



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated August 19, 2020 which reads as follows:

“G.R. No. 247943 – Associated Labor Unions-TUCP and Charlito U. Rojas v. Del Monte Philippines, Inc.

In this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, Charlito U. Rojas (Rojas) and Associated Labor Unions–TUCP (collectively, petitioners) assail the December 14, 2018 Decision¹ and May 17, 2019 Resolution² of the Court of Appeals–Cagayan de Oro City (CA) in CA-G.R. SP No. 08519-MIN.

Petitioner Rojas was a field worker of Del Monte Philippines, Inc. (DMPI) from 1981 until his promotion to Heavy Equipment Operator of DMPI’s Land Preparation Department in 1995. Rojas’ latest assignment was at DMPI’s Magsaysay and Dalwangan plantations in Malaybalay, Bukidnon, as operator of Wheel Tractor No. 3620. Rojas was also responsible for dispatching outsourced drivers of boom trucks in liming operations.³

As sustained by the CA, security guard Reynaldo Furog (Furog) spotted Rojas siphoning diesel fuel from the fuel tank of Wheel Tractor No. 3620 at 10:00 a.m. of April 30, 2016. Furog then saw Rojas with two other persons load five fuel containers on Boom Truck No. 507. When the vehicles left, Furog followed Boom Truck No. 507 until it stopped at Malaybalay City, where the driver waited until a motorcycle with side carriages arrived. The man on the motorcycle received the five containers after handing something from his pocket to the boom truck driver. Furog subsequently accosted the man on the

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¹ Penned by Associate Justice Walter S. Ong, with Associate Justices Oscar V. Badelles and Evalyn M. Arellano-Morales, concurring; *rollo*, pp. 37-61.

² Id. at 63-64.

³ Id. at 38.

motorcycle, who identified himself as James Malinao (Malinao) and admitted that he bought the five gas containers from the boom truck driver at ₱550.00 per container, for a total of ₱2,750.00. Malinao also disclosed that it was the second time he bought diesel fuel from the driver of Boom Truck No. 507.⁴

On May 1, 2016, the driver of Boom Truck No. 507, identified as Ruel Guno (Guno) of GT Trucking, admitted to security supervisor Efren A. Dumotan (Dumotan) that he, Rojas and the driver of Boom Truck No. 514, took five containers of diesel fuel from Wheel Tractor No. 3620 that were later sold to Malinao. Guno also turned over the amount of ₱1,650.00, which was supposed to be Rojas' share.⁵

The May 2, 2016 Security Report of security guard Anecito Candaroma (Candaroma), to whom Furog reported the incident, gave the time of occurrence of the pilferage as 1:30 p.m. This report was attached to DMPI's show cause letter dated May 14, 2016, directing Rojas to explain why he should not be disciplined for the reported pilferage.⁶

In response, Rojas denied involvement in the pilferage, claiming he was not at the scene of the incident and was already at the bunkhouse around 12:30 p.m., after completing his work and leaving the area at 11:00 a.m. An administrative hearing was conducted on June 11, 2016, attended by Rojas and union officers, as well as by Furog and Dumotan, after which, DMPI found Rojas guilty of dishonesty, punishable by dismissal under DMPI's Table of Disciplinary Measures. Consequently, Rojas was terminated from employment by Notice of Termination, effective June 28, 2016.⁷

Aggrieved, petitioners lodged a Complaint⁸ on August 19, 2016 with the National Labor Relations Commission—Cagayan de Oro City (NLRC). Executive Labor Arbiter (ELA) Rammex C. Tiglao did not take into account the affidavits of Furog, Candaroma, Dumotan, and Guno as these were not presented during the investigative hearing and were only submitted during the proceedings before the ELA.⁹ As a result, the ELA rendered a Decision¹⁰ on January 30, 2017, finding that the alleged misconduct was not proven to be so gross as to

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⁴ Id. at 38-39.

⁵ Id. at 39.

⁶ Id. at 39-40.

⁷ Id. at 40.

⁸ Id. at 239-240.

⁹ Id. at 45.

¹⁰ Id. at 96-105.

deserve the penalty of dismissal from service and that, the degree, gravity, and magnitude of the infraction attributed to Rojas were unclear. The dispositive portion reads:

WHEREFORE, judgment is hereby rendered as follows:

1. Declaring the dismissal of complainant illegal for lack of just cause;
2. Finding the penalty of dismissal imposed on complainant too harsh of a penalty and that his suspension with severe warning would have sufficed, which suspension, for all intents and purposes, has already been deemed served from the time he was dismissed from service up to the date of this Decision and that full backwages should begin to accrue thereafter in the event the respondents appeal the Decision;
3. Ordering respondent Del Monte Philippines, Inc. to pay complainant the following:
 - a) Separation pay, equivalent to one (1) month pay for every year of service, a fraction of at least six (6) months being considered as one (1) whole year, until the finality of this Decision which, as of this date, is provisionally computed in the amount of Php 612,192.40 (P84.08/hrs/day x 26 days x 35 years); and
 - b) Attorney's fees (10%), Php 61,210.24; or, for a TOTAL TENTATIVE AMOUNT of Php 673,402.64.
4. Dismissing the rest of the money claims and the complaint against respondent Mae Allyn C. Linaac for lack of merit.

SO ORDERED.¹¹

When both parties appealed, the NLRC found merit in DMPI's appeal. In a Decision¹² dated June 30, 2017, it ruled that the ELA should have considered the affidavits of Furog, Candaroma, Dumotan, and Guno and that, the NLRC is not precluded from receiving evidence even for the first time on appeal because technical rules of procedure are not binding in labor cases. Thus, the NLRC found sufficient evidence that Rojas committed pilferage, constituting just cause for his termination from employment.¹³ It then disposed:

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¹¹ Id. at 104-105.

¹² Id. at 226-235.

¹³ Id. at 233-234.

WHEREFORE, foregoing premises considered, the appealed decision is hereby REVERSED and SET ASIDE.

SO ORDERED.¹⁴

Petitioners' Motion for Reconsideration¹⁵ was denied by the NLRC in a Resolution¹⁶ dated November 8, 2017, for raising no new matter that could compel a change in its June 30, 2017 Decision.

Undeterred, petitioners filed a Rule 65 petition before the CA.¹⁷ The appellate court similarly took into account the affidavits that were considered by the NLRC on appeal and found no grave abuse of discretion on the part of the commission proper when it set aside the ruling of the ELA.¹⁸ Thus, the CA's December 14, 2018 Decision, disposing:¹⁹

The Petition for Certiorari under Rule 65 is DENIED.

IT IS SO ORDERED.²⁰

Petitioners filed a Motion for Reconsideration²¹ of the CA's December 14, 2018 Decision, which the latter denied²² on May 17, 2019. Hence, petitioners' current recourse insisting that the CA and the NLRC erred:

- I. x x x IN REVERSING AND SETTING ASIDE THE DECISION OF THE EXECUTIVE LABOR ARBITER[;]
- II. x x x IN NOT DECLARING PETITIONER ILLEGALLY DISMISSED GIVEN THE LACK OF SUBSTANTIAL EVIDENCE SUPPORTING THE CHARGES AGAINST HIM[; AND]
- III. x x x IN NOT DECLARING [ROJAS] ENTITLED TO SEPARATION PAY, IF REINSTATEMENT IS NO LONGER POSSIBLE IN VIEW OF THE STRAINED RELATIONS BETWEEN THE PARTIES, PLUS FULL BACKWAGES AND ALL BENEFITS APPURTENANT THERETO, DAMAGES AND ATTORNEY'S FEES.²³

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¹⁴ Id. at 234.

¹⁵ Id. at 108-111.

¹⁶ Id. at 237-238.

¹⁷ Id. at 242-257.

¹⁸ Id. at 57.

¹⁹ Supra note 1.

²⁰ *Rollo*, p. 61.

²¹ Id. at 335-340.

²² Supra note 2.

²³ *Rollo*, p. 20.

On record is DMPI's Comment²⁴ filed on November 14, 2019.

From the foregoing, the issue for our consideration may be reduced to whether or not the CA committed reversible error in finding no grave abuse of discretion when the NLRC found substantial evidence proving the accusations against Rojas, consequently dismissing Rojas' illegal dismissal complaint.

The petition fails to present any meritorious argument.

Given that this is a Rule 45 petition against the CA's ruling in a special civil action under Rule 65 from a labor case, it bears recalling in such cases that, "this Court's power of review is limited to the determination of whether the CA correctly resolved the presence or absence of grave abuse of discretion on the part of the NLRC."²⁵ Pertinently:

A special civil action for *certiorari* under Rule 65 does not concern errors of judgment; its province is confined to issues of jurisdiction or grave abuse of discretion. Grave abuse of discretion, as distinguished from mere errors of judgment, connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered "grave," discretion must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.²⁶

The CA necessarily concerned itself solely with "errors of jurisdiction committed by the NLRC, whose decision might only be set aside if it committed grave abuse of discretion amounting to lack or excess of jurisdiction."²⁷

In underlining "that the NLRC may receive evidence submitted for the first time on appeal on the ground that it may ascertain facts objectively and speedily without regard to technicalities of law in the interest of substantial justice,"²⁸ we have explained that:

x x x [O]ur jurisprudence is replete with cases allowing the NLRC to admit evidence, not presented before the Labor Arbiter, and submitted to the NLRC for the first time on appeal. The submission of additional evidence before the NLRC is not

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²⁴ Id. at 398-433.

²⁵ *Almagro v. Philippine Airlines, Inc.*, G.R. No. 204803, September 12, 2018.

²⁶ Id.

²⁷ *The Heritage Hotel, Manila, v. Sio*, G.R. No. 217896, June 26, 2019.

²⁸ *Unicol Management Services, Inc. v. Malipot*, 751 Phil. 463, 474 (2015).

prohibited by its New Rules of Procedure considering that rules of evidence prevailing in courts of law or equity are not controlling in labor cases. **The NLRC and Labor Arbiters are directed to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law and procedure all in the interest of substantial justice. In keeping with this directive, it has been held that the NLRC may consider evidence, such as documents and affidavits, submitted by the parties for the first time on appeal.**

Moreover, among the powers of the Commission as provided in Section 218 of the Labor Code is that the Commission may issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, statement of accounts, agreements, and others. In addition, the Commission may, among other things, conduct investigation for the determination of a question, matter or controversy within its jurisdiction, proceed to hear and determine the disputes in the absence of any party thereto who has been summoned or served with notice to appear, conduct its proceedings or any part thereof in public or in private, adjourn its hearings to any time and place, refer technical matters or accounts to an expert and to accept his report as evidence after hearing of the parties upon due notice. From the foregoing, it can be inferred that the NLRC can receive evidence on cases appealed before the Commission, otherwise, its factual conclusions would not have been given great respect, much weight, and relevance when an adverse party assails the decision of the NLRC [via] petition for *certiorari* under Rule 65 of the Rules of Court before the CA and then to this Court [via] a petition for review under Rule 45.²⁹ (Emphasis and underscoring supplied.)

To be clear, the rule that the NLRC is not precluded from considering evidence for the first time on appeal, because technical rules of procedure are not binding in labor cases, may benefit a complaining employee as well. Rojas could have presented, even on appeal, any additional evidence that could sufficiently refute the pieces of evidence submitted by DMPI. The records, however, disclose no such adequate exculpatory evidence.

We have also said that “any delay in the submission of evidence should be adequately explained and should adequately prove the allegations sought to be proven”³⁰ to dispel doubt on its credibility, especially so when the same is not newly discovered evidence. Here, the difference between the time stated in the Security Report and in

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²⁹ Id. at 474-475, citing *Sasan, Sr. v. National Labor Relations Commission 4th Division*, 590 Phil. 685, 701-702 (2008).

³⁰ *Quirante v. Oroport Cargo Handling Services, Inc.*, 774 Phil. 165, 180 (2015), citing *Misamis Oriental II Electric Services Cooperative (MORESCO II) v. Cagalawan* 694 Phil. 268, 281 (2012).

the narration of other persons involved fails to discredit DMPI's evidence regarding Rojas' part in the pilferage. It was adequately explained that at 1:30 p.m. as cited in the Security Report was the time the incident was brought to the attention of Candaroma, while the theft actually took place earlier or at 10:00 a.m., as stated by Furog. The discrepancy is only relevant insofar as Rojas' written response to the show cause letter sent with the Security Report. It could not be said that Rojas was not informed of the security guards' account of the time of occurrence, given the subsequent administrative hearing and investigation where the security guards were also presented and where Rojas was assisted by union officers, aside from Rojas' written explanation. Thus, the ELA erred in brushing aside the affidavits of Furog, Candaroma, Guno, and Dumotan that were submitted comprising substantial evidence that Rojas was guilty of the charge.

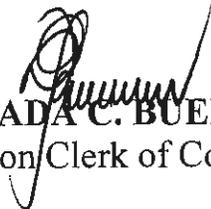
We also agree that Rojas' length of service does not call for leniency in this case as it should have been treated as aggravating the offense of pilferage. Both the NLRC and the CA correctly appreciated the loyalty expected of Rojas and the trust reposed on him, given his discretion on which of the outsourced boom truck drivers to employ, a power over Guno which Rojas appears to have exploited.

In sum, we find no reversible error when the CA concluded that the NLRC did not gravely abuse its discretion when it took into account DMPI's evidence on appeal.

ACCORDINGLY, the petition is **DENIED**.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *mm 10/14*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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(NLRC Case No. MAC-04-014906
-2017)
(NLRC Case No. RAB-10-08-00593
-2016)

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