

FOURTEENTH DIVISION

[CA – G.R. SP NO. 119500, March 31, 2014]

**DANTE B. MASUTA AND ROMEO L. CASTE, PETITIONERS, VS.
OMNIPACK INDUSTRIAL CORPORATION, ALEXANDER NG, GENER
GABUTEN AND NATIONAL LABOR RELATIONS COMMISSION,
RESPONDENTS.**

D E C I S I O N

GALAPATE-LAGUILLES, J:

This *Amended Petition for Certiorari*^[1] filed under Rule 65 of the Rules of Court impugns the *Decision*^[2] dated 11 February 2011 of public respondent National Labor Relations Commission, Second Division (NLRC for brevity) which dismissed the appeal of petitioners Dante B. Masuta (Masuta) and Romeo L. Caste (Caste) for lack of merit. Likewise assailed is the *Resolution*^[3] dated 16 March 2011 denying the *Motion for Reconsideration*^[4] thereof.

The instant controversy arose from a complaint for illegal dismissal, illegal suspension, non-payment of salary, damages and attorney's fees filed by Masuta and Caste against private respondents Omnipack Industrial Corporation (Omnipack), Alexander Ng and Gener Gabuten before the Arbitration Branch of the NLRC in Quezon City. Omnipack is a domestic corporation engaged in the business of manufacturing and sale of packaging products particularly for snack food products.^[5]

In his *Position Paper*,^[6] Masuta alleged that in the morning of 28 January 2010, while he, together with his two (2) delivery helpers, was about to drive the delivery truck out of the company premises of Omnipack, the security guard on duty flagged down the delivery truck and asked him (Masuta) to open the rear door of the truck. The security guard further told Masuta that “*may timbre kayo galing kay Bobby Tan.*” Although this was unusual, Masuta complied and opened the truck's rear door and thereupon, the security guard ordered him to unload ten (10) of the seventeen (17) wooden pads^[7] on board. Masuta was then allowed to leave the company premises to continue with the itinerary of the day.^[8]

For his part, Caste averred that in the morning of 28 January 2010, before leaving Omnipack's premises to make deliveries, he was requested by his two (2) delivery helpers, Rafael Gumban (Gumban) and William C. Hije, Jr. (Hije, Jr.), to stop the delivery truck near Warehouse-Moulding, across the Administration Office of the company premises to unload the scrap wooden pads. Gumban and Hije, Jr. had previously gathered the said wooden pads at the far end of the company compound and loaded them in the truck to be brought near the Administration Office for the payment of its total cost later that day. Finding nothing wrong with the request, Caste thus complied.^[9]

When Masuta and Caste reported for work on 29 January 2010, they were prevented from punching their time cards. Instead, they were directed verbally by their Section Head John Paul Caneta to explain in writing why they were taking out excessive wooden pads. On even date, Masuta and Caste wrote their respective explanations on the alleged baseless charge.^[10]

Masuta and Caste further claimed that on 3 February 2010, they were asked to attend a conference with the management of Omnipack. Then, on 5 February 2010, they were told to report to Omnipack and were asked to sign what appears to be suspension notices that were antedated to 29 January 2010.^[11]

On 26 February 2010, Masuta received through the mails his *Termination Letter* dated 17 February 2010. Caste, on the other hand, maintained that he never received a *Termination Letter* but he was nevertheless refused entry at Omnipack.^[12]

In its *Position Paper*,^[13] Omnipack countered that at around 9:30 in the morning of 28 January 2010, its Warehouse Officer-In-Charge Robert Tan (Tan) was informed by Warehouse Clerk Ernie Duriman that he and driver Mamerto Lucas saw Masuta and his truck helpers loading into the delivery truck some wooden pads. Immediately, Tan called up the Security Guard Allan Abogado (Abogado) to check the delivery truck driven by Masuta which was about to leave the company premises.^[14]

At around 9:50 in the morning, Abogado flagged down the delivery truck driven by Masuta which was about to leave the company premises. Upon inspection, Abogado discovered some wooden pads stowed inside the delivery truck which were not listed in the gate pass. When Abogado was about to inspect the top of the truck, Masuta drove the truck and sped towards the warehouse area. Abogado saw the delivery truck proceeding in front of Building "A" where Masuta and his delivery helpers hurriedly unloaded wooden pads. Warehouse Section Head Caneta likewise saw Masuta and his helpers unloading wooden pads, five (5) pieces in front of Building A and another fifteen (15) at the side thereof.^[15]

When the delivery truck driven by Masuta was about to leave Omnipack's compound, Abogado discovered and intercepted about seventeen (17) wooden pads inside the truck.^[16]

Simultaneously, on the same day of 28 January 2010, Zenon Doblas (Doblas), a delivery driver of Omnipack, saw the delivery van driven by Caste heading to Building 4 instead of proceeding to the guardhouse for inspection. Thereat, Caste and his helpers unloaded forty (40) pieces of scrap wood. It was later found out that the said forty (40) pieces of scrap wood were not listed in the gate pass, thus not authorized to be loaded in the truck.^[17]

Accordingly, Masuta and Caste were each issued a *Hiling Paliwanag*^[18] on 28 January 2010 by Warehouse Section Head Caneta, advising them of their violation of *Alituntunin Blg. V Sek 17* of the company Rules and Regulations or "*Walang kapahintulutang paglabas ng anumang bagay na pag-aari ng kumpanya at iba pang kauri nito.*" which is punishable by dismissal for the first offense. They were also directed to submit an explanation on their alleged violation of the said company

rule. On even date, Masuta submitted his Letter^[19] explaining his side of the incident.

On 29 January 2010, Caste, on the other hand, submitted his Letter^[20] to clarify his version of the incident. On the said date, Masuta and Caste were placed under preventive suspension.^[21]

On 3 February 2010, Omnipack conducted an administrative hearing regarding the incident that took place on 28 January 2010. Both Masuta^[22] and Caste^[23] attended the said hearing.

On 17 February 2010, Omnipack terminated the employment of Masuta and Caste effective 20 February 2010. They were each furnished their individual *Termination Letter*^[24] via registered mail. They were also personally served with a copy of their *Termination Letter* which they refused to acknowledge.^[25]

On 27 August 2010, the Labor Arbiter rendered a Decision dismissing the Complaint of petitioners for lack of merit.

Feeling aggrieved, petitioners appealed the Decision of the Labor Arbiter to the NLRC. Thus, on 11 February 2011, the NLRC rendered its Decision dismissing the appeal of petitioners for lack of merit.

Still undaunted, petitioners filed their *Motion for Reconsideration*, which the NLRC denied in its *Resolution* dated 16 March 2011.

Hence, the instant *Petition*.

The crux of the controversy is whether or not Masuta and Caste were validly dismissed from employment and were afforded due process.

The instant Petition is bereft of merit.

In cases of termination of employees, the well-entrenched policy is that no worker shall be dismissed except for just or authorized cause provided by law and after due process.^[26] Dismissals of employees have two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and second, the legality in the manner of dismissal, which constitutes procedural due process.^[27]

Masuta was dismissed by Omnipack for allegedly violating *Alituntunin Blg. V Sek 17* of the company Rules and Regulations prohibiting the carrying of company-owned items outside the company premises or in the vernacular, "*Walang kapahintulutang paglabas ng anumang bagay na pag-aari ng kumpanya at iba pang kauri nito.*" Caste, on the other hand, was dismissed for allegedly violating *Alituntunin Blg. V Sek 16* penalizing the act of hiding, harbouring or concealing items which are the fruits of any violation of company regulation, or, in the vernacular, "*Paglilihim at o pagtatago ng anumang bagay na labag sa alituntunin. Ang pagkunsinti at/o pagkakaroon ng kaugnayan sa sinumang tao na naakusahan ng pang-uumit or pagnanakaw.*" These grounds are among the just causes for termination of employment under Article 282 of the Labor Code, to wit:

ART. 282. Termination by employer. — An employer may terminate an employment for any of the following causes:

a) **Serious misconduct** or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

b) Gross and habitual neglect by the employee of his duties;

c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

e) Other causes analogous to the foregoing. (Italicization supplied)

Misconduct is defined as "the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment."^[28] For serious misconduct to justify dismissal under the law, "(a) it must be serious, (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer."^[29]

Unarguably, the quantum of proof which the employer must discharge is substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.^[30]

In the case at bar, in his *Letter*^[31] dated 28 January 2010, Masuta explained that it was never his intention to steal the wooden pads which were being used as cushion for the products when making deliveries. His only mistake was his failure to include in the gate pass the said wooden pads when he was about to leave Omnipack's compound. However, during the administrative hearing conducted on 3 February 2010, Masuta admitted having loaded extra wooden pads into the delivery truck to be given to checkers out of pakikisama.^[32] Clearly, Masuta intentionally circumvented a strict company policy against the taking out of company property without consent or permission. This transgression was a serious offense that warranted his dismissal from employment and proved that Masuta's termination from work was for a just cause.

It is well to emphasize that Omnipack's charge of theft against Masuta was amply proven by substantial evidence consisting of the affidavits of various employees of Omnipack. In their respective affidavits, Warehouse OIC Tan,^[33] Warehouse Clerk