and, therefore, is not in a position to state that the bag was the same plastic bag being handed by Salonga to Sonia Mercado.

The foregoing inconsistent statements of Ms. De Asis clearly shows that she is not a reliable witness.^[23]

The NLRC affirmed the findings of the Labor Arbiter and further declared that:

In trying to convince us that the articles found in her bag were planted, complainant-appellant relied heavily on the declarations of her sole witness Ms. Zaida C. de Asis. Unfortunately, a close scrutiny of her sworn statement would reveal that the same is not substantially supportive of what complainant-appellant wants us to believe. It is noted that while Ms. De Asis declared that she saw Salonga giving small items in a plastic to Mercado, she did not personally witness the security guard inspecting the complainant-appellant’s bag. She merely presumed that what she saw being handed to Mercado were the same items found in the bag during inspection. She even stated that she learned of the incident only the following day. More important, Ms. De Asis did not see what articles were being given to Mercado. Neither did she witness when the stolen articles were supposedly planted in complainant-appellant’s bag. These could easily be gleaned from the following statements in her affidavit. (Records, p. 33).