

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**NAZARIO C. AUSTRIA,  
*Petitioner,***

***-versus-***

**G.R. No. 123646  
July 14, 1999**

**NATIONAL LABOR RELATIONS  
COMMISSION, ABETO A. UY and  
PHILIPPINE STEEL COATING  
CORPORATION,**

***Respondents.***

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**DECISION**

**BELLOSILLO, J.:**

PHILIPPINE STEEL COATING CORPORATION (PHILSTEEL), private respondent, is engaged in the manufacture of prefabricated steel, galvanized iron and other metal products. On 19 December 1985 it hired petitioner Nazario C. Austria as its Credit and Collection Manager.<sup>[1]</sup> On 11 August 1987 petitioner and private respondent PHILSTEEL entered into a “Confidentiality Agreement” whereby he agreed not to disclose to anyone outside the company any technical, operational and other such information acquired in the course of his employment, unless otherwise duly authorized by private respondent, on pain of immediate dismissal.<sup>[2]</sup>

A smooth and satisfactory employee-employer relationship ensued between the two (2) parties until 17 August 1989 when petitioner was unceremoniously terminated by private respondent company on the ground that he allegedly disclosed confidential information to prospective competitors and had undertaken activities far beyond his official duties and responsibilities.<sup>[3]</sup>

On 30 August 1989 Austria filed a case for illegal dismissal against PHILSTEEL. He alleged that on 5 August 1989 the President of PHILSTEEL, Abeto Uy, demanded his resignation purportedly due to loss of confidence but refused to shed light on the reasons therefor.<sup>[4]</sup> Austria further alleged that on 17 August 1989, without any prior written notice, he was summoned to a meeting with the Vice-President for Finance, Primo Valerio, and Vice-President for Legal and Personnel, Gregorio Vega. Therein he was questioned about a certain 13 July 1989 telefax message sent by one Felix Lukban to PHILSTEEL's Australian supplier of equipment and machinery, Bliss Fox Manufacturing Corporation (BLISS FOX). The telefax showed that, on behalf of an unnamed client, Lukban was asking for the purchase price of a complete line of machinery and equipment for a steel galvanizing plant. Austria denied any knowledge of the telex.

Petitioner was also asked about his close relationship with Lukban, which the former admitted, Lukban being the godfather of his child.<sup>[5]</sup> Immediately after the meeting Austria was given his notice of termination and required to surrender the keys to his company car and to his room which were in his possession. When he returned to his room it was already padlocked; when he passed by his car it was barricaded.<sup>[6]</sup>

Austria submitted in support of his complaint the affidavit of Felix Lukban executed on 13 December 1989 disclaiming any participation of petitioner in the sending of the telefax message.<sup>[7]</sup> In addition, Lukban testified to the same effect and denied hearing any answer from BLISS FOX on his telefax.<sup>[8]</sup>

PHILSTEEL, on the other hand, contended that any information as to the sources of its supply was highly confidential as the steel industry was very competitive, and the information was disclosed by Austria to

Lukban. The basis for this contention was the incident of 5 August 1989 when a representative of BLISS FOX named Charles Villa informed Abeto Uy, in the presence of Primo Valerio and Gregorio Vega, of the fax message sent by Lukban to BLISS FOX. Charles Villa was said to have stated that Lukban represented himself to be acting for PHILSTEEL so he verified the representation from Uy who however denied it. Forthwith, Villa dialed a certain number from the telefax message.<sup>[9]</sup> After a brief exchange with the person on the other end of the phone, during which time Villa scribbled a name at the back of the telex, he informed Uy that he just talked with Lukban who informed him that his contact with PHILSTEEL was Rudy Austria whose name he had just written.<sup>[10]</sup>

After Villa left, Austria was immediately investigated on the matter. Petitioner admitted having a close relationship with Lukban. Austria also volunteered to disclose secret meetings at Manila Garden Hotel with Lukban and the latter's son-in-law regarding plans to put up a rival galvanizing business either here in the Philippines or in Singapore, as well as meetings at company premises with a group of Australians on the same subject. A second investigation held on 17 August 1989 yielded the same result.<sup>[11]</sup> Testimonies of Vega and Valerio, as well as the latter's 29 November 1989 affidavit, the confidentiality agreement and the termination letter were presented to buttress private respondents' evidence.

The Labor Arbiter found the evidence of private respondents credible on the ground that no other inference other than Austria's guilt could be drawn from these established circumstances: the Australian representative of BLISS FOX did not know Austria nor the latter's nickname (Rudy) when he called Lukban and inquired who Lukban's contact person was at PHILSTEEL; Lukban was not only known to Austria, he was close to him; and, Austria signified his intention to join the rival company which Lukban planned to form.<sup>[12]</sup>

The Labor Arbiter pointed out that petitioner failed to establish any motive on the part of private respondents and of Valerio and Vega in terminating his employment or in testifying against him since his services were still highly satisfactory as of July 1989. Thus, the Labor Arbiter declared the dismissal to be legal but ordered private respondents to pay petitioner P24,000.00 separation pay considering

that the company suffered no loss and that there was no proof of a rival company later established by petitioner.<sup>[13]</sup>

On appeal the NLRC agreed with the thesis of the Labor Arbiter that petitioner failed to prove any other motive by private respondents for his termination considering his excellent job performance. The Commission however modified the Labor Arbiter's decision by directing PHILSTEEL to pay petitioner an indemnity of P1,000.00 for non-observance of due process in failing to provide petitioner with a prior written notice of the investigation and for not giving him time to answer charges and to seek assistance of counsel.<sup>[14]</sup> Hence, this petition which is anchored on the following perceived errors:<sup>[15]</sup>

1. Respondent NLRC committed grave abuse of discretion in upholding the validity of petitioner's dismissal —
  - a. The alleged "loss of trust" in petitioner was not based on convincing and substantial evidence of any actual misconduct on his part, but merely on private respondents' suspicions, speculations and conjectures built around Lukban's telefax of 13 July 1989;
  - b. The alleged mention of petitioner as a "contact person" of Lukban in respondent PHILSTEEL is not in itself proof of any breach of duty on petitioner's part, nor was such "identification" even established as a fact by competent and reliable evidence;
  - c. The inconsistent and incredible testimonies of private respondents' witnesses on material and relevant facts clearly show that the charge of "loss of trust" is baseless, simulated and a mere capricious concoction of private respondents;
2. The denial of reliefs to petitioner for his illegal dismissal was an arbitrary, whimsical and capricious exercise of judgment by respondent NLRC.

Petitioner, in effect, assigns grave abuse of discretion on the part of public respondent NLRC for its misappreciation of the evidence and

giving it undue weight. Basic is the rule that judicial review of labor cases does not go so far as to evaluate the sufficiency of evidence on which the labor officials' findings rest;<sup>[16]</sup> more so when both the Labor Arbiter and the NLRC share the same findings. This, notwithstanding, we cannot affirm the decision of the NLRC especially when its findings of fact on which the conclusion was based are not supported by substantial evidence. By substantial evidence, we mean the amount of relevant evidence which a reasonable mind might accept as adequate to justify the conclusion.<sup>[17]</sup>

The NLRC grounded its findings on the following postulates: (a) the witnesses of PHILSTEEL are credible for petitioner failed to show any ground for them to falsely testify, especially in the light of his excellent job performance; and, (b) respondents' witnesses are more credible than petitioner's — Lukban who, insofar as the source of the information is concerned, impressed the NLRC as evasive.<sup>[18]</sup> The NLRC however entertained a patent misapprehension of the burden of proof rule in labor termination cases. Unlike in other cases where the complainant has the burden of proof to discharge, in labor cases concerning illegal dismissals, the burden of proving that the employee was dismissed with just cause rests upon the employer.<sup>[19]</sup> Such is the mandate of Art. 278 of the Labor Code.<sup>[20]</sup>

In brief, the evidence of PHILSTEEL rests upon the following bases: (a) the allegation of Charles Villa, representative of BLISS FOX, that Lukban named petitioner Austria as his contact in PHILSTEEL; (b) the close relationship of Lukban and Austria; and, (c) the admissions of Austria during the investigation relative to both the close relationship with Lukban and their plans to set up a rival business.

Like a house of cards, the evidence of private respondents collapses when we take into account the fact that its foundation is made of hearsay evidence or mere speculations. It must be noted that the testimonies of Valerio and Vega relied mainly on the veracity of the assertions of Villa. They did not say that they actually heard or observed Lukban admit to Villa that the former's client was PHILSTEEL and that his contact with PHILSTEEL was Austria. What they seemingly saw was Villa scribbling a name on the telefax purportedly dictated by Lukban. In short, what they appear to have observed was what Villa wanted them to observe, no matter whether

it was the truth or not. Thus, their testimony was clearly hearsay and must not be given weight. Moreover, the veracity of Villa's assertions, even as to his being a representative of BLISS FOX, is suspect. For not only were the circumstances attending the assertions incredible, considering that Lukban's message was by telex sent to Australia and would thus be more convenient for BLISS FOX to reply by the same mode and not by spending so much by sending a representative over merely to inquire upon a prospective customer, but also, the assertions were not subjected to the sifting process of cross examination. Neither Villa nor Uy was presented as a witness, hence, could not be cross examined by petitioner.

The reliance both by the Labor Arbiter and the NLRC on the hearsay testimonies in assessing the evidence of private respondents reflects a dangerous propensity for baseless conclusions amounting to grave abuse of discretion.<sup>[21]</sup> Such propensity is further shown when public respondent gave imprimatur to PHILSTEEL's conclusion that Austria was the one who divulged the so-called confidential information due mainly to his close affinity with Lukban. As we held in *Globe Mackay Cable and Radio Corporation vs. NLRC*<sup>[22]</sup> —

In the instant case, petitioner has predicated its dismissal of Salazar on loss of confidence. As we have held countless times, while loss of confidence or breach of trust is a valid ground for termination, it must rest on some basis which must be convincingly established. An employee may not be dismissed on mere presumptions and supposition. Petitioner's allegation that since Salazar and Saldivar lived together in the same apartment, it "presumes reasonably that complainant's sympathy would be with Saldivar" and its averment that Saldivar's investigation although unverified, was probably true, do not pass this Court's test. While we should not condone the acts of disloyalty of an employee, neither should we dismiss him on the basis of suspicion derived from speculative inferences.

Of significance here is the fact that nowhere in all the allegations of PHILSTEEL was there proof of any concrete action by Austria of divulging confidential information and of setting up a rival business. Everything was according to what

Villa said or what Lukban supposedly said. Thus, PHILSTEEL's resort to Austria's "admissions."

The admission of close relationship is certainly true as it was affirmed by both Austria and Lukban. The "admission" however, of their setting up a rival business strikes this Court as somewhat forced like squeezing a stone for water. The reality of such admission is negated by subsequent events. At no time did such an envisioned "rival" company come to being. Indeed, after his dismissal, petitioner had to languish for several months in uncertainty while looking for employment, instead of just joining the alleged company. Until he died on 15 March 1997,<sup>[23]</sup> petitioner never went into partnership with Lukban nor joined any other company.

Accusation cannot take the place of proof. A suspicion or belief no matter how sincerely felt cannot be a substitute for factual findings carefully established through an orderly procedure.<sup>[24]</sup> Such orderly procedure was denied petitioner by PHILSTEEL, as correctly found by the NLRC, thus<sup>[25]</sup> —

In the instant case, there was at least a partial denial of the complainant's right to due process because there was no showing: (1) that he was given the required first written notice; (2) that he was given sufficient time to answer the charges against him; and, (3) that he had the chance to obtain the assistance of counsel.

As there is a finding of illegal dismissal, an award of back wages, instead of indemnity, computed from the time of dismissal up to the time of his death, with legal interest plus attorney's fees, might properly assuage the hurt and damages caused by such illegal dismissal.

**WHEREFORE**, the petition is **GRANTED**. Private respondent PHILIPPINE STEEL COATING CORPORATION (PHILSTEEL) is **ORDERED** to pay the heirs of petitioner NAZARIO C. AUSTRIA his back wages inclusive of allowances and other benefits, including death benefits, from 17 August 1989 up to 15 March 1997, with legal interest plus attorney's fees. The Labor Arbiter is **DIRECTED** to

compute immediately the monetary benefits due petitioner as aforestated in accordance with law.

**SO ORDERED.**

**Puno, Mendoza, Quisumbing and Buena, JJ., concur.**

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- [1] Rollo, p. 6.
- [2] Records, pp. 42-44.
- [3] Id., p. 20.
- [4] TSN, 12 February 1990, pp. 73-88.
- [5] TSN, 27 February 1990, pp. 40-47.
- [6] Rollo, p. 36.
- [7] Records, pp. 59-60.
- [8] TSN, 19 March 1990, pp. 292-294.
- [9] TSN, 20 April 1990, pp. 15-16.
- [10] Records, p. 45.
- [11] TSN, 2 October 1990, pp. 19-23, 28-30.
- [12] 14 October 1992 Decision of Labor Arbiter Nieves V. De Castro; Records, p. 700.
- [13] Id., pp. 701-702.
- [14] 10 February 1994 NLRC (First Division) Decision, penned by Presiding Commissioner Bartolome S. Carale, concurred in by Commissioners Vicente S. E. Veloso and Alberto R. Quimpo; Rollo, pp. 33-48.
- [15] Rollo, p. 15.
- [16] Fernandez vs. NLRC, G.R. No. 108444, 6 November 1997, 281 SCRA 423.
- [17] Panlilio vs. NLRC, G.R. No. 117459, 17 October 1997, 281 SCRA 53.
- [18] Rollo, pp. 46-47.
- [19] Southern Cotobato Development and Construction, Inc. vs. NLRC, G.R. No. 121582, 16 October 1997, 280 SCRA 853; Reno Foods, Inc. vs. NLRC, G.R. No. 116462, 18 October 1995, 249 SCRA 379;
- [20] Pan Pacific Industrial Sales Co., Inc. vs. NLRC, G.R. No. 96191, 4 March 1991, 194 SCRA 633.
- [21] Icasiano vs. Office of the President, G.R. No. 49855, 15 May 1992, 209 SCRA 25.
- [22] G.R. No. 82511, 3 March 1992, 206 SCRA 701, 713.
- [23] Rollo, p. 175.
- [24] Philippine Associated Smelting and Refining Corp. (PASAR) vs. NLRC, G.R. Nos. 82866-67, 29 June 1989, 174 SCRA 550.
- [25] See Note 14, p. 42.