



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

NOEL M. MANRIQUE,
Petitioner,

G.R. No. 229429

Present:

– versus –

PERLAS-BERNABE, S.A.J.,
Chairperson
GISMUNDO,
LAZARO-JAVIER,
LOPEZ, and
ROSARIO,* JJ.

DELTA EARTHMOVING,
INC., ED ANYAYAHAN AND
IAN HANSEN,
Respondents.

Promulgated:

NOV 09 2020

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DECISION

LOPEZ, J.:

Whether substantial evidence exists to establish loss of trust and confidence as a valid ground for dismissal is the main issue in this Petition for Review on *Certiorari*¹ under Rule 45 of Rules of Court assailing the Court of Appeals' (CA) Decision² dated August 11, 2016 and Resolution³ dated January 20, 2017 in *CA-G.R. SP No. 140827*.

ANTECEDENTS

The case stemmed from a Complaint⁴ for illegal dismissal, reinstatement with full backwages and benefits, non-payment of salary/wages, 13th month pay, vacation leave and sick leave credits, moral, exemplary and

* Designated as additional Member per Special Order No. 2797 dated November 5, 2020.

¹ *Rollo*, pp. 3-36.

² *Id.* at 321-330; penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with the concurrence of Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan (now a Member of this Court).

³ *Id.* at 367-368.

⁴ *Id.* at 78-79.

nominal damages and attorney's fees filed by Noel M. Manrique (Manrique) against Delta Earthmoving, Inc. (Delta Earth), Ed Anyayahan (Anyayahan) and Ian Hansen (Hansen). Manrique alleged that on January 2, 2013, he was hired as Assistant Vice President for Mining Services by Delta Earth to take charge of the company's human resources department and to perform other administrative functions. As required, he reported at the mine site located at Didipio, Kasibu, Nueva Vizcaya. Later in June 2013, the company assigned him to work as Officer-in-Charge of the Oceana Gold Philippines, Inc. – Didipio Gold Project to assist in the operations while his immediate supervisor, Hansen, was on roster break. On December 29, 2013, Manrique claimed that he was instructed to pack his things and to not report back to work. Hansen told him that the head office of Delta Earth decided to terminate him. On January 6, 2014, he went to the head office in Quezon City to verify and Anyayahan, who is the Executive Vice President and Chief Operating Officer, confirmed the termination of his employment. Manrique was asked to tender a voluntary resignation but he refused. Instead, he filed the present complaint.

On the other hand, Delta Earth, Anyayahan, and Hansen maintained that Manrique was validly dismissed due to poor performance, resulting in loss of trust and confidence. To prove the just cause for the dismissal, Delta Earth pointed to the Performance Evaluation and various memoranda indicating gross neglect of duty and inefficiency on the part of Manrique, as follows: (1) neglected instructions from his superiors, such as truck hauling and volume studies; (2) failure to improve KM 20 to serve as employees' accommodation; (3) failure to submit 2013 mine operations budget; (4) delay in the submission of cost reports and billings resulting to delayed collection; and (5) failure to perform his duties despite constant reminders. Delta Earth stated that Manrique refused to receive the performance evaluation as he was insisting that he was performing well. Aside from the presence of just cause, the management also complied with procedural due process in terminating Manrique's employment. Lastly, Delta Earth argued that being a managerial employee, Manrique is not entitled to 13th month pay, as well as vacation leave and sick leave credits since he enjoyed rotation leave.

On September 30, 2014, the Labor Arbiter (LA) found that Manrique was illegally dismissed and ruled that only Delta Earth is liable,⁵ thus:

WHEREFORE, premises considered, judgment is rendered declaring NOEL M. MANRIQUE ILLEGALLY DISMISSED. DELTA EARTH MOVING INC is ordered to pay NOEL M. MANRIQUE:

[1] Separation pay equivalent to one month pay per year of service;

[2] Full backwages [excluding site living allowance] from January 16, 2014, both separation pay and full backwages shall be computed up to date of actual payment;

⁵ *Id.* at 165-168.



[3] Proportionate 13th month pay from February 2013 up to December 2013.

[4] attorney's fees equivalent to 10% of the monetary award.

Claims for unpaid salaries and leave credits are dismissed without prejudice.

All other claims are dismissed for lack of merit.

The total monetary award is as computed in Annex "A" forming part of this Decision.

SO ORDERED.⁶

Aggrieved, Delta Earth filed an appeal with an urgent motion to reduce appeal bond⁷ before the National Labor Relations Commission (NLRC). On March 31, 2015, the NLRC issued a Resolution,⁸ granting the prayer for reduction of appeal bond after considering Delta Earth's posting of a bond equivalent to ten percent (10%) of the monetary award to be reasonable and finding the grounds raised in the appeal to be meritorious. On the main issue of whether there was illegal dismissal, the NLRC held in the same Resolution that Manrique was validly dismissed by reason of loss of trust and confidence. Delta Earth received reports of Manrique's failure to perform various tasks and this led to the issuance of six memoranda relative to his work assignments. A performance evaluation was conducted and Manrique failed. The NLRC noted that while Manrique denied these allegations, he did not present any proof that he turned in the required reports, or that he completed the assigned tasks. On the procedural aspect, the NLRC ruled that Manrique was afforded due process as his adamant refusal to submit a written explanation should not be taken against Delta Earth, thus:

WHEREFORE, premises considered, the Urgent Motion to Reduce Appeal Bond filed by respondents is **GRANTED**. The Decision dated September 30, 2014 is hereby **REVERSED and SET ASIDE**. The complaint for illegal dismissal and money claims is **DISMISSED** for lack of merit.

SO ORDERED.⁹ (Emphases supplied.)

Manrique elevated the matter on *certiorari* to the CA. In its Decision¹⁰ dated August 11, 2016 in *CA-G.R. SP No. 140827*, the CA upheld the NLRC's judgment that there was no substantial evidence of illegal dismissal. Manrique sought reconsideration but this too was denied.¹¹ Hence, this petition. Manrique claims that Delta Earth's appeal should not have been given due

⁶ *Id.* at 168.

⁷ *Id.* at 170-185.

⁸ *Id.* at 226-235.

⁹ *Id.* at p. 234.

¹⁰ *Supra* note 1.

¹¹ *Supra* note 2.



course as there is no meritorious ground that will justify the reduction of the appeal bond. As for his dismissal, Manrique insists that there was no competent evidence to prove the alleged loss of trust and confidence as he was not even apprised of his superiors' alleged dissatisfaction with his performance. He was not given copies of the memoranda and the Performance Management Form and was therefore deprived of the opportunity to submit his explanation. Conversely, Manrique points to the remarks of his immediate superior Hansen that he did a good job on the mining site. He contends that the NLRC and the CA failed to recognize that Hansen is in a better position to evaluate his work performance than his superiors stationed in the Delta Earth main office as the former worked with him closely on-site.

On the procedural aspect, Manrique alleges that his termination was aggravated by Delta Earth's failure to give the required notices. He was asked by Hansen to leave the company premises after the Christmas break and was told to stop reporting for work upon the instruction from Delta Earth's management. Worse, Anyayahan tried to convince him to execute a letter of voluntary resignation in exchange for payment of one month's salary. Finally, he contends that the alleged abandonment and desire to resign are mere afterthoughts.

RULING

The NLRC has full discretion to determine the existence of meritorious ground in granting a motion to reduce appeal bond.

Article 229 [formerly Article 223] of the Labor Code governs the appeal in labor cases:

ART. 229. [223] *Appeal.* — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x

x x x x

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

x x x x

The indispensable nature of the posting of a bond in appeals from the LA to the NLRC is further highlighted in Section 4 (b) Rule VI of the 2011 NLRC Rules of Procedure, which states that: "*A mere notice of appeal without complying with the other requisites aforesaid shall not stop the*



running of the period for perfecting an appeal.” The posting by the employer of a cash or surety bond is mandatory to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer’s appeal. The requirement was designed to discourage employers from using an appeal to delay, or even evade, their obligation to satisfy their employees’ just and lawful claims.¹²

Here, Delta Earth’s appeal was filed with a motion to reduce appeal bond, accompanied by the posting of ten percent (10%) of the judgment award as appeal bond. In *McBurnie v. Ganzon*,¹³ the Court explained that in order to stop the running of the period to perfect an appeal, a motion to reduce bond must comply with two conditions: (1) that the motion to reduce bond shall be based on meritorious grounds; and (2) a reasonable amount of bond in relation to the monetary award is posted by the appellant. This is allowed under Section 6, Rule VI of the 2011 NLRC Rules of Procedure. The “*meritorious ground*” takes into account the respective rights of the parties and the attending circumstances and could pertain to either the appellant’s lack of financial capability to pay the full amount of the bond, the merits of the main appeal, the absence of an employer-employee relationship, prescription of claims, and other similarly valid issues that are raised in the appeal.¹⁴

The NLRC in this case made a preliminary determination that Delta Earth has a valid claim in that there is no illegal dismissal to justify the award. For this reason, the CA could not be faulted when it sustained the NLRC’s approval of the motion to reduce the appeal bond, especially since the determination of the presence of a “*meritorious ground*” is a matter fully within the discretion of the NLRC.¹⁵

Loss of trust and confidence, as a ground for dismissal, may not be invoked arbitrarily.

Article 297 of the Labor Code enumerates the just causes for the dismissal of an employee:

ART. 297. [282] *Termination by Employer.* — An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;

¹² *Philux, Inc. v. National Labor Relations Commission*, 586 Phil. 19, 32 (2008), citing *Viron Garments Mfg., Co., Inc. v. National Labor Relations Commission*, G.R. No. 97357, March 18, 1992, 207 SCRA 339, 342.

¹³ 719 Phil. 688 (2013) Resolution; and 616 Phil. 629 (2009)..

¹⁴ *Pacios v. Tahanang Walang Hagdanan*, G.R. No. 229579, November 14, 2018.

¹⁵ *Id.*

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing. (Emphasis supplied.)

An employer cannot be compelled to retain an employee who is guilty of acts inimical to its interests, particularly one who has committed willful breach of trust under Article 297(c). This 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. However, to justify a valid dismissal based on loss of trust and confidence, the concurrence of two (2) conditions must be satisfied: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.¹⁶

The first requisite is present in this case. The parties admit that Manrique is a managerial employee, thus holds a position of trust and confidence. The CA correctly recognized the intricacy of his position as Assistant Vice President for Mining Services when it held that a great deal of Delta Earth's business relies on the competence of Manrique. His main duty consists of the management of the establishment, or of a department or a subdivision thereof.¹⁷ Next, we discuss the second requisite.

In terminating managerial employees based on loss of trust and confidence, proof beyond reasonable doubt is not required. The mere existence of a basis for believing that such employee has breached the trust of his employer is enough. This degree of proof differs from that of a rank and file employee which requires proof of involvement in the alleged events, and that mere uncorroborated assertions by the employer will be insufficient. Despite the less stringent degree of proof involving managerial employees, jurisprudence is firm that loss of trust and confidence as a ground for dismissal has never been intended to afford an occasion for abuse due to its subjective nature. It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith.¹⁸ In this case, the LA quickly identified several markers of bad faith on the part of Delta Earth, which made Manrique's dismissal questionable, thus:

The Performance Evaluation is suspect. First, the date of evaluation and period covered are not indicated. Second, Gaddi, the one who conducted the same is not competent to conduct the evaluation since he was not the immediate supervisor of Complainant. Third, it was **not shown that**

¹⁶ *SM Development Corp. v. Ang*, G.R. No. 220434, July 22, 2019.

¹⁷ *Casco v. National Labor Relations Commission (Sixth Div.)*, G.R. No. 200571, February 19, 2018.

¹⁸ *Id.*

the copy of the same was given to Complainant. If Complainant really refused to receive the same, Respondents should have sent a copy of the same to Complainant by registered mail. Being so, we conclude that the Performance Evaluation is a mere afterthought to justify the termination of Complainant due to alleged poor performance. On the other hand, the January 11, 2014 email of individual respondent x x x, Complainant's immediate supervisor and Project Manager of the Didipio Gold Project is quite telling. Complainant was commended by his immediate supervisor Hansen for all the good work he has done at Didipio Gold Project. x x x Meanwhile, the **memorandums submitted by Respondents as Annexes "1" to "6" to their Rejoinder directing Complainant to explain in writing certain acts of negligence are discredited.** It was **not shown that the same were served on Complainant.** We could only conclude that the same were concocted by Respondents x x x to strengthen their position. Respondents should have instead submitted records of Complainant's delayed costings, billings, budget and the resulting prejudice to the company. There being no poor performance, gross negligence and inefficiency on the part of the Complainant, there is no basis for [the] alleged loss of trust and confidence on Complainant. x x x Respondents were not able to discharge the burden to prove that Complainant was dismissed for just and/or authorized cause. x x x (Emphasis supplied.)¹⁹

Managerial employees could not simply be dismissed on account of their position and this Court agrees with the incisive findings of the LA that the performance evaluation and the memoranda deserves no merit as these were not even furnished to Manrique. The documents appear to be a belated attempt to justify Manrique's dismissal which was only verbally relayed to him by his on-site supervisor. Delta Earth's allegation of poor performance resulting in loss of trust and confidence was not clearly and convincingly supported by established facts, hence, is not sufficient to warrant Manrique's separation from employment.

Moreover, this Court observes that Delta Earth failed to comply with the two-notice rule under Article 292(b)²⁰ of the Labor Code. The first notice must contain the reasons for the termination affording the employee ample opportunity to be heard and defend himself with the assistance of a representative if he so desires. The second notice must indicate that there are grounds to justify the employee's termination upon due consideration of all

¹⁹ *Rollo*, p. 167.

²⁰ ART. 292 [277]. *Miscellaneous Provisions*. — x x x

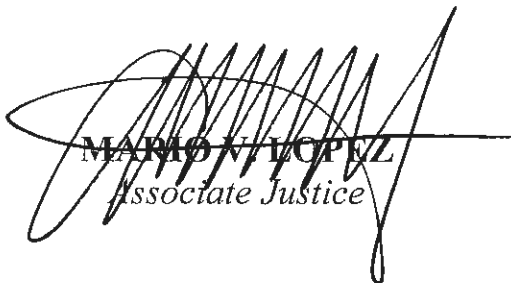
(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is 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. x x x.

the circumstances.²¹ None of these notices were given to Manrique as the fact of his termination was only relayed to him by his immediate supervisor in the mining site, upon instructions received from Delta Earth's main office. Manrique's email correspondence²² with his supervisor even shows that he had to go to Delta Earth's office in Quezon City to verify for himself if his employment was indeed terminated. Clearly, Manrique's dismissal is illegal as he was denied his right to substantive and procedural due process.

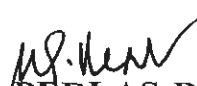
We remind employers that the misdeed attributed to the employee must be a genuine and serious breach of the established expectations required by the exigencies of the position regardless of its designation, and not a mere distaste, apathy, or petty misunderstanding. What is at stake are the employee's reputation, good name, and source of livelihood, at the very least. Employment and tenure cannot be bargained away for the convenience of attaching blame and holding one accountable when no such accountability exists.²³


FOR THESE REASONS, the petition is **GRANTED**. The Court of Appeals' Decision and Resolution in *CA-G.R. SP No. 140827* are **REVERSED** and **SET ASIDE**. The Decision dated September 30, 2014 of the Labor Arbiter is **REINSTATED**.

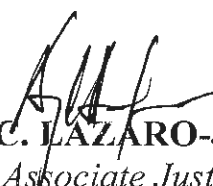
SO ORDERED.


MARIO N. LOPEZ
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson


ALEXANDER G. GESMUNDO
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice

²¹ *Punongbayan and Araullo (P & A) v. Lepon*, G.R. No. 174115, November 9, 2015, 772 Phil. 311, 334-335 (2015).

²² *Rollo*, p. 131.

²³ *Casco v. National Labor Relations Commission (Sixth Div.)*, *supra* note 15.



RICARDO R. ROSARIO

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.



ESTELA M. PERLAS-BERNABE

*Senior 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.



DIOSDADO M. PERALTA

Chief Justice