

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

BERNARDINO A. CAINGAT,
Petitioner,

-versus-

**G.R. No. 154308
March 10, 2005**

**NATIONAL LABOR RELATIONS
COMMISSION, STA. LUCIA
REALTY & DEV'T., INC., R.S.
MAINTENANCE & SERVICES,
INC., and R.S. NIGHT HAWK
SECURITY & INVESTIGATION
AGENCY, INC.,**

Respondents.

X-----X

DECISION

QUISUMBING, J.:

This petition for review on certiorari^[1] assails the Resolutions dated October 29, 2001^[2] and July 5, 2002^[3] of the Court of Appeals in CA-G.R. SP No. 66929.

The facts are as follows:

In 1983, petitioner Bernardino A. Caingat was hired by respondent Sta. Lucia Realty and Development, Inc. (SLRDI) as officer-in-charge of maintaining the facilities and checking the deliveries of construction materials in the different malls and subdivisions developed by the SLRDI. Later, he was assigned as Stock Clerk, tasked to supervise SLRDI utility and security personnel.

In 1990, petitioner became the General Manager of SLRDI's sister companies, R.S. Night Hawk Security and Investigation Agency, Inc., and R.S. Maintenance and Services, Inc., both organized to service the malls and subdivisions owned by SLRDI. He was allowed to use 10% of the total payroll of respondent R.S. Maintenance to defray operating expenses.

In 1991, the Finance Manager discovered that petitioner deposited company funds in the latter's personal account and used the funds to pay his credit card purchases, utility bills, trips abroad, and acquisition of a lot in Laguna.

On June 20, 1996, complainant received a Memorandum from Germelino Angeles, the HRD Manager of respondents. It reads:

Upon verification of financial records of the R.S. Nighthawk Security & Investigation Agency, Inc. and the R.S. Maintenance & Services Corporation, where you were designated as Manager, it was found that you have misappropriated company funds in the sum of about P5,000,000.00 from 1992 up to the present.

Within a period of forty-eight (48) hours from your receipt of this letter, please submit under oath written explanation why you should not be terminated as Manager of the two companies for misappropriating company funds in the sum of about P5,000,000.00, leading to serious loss of trust and confidence in you.

In the meantime, you are hereby suspended from your duties as Manager of the stated companies. You are hereby ordered to turn over your position to Mr. Ben Reyes (R.S. Night Hawk) and Mr. Mario Mapua (R.S. Maintenance) immediately upon receipt hereof.^[4]

On August 13, 1996, without conducting any investigation, respondent R.S. Maintenance filed a complaint docketed as Civil Case No. 65841 for sum of money and damages with prayer for writ of preliminary attachment before the Pasig Regional Trial Court, Branch 67.

On August 27, 1998, petitioner filed before the Labor Arbiter, a complaint, docketed as NLRC-NCR Case No. 00-08-07023-98 for illegal dismissal against the respondents. On June 20, 2000, finding illegal dismissal, the Labor Arbiter ordered the reinstatement of petitioner to his former position without loss of seniority rights and other privileges, and benefits, with full backwages.

Respondents appealed to the Commission, which reversed the findings of the Labor Arbiter. The respondents, however, were directed to pay the petitioner indemnity of ₱10,000 for their failure to furnish him the required notice of dismissal.

Petitioner filed a petition for certiorari, but it was dismissed by the Court of Appeals, as follows:

The petition has for its attachments only the NLRC Decision, Decision of the Labor Arbiter and the denial of the Motion for Reconsideration, without appending other pleadings and documents relevant and pertinent thereto, as required by Section 1, Rule 65 of the 1997 Rules of Civil Procedure, as amended, such as the complaint, position papers and appeal memoranda submitted below. Section 3 of Rule 46, considers such omission as sufficient ground for the dismissal of the petition.

WHEREFORE, the petition is DENIED DUE COURSE and necessarily DISMISSED.

SO ORDERED.^[5]

The appellate court also denied petitioner's motion for reconsideration.^[6]

Hence, the instant petition for review, alleging the following errors committed by the appellate court:

1. The Decision of the Honorable NLRC promulgated on May 18, 2001 were rendered contrary to the provisions of the Labor Code and its implementing rules and regulation and the applicable decisions of this Honorable Supreme Court, specifically:
 - A. Petitioner was dismissed from his employment by respondents without just and legal cause. As found by the Honorable Arbiter, Jovencio Ll. Mayor, Jr. in his decision promulgated on June 20, 2000, petitioner did not abandon his job contrary to the allegations of respondents. On appeal, the NLRC reversed the decision of Labor Arbiter Mayor for breach of trust, the grounds of which however, were speculative and unproven allegations.
 - B. As found by Labor Arbiter Jovencio Ll. Mayor, Jr. in his decision promulgated on June 20, 2000, respondents dismissed petitioner from employment without due process of law. Private respondents themselves admitted that they did not investigate the veracity of petitioner's alleged misappropriation of respondents' funds. Private respondents did not likewise comply with the requirements of notice of dismissal of petitioner.
 - C. The indemnity awarded by the NLRC to petitioner in its decision of May 18, 2001 in the amount of P10,000.00, for dismissing petitioner without the required notice of dismissal is a patent nullity.
2. Petitioner has complied with the requirement of submitting the documents relevant and pertinent to his petition for certiorari filed on October 19, 2001 with the Honorable Court of Appeals under Section 1, Rule 65 of the Rules of Court. The resolutions promulgated by the Honorable Court of Appeals on October 30, 2001 and July 5, 2002, denying

due course to petitioner's petition due to "a procedural error" are inconsistent with the applicable decisions of this Honorable Supreme Court and the provisions of Rule 51 of the Rules of Court which provides, "the court at every stage of the proceedings must disregard any error or defect which does not affect the substantial rights of the parties;" and

3. Private respondents were guilty of malice, bad faith, oppressiveness, and of inflicting severe mental anguish to petitioner and his family, in the manner they terminated petitioner from his employment.^[7]

Simply stated, the issues are: (1) Did the Court of Appeals err in dismissing CA-G.R. SP No. 66929 on purely technical grounds? (2) Did respondents illegally dismiss petitioner?

Petitioner contends that his petition should not have been dismissed for lack of technical requirements by the Court of Appeals. He states that Section 1, Rule 65 does not specify what documents or pleadings are relevant or pertinent to the petition. Thus, petitioner is accorded latitude in determining what documents or pleadings are to be filed. He cites Section 6 of Rule 1^[8] and Section 6 of Rule 51^[9] of the 1997 Rules of Procedure as well as our ruling in *Piglas-Kamao (Sari-Sari Chapter) vs. NLRC*^[10] to support his appeal for a liberal construction of the rules.

Respondents counter that the Court of Appeals did not commit any reversible error. They aver Section 3 of Rule 46^[11] sanctions the dismissal of a petition for failure to comply with requirements. The petitioner should not be given latitude since he had sufficient time to complete the form and substance of his petition before the Court of Appeals. After all, petitioner was twice granted extension of time to file the petition.

Section 1, Rule 65 of the 1997 Rules of Civil Procedure^[12] is unequivocal. It requires that the petition for certiorari shall be accompanied by (1) a certified true copy of the judgment or order subject thereof,^[13] (2) copies of all pleadings and documents relevant and pertinent thereto, and (3) a sworn certification of non-forum shopping as provided in par. 3, Section 3, Rule 46. The enumerated

documents should be attached in a petition. Any contrary interpretation would run counter to the very purpose of the rule of providing the appellate court sufficient basis for the resolution of the petition.

In his petition, petitioner only included the decisions of the Labor Arbiter and NLRC, and the denial of the motion for reconsideration. However, since the petitioner subsequently submitted the complete attachments required in his motion for reconsideration, in accordance with our decision in *Reyes vs. Court of Appeals*, [G.R. No 154448, 15 August 2003, 409 SCRA 267, 278], we will now decide the case. A remand to the Court of Appeals will merely unduly delay its disposition.

Respondents now contend that the petitioner raises purely factual issues which should not be delved into as this Court can only review questions of law. We note, however, that in this case, the NLRC findings are not consistent with those of the labor arbiter. The Court of Appeals did not make factual findings. While the labor arbiter found that respondents failed to prove that petitioner abandoned his job, the NLRC simply found that the petitioner was validly dismissed due to loss of trust and confidence. It behooves us, by way of exception to the general rule, to delve into the facts^[15] even as we resolve the principal issue: was petitioner illegally dismissed?

Petitioner contends that he was illegally dismissed because the memorandum dated June 20, 1996, had the effect of indefinitely suspending him as it has not been lifted up to the present,^[16] despite the provision that no preventive suspension shall last longer than 30 days.^[17] Petitioner also claims that he was denied due process when respondents failed to provide him any notice of dismissal.

For their part, respondents deny that they dismissed the petitioner. In their position paper, private respondents state that “there is no evidence that respondents dismissed the complainant.”^[18] Again, in the second paragraph of said position paper, respondents said:

“besides, complainant was not dismissed nor terminated. There is no evidence which would show that he was dismissed.”^[19] Further, respondents aver, “as to the issue of backwages, suffice

it to say that since complainant was not dismissed nor terminated, there can be no finding of illegal dismissal” to justify a claim for backwages.^[20]

Rebutting petitioner’s claim for separation pay, respondents add:

“since as earlier said, he was not dismissed nor illegally dismissed, complainant thus, cannot seek separation pay.”^[21]

On record, however, it was shown that on July 31, 1996, the following appeared in the *Philippine Daily Inquirer*:

NOTICE TO THE PUBLIC

This is to notify the public that as of June 20, 1996, MR. BERNARDINO A. CAINGAT is no longer connected with RS Night Hawk Security and Investigation Agency and with RS Maintenance and Services.

All transactions with Mr. Caingat after June 20, 1996 are no longer honored by these offices.^[22] (*Underscoring supplied.*)

There is no proof submitted, and the records are bereft, as to who caused the publication of the notice to the public. The NLRC, however, in its decision of May 18, 2001, said:

On the other hand, the respondents apparently took his failure to submit the required written explanations an admission of guilt. As a result, on July 21, 1996, they announced his severance from the companies in the newspaper.^[23]

Further, the Commission said:

It is therefore clear that as of July 21, 1996, he was already considered dismissed from employment.^[24]

Thus, in our view, the announcement made on July 21, 1996 would only mean that actual severance was effective June 20, 1996, as far as petitioner was concerned. It was the date the petitioner was formally suspended, but clearly respondents were not expecting further

investigation to happen. The order for petitioner to submit a written explanation under oath was just a formality. The termination was a *fait accompli*. The *pro-forma* notice made even more glaring management's intent to separate him from the companies' service.

But was there an illegal dismissal?

As firmly entrenched in our jurisprudence, loss of trust and confidence as a just cause for termination of employment is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. This includes managerial personnel entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. (*Panday vs. National Labor Relations Commission*, G.R. No. 67664, 20 May 1992, 209 SCRA 122, 125; *Metro Drug Corporation vs. NLRC*, No. L-72248, 22 July 1986, 143 SCRA 132, 136).^[25] The betrayal of this trust is the essence of the offense for which an employee is penalized. (*Central Pangasinan Electric Cooperative, Inc. vs. Macaraeg*, G.R. No. 145800, 22 January 2003, 395 SCRA 720, 727 citing *Quezon Electric Cooperative vs. NLRC*, G.R. Nos. 79718-22, 12 April 1989, 172 SCRA 88, 94).^[26]

In the case at bar, the petitioner held a position of utmost trust and confidence. He was entrusted with cash fees for the maintenance and security services of 80 subdivisions and clubhouses. He used company funds for payment of his personal bills. Instead of accounting for his alleged unauthorized disbursements, petitioner suddenly departed from the country and returned only after more than three years and claimed that he was illegally dismissed and he was entitled to the alleged misappropriated funds by way of commission apart from the monthly salary he received. Given the circumstances of this case, we can conclude that management's loss of trust and confidence on petitioner was well justified. Private respondents had every right to dismiss petitioner. Petitioner's long period of disappearance from the scene and departure for abroad before making a claim of illegal dismissal does not contribute to its credibility.

Nonetheless, while dismissal may truly be justified by loss of confidence, we agree with the Labor Arbiter and NLRC that

management failed to observe fully the procedural requirement of due process for the termination of petitioner's employment.

The due process prescribed in Article 277^[27] of the Labor Code, as amended, and in Sections 2^[28] and 7,^[29] Rule I, Book VI of the Implementing Rules of the Labor Code, are mandatory.^[30] Two notices should be sent to the employee. The first notice apprises the employee of the particular acts or omissions for which his dismissal is sought; while the second informs the employee of the employer's decision to dismiss him. The latter must come after the employee is given a reasonable period from receipt of the first notice within which to answer the charge, and ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires. ^[31] In this case, the respondents only sent the first notice, gleaned from the June 20, 1996 memorandum. There was no second notice. Neither the public notice in the *Philippine Daily Inquirer*, a newspaper of general circulation, nor the demand letter could constitute substantial compliance. What the public notice did was to inform the public that petitioner was already separated as of June 20, 1996, the same day he was suspended.

In *Agabon vs. NLRC*, ^[32] we said that if the dismissal was for cause, the lack of statutory due process should not nullify the dismissal, or render it illegal or ineffectual. ^[33] But the violation of the petitioner's right to statutory due process by respondents warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the Court, taking into account the relevant circumstances. ^[34] Accordingly, we deem the amount of ₱30,000 sufficient as a vindication of the petitioner's statutory right to notice, pursuant to current jurisprudence.

WHEREFORE, the assailed Resolutions of the Court of Appeals in CA-G.R. SP No. 66929 are hereby **MODIFIED**. Petitioner Bernardino A. Caingat's dismissal from employment by private respondents is upheld on the ground of loss of trust and confidence on a managerial employee, a just cause for termination. However, for failure to comply fully with the requirement of notice as part of due process, the private respondents are **ORDERED** to pay petitioner Bernardino A. Caingat the amount of ₱30,000.00 as nominal damages. No pronouncement as to costs.

SO ORDERED.

DAVIDE, JR., C.J., (Chairman), YNARES-SANTIAGO, CARPIO, and AZCUNA, JJ., concur.

[1] Rule 45 of the Rules of Court.

[2] Rollo, pp. 56-57. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Delilah Vidallon-Magtolis, and Candido V. Rivera concurring.

[3] Id. at 59-60.

[4] Id. at 235.

[5] Id. at 56-57.

[6] Id. at 59-60.

[7] Id. at 15-16.

[8] Rule 1. – General Provision

SEC. 6. Construction. – These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

[9] Rule 51. Judgment

SEC. 6. Harmless error. – No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the trial court or by any of the parties is ground for granting a new trial or for setting aside, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceedings must disregard any error or defect which does not affect the substantial rights of the parties.

[10] G.R. No. 138556, 9 May 2001, 357 SCRA 640.

[11] SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. –

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

[12] SEC. 1. Petition for certiorari. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum

shopping as provided in the third paragraph of Section 3, Rule 46.
[Emphasis supplied]

- [13] OSM Shipping Philippines, Inc. vs. National Labor Relations Commission, G.R. No. 138193, 5 March 2003, 398 SCRA 606, 613.
- [14] [G.R. No 154448, 15 August 2003, 409 SCRA 267, 278].
- [15] See Mendoza vs. National Labor Relations Commission, G.R. No. 131405, 20 July 1999, 310 SCRA 846, 855.
- [16] Rollo, p. 20.
- [17] Implementing Rules of Book V: Rule XXIII (*Termination of Employment*) of the Labor Code
Sec. 9. Period of suspension. - No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearings, to dismiss the worker.
- [18] CA Rollo, p. 121.
- [19] Id. at 122.
- [20] Ibid.
- [21] Id. at 124.
- [22] Rollo, p. 144.
- [23] Id. at 101.
- [24] Ibid.
- [25] (Panday vs. National Labor Relations Commission, G.R. No. 67664, 20 May 1992, 209 SCRA 122, 125; Metro Drug Corporation vs. NLRC, No. L-72248, 22 July 1986, 143 SCRA 132, 136).
- [26] (Central Pangasinan Electric Cooperative, Inc. vs. Macaraeg, G.R. No. 145800, 22 January 2003, 395 SCRA 720, 727 citing Quezon Electric Cooperative vs. NLRC, G.R. Nos. 79718-22, 12 April 1989, 172 SCRA 88, 94).
- [27] ART. 277. Miscellaneous provisions. –
(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.
- [28] Sec. 2. Security of Tenure. – x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

[29] SEC. 7. Termination of employment by employer. – The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective bargaining agreement with the employer or voluntary employer policy or practice.

[30] *Colegio de San Juan de Letran–Calamba vs. Villas*, G.R. No. 137795, 26 March 2003, 399 SCRA 550, 559. See also *Equitable Banking Corporation vs. NLRC*, G.R. No. 102467, 13 June 1997, 273 SCRA 352, 378.

[31] *Lim vs. National Labor Relations Commission*, G.R. No. 118434, 26 July 1996, 259 SCRA 485, 498.

[32] G.R. No. 158693, 17 November 2004, p. 15.

[33] *Ibid.*

[34] *Id.* at 16. See also *Savellano vs. Northwest Airlines*, G.R. No. 151783, 8 July 2003, 405 SCRA 416, 430.