

SEVENTH DIVISION

[CA-G.R. SP NO. 89130, August 14, 2006]

NICOLAS C. VILLEGAS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, PORT COQUITLAM DEVELOPMENT CORP. AND/OR BOWEN GOTHONG, RESPONDENTS.

D E C I S I O N

COSICO, J.:

This is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure assailing the Resolutions^[1] dated November 26, 2004 and January 31, 2005 rendered by the National Labor Relations Commission (NLRC) (Second Division) in NLRC CA No. 041050-04 reversing the decision^[2] dated June 28, 2004 of Labor Arbiter Donato G. Quinto Jr. in NLRC-NCR CASE No. 05-05675-03 which is, first and foremost, a complaint for illegal dismissal with damages filed by petitioner Nicolas Villegas against his former employer, private respondent Port Coquitlam Development Corp.(PCDC) and Bowen Gothong.

In the proceedings below, the Labor Arbiter ruled that petitioner's dismissal was illegal and made the following pronouncements in the June 28, 2004 Decision, to wit:

"WHEREFORE, premises above considered, a decision is hereby rendered declaring the dismissal of the complainant illegal, and ordering respondent to pay him separation pay equivalent to one-month salary for every year of service, in the amount of P176,000.00 considering that reinstatement appears no longer feasible, plus full backwages of P165,000.00, all in the aggregate of THREE HUNDRED THIRTY ONE THOUSAND PESOS (P331,000.00) plus attorney's fee equivalent to ten percent (10%) of the total above award. Respondent is further ordered to pay complainant P20,000 as moral damages and P10,000 as exemplary damages as discussed above.

The rest of the claims are hereby dismissed for lack of merit.

SO ORDERED.^[3] [Decision, p. 8]

On appeal^[4] to the NLRC, the latter found petitioner's dismissal was legal. Hence, in its November 26, 2004 Resolution, respondent Commission ruled:

"**WHEREFORE**, all foregoing premises considered, the appealed Decision dated June 28, 2004 is hereby **SET ASIDE** and **VACATED** and a new one entered **DISMISSING** this case for lack of merit.

SO ORDERED."^[5] [Decision, p. 12]

Meanwhile, in its January 31, 2005 Resolution, respondent Commission denied for lack of merit the motion for reconsideration of the above Resolution.

The Facts

This petition stemmed from the amended complaint for illegal dismissal, illegal suspension and underpayment/non-payment of salaries, overtime pay, legal holiday pay, premium pay, service incentive leave and 13th month pay with prayer for an award for separation pay and backwages, refund of cash bond, plus moral and exemplary damages and attorney's fee filed by Nicolas Villegas against his former employer PCDC and its President, Bowen Gothong.

As the records show, petitioner was formerly the Officer-in-Charge (OIC) for Branch Operations of PCDC's Manila Branch Office and held three positions therein; that of manager for both the company's cargo and trucking business and supervisor of the company's trucking business since 1998 until his employment was terminated on April 23, 2003. On February 11, 2003, PCDC issued to him a suspension order^[6] requiring him to answer the following charges: (1) Hi-jacking incidents which occurred during his stint which may have been the result of his unauthorized absences; (2) Failing to inform the management of the impoundment of one of the company's truck and failing to recover the same and as a result thereof, the truck was cannibalized. Petitioner was thereafter placed under preventive suspension and the company directed the former to appear at PCDC's Cebu Branch Office on February 21, 2003 for the investigation of his case.

In response thereto, petitioner through his letter-explanation^[7] dated February 18, 2003 written by his son, PCDC was informed that petitioner could not attend the February 21, 2003 hearing due to lack of funds. With respect to aforesaid charges, however, petitioner had this to say:

"It is worth stressing that my father was originally assigned to manage the LCL Department alone by which for years he was exceedingly good at. It was only then when Mr. Teotimo Nocos resigned from the service and whose vacant position was never replaced that my father took over the management and handling of Trucking Department which is a separate and distinct from that of the LCL in order not to paralyze Trucking Operations aside from being the Manager for LCL Department at the same time. Nevertheless, for years also, my father was able to make good of it until such time that some members of the Trucking Department, through their own surprisingly engaged in [an] illegal activities such as theft and hi jacking operations. Admittedly, my father's shortcomings consists mainly on the Trucking side by which he was merely substituting in temporary capacity the position vacated by another manager, Mr. Teotimo Nocos, while at the same time concentrating on his main task, the LCL Department. Such being the case, I hope the management would consider the fact pending the result of the investigation leading to my father's involvement or participation to the same, be presumed innocent. Please let it be noted as well that it is blatantly unfair on the part of my father if he will be deprived of the only source of livelihood he has to support his family merely on account of infractions committed by others which is beyond his control.

As regards to the issue of the absences of my father please be considerate for that as he was by that time visiting his ailing mother and was sometimes called for an emergency.”

Subsequently, another letter^[8] dated March 10, 2003 was issued by PCDC to petitioner informing him that the company shall transfer the venue for the investigation of his case to Manila and the hearing thereof shall be conducted on March 25, 2003. Petitioner was also required to answer the charges leveled against him by former company employees, Redeemer Lizada and Edmar Marata, through their letters attached to the company letter. Meanwhile, in the reply-letter dated March 24, 2003 of petitioner, written in his behalf by his son, the latter clarified that his father is still an employee of PCDC and inquired as to the following inconsistencies: (1) Petitioner’s latest earned salary prior to his preventive suspension was continuously withheld unjustifiably; (2) Petitioner’s SSS loan application was rejected/disapproved on the ground that he has no more employer even prior to his receipt of the aforesaid suspension memo; (3) Petitioner was prematurely replaced by the newly hired PCDC Manager by the person of Mr. Terry Gulpan who started in his official capacity on March 1, 2003; and (4) Petitioner’s preventive suspension was over 30 days without pay.

As to the charges, petitioner submits that the written statement of Lizada and Marata should not be given probative value for being devoid of legal and factual bases. The contents of the written statement of Lizada are mere fabrications, tainted with malice, motivated by personal ill will, an act of retaliation and most of all unsupported by any documentary evidence and it is unlikely for Marata to have personal knowledge of the allegations of Lizada as the nature of Marata’s duties require him to be out of the company premises almost all the time.

Not satisfied with petitioner’s letter-explanations, the company on April 8, 2003, wrote^[9] to petitioner terminating his employment:

“By reason of your indifference and gross neglect of duty our company asset was lost. This could have been averted, had you exercised prudence and diligence in seeing to it that proper documentations were done and reports were made to the office. You could not claim and feign ignorance, because this has been our STANDARD OPERATING PROCEDURE, and you have done this before in all our other accidents and undertakings. What made matters worse, was the fact that this incident was allowed to lapse for over one year without you making any report about it. As the company’s OIC, you occupy a position of trust and confidence. You have been entrusted by the company of its valuable assets, some 15 units of trucks and some 60 units of trailer costing MILLIONS of pesos. The company expects you to take care of these units as a good father of a family. By your act and attitude of indifference, you have shown that the company was mistaken in leaving to your care and protection its valuable assets. You must understand, that you were hired as the company’s OIC. You represent the company in its absence. In short, you are expected to take good care of the company’s properties and assets. It is very sad to note, that you failed in this.

It is likewise noteworthy to note, that in the investigation of this case, MR. REDEEMER LIZADA submitted a sworn statement detailing some of

your activities during your stint as our company's OIC. This sworn testimony not having been rebutted , shall stand.

IN VIEW OF ALL THE FOREGOING, it is the DECISION of the company, to dismiss your services effective upon receipt hereof, on account of loss of trust and confidence and gross negligence of your duties and responsibilities. The company reserves the right to claim for damages for the loss of its valuable assets due to your acts." [PCDC Resolution, pp. 2-3]

Petitioner received the aforesaid notice of termination on April 23, 2003. Losing no time, petitioner instituted the present complaint for illegal dismissal against PCDC.

Conciliation efforts to settle the dispute between the parties have proven to be futile, the Labor Arbiter required them to submit their respective position papers and supporting evidence and annexes and thereafter declared the case submitted for decision.

The Ruling of the Labor Arbiter

Verily, Labor Arbiter Donato G. Quinto, Jr. found petitioner to have been illegally dismissed, ruling thus^[10]:

"As above expounded, the dismissal of complainant is illegal as respondent did not observed (sic) the requirements of substantial and procedural due process. It even appears plain that his dismissal was done under anomalous circumstances x x x" [June 28, 2004 Decision, p. 7]

The Ruling of the NLRC

As earlier adverted to on appeal^[11], the NLRC found private respondents to have sufficiently complied with the substantive and procedural due process set forth under the law and made the following ratiocinations, to wit:

"From the tenor of complainant's letter-explanation to respondents' show cause memo, the former virtually admitted the charges against him for negligence and unauthorized absences which resulted to substantial losses to the company amounting to millions of pesos.

As to his unauthorized absences without proper memorandum, complainant's lame explanation was that he was "visiting his ailing mother x x x There is, however, no evidence to support such bare allegations.

As to the incidents of hi-jacking involving cargoes of FCTC worth more than One Million Pesos; the matter of the company truck being abandoned at the PNCC impounding compound as well as the other hi-jacking incidents which happened during complainant's stint as OIC Manager, complainant likewise virtually admitted that these incidents indeed happened during his watch but denied any personal involvement therein x x x

x x x

In light of the foregoing, there is no doubt that complainant's suspension and eventual termination from his employment was for a just and valid cause.

As a top management employee at respondent Company's Manila Branch, complainant's position is imbued with complete trust and confidence. x x x Being the OIC Branch Manager, complainant cannot escape his responsibility for the theft and hi-jacking incidents occurring in his area of responsibility thereby costing the Company millions of pesos in terms of losses by simply saying that "he was merely substituting in a temporary capacity the position vacated by another Manager" and that said "infractions (were) committed by other which is beyond his control". Such evasive statements do not relieve him from his responsibility for the incidents which happened during his stint. At best, it is an open admission of his inefficiency and gross negligence in the performance of his functions.

x x x

On the Labor Arbiter *a quo's* finding that "dismissal of the complainant is illegal as respondent did not observed (sic) the requirements of substantial and procedural due process", such conclusion is not supported by the evidence on record. As above-shown, records show that respondents issued complainant a show-cause letter dated February 11, 2003 informing him of the charges against him x x x In response thereto, complainant submitted his letter-explanation dated February 18, 2003 x x x. Not satisfied with his explanation, respondent Company issued complainant a termination letter dated April 8, 2003 x x x It is clear from the foregoing that complainant was accorded substantial and procedural due process before he was finally dismissed from his employment. x x x" [12] [November 26, 2004 Resolution, pp. 6-9]

The motion for reconsideration^[13] filed having been denied^[14], petitioner is now before us in the instant petition.

The Present Petition

Petitioner raises the following issues for this Court's resolution, to wit:

I.

THE APPEAL OF PRIVATE RESPONDENTS BEFORE THE NLRC SHOULD HAVE BEEN DISMISSED OUTRIGHT DUE TO ITS FAILURE TO SUBMIT A CERTIFICATE OF NON-FORUM SHOPPING AS REQUIRED BY NLRC RULES OF PROCEDURE AS WELL AS SC CIRCULAR NO. 04-94.

II.

THE DECISION OF THE LABOR ARBITER WAS SUFFICIENTLY