371 Phil. 649

SECOND DIVISION

[G.R. No. 124348, August 19, 1999]

DOMINADOR SANCHEZ, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND PEPSI COLA PRODUCTS PHILIPPINES, INC., RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

In *Coca-Cola Bottlers Philippines, Inc. v. NLRC*[1] we said that the life of a softdrinks company depends not so much on the bottling or production of the product since this is primarily done by automatic machines and personnel who are easily supervised, but upon mobile and far-ranging salesmen who go from store to store all over the country or region. Salesmen are highly individualistic personnel who have to be trusted and left essentially on their own. A high degree of confidence is reposed in them when they are entrusted with funds or properties of their employer. Such is petitioner Dominador Sanchez who was then a salesman of respondent Pepsi-Cola Products Philippines, Inc. (PEPSI-COLA), until he was terminated after twenty-three (23) years of service for loss of trust and confidence for violation of company rules.

Petitioner Sanchez worked for PEPSI-COLA since 1976. He was a route salesman assigned in the Quezon City Plant. His task consisted of, among others, marketing and merchandising Pepsi-Cola products, collection of sales proceeds, granting of credit extensions to qualified company outlets and delivery of Pepsi-Cola products to his specific area of assignment.

Sometime in June 1990 the transactions of petitioner for the months of April and May 1990 were audited. The audit disclosed a breach of company policy and procedure. An examination of the 3 May 1990 load count of the gate guard and the checker indicated the padding of 200 cases of "empties" during the "load in." "Empties" are the empty bottle containers, while "load in" is the scoring procedure when the salesman returns to the plant after each routing day to have the unsold products ("fulls") as well as the "empties" scored and verified by the gate guard and the checker.

The alleged padding was based on the reconciliation of the "empties" which showed an unaccounted excess of 200 cases worth P13,200.00. In addition, 331 cases of "empties" worth P22,252.00 were inserted in his load sheet.[2] These "empties" can be converted into cash. Petitioner was thus administratively charged with violating company rules and regulations: (1) failure to remit and/or account for all collections from route sales of Pepsi-Cola products at the end of each routing day; (2) borrowing money, "empties" or "fulls" from dealers; and (3) stealing and other forms of dishonesty.[3] Based on company rules and regulations, these violations fell under Group H, the commission of which were punishable with dismissal for cause.

[4]

In his letter of 18 July 1990 to the Personnel Manager in compliance with a memorandum served to him, petitioner admitted that he borrowed 200 cases of "empties" from a dealer, a certain Eliseo P. Gabaldon. He brought them inside the plant and converted the same into cash to defray the medical expenses of his ailing wife. On 16 November 1990, after being accorded procedural due process, petitioner was dismissed from the service.

On 12 April 1993 petitioner instituted a complaint for illegal dismissal. On 27 October 1993 Labor Arbiter Eduardo J. Carpio rendered a Decision in favor of petitioner and ordered respondent PEPSI-COLA to immediately reinstate him actually or in payroll with full back wages computed from 16 November 1990 to payroll or actual reinstatement on the basis of his P6,000.00 monthly salary and other appurtenant benefits. Respondent Pepsi-Cola was likewise ordered to pay petitioner P50,000.00 as moral damages, P25,000.00 as exemplary damages and attorney's fees equivalent to 10% of the total monetary award.[5]

On 22 November 1995 the NLRC, on appeal, reversed and set aside the Decision of the Labor Arbiter and dismissed petitioner's complaint for lack of merit. Respondent PEPSI-COLA was however ordered to pay petitioner separation pay equivalent to one-half (1/2) month salary for every year of service in recognition of the latter's long years of service.[6] On 29 December 1995 petitioner's motion for reconsideration was denied. Hence, this petition for *certiorari*.

Petitioner maintains that there was no basis at all for his dismissal. Thus, even respondent NLRC sustained and in fact quoted the findings of the Labor Arbiter that "'no evidence was adduced to show that complainant failed to remit and/or account all collections from route sales products x x x. There is no explanation how said offenses were committed and how much was not remitted or stolen from the company.[7] Indeed, (respondent NLRC has) scoured the records of the case and (did) not find any evidence to substantiate said charges."[8]

Furthermore, petitioner asserts that it was inconceivable on his part to have committed the offenses imputed to him considering the strict security measures set up by the management at the gates of the plant. Every truck, together with its personnel, has to pass through a gauntlet of guards, checkers and arbiters before it enters and leaves the plant premises. In addition, it has been the practice of the duty supervisor to search all accountable forms for any sign of irregularity. It is only after the supervisor has satisfied himself that all documents related to the day's sales are truly above-board will he allow the salesman, after affixing his signature, to proceed to the cashier for settlement. Anent the borrowing of "empties" from a dealer, petitioner submits that it only becomes a violation under company policy if a dealer files a complaint.

In sum, petitioner contends that his dismissal was not in any way legal since Art. 279 of the Labor Code provides that in cases of regular employment, the employer shall not terminate the services of an employee except for just causes provided under Art. 282 of the Labor Code.

Respondent PEPSI-COLA on the other hand presents the notice of administrative

charges, the audit report for the months of April and May 1990 indicating that fraud was committed and the letter of petitioner himself admitting that he brought inside the company premises 200 cases of "empties" which he borrowed from a certain Gabaldon, one of his customers.[9] Respondent PEPSI-COLA submits that petitioner's admission by itself means that the cash collection he remitted for that particular routing day was reduced by as much as P13,200.00. This alone is sufficient for the management to lose trust and confidence in petitioner and cause his eventual dismissal from the service.

Respondent PEPSI-COLA explains that petitioner as a route salesman should account and remit all sales revenue at the end of each routing day. Respondent has reposed trust and confidence in him by placing in his care the route truck and thousands of pesos worth of Pepsi-Cola products which he must account for at the end of each routing day. Because of this, and notwithstanding the strict security measures instituted by the bottling firm, petitioner was still able to commit fraudulent and anomalous transactions in direct contravention of company rules and regulations. As such his dismissal is a fair consequence, and respondent NLRC did not gravely abuse its discretion in upholding petitioner's termination. Thus, the issue before us is whether respondent NLRC gravely abused its discretion in sustaining petitioner's dismissal from the service.

We have said often enough that for the extraordinary remedy of *certiorari* to lie by reason of grave abuse of discretion, the abuse of discretion must be too patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined or act in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility. The judgment must be rendered in a capricious, whimsical, arbitrary or despotic manner. Abuse of discretion does not necessarily follow a reversal of a decision of a labor arbiter by the NLRC. Corollarily, mere variance in evidentiary assessment between the labor arbiter and the NLRC does not automatically call for a full review of the facts by this Court. The decision of the NLRC, so long as it is not bereft of substantial support from the records, deserves respect from this Court.[10]

In *Caoile v. NLRC*[11] we said that law and jurisprudence have long recognized the right of employers to dismiss employees by reason of loss of trust and confidence. As provided for in Art. 282 of the Labor Code, an employer may terminate an employee for fraud or willful breach of the trust reposed in him. Thus, if there is sufficient evidence to show that the employee has been guilty of breach of trust or that his employer has ample reason to distrust him, the labor tribunal cannot justly deny to the employer the authority to dismiss such employee, more so in cases where the latter occupies a position of responsibility.[12]

Loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility or trust and confidence.[13] He must be invested with confidence on delicate matters, such as custody, handling or care and protection of the property and assets of the employer.[14] And, in order to constitute a just cause for dismissal, the act complained of must be "work-related" and shows that the employee concerned is unfit to continue to work for the employer.[15]