

FIRST DIVISION

[G.R. No. 119912, March 19, 1998]

FELIXBERTO Biantan, Petitioner, vs. National Labor Relations Commission (Fourth Division, Cebu City) and Victorias Milling Co., Inc., Respondents.

DECISION

BELLOSILLO, J.:

FELIXBERTO Biantan, petitioner, was hired in June 1957 by Victorias Milling Co., Inc. (VICTORIAS) as "wire straightener." In 1987, or after thirty (30) years, rising from the ranks in the company, he assumed the position of Head of its Salvage and Disposal Section, Inventory Control and Warehousing Department.

On 15 March 1989 respondent VICTORIAS' Internal Audit-Field Operations through its representatives aborted the anomalous sale of four (4) brand new Exide batteries passed off as "discarded" to a certain Victor Go. After conducting further investigations, the representatives unearthed that sometime prior thereto, particularly on 18 January 1989, four (4) other brand new Exide batteries but classified as "deteriorated" were also sold to Go.

On 7 April 1989 notices to explain the apparent anomaly were sent to petitioner and other employees who could have had a hand in the deviant transactions. On 10 April 1989 petitioner submitted his written explanation denying involvement therein whatsoever. On 12 April 1989 the Personnel Officer himself conducted an in-plant investigation.

On 24 April 1989, effective on the same day, petitioner was placed under preventive suspension for a month. On 8 May 1989 he sought reconsideration with a request for a formal investigation to enable him to confront the witnesses and dispute the evidence against him. On 22 May 1989 the request was denied. The following day, his suspension was extended for fifteen (15) days.

On the bases of the statements of witnesses, company records and petitioner's explanation letter, petitioner was declared principally involved in the anomalous transfer and sale of safe-kept and brand-new Exide batteries thus -

1. Falsely identified four (4) brand-new storage batteries, Exide, contained in Shipping List #213424 dated January 17, 1989, as "Deteriorated Batteries" per Shipping List #0789 dated January 18, 1989 prepared by you and on the basis of which the sale of the said brand-new batteries - Exide - to Mr. Victor Go materialized under the classification and pricing as deteriorated batteries.
2. Personally withdrawing from the main Warehouse four (4) brand-new storage batteries per Shipping List #213432 dated March 15, 1989, which batteries are marked, "For Safekeeping assigned to Rolling Stock," and transferred to Scrap Yard without clearance from the Rolling Stock as owner/end-user of said brand-new

batteries. Moreover, Shipping List #213432 had not been signed by Mr. Emilio Yee, Head of Inventory and Warehousing Department, nor the knowledge or authority of Mr. Rodolfo Victoriano, MCD Manager.

3. Selling the said four (4) brand-new storage batteries safe-kept by Rolling Stock to Mr. Victor Go by falsely identifying them as "Discarded Storage Batteries" per Shipping List #14149 dated March 15, 1989; in handwritten note dated March 15; and in Inventory Cash Sales Invoice (ICSI) #10752 also dated March 15, 1989. Moreover, said ICSI #10752 was not signed by either Mr. Victoriano or Mr. Yee who are the authorized persons but only signed by you. It was further gathered during the investigation that the preparation by Scrap Yard of S/L #14149 and approved by you was irregular having been prepared ahead of ICSI #10752 at which time there was yet no approval from either Mr. Victoriano or Mr. Yee. It was confirmed upon interception by Audit that said falsely identified discarded batteries are in reality brand-new storage batteries - Exide.^[1]

On 31 May 1989 petitioner's services were terminated while his Department Head, Emilio Yee, was demoted one rank and suspended for six (6) months.

Petitioner then contested his dismissal as illegal and prayed for reinstatement and back wages.

On 29 May 1992, justifying the termination of petitioner's services, the Labor Arbiter dismissed the claims of petitioner^[2] after taking into account these points -

x x x x With regard to the items sold in January 1989 it was shown that complainant, in his own handwriting classified the 4 industrial batteries as deteriorated ones, when he fully knew that said items were unused and therefore new. The acts of the complainant in setting the pricing as scrap/deteriorated items of said 4 batteries as well as in preparing the shipping list covering the transfer of the batteries sold to the buyer describing same as deteriorated, clearly show that complainant took a direct hand in committing this offense of fraud against the company, which is enough and sufficient reason for the latter to lose its confidence on the complainant. Moreover, it was shown that complainant was even the one who marked these batteries for safekeeping as he was then assigned with the warehousing section in charge of safekept items and that despite the knowledge that the 4 batteries were brand-new, still marked and classified them as deteriorated.

The respondent company had also shown that on March 15, 1989, the complainant had again described 4 brand new locomotive batteries as "discarded batteries," when he fully knew that these were brand new and therefore not destined for Scrap yard for sale as discarded batteries x x x x^[3]

Public respondent National Labor Relations Commission found the conclusion of the Labor Arbiter amply supported by the evidence. Thus on 28 February 1995 NLRC dismissed the appeal.^[4]

The issue is very simple: whether the dismissal of petitioner from his employment was legal or illegal.

Petitioner insists that he had no involvement whatsoever in the disputed transactions. He argues that in the 18 January 1989 transaction, the disposal, sale and transfer of the four (4) Exide batteries were not decided nor performed by him but by the Head of his Department, the Chief of the Warehousing Section and the buyer. As regards