

SECOND DIVISION

[G.R. No. 121905, May 20, 1999]

VITARICH CORPORATION, DANILO SARMIENTO AND ONOFRE SEBASTIAN, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND ISAGANI E. RECODO, RESPONDENTS.

DECISION

BELLOSILLO, J.:

VITARICH CORPORATION (VITARICH), together with its co-petitioners Danilo Sarmiento and Onofre Sebastian,^[1] through this petition for *certiorari*, assails as grave abuse of discretion the reversal of its previous decision by public respondent National Labor Relations Commission (NLRC).

Private respondent Isagani E. Recodo was hired by VITARICH, a feeds manufacturing corporation, as an Accounting Clerk in its office in Marilao, Bulacan. In 1979, he was promoted as Accounting Supervisor, then in 1986 as Sales Superintendent while assigned in Davao City. In 1988 he became the Sales Manager for Western Visayas based in Iloilo City with a monthly salary of P18,200.00.^[2]

As Sales Manager Recodo was supervised successively by three (3) division heads who were his immediate supervisors, namely, Dave Fernandez (1988-1989), Ben Cruz (1990-1992), and Onofre Sebastian (15 June 1992 up to Recodo's termination).^[3] He also underwent several audit examinations in his line of work.

In March 1991 VITARICH conducted an audit in Iloilo in response to a letter of a certain Espinosa pointing to anomalies in the backloading^[4] and arrastre transactions of Recodo. The evaluation of the audit team found no concrete evidence that Recodo was receiving direct commission from the backloading of the chartered vessel but faulted him for his inadequate exercise of internal control regarding the matter, and no evidence either that Recodo had been receiving a share in the arrastre since the shipper and the arrastre operators managed by the Espinosa family denied this. However, an unaccounted difference of P14,002.50 in the backloading profits surfaced. Consequently, the audit team recommended that bills of lading should cover all backloading shipments; all collections from backloading shipment should be directly paid to the cashier who is responsible for procedural controls; and, incentive payments to the captain of the vessel and the cash advances for the port expenses should be covered by proper forms.^[5]

On 25 June 1992 another audit report was submitted detailing the accommodation of Mr. Elbert Jeanjacquet as a trade client whose account was 74% past due and unsecured yet was allowed as a contract grower for two thousand (2,000) chicken heads. The accounts of twelve (12) other customers granted extensions over and beyond the credit limit were further enumerated in the report. Except for two, all

these accounts did not have any collaterals to secure them.^[6]

On 6 June 1992 a cash audit generated these findings: (a) cash collections were diverted to defray the area's operational and administrative expenses as the revolving fund was consumed before its replenishment in the form of countersigned checks from Cebu came; (b) personal '*vales*' (cash advances) were disbursed from the revolving fund in violation of company policies; and, (c) payments to suppliers were taken from the revolving fund instead of being paid in checks.^[7] But, unlike in the first two audit examinations where no action was taken by VITARICH after receipt of the corresponding reports, Recodo this time was required to explain why he allowed the reported violations of company policies.^[8]

In his letter of 11 August 1992 Recodo clarified that the alleged personal '*vales*' were actually for business expenses and for wages of employees and that the use of collections to defray operational and administrative expenses was unavoidable particularly when the chartered vessel was on dock unloading feeds while the replenishment of the revolving fund was delayed. He further assured VITARICH that all transactions with stevedores, shipping lines, PAL and piece workers were all on C.O.D. basis.^[9]

Admittedly, when petitioner Onofre Sebastian took over in June 1992 as Division head he was faced with a high volume of account receivables (A/R) accumulated during the time of Ben Cruz, his predecessor. To address the problem petitioner Sebastian and respondent Recodo conferred in the middle of July 1992 with the latter being instructed to cut down the accountabilities of Rex Cordova, a company salesman in Iloilo. Thereafter Recodo advised Cordova to reduce his technical credit extensions. In less than a month, the amount of account receivables was reduced from P800,000.00 to P205,000.00.^[10] However, on 27 August 1992 Recodo was asked again to explain within forty-eight (48) hours why he should not be terminated for failure to ground Rex Cordova in accordance with the 4 August 1992 memorandum of vice president Onofre Sebastian.

The other grounds cited for terminating Recodo were his failure to reduce Cordova's A/R driver, the allowance of extension of his credit line, as well as the misrepresentation of his outstanding A/R.^[11] The memorandum of 4 August 1992 instructed Recodo to confirm all A/R drivers who were already two (2) weeks overdue to preclude any ghost deliveries and to ground all salesmen with A/R drivers who were already thirty (30) days old so that they could only resume deliveries after accounts were collected or payment arrangements were made.^[12]

In his 5 September 1992 letter Recodo explained that only the first paragraph of the faxed memorandum was readable so he had it verified. He only learned its full context when he was negotiating for the security of Cordova's past accounts. Thus, he postponed grounding Cordova until 20 August 1992 in order to bring about positive results. The negotiation reduced Cordova's A/R driver from P800,000.00 to P250,000.00 as of 19 August 1992 which amount would be further lowered to P150,000.00 by September. The alleged misrepresentation in the figures given was not deliberate but was merely a mental lapse due to tension at work.^[13]

After investigation, E.T. Enriquez, Head of Personnel, submitted his report on

Recodo's alleged insubordination. Enriquez found that there was "no defensible ground for terminating (Recodo's) services." He cited as reasons therefor the non-documentation of any warning given to Recodo to justify any loss of trust and confidence in him.^[14] Nevertheless, VITARICH terminated Recodo on 15 October 1992 for violation of the 4 August 1992 Memorandum including policies on credit extensions and cash advances.

On 13 October 1992, Recodo filed a complaint for illegal dismissal, non-payment of managerial incentive bonus and for moral and exemplary damages. Initially the complaint was directed against VITARICH and its president Danilo Sarmiento, but on 21 January 1993 vice president Onofre Sebastian was also included as respondent.

On 23 June 1993 the Labor Arbiter adjudged VITARICH and its impleaded officers guilty of illegal dismissal and ordered them to pay Recodo seven (7) months back wages from November 1992 to May 1993 in the total amount of P418,600.00 plus 10% attorney's fees of P41,860.00. A separation pay of P291,200.00 was granted Recodo because reinstatement was no longer feasible in view of the strained relations between the parties. Moral and exemplary damages were not awarded since there was no finding of a valid reason to do so. For one to be entitled to these damages, the manner in which the dismissal was made must be deliberate, malicious and tainted with bad faith. In this case the Labor Arbiter found no proof that petitioners acted in bad faith when they dismissed Recodo from employment. The claim for management incentive bonus was likewise denied as the grant of a bonus is a management prerogative.^[15]

The Labor Arbiter pointed out that although VITARICH justified the dismissal of Recodo by the audit reports on backloading, unauthorized credit extensions and cash disbursements and insubordination the company's dismissal letter was only anchored on insubordination without any mention of the past audits as bases thereof. Consequently, for want of prior notice, the Labor Arbiter ruled that lack of due process attended Recodo's termination. Nonetheless, the evidence of VITARICH relative to the charges of backloading and unauthorized transactions was examined.

Thus, the Labor Arbiter reached the following conclusions: Firstly, there was no concrete evidence to support the claim that Recodo was receiving commissions or profited through hidden deals in the backloading transactions; nor did the company suffer any material loss as it even profited substantially therefrom. The Labor Arbiter noted that the transactions were undertaken upon the instructions of Recodo's supervisor, Dave Fernandez, hence, officially authorized by the company. They were properly documented by bills of lading considering that the shipper would suffer legal and other constraints if it were otherwise.^[16] Secondly, credit extension limits, unsecured accounts and disbursements of cash collection for operational and administrative expenses were already part of the system when petitioner Onofre Sebastian took the helm as division head and instructed Recodo to solve the problems. Recodo exerted efforts to do so, especially with the reduction of Cordova's account and accomplished the lowering of overdue and unsecured accounts within a month. It was clear that the cash disbursements were utilized for official business.^[17] Lastly, the Labor Arbiter significantly found that Recodo's explanation to the charges imputed to him by VITARICH was sincere and reasonable and that any breaches in company policies he might have committed were only ordinary, not willful to warrant his dismissal.^[18]