

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**ATLAS CONSOLIDATED MINING &  
DEVELOPMENT CORPORATION,**  
*Petitioner,*

*-versus-*

**G.R. No. 122033  
May 21, 1998**

**NATIONAL LABOR RELATIONS  
COMMISSION and ISABELO O.  
VILLACENCIO,**

*Respondents.*

X-----X

**DECISION**

**PUNO, J.:**

Assailed in this Petition for *Certiorari* under Rule 65 of the Revised Rules of Court are the Decision<sup>[1]</sup> dated December 27, 1994 of the public respondent National Labor Relations Commission (NLRC) in NLRC Case No. V-0423-93 (RAB Case No. 07-02-016690) which

ordered the payment of separation pay and backwages to private respondent Isabelo O. Villacencio, and its Resolution<sup>[2]</sup> dated August 18, 1995 denying petitioner's Motion for Reconsideration.

The facts show that private respondent Isabelo O. Villacencio worked with petitioner ACMDC from January 23, 1970 to February 2, 1990. He started as an ordinary laborer/helper in the Mill Department. In 1973, he became supervisor of the Tailings Disposal Department. In 1982, he was elevated as a junior staff of the department. Finally, he was promoted general foreman of the Tailings Disposal and Water Supply Department with a monthly salary of P7,440.00. He held this position until his services were terminated on February 2, 1990.<sup>[3]</sup>

As general foreman, Villacencio was the second-to-the-highest man in the department which has a field office located in Magdugo, Toledo City. Under Villacencio were some fifty nine (59) workers whom he supervised through regular field inspections. Villacencio was assigned a service jeep and a service motorcycle which he used alternately. He was given the privilege to withdraw the necessary fuel/gasoline for the vehicles at the Transport Department located inside the main compound of ACMDC.<sup>[4]</sup>

On September 8, 1989, Engineer Conrado Sanchez of the Services Division wrote a memorandum requesting that Villacencio be investigated for alleged anomalies at the Magdugo Tailings Field Office. Villacencio was charged before the Special Investigation Board with acts of malfeasance consisting of:

1. withdrawal of company-owned gasoline for the refueling of his personal jeep;
2. use of company personnel on company time as well as company-owned materials for the assembly of a jeep not belonging to the company; and
3. granting of authority to non-company personnel to withdraw company-owned stocks.

He was summoned on January 9, 1990, and investigations were conducted on January 12 and 13, 1990.<sup>[5]</sup>

On January 25, 1990, the Special Investigation Board<sup>[6]</sup> found Villacencio guilty of the charge of withdrawing on various dates a total of 192 liters of company-owned gasoline which he used to refuel his private jeep and of the charge of using company personnel on company time in the assembly of his jeep. The third charge was dismissed for insufficiency of evidence. Villacencio was dismissed from work on February 2, 1990. He lodged a complaint against ACMDC before the Regional Arbitration Branch No. VII, NLRC, Cebu City, on February 19, 1990 for illegal dismissal with prayer for reinstatement and backwages plus damages. The case was assigned to Labor Arbiter Reynoso A. Belarmino.<sup>[7]</sup>

Meanwhile, ACMDC initiated a criminal complaint against Villacencio for the misappropriation of 192 liters of gasoline amounting to P1,086.72. An Information for Estafa was filed against Villacencio before the Municipal Trial Court of Toledo City. After trial, he was found guilty and sentenced to suffer the indeterminate penalty of two (2) months and one (1) day of *arresto mayor* as minimum to one (1) year and eight (8) months of *prision correccional* as maximum, and to pay ACMDC the amount of P1,086.72 for the misappropriated gasoline.<sup>[8]</sup>

Villacencio appealed his conviction to the Regional Trial Court of Toledo City. For failure of the prosecution to establish the guilt of Villacencio beyond reasonable doubt, the appellate court acquitted him.<sup>[9]</sup>

On August 9, 1993, Labor Arbiter Belarmino rendered a Decision<sup>[10]</sup> dismissing Villacencio's complaint of illegal dismissal for lack of merit.

Aggrieved, Villacencio appealed to the NLRC. On December 27, 1994, the NLRC reversed the Labor Arbiter's Decision. It held:

“We have thoroughly reviewed the record of this case and found no sufficient evidence against the complainant for wrongdoing.

“x x x

“WHEREFORE, the respondent is hereby ORDERED to pay complainant separation pay equivalent to one-half month pay for every year of service, a fraction of 6 months service being considered one whole year.

“Complainant’s severance pay is P74,400.00 (January 23, 1970 to February 2, 1990;  $\frac{1}{2}$  of P7,440.00 = P3,720.00 x 20 years).

“Appealed Decision Reversed.

“SO ORDERED.”<sup>[11]</sup>

Both parties filed their respective Motion for Reconsideration. ACMDC’s motion assailed the public respondent’s decision for allegedly misapprehending the Labor Arbiter’s decision. On the other hand, Villacencio’s motion prayed for reinstatement and award of backwages in addition to separation pay.

On August 18, 1995, the public respondent rendered a Resolution granting Villacencio’s prayer for backwages and denying ACMDC’s motion. Its dispositive portion reads:

“X X X

“WHEREFORE, the Motion for Reconsideration filed by respondent-appellee is hereby DENIED for lack of merit. On the other hand, the Motion for Reconsideration filed by complainant-appellant is granted and our Decision is hereby modified to include backwages to complainant from February 1990 up to the present.

“SO ORDERED.”<sup>[12]</sup>

Hence, the instant petition.

The main issue is whether or not public respondent NLRC acted with grave abuse of discretion amounting to lack of jurisdiction in reversing the Decision of the Labor Arbiter and holding private respondent’s dismissal illegal. Both parties urge us to weigh the evidence presented by them in light of the contradictory factual

findings of the Labor Arbiter and the public respondent. We shall do so to settle the conflict.<sup>[13]</sup>

In illegal dismissal cases, the employer bears the burden of proof to show that the dismissal is for a just or authorized cause.<sup>[14]</sup> The charges against private respondent are: (1) withdrawal of 192 liters of gasoline from company stocks for his private use; and (2) knowingly allowing company personnel to work on company time in the assembly of a privately-owned jeep. To prove the first charge, petitioner presented the Tenders Logbook showing the unsigned entries of gasoline withdrawals allegedly made by private respondent. Wilfredo Caba and Bienvenido Villacencio also testified that private respondent refused to sign the entries when requested to do so.<sup>[15]</sup>

The evidence for the private respondent shows that during his more than twenty (20)-year stint with petitioner, he received several awards and commendations for his contribution in the areas of production, services and smooth operation of his department. The management recognized his ability in handling his subordinates and in protecting company assets in relation to his assigned duties. As a stickler for company rules, he never held back on issuing warnings, admonitions and even suspensions against erring subordinates. Consequently, he earned the ire of some of his subordinates. Among them were Wilfredo Caba whom he suspended on December 12, 1987 for sleeping while on duty; June Climaco whom he suspended on September 19, 1987 for failing to observe safety rules in handling flammable materials; Felix Gonzales whom he warned for quitting work earlier than the prescribed time; and Bienvenido Villacencio, together with Caba, Gonzales and F. Garnece, whom he warned on January 18, 1990 for leaving blank spaces on the withdrawal logbook. He also denied the requests of Caba, Villacencio, Gonzales and Climaco for promotion from 1988 to 1989.<sup>[16]</sup> He averred that these workers made willful assertions of falsehood in charging him and testifying against him.

In sum, private respondent's position is that the logbook entries do not prove that he received the 192 liters of gasoline since his signature does not appear therein and that the witnesses presented by the petitioner to explain the absence of his signature in the logbook

entries were motivated by vengeance since he offended their feelings when he disciplined them and denied their requests for promotion.

Loss of trust and confidence to be a valid ground for an employee's dismissal must be clearly established.<sup>[17]</sup> We hold that the proofs presented by the petitioner are insufficient to show dishonesty on the part of the private respondent. The Standard Guidelines of ACMDC require that all withdrawals of consumable items and the borrowing of company materials and equipments should be recorded in the Tender's Logbook by the tender on duty and should be signed by the withdrawing party. The tender on duty is also required to immediately report to his supervisor any discrepancy, error or irregularity. Needless to stress, the best evidence of any withdrawal is the Tender's Logbook. In the case at bar, the gasoline withdrawal entries were made by tenders Caba and Villacencio. Private respondent's signature does not appear in the logbook, thus, there is no proof that he actually withdrew and received the gasoline. The same entries also indicate that the gasoline was filled into the "service jeep" or "service pick-up" assigned to the private respondent. No clear reference was made that the said gasoline was used in the personal jeep of private respondent. Accordingly, the logbook cannot be relied upon to establish the alleged dishonesty of private respondent.

The explanation of Caba and Bienvenido Villacencio on the lack of signature of the private respondent on the logbook is not persuasive. For one, they appear to have an axe to grind against the private respondent. For another, they admitted that persons other than the assigned tenders could get hold of the logbook and write entries thereon. The entries in the logbook are therefore not tamper proof. It has also been established that the service jeep of private respondent was used by other supervisors who have no privilege to withdraw gasoline from the company supply.<sup>[18]</sup> All these give credence to private respondent's contention that the 192 liters of gasoline were filled into his service jeep at the instance of the supervisors who caused the same to be charged against him.

The second charge against the private respondent is likewise bereft of proof. The Solicitor General's observation on this factual issue is correct, viz.:

“Similarly, anent the charge of use of company personnel to work overtime on private respondent’s personal jeep, it needs more than the testimony of witness June Climaco for the charge to prosper. The Authorization to Work Overtime dated May 14, 1989 (Exh. “S”, p. 38, Records) indicates that A. Saavedra, A. Sepada and V. Rago were among those authorized to work overtime ‘to assist in emergency repair of busted 280 CIC Tailings Line’ (ibid) on that date. The same does not show or affirm petitioner’s contention that said workers were not actually authorized or did not actually perform the required work but were at the Magdugo Field Office working on private respondent’s personal jeep. On the contrary, the Authorization to Work Overtime (Exhibit “S”) appears regular on its face, as in fact, the same bears the imprimatur indicated by the signature not only of private respondent alone but of three (3) other officers, namely: the Supervisor, J.V. Climaco, Jr., the Department Head, J. N. Tecson, and the Division Manager, C. N. Sanchez. If ever there was an irregularity, these officers would likewise have to be answerable to the company, instead of letting private respondent bear the burden alone. Thus, petitioner’s version that the three (3) workers did not perform the authorized work cannot be accorded credence since the same is belied by the very document (Exh. “S”) adduced by petitioner. It cannot be upheld on the mere say-so of witness Climaco who, in the first place, admits to have testified upon petitioner’s request (TSN, July 17, 1991, p. 30) and may have been moved by some ill-feelings against private respondent who, at one time, meted him the penalty of suspension (p. 60, Records).”<sup>[19]</sup>

We reject the ruling of the Labor Arbiter that since private respondent neglected to inspect the logbook and thus failed to discover the irregularity, he committed breach of trust. Settled is the rule that under Article 283(c) of the Labor Code, the breach of trust must be willful. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the

employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify earlier action taken in bad faith or a subterfuge for causes which are improper, illegal or unjustified. It has never been intended to afford an occasion for abuse because of its subjective nature.<sup>[20]</sup> Private respondent explained that he failed to inspect the logbook for about two (2) months before its disappearance because he was preoccupied with some emergency works brought about by a storm.<sup>[21]</sup> With the foregoing explanation, it cannot be said that private respondent's failure was willful.

**IN VIEW WHEREOF**, the assailed Decision and Resolution of public respondent NLRC are **AFFIRMED**. Costs against petitioner.

**SO ORDERED.**

**Regalado, Melo, Mendoza and Martinez, JJ., concur.**

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- [1] Penned by Commissioner Bernabe S. Batuhan and concurred in by Presiding Commissioner Irene E. Ceniza and Commissioner Amorito V. Cañete.
- [2] Penned by Commissioner Amorito V. Cañete and concurred in by Presiding Commissioner Irene E. Ceniza, Commissioner Bernabe S. Batuhan dissented and voted this time for the affirmance of the Labor Arbiter's decision.
- [3] Labor Arbiter's Decision, p. 1; Rollo, p. 68.
- [4] Solicitor General's Comment, pp. 2-5; Rollo, pp. 239-242.
- [5] Id., pp. 6-7; Id., pp. 243-244.
- [6] Annex "G", Rollo, pp. 81-91.
- [7] Supra note 4, pp. 244-246.
- [8] See Municipal Trial Court's Decision, Annex "D", Rollo, pp. 52-66.
- [9] See dispositive portion of the Regional Trial Court's Decision, Annex "E", Rollo, p. 67.
- [10] Rollo, pp. 68-80.
- [11] NLRC Decision, p. 3; Rollo, p. 45.
- [12] NLRC Resolution, pp. 3-4; Rollo, pp. 49-50.
- [13] Pantranco North Express, Inc. vs. NLRC, 239 SCRA 272 [1994].
- [14] Molave Tours Corporation vs. NLRC, 250 SCRA 325 [1995].
- [15] Rollo, pp. 5-6, 284-285.
- [16] Rollo, pp. 68-69, 240-241, 307-311.
- [17] Labor vs. NLRC, 248 SCRA 183 [1995].

[18] Rollo, pp. 258-259.

[19] Rollo, pp. 253-254.

[20] Gloria S. Dela Cruz vs. NLRC, et al., G.R. No. 119536, February 17, 1997.

[21] Rollo, p. 259.

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