

## TENTH DIVISION

[ CA-G.R. SP No. 131882, November 28, 2014 ]

### THE REDSYSTEMS COMPANY, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND NONILON B. BATAIN, RESPONDENTS.

#### DECISION

**VELOSO, J.:**

Assailed by petitioner in this Petition for Certiorari<sup>[1]</sup> which it filed under Rule 65 of the 1997 Rules of Court, are the **Decision** dated **May 21, 2013**<sup>[2]</sup> and **Resolution** dated **July 15, 2013**<sup>[3]</sup> which the National Labor Relations Commission ("NLRC") rendered in NLRC LAC Case No. 03-000930-13 (NLRC RAB IV No. 03-00462-12-L), entitled "*Nonilon B. Batain, Complainant-Appellant -versus- The Red Systems Company, Inc./Eduardo P. Quintos XVIII-Site Operations Manager, Respondents-Appellees*", the dispositive portions of which read:

(1) **Decision dated May 21, 2013:**

"**WHEREFORE**, the herein Appeal is hereby **GRANTED** and the Decision of the Labor Arbiter dated 04 December 2012 is **REVERSED** and **SET ASIDE** and a new one is entered as follows:

1. Declaring complainant Nonilon B. Batain to have been illegally dismissed;
2. Ordering respondent The Redsystems Company Inc., through its responsible officers, to immediately reinstate complainant Batain to his former position without loss of seniority rights and other privileges;
3. Ordering respondent The Redsystems Company Inc., through its responsible officers, to pay complainant Batain, his one-month salary due to his suspension from work for the period November 3 to December 2011 and his full backwages computed from the date he was illegally dismissed on 21 December 2011 until the finality of this decision; and
4. Ordering the respondent company, through its responsible officers, to pay complainant Batain his attorney's fees equivalent to ten percent (10%) of the total monetary award

**SO ORDERED.**"<sup>[4]</sup> (emphasis supplied)

and

**(2) Resolution dated July 15, 2013:**

**"WHEREFORE**, in accordance to Section 15, Rule VII of the 2011 NLRC Rules of Procedure, let this Motion for Reconsideration be **DISMISSED** for lack of merit. No second motion of the same nature and substance shall be entertained.

**SO ORDERED."**<sup>[5]</sup>

***The Facts***

The antecedent facts of this case are those as narrated by Labor Arbiter Edgar B. Bisana in his December 4, 2012 Decision, *viz.*:

"The facts as narrated by respondents considering that complainant's position paper does not contain a detailed narration of facts, are as follows:

'In November 2010, complainant Nonilon B. Batain ("Complainant") was hired by Redsystems as Forklift Operator. A copy of Complainant's employment contract is hereto attached as Annex "1".

At the time complainant was hired, he was fully apprised, among others, of his duties and responsibilities, his job description, the standards of employment required by Redsystems, his compensation, policies & procedures of Redsystems, and confidential information relating to intellectual property. As Forklift operator assigned as [sic] the loading area, complainant was required to report regularly, to make sure that all outgoing full goods (products for delivery) are properly and correctly loaded on board delivery vehicles which are either trucks or container vans of Redsystems, and to comply with Redsystems' Code of Conduct as well as all company policies, rules and regulations. Complainant was likewise required to make sure that all goods put on hold by Redsystems are not loaded to any delivery vehicles of Redsystems.

xxx                      xxx                      xxx

On 13 October 2011, the quality assurance of Redsystems put on hold for delivery four (4) pallets of 200 cases of Sprite 1.5L. On same date, complainant reported for work and was

assigned at the loading area as the only available Forklift Operator, the other assigned Forklift Operator was absent or on leave;

As the only Forklift Operator present, complainant was given Load Diagram and pallet details to load 192 cases of Sprite 1.5L to container van NEPU-3340200 intended for Cebu with Shipment No. 3436171.

However, for no apparent reason, and notwithstanding a very large and visible tag "HOLD", complainant loaded on the said container van intended for Cebu four (4) pallets or 200 cases of Sprite 1.5L which were put on hold by the quality assurance of Redsysyems. The said goods were eventually delivered or shipped to Cebu and produced a damaging effect to the name of Redsystems and its client.

Thus, notwithstanding the rules, regulations, and policies of Redsystems made known to complainant at the start of his employment, particularly its strict policy on on-hold goods/products for delivery, or disregard or deviation from established control and other policies and procedures, complainant was found to have violated the above-quoted Section 3, Rule 5, Article IV of the Redsystems' Code of Conduct.

Notice to Explain (NTE) was duly served on complainant, directing him to explain in writing why Redsystems should not penalize him for his violation/offense. A copy of the notice to Explain is hereto attached as Annex '3'.

Complainant submitted his written explanation denying any violation of the policy. A copy of complainant's written explanation is hereto attached as Annex '4'.

Redsystems conducted preliminary investigation on how the goods which were put on hold by the quality assurance of Redsystems with a very large and visible 'HOLD' tag were loaded to the container van intended for shipment to Cebu. Results of the investigation showed that complainant was the only Forklift Operator assigned at the loading area during that time. Hence, in view of the unsatisfactory explanation of complainant regarding the incident, a Notice of Investigation was issued by Redsystems to further investigate the incident and to give complainant another chance to explain his side. A copy of the notice of Investigation is hereto attached as Annex '5'.

During the Administrative Investigation/Hearing, complainant was not able to explain why the goods which were put on hold with a very large and visible 'HOLD' tag were loaded on the container van intended for shipment to Cebu under his watch, he being the only the Forklift Operator present and assigned at the loading area during the time of the incident. A copy of the Minutes of the Administrative

Investigation/Hearing is hereto attached as Annex '6'.

Redsystems, after evaluating the case and all evidence submitted, concluded that complainant disregarded or deviated from established control and other policies and procedures when he loaded on the container van intended for shipment to Cebu, goods which were expressly and explicitly put on hold by the quality assurance of Redsystems through a very large and visible 'HOLD' tag, which incident exposed Redsystems to damage in the amount of more than Php25,000.00. The amount of four (4) pallets or 200 cases of Sprite 1.5L that were put on hold but loaded for shipment amounted to more than Php25,000.00.

Thus, based on the evaluation of the facts and the conclusions after the Administrative Hearing, Redsystems imposed the penalty of termination or dismissal of complainant pursuant to Section 3, Rule 5, Article IV of the Redsystems' Code of Conduct in relation to the Table of Corrective Actions.

Redsystems issued the Notice of Dismissal which was duly served on complainant, informing him that his employment is terminated. A copy of the Notice of Dismissal is hereto attached as Annex '7'."<sup>[6]</sup>

A complaint having been filed by private respondent against petitioner, and with said complaint assigned to Labor Arbiter Bisana, said Arbiter disposed said case, viz.:

"WHEREFORE, premises considered, the complaint is hereby DISMISSED for lack of merit.

SO ORDERED."<sup>[7]</sup>

Aggrieved, private respondent appealed<sup>[8]</sup> on February 25, 2013 said decision to the NLRC.

On May 21, 2013, the NLRC<sup>[9]</sup> rendered its Decision disposing the case, as follows:

"**WHEREFORE**, the herein Appeal is **GRANTED** and the Decision of the Labor Arbiter dated 04 December 2012 is **REVERSED** and **SET ASIDE** and a new one is entered as follows:

1. Declaring complainant Nonilon B. Batain to have been illegally dismissed;
2. Ordering respondent The Redsystems Company[, ] Inc., through its responsible officers, to immediately reinstate