SUPREME COURT
THIRD DIVISION

FLORENCIO M. DE LA CRUZ, JR.,
***Petitioner*,**

-versus-

G.R. No. 145417
December 11, 2003

NATIONAL LABOR RELATIONS COMMISSION (4th Division) SHEMBERG MARKETING CORPORATION and ERNESTO U. DACAY, JR.,
***Respondents*.**
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D E C I S I O N

CORONA, *J.*:

Before us is a Petition for Review on Certiorari seeking to set aside the Decision[1] of the Court of Appeals dated July 11, 2000, affirming with modification the two resolutions of the National Labor Relations Commission (NLRC) dated July 9, 1999[2] and November 19, 1999,[3] which awarded to petitioner Florencio de la Cruz, Jr., the amount of P23,900 representing his unpaid wages and indemnity.

The facts follow.

On May 27, 1996, petitioner Florencio M. dela Cruz, Jr. was hired by private respondent Shemberg Marketing Corporation (Shemberg) as senior sales manager with a monthly salary of P40,500. Shemberg was engaged in the business of manufacturing, trading, distributing and importing various consumer products. The position of senior sales manager was then newly created in line with Shemberg's objective of product positioning in the consumer market. Its duties included, among others, the supervision and control of the sales force of the company. The senior sales manager was also vested with some discretion to decide on matters within the scope of his functions, including the appointment of district sales representatives and the reshuffling of salesmen to achieve sales targets.

However, on September 14, 1996, Shemberg's human resource department manager, Ms. Lilybeth Y. Llanto, summoned petitioner and informed him of the management's decision to terminate his services. Petitioner asked Llanto for something to do with the drop in the company's sales. Petitioner then requested a meeting with Shemberg's vice president, Ernesto U. Dacay, Jr., but was told that the decision of the management was final. His request to be furnished a 30-day written notice was also denied by the management. Hence, petitioner filed a complaint for illegal dismissal, non-payment of salary, backwages, 13th month pay and damages against Shemberg, Ernesto Dacay, Jr. and Lilybeth Llanto.

Respondents answered that petitioner's dismissal was premised on the following: (1) his poor performance as evidenced by the steady and substantial drop in company sales since his assumption as senior sales manager; (2) the dissatisfaction of his subordinates over his management style and dealings with the company's distributors which resulted in the low morale of Shemberg's sales force, as evidenced by the joint affidavit[4] of two of his subordinates, Ruel O. Salgado and Joel D. Sol; (3) his unauthorized use of company cellular phone for overseas personal calls[5] and (4) the unauthorized reimbursement of the plane tickets of his wife and child.[6] In short, petitioner was terminated for his failure to meet the required company standards and for loss of trust and confidence.

In a decision dated August 25, 1997, labor arbiter Ernesto F. Carreon ruled that petitioner Florencio de la Cruz was illegally dismissed and granted his claim for separation pay, backwages and unpaid wages:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent Shemberg Marketing Corp. to pay the complainant Florencio de la Cruz the following:
>
> | | | |
> |---|---|---|
> | 1. | Separation pay | P40,500.00 |
> | 2. | Backwages | 379,350.00 |
> | 3. | Unpaid wages | 18,900.00 |
> | | TOTAL | P438,750.00 |
>
> The other claims and the cases against respondents Ernesto Dacay, Jr. and Lilybeth Llanto are dismissed for lack of merit.
>
> SO ORDERED.

On appeal by respondents, the NLRC dismissed the appeal in a decision dated May 13, 1998.[7]

Respondents moved for reconsideration, presenting additional evidence to support its claim: (1) an affidavit executed on July 11, 1998[8] by Ms. Lily Joy M. Sembrano, Shemberg's vice president for operations; (2) petitioner's letter of appointment dated July 8, 1996 as senior sales manager;[9] (3) petitioner's job description;[10] (4) memorandum dated July 30, 1996 addressed to petitioner, sternly warning him about the huge drop in company sales[11] and (5) an undated memorandum requiring petitioner to explain why he was claiming reimbursement for his wife's and child's plane tickets.[12]

Petitioner opposed the motion for reconsideration and questioned the authenticity of the additional evidence submitted by the respondents.[13]

On July 9, 1999, the NLRC partially granted the motion for reconsideration and modified its previous resolution:

> WHEREFORE, premises considered, the Motion for Reconsideration filed by the respondents-appellants is PARTIALLY GRANTED. The decision of this Commission promulgated on 13 May 1998 is ABANDONED. The decision of Labor Arbiter Ernesto F. Carreon dated 25 August 1997 is MODIFIED and a new one is entered, to wit:
>
> > Ordering respondent Shemberg Marketing Corporation to pay complainant Florencio dela Cruz, Jr., the amount of Twenty Three Thousand Nine Hundred Pesos (P23,900.00), broken down as follows:
> >
> > | | |
> > |---|---|
> > | Unpaid Wages | P18,900.00 |
> > | Indemnity | 5,000.00 |
> > | TOTAL | P23,900.00 |
>
> SO ORDERED.[14]

Petitioner filed a motion for reconsideration of the above resolution but the same was denied by the NLRC on November 19, 1999.[15]

Petitioner elevated the case to the Court of Appeals on a petition for certiorari but it was dismissed for lack of merit.[16] His subsequent motion for reconsideration was likewise denied on September 8, 2000.[17]

Hence, this petition.

Petitioner raises the following assignments of error: [18]

I

> THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT REFUSED TO AWARD BACKWAGES NOTWITHSTANDING ITS FACTUAL FINDING THAT RESPONDENTS FAILED TO COMPLY WITH THE TWO-NOTICE REQUIREMENT, CONTRARY TO THE NEW DOCTRINE IN “SERRANO VS. NLRC AND ISETANN DEPT.

STORE, G.R. NO. 117040, 27 JANUARY 2000" WHEREBY THE HONORABLE SUPREME COURT EN BANC RULED THAT AN EMPLOYEE WHO WAS NOT GIVEN NOTICE MUST BE PAID BACKWAGES FROM HIS TERMINATION UNTIL IT IS FINALLY DETERMINED THAT IT WAS FOR A JUST CAUSE.

II

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT THE SUBMISSION BY PETITIONER OF PLANE TICKETS FOR REFUND CONSTITUTED UNAUTHORIZED USE OF COMPANY FUNDS, DESPITE ABSENCE OF EVIDENCE ON A SPECIFIC PROHIBITION REGARDING SUCH REQUEST, AND CONSIDERING THAT THE SAME WAS RESPONDENTS' AFTERTHOUGHT FOR NOT BEING RAISED IN THE ORIGINAL POSITION PAPER BEFORE THE LABOR ARBITER.

III

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT FAILED TO AWARD DAMAGES AS WELL AS ATTORNEY'S FEES.

The petition is without merit.

Petitioner insists that the Court of Appeals committed grave abuse of discretion in ruling that the submission of his family's plane tickets for reimbursement was tantamount to fraud and deceit which justified the employer's loss of trust and confidence in him. He contends that private respondents' attempt to impute fraud and deceit to him was a mere afterthought, considering that it was only raised by private respondents for the first time on appeal and not in the original position papers submitted to the labor arbiter.

Petitioner was holding a managerial position in which he was tasked to perform key functions in accordance with an exacting work ethic. His position required the full trust and confidence of his employer.

While petitioner could exercise some discretion, this obviously did not cover acts for his own personal benefit. As found by the court a quo, he committed a transgression that betrayed the trust and confidence of expenses out of company funds. Petitioner failed to present any persuasive evidence or argument to prove otherwise. His act amounted to fraud or deceit which led to the loss of trust and confidence of his employer.

We reiterate the well-established rule that findings of fact of the Court of Appeals are conclusive on the parties and are not generally reviewable by this Court when supported by substantial evidence.[19] The rationale is that this Court, not being a trier of facts, relies in good part on the assessment and evaluation of evidence by the lower courts. We thus subscribe to the following findings of the Court of Appeals in affirming the NLRC decision, that petitioner's dismissal was for a just cause:

> With respect to the unauthorized use of company funds, there appears to be substantial evidence to show that petitioner indeed is guilty of the same — but only with respect to the reimbursement of plane ticket fares.
>
> Although the cellular phone bill statement with the alleged unauthorized overseas calls were reflected was submitted in evidence, it does not prove that petitioner was the one who made those calls. Petitioner claimed that the said mobile unit was not at all times used by him. This was not controverted by respondents. Furthermore, there was no evidence presented to prove that the recipient of the overseas call was not at all connected with the company as the calls could actually be official business calls. Mere presentation of a cellular phone bill statement would not suffice to charge petitioner with unauthorized use of company phone especially in the light of the memorandum sent by the cellular phone company warning its subscribers of illegal activities perpetuated by unauthorized individuals posing as their employees.
>
> But this cannot be true insofar as the prosecution of the plane tickets of petitioner's family is concerned. Respondents insist that petitioner submitted these tickets and reimbursed the cost

of the same from the respondent corporation without authority or permission from management. On the other hand, petitioner merely denied having reimbursed the costs of the tickets or of using company funds to buy them. We find that petitioner's denial cannot prevail over the actual presentation of the plane ticket in the name of petitioner and his family and terminal fee stubs bearing three (3) different serial numbers but similarly dated. The possession by respondent corporation of the plane tickets of petitioner's wife and child clearly shows that the same were submitted to management for reimbursement along with the other transportation expenses of petitioner. Otherwise, there is no way respondent corporation could have gotten hold of the same. Petitioner opted not to explain why these plane tickets were in the possession of respondent corporation. His denials without accompanying proof coupled with his silence on this matter cannot but be taken against him.

We reject petitioner's contention that the matter of reimbursement of the plane tickets of his family was a mere afterthought, not having been raised by respondent in the original position papers before the labor arbiter. The NLRC acted correctly since technical rules of evidence are not binding in labor cases. Article 221 of the Labor Code provides:

> "In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiter shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process."

Thus, in Bristol Laboratories Employees' Association vs. NLRC,[20] this Court upheld the NLRC when it considered additional documentary evidence submitted by the parties on appeal to prove breach of trust and loss of confidence as basis for the dismissal of the petitioner therein. Likewise, in Lopez vs. NLRC,[21] we held that, under Article 221 of the Labor Code, the

> NLRC could validly admit certain documents proving the re-employment of the private respondent although they were presented only on appeal. Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties.[22]

Petitioner was hired by respondent Shemberg Marketing Corporation on May 27, 1996 and was terminated on September 14, 1996. Article 281 of the Labor Code provides:

> Probationary employment. — Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards, made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.
>
> Petitioner vigorously contends that he was not a probationary employee since Shemberg failed to disclose to him the reasonable standards for qualifying as a regular employee.

This Court notes, however, the evidence on record clearly showing that petitioner was well informed of the standards to be met before he could qualify as a regular employee. This was stated in his appointment paper:

> To : Florencio dela Cruz
> From : HRD
> Re : Appointment
> Date : July 8, 1996
>
> We are happy to inform you that you have been hired as Senior Sales Manager — VISMIN effective May 27, 1996. As a matter of company policy your performance shall be periodically evaluated in accordance with performance standards set by the company.

You will be reporting directly to the President and shall maintain coordinating relationship with the AVP's for TRADING, F & B Division, CUPCO & SHALDAN and their respective Plant Managers.

LILIBETH Y. LLANTO
HRD Manager

Noted by:

ERNESTO U. DACAY, JR.
President

Attached to his appointment paper was the job description of sales manager which read:

JOB DESCRIPTION

Senior Sales Manager
Visayas Mindanao Areas
Shemberg Marketing Corporation

General Functions:

Responsible in (sic) organizing, planning, establishing, and implementing sales policies and procedures for the purpose of attaining sales targets.

Specific Functions:

1. Responsible in (sic) the proper marketing, sales and distribution of products in the assigned area.
2. Handles the monitoring of sales and sees to it that the monthly sales targets are attained.
3. Submits monthly report of sales and collection showing comparison against the budgeted sales targets for evaluation purposes.
4. Does such other functions as may be directed by the President from time to time.

5. Performance subject to evaluation and trial period for six (6) months or more. *(Italics supplied)*

> A probationary employee is one who, for a given period of time, is under observation and evaluation to determine whether or not he is qualified for permanent employment. During the probationary period, the employer is given the opportunity to observe the skill, competence and attitude of the employee while the latter seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment. The length of time is immaterial in determining the correlative rights of both the employer and the employee in dealing with each other during said period.[23]

There is no dispute that petitioner, as a probationary employee, enjoyed only temporary employment status. In general terms, this meant that he was terminable anytime, permanent employment not having been attained in the meantime. The employer could well decide he no longer needed the probationary employee's services or his performance fell short of expectations, etc. As long as the termination was made before the expiration of the six-month probationary period, the employer was well within his rights to sever the employer-employee relationship. A contrary interpretation would defect the clear meaning of the term "probationary." In this case, respondent Shemberg had good reason to terminate petitioner's employment and that was his dishonesty.

WHEREFORE, the instant petition is hereby **DISMISSED** for lack of merit and the decision dated July 11, 2000 of the Court of Appeals is hereby **AFFIRMED**.

SO ORDERED.
Vitug, Sandoval-Gutierrez and Carpio Morales, *JJ*., concur.

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[1] Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Salome A. Montoya and Romeo J. Callejo, Sr. (now Associate Justice of the Supreme Court) in CA-G.R. SP No. 57293; Rollo, pp. 27–37.

[2] Penned by Commissioner Amorito V. Cañete and concurred in by Presiding Commissioner Irenea E. Ceniza and Commissioner Bernabe S. Batuhan; Original Records, pp. 220-229.
[3] Original Records, pp. 265-271.
[4] Original Records, pp. 42-43.
[5] Original Records, pp. 44-45.
[6] Original Records, pp. 78–80.
[7] Original Records, pp. 158–164.
[8] Original Records, pp. 186-188.
[9] Original Records, p. 189.
[10] Original Records, p. 190.
[11] Original Records, p. 192.
[12] Original Records, p. 193.
[13] Original Records, pp. 195-202.
[14] Original Records, pp. 220–229.
[15] Original Records, pp. 265–271.
[16] Record from the CA, pp. 227-228.
[17] Records from the CA, p. 254.
[18] Rollo, pp. 16-17.
[19] Such factual findings shall not be disturbed, unless: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7) the findings of fact of the Court of Appeals are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the Curt of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. Martinez vs. CA, 358 SCRA 38, 49-50 (2001).
[20] 187 SCRA 118, 121 [1990].
[21] 245 SCRA 644, 649 [1995].
[22] Philippine-Singapore Ports Corporation vs. NLRC, 218 SCRA 77 [1993].
[23] Footnote text not found in the original.