Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

OIKONOMOS INT'L RESOURCES CORPORATION (FORMERLY HILTON CEBU RESORT AND SPA),
Petitioner,

- versus -

ANTONIO Y. NAVAJA, JR.,
Respondent.

G.R. No. 214915

Present:

CARPIO, *J., Chairperson,*
DEL CASTILLO,
PEREZ,*
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

07 DEC 2015

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DECISION

MENDOZA, *J.*:

This petition for review on *certiorari* seeks to reverse and set aside the May 29, 2013 Decision[1] and the September 4, 2014 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 06844, which nullified the December 29, 2011 Decision[3] of the National Labor Relations Commission *(NLRC),* finding the dismissal of respondent Antonio Y. Navaja, Jr. *(Navaja)* from his employment by petitioner Oikonomos Int'l Resources Corporation *(Oikonomos)* valid and legal.

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* Per Special Order No. 2301, dated December 1, 2015.

[1] Penned by Associate Justice Pampio A. Abarintos with Associate Justice Gabriel T. Ingles and Associate Justice Marilyn B. Lagura-Yap of Court of Appeals 18th Division, concurring; *rollo,* pp. 96-111.

[2] Id. at 49-50.

[3] Id. at 205-216. Penned by Presiding Commissioner Violate Ortiz-Bantug.

The Facts

On December 27, 2004, Oikonomos, then known as Hilton Cebu Resort and Spa, hired Navaja as a room attendant. Navaja performed housekeeping and cleaning duties in the hotel and reported for a graveyard shift from 11:00 o'clock in the evening up to 7:00 o'clock in the morning.

Employee's Position

On August 25, 2010, at around 6:00 o'clock in the morning, the front office ordered Navaja to check the minibar in Room 1202 after the guests checked out early. He went and checked Room 1202. At around 6:50 o'clock in the morning, after checking another room, he went back to Room 1202 to double check if the Sebu Fish Mascot was still there. It was then that he saw a white Nike jacket left in the room.

At that point, Navaja remembered that he was tasked to bring a wine crate from the ground floor to the housekeeping office, a chore that required both of his hands. He decided to place the jacket at the back of his pants to free both his hands to enable him to carry the wine crate. With the jacket clearly visible at his back, he rode the elevator down to the first floor, took the wine crate to the housekeeping office, and there, placed the jacket inside a black plastic bag and left it beside a divider within the office to be brought to the Lost and Found Section later. Afterwards, he accomplished his duty report, went home around 7:30 o'clock in the morning, and totally forgot about the jacket as he needed to bring his children to school before 8:00 o'clock in the morning.

In his following shift, on August 26, 2010, at around 1:00 o'clock in the morning, the security department called Navaja to answer a Q&A form[4] concerning his whereabouts on August 25, 2010. He felt that the questioning might have something to do with the jacket he found earlier. He decided to wait for the executive housekeeper so that he could turn over the jacket to him. At around 8:00 o'clock, he brought the jacket to their Lost and Found Section and made a second statement,[5] following the advice of their executive housekeeper.

On the same day, Navaja was served a memorandum[6] by Oikonomos notifying him that he was being preventively suspended for suspicion of theft, and that he had to explain in writing why he should not be dismissed from service and to attend the administrative hearing scheduled on

[4] Id. at 171
[5] Id. at 172.
[6] Id. at 173.

September 6, 2010. He then submitted his written explanation[7] and appeared at the Human Resources Department for the administrative hearing of his case.

On September 24, 2010, Navaja received the memorandum[8] from Oikonomos dismissing him from the service after he was found guilty of theft and dishonesty which were violations of company rules and regulations.

Thereafter, Navaja filed an illegal dismissal complaint before the Regional Arbitration Board No. VII, Cebu City.

Employer's Position

Oikonomos asserted that, prior to the incident of August 25, 2010, Navaja had a history of committing infractions, as follows:

1. January 18, 2008 – Lost and found items were retrieved from Navaja's pantry. He was verbally reprimanded.
2. March 21, 2008 – Lost and found items were retrieved from inside his cart. Navaja was issued a written warning.
3. March 23, 2009 – Acts of inefficiency and incompetence on the part of Navaja which resulted in the complaints from guests. He was suspended for 15 days.
4. July 9, 2009 – Insubordination for which he was suspended for 7 days.[9]

On August 25, 2010, at around 7:30 o'clock in the morning, the hotel received a call from a guest, who just checked-out, informing it that she left a white Nike jacket in Room 1202. The said room was examined but the jacket was not found. The hotel's closed circuit television camera *(CCTV)* footage showed Navaja entering Room 1202 twice after the guests had left. After coming out from the room the second time, he acted suspiciously and made an effort to hide his back from the view of the CCTV. [10]

On August 26, 2010, at around 1:30 o'clock in the morning, the hotel security office asked him about his work details and whereabouts in his previous shift. Navaja, however, never mentioned that he found a white Nike jacket in Room 1202. It was only around 8:00 o'clock of the same morning that he handed the jacket to the security office and issued another statement.[11]

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[7] Id. at 174-176.
[8] Id. at 179.
[9] Id. at 23-24.
[10] Still photos submitted. Id. at 170.
[11] Id. at 172.

After issuing a memorandum of suspension and conducting an administrative hearing, Oikonomos dismissed Navaja for apparent violation of the hotel's rules and regulations based on the following findings: (1) that Navaja intentionally hid the item to avoid detection; (2) that he did not follow company procedure regarding lost and found items; and (3) that he made a falsified or mistaken report.

The Labor Arbiter Ruling

In its May 25, 2011 Decision,[12] the Labor Arbiter *(LA)* found that Navaja was validly dismissed because he committed an act of theft or dishonesty. The CCTV footage and his deliberate failure to report the missing item showed his intention to appropriate the jacket. The LA opined that Navaja's defense of simple forgetfulness was not a credible excuse to refute the evidence presented by Oikonomos. In deciding against Navaja, the LA also considered his past infractions.

Nevertheless, the LA awarded Navaja with his corresponding 13th month pay and service incentive leave pay because Oikonomos failed to show proof of payment. The LA also awarded attorney's fees at 10% of the total awards. The decretal portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered –
>
> 1. Finding the dismissal of complainant to be legal;
> 2. Awarding complainant the following:
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> |---|---|---|
> | a. | 13th month pay | ₱5,374.00 |
> | b. | SILP | ₱1,378.00 |
> | | Sub-total | ₱6,752.00 |
> | c. | Attorney's fees | ₱675.00 |
> | | Total | ₱7,427.00 |
>
> 3. Ordering respondents to pay complainant the total awards of ₱7,427.00 within ten (10) days from receipt of this Decision and coursed through the Cashier of this Labor Court, RAB VII.
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> SO ORDERED.[13]

Aggrieved, Navaja elevated the case on appeal before the NLRC.

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[12] Penned by Labor Arbiter Philip B. Montances; id. at 181-189.
[13] Id. at 189.

The NLRC Ruling

In its decision, dated December 29, 2011, the NLRC declared that Navaja's dismissal was valid. The labor tribunal recognized the employer's right to dismiss an employee for violating company rules. Navaja clearly failed to follow company procedure on reporting lost items. He also provided false information even when he was given the opportunity to disclose the occurrences regarding the missing item. The NLRC also noted that the previous infractions of Navaja were relevant matters in determining the imposable penalty by Oikonomos.

Navaja moved for reconsideration, but his motion was denied by the NLRC in a Resolution,[14] dated February 29, 2012.

Undaunted, Navaja filed a petition for *certiorari* before the CA.

The CA Ruling

In its assailed decision, the CA *nullified* and *set aside* the December 29, 2011 Decision and the February 29, 2012 Resolution of the NLRC. The appellate court opined that Navaja was able to justify the delay in reporting the missing jacket. The CA stated that Navaja, based on the statements of his co-employees, did not intentionally conceal it. The element of intent to take was absent because Navaja did not bring the item outside the hotel premises. Moreover, the appellate court did not give credence to the CCTV clippings as these were arbitrarily chosen by Oikonomos. Thus, the CA concluded that Navaja was illegally dismissed which entitled him to reinstatement, full backwages and other monetary benefits. Thus, the CA disposed:

> WHEREFORE, premises considered, the petition is hereby GRANTED and the Decision and Resolution of herein public respondent NLRC, 7th Division relative to NLRC Case No. VAC-08-000671-2011 (RAB Case No. VII-09-2011-2010) which were respectively promulgated on 29 December 2011 and 29 February 2012 are NULLIFIED and SET ASIDE.
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> A new one is entered in its stead declaring petitioner as illegally dismissed from his employment. As such, he is ENTITLED to reinstatement and full backwages, inclusive of allowances and other benefits, or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement. Considering that there may already be strained

[14] Id. at 218-220.

> relations between the parties, petitioner is then AWARDED separation pay equivalent to one month salary per year of service in lieu of reinstatement.
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> SO ORDERED.[15]

Oikonomos filed its motion for reconsideration, but the CA denied the same in its assailed Resolution, dated September 4, 2014.

Hence, this petition.

ISSUES

I

WHETHER A QUESTION OF FACT COULD BE ENTERTAINED IN A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT.

II

WHETHER THE DISMISSAL OF NAVAJA BASED ON A JUST CAUSE OF SERIOUS MISCONDUCT WAS PROVEN BY OIKONOMOS WITH SUBSTANTIAL EVIDENCE.

Oikonomos argues that it has established with substantial evidence that Navaja committed serious misconduct under Article 282 (a) of the Labor Code; that Navaja had several opportunities to report the missing white jacket but he knowingly failed to do so; that he issued inconsistent statements regard the missing jacket; that he tucked the jacket at the back of his pants and later placed it in a black plastic bag to intentionally conceal the same; that his co-employees could not even see that he was carrying a white jacket; and that the CA failed to consider his past infractions.

In his Comment,[16] Navaja asserted that the issues raised by Oikonomos were factual in nature and could not be subject of an appeal before the Court; that there was no substantial evidence that he committed theft; that his co-employees attested that they saw him with the white jacket in plain sight, thus, he was not hiding it; that the CCTV snapshots were arbitrarily isolated by Oikonomos and these did not convey the real events that transpired; and that he refuted the minutes of the administrative hearing conducted by Oikonomos.

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[15] Id. at 110.
[16] Id. at 433-448.

In its Reply,[17] Oikonomos reiterated that Navaja had several opportunities to disclose that he found the missing item, but he opted not to; that the CA simply focused on the fact that Navaja did not dispose the item; and that his act constituted a violation of company policy, not merely the crime of theft.

The Court's Ruling

The Court finds merit in the petition.

Generally, a question of fact cannot be entertained by the Court; exceptions

Oikonomos essentially raises the issue of whether there was substantial evidence to uphold the legality of Navaja's dismissal. The question posited is evidently factual because it requires an examination of the evidence on record. Well settled is the rule that the Court is not a trier of facts. Its function in petitions for review on *certiorari* is limited to reviewing errors of law that may have been committed by the lower courts.[18]

Nevertheless, the Court has enumerated several exceptions to this rule: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[19] Here, one of the exceptions exists – that the findings of the CA are contrary to those of the NLRC and the LA. They obviously differ in their appreciation of the evidence in determining the propriety of Navaja's dismissal. To finally resolve the dispute, the Court deems it proper to tackle the factual question presented.

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[17] Id. at 455-491.
[18] *Gepulle-Garbo v. Spouses Garabato,* G.R. No. 200013, January 14, 2015.
[19] *Carbonell v. Carbonell-Mendes,* G.R. No. 205681, July 1, 2015.

Serious misconduct was proven with substantial evidence

The just causes for dismissing an employee are provided under Article 282 of the Labor Code.[20] In Article 282 (a), serious misconduct by the employee justifies the employer in terminating his or her employment.[21]

Misconduct is defined as improper and wrongful conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. Ordinary misconduct would not justify the termination of the services of an employee as the law is explicit that the misconduct should be serious. It is settled that in order for the misconduct to be considered serious, it must be of such grave and aggravated character and not merely trivial or unimportant. As amplified by jurisprudence, the misconduct must (1) be serious; (2) relate to the performance of the employee's duties; and (3) show that the employee has become unfit to continue working for the employer.[22]

Where there is no showing of a clear, valid and legal cause for termination of employment, however, the law considers the case a matter of illegal dismissal. If doubt exists in the appreciation of the evidence presented by the employer as against that of the employee, the scales of justice must be tilted in favor of the latter.[23] The employer must affirmatively show substantial evidence that the dismissal was for a justifiable cause. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[24]

After a painstaking review of the records of the case, the Court finds that Oikonomos was able to establish with substantial evidence that Navaja committed serious misconduct, specifically, theft, dishonesty and violation of company policy, as shown by the following facts and circumstances:

First, it was undisputed that Navaja took the jacket from Room 1202 on August 25, 2010. From the time he obtained the said item, he began to perform certain acts to willfully conceal the same. Upon his discovery of the

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[20] Now Article 296 of the Labor Code.
[21] *Imasen Phil. Manufacturing Corp. v. Alcon,* G.R. No. 194884, October 22, 2014.
[22] *Colegio de San Juan de Letran-Calamba, v. Tardeo*, G.R. No. 190303, July 9, 2014, 729 SCRA 497, 505.
[23] *Hocheng Philippines Corp. v. Farrales,* G.R. No. 211497, March 18, 2015.
[24] *Tongko v. Manufacturer's Life Insurance Co.,* 591 Phil. 476, 502 (2008).

jacket, it was strange that he placed it at the back of his pants. His flimsy explanation that he needed to free both his hands to carry the wine crate was simply incredible considering that there were various and more convenient ways to carry the jacket in a conspicuous manner.

The CCTV footages would also show that Navaja acted strangely outside the elevator. Under normal circumstances, a person would not stand in such an awkward position to hide his back from a camera's view while waiting for an elevator ride.[25] Even if the CCTV images were completely disregarded, there were still numerous pieces of evidence to establish Navaja's acts of theft.

Further, the statements[26] of his co-employees, Diala and Silawan, contrary to the explanation of the CA, did not prove that there was no intent to hide the item. Their statements did not categorically indicate that they actually saw Navaja carrying a jacket at the back of his pants. They merely stated that there was something dangling at the back of Navaja's pants and that he was seen placing something inside a plastic bag. Glaringly, Navaja even placed the jacket inside a black plastic bag when he arrived at the housekeeping office and placed it beside the divider to keep it out of sight.

Second, Navaja had several opportunities to report the missing item to the management. The first instance was when Navaja accomplished his daily report at the housekeeping office before he went home on August 25, 2010.[27] Considering that the black plastic bag containing the jacket was in the same room where he wrote his report, it was unbelievable that he still failed to recall and indicate the lost item in the said report. Navaja could not also feign amnesia as only a couple of minutes had elapsed from the time he took the missing jacket, until he completed his daily report.

Another instance was during his next shift on August 26, 2010, around 1:00 o'clock in the morning, when he was made to answer a Q&A form by the security department. At that specific point, Navaja admitted that he remembered the missing jacket[28] as he already had the feeling that the questioning was about the jacket that he found, but still failed to disclose the same to the management. He waited for six (6) hours, until their executive housekeeper arrived, before divulging his discovery of the jacket. Navaja could no longer claim the benefit of spontaneity due to the substantial lapse of time in reporting the missing item.

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[25] *Rollo,* p. 170.
[26] Id. at 303-304.
[27] Id. at 151.
[28] Id. at 152.

Third, Navaja violated company policy regarding their lost and found procedure. The hotel required its employee to immediately report lost and found items to the security or front office.[29] To recapitulate, Navaja had several encounters with the security and front office before he belatedly reported the jacket. At the time he went home on August 25, 2010, he passed by the front office and, on the next day, August 26, 2010, the security office called him to fill out a Q&A form. Still, Navaja kept silent about it.

Notably, he could have also immediately reported and surrendered the item to the housekeeping office at the time of his discovery to establish his claim of good faith. Ironically, he insisted that the jacket should only be ceded to the security office.[30]

Fourth, the Court finds itself unable to agree with the CA that there was no intent to take because Navaja did not bring the jacket outside the hotel premises. In the landmark case of *Valenzuela v. People,*[31] it was stated that "[t]he ability of the offender to freely dispose of the property stolen is not a constitutive element of the crime of theft."[32] Consequently, as intent to dispose is not an integral element of theft, it is of no moment that Navaja failed to bring the stolen item outside the premises. As discussed, there was substantial evidence that Navaja had the intent to take the missing item**.**

The company policy that Navaja violated was "[R]ule C-1 DISHONESTY: Theft, attempting theft or removing from Company premises, any food, beverage, material, equipment, tools or any other property of the Company, another colleague or customer."[33] Apparently, even attempted theft, where theft was not consummated, could be considered as a violation of Oikonomos' policy warranting disciplinary measures.

Based on the foregoing, the misconduct of Navaja, coupled with his conscious concealment of the missing item, was serious in character and constituted a violation of company policy.

Past infractions may be considered in the imposition of penalties

In determining the imposable penalty, previous infractions may be used as justification for an employee's dismissal from work in connection

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[29] Id. at 326.
[30] Id. at 442.
[31] 552 Phil. 381 (2006).
[32] Id. at 415.
[33] *Rollo,* p. 15.

with a subsequent similar offense.[34] In the case at bench, some of the past violations committed by Navaja were (1) failing to return lost and found items, (2) acts of inefficiency and (3) insubordination. Navaja, albeit with protest, recognized that he had been struck with various penalties for past offenses.[35] Despite the warnings on his prior infractions and Oikonomos' forbearance, Navaja unfortunately continued his transgressions.

In fine, the dismissal of Navaja due to the theft of a jacket was reasonable in light of his serious lapses. After all those infractions, with the latest incident of theft as the last straw, the Court understands Oikonomos' position that it could not anymore accept Navaja as one of its trusted employees.

"While it is true that compassion and human consideration should guide the disposition of cases involving termination of employment, since that it affects one's source or means of livelihood, it should not be overlooked that the benefits accorded to labor do not include compelling an employer to retain the services of an employee who has been shown to be a gross liability to the employer. The law, in protecting the rights of the employees, authorizes neither oppression nor self-destruction of the employer. It should be made clear that when the law tilts the scale of justice in favor of labor, it is but a recognition of the inherent economic inequality between labor and management. The intent is to balance the scale of justice; to put the two parties on relatively equal positions. There may be cases where the circumstances warrant favoring labor over the interests of management but never should the scale be so tilted if the result is an injustice to the employer. *Justitia nemini neganda est.* (Justice is to be denied to none.)"[36]

WHEREFORE, the petition is **GRANTED.** The May 29, 2013 Decision and the September 4, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 06844 are hereby **REVERSED** and **SET ASIDE**. The May 25, 2011 Decision of the Labor Arbiter in RAB Case No. VII-09-2011-2010, is **REINSTATED.**

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[34] *PLDT, Inc. v. Balbastro,* 548 Phil.168, 181(2007).
[35] *Rollo,* pp. 412-416.
[36] *Philippine Geothermal, Inc. v. NLRC*, G.R. No. 106370, September 8, 1994, 236 SCRA 371, 378-379.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice