



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

JEROME M. BAUTISTA,
Petitioner,

G.R. No. 235865

Present:

- versus -

PERALTA, C.J., Chairperson,
CAGUIOA,
GESMUNDO,*
CARANDANG, and
GAERLAN, JJ.

ELI LILLY PHILIPPINES, INC.,*
Respondent.

Promulgated:

FEB 03 2021 *with check*

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DECISION

CAGUIOA, J.:

This is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the Rules of Court assailing the Decision² dated August 17, 2017 and Resolution³ dated November 22, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 136537. The CA reversed the National Labor Relations Commission’s (NLRC) Decision⁴ dated November 19, 2013 and ruled that petitioner Jerome M. Bautista (Bautista) was validly dismissed from his employment because of dishonesty.

Facts

Bautista was hired by respondent Eli Lilly Philippines, Inc. (ELPI) in 1998 as a Professional Sales Representative. After several promotions, he

* Also appears as “Eli Lily Philippines, Inc.” in some parts of the *rollo*.
* Additional Member per Raffle dated January 27, 2021 vice Associate Justice Rodil V. Zalameda.
¹ *Rollo*, pp. 9-30, excluding Annexes.
² Id. at 31-46. Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Apolinario D. Bruselas, Jr. and Henri Jean Paul B. Inting (now a Member of the Court) concurring.
³ Id. at 47-48. Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Rodil V. Zalameda (now a Member of the Court) and Henri Jean Paul B. Inting (now also a Member of the Court) concurring.
⁴ Id. at 49-66. Penned by Presiding Commissioner Grace E. Maniquiz-Tan and concurred in by Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap.

was retrenched in 2003. He was rehired in 2005 and last held the position of Sales and Marketing Services Manager in 2011.⁵

On November 4, 2011, ELPI issued a Show-Cause Letter, charging Bautista with violation of the company rules and breach of trust and confidence. Allegedly, on May 14, 2008, Bautista simulated the purchase of four tires from Babila Tire Supply (BTS) and claimed reimbursement for the cost. He was placed under preventive suspension for 30 days. ELPI did not reveal the source of the damning information against Bautista.⁶

Bautista submitted his explanation and questioned ELPI's failure to identify the source of the damaging information. In response, ELPI attached a copy of Official Receipt No. 000475 issued by BTS, Sales Invoice No. 27274, and Car Repairs Request No. 8911.⁷

Bautista then submitted a certification dated December 7, 2011 issued by Lilia C. Babila (Lilia), proprietress of BTS, stating that she issued Official Receipt No. 000475 dated May 14, 2008 under the name of ELPI for the purchase of four tires.⁸ ELPI, during the formal investigation, confronted Bautista with a notarized certification dated December 17, 2011 from Arnulfo Babila (Arnulfo), husband of Lilia, stating that Bautista did not purchase tires from BTS. Arnulfo would, however, issue another statement dated December 20, 2011 acknowledging that he lacked knowledge of the sale and that it was his wife who issued the official receipt.⁹

On December 21, 2011,¹⁰ Bautista was issued a Notice of Termination, prompting him to file a Complaint for illegal dismissal and suspension before the Labor Arbiter (LA).¹¹ Bautista prayed for the payment of separation pay in lieu of reinstatement, backwages, damages, and attorney's fees, among others.¹²

LA Decision

In a Decision dated October 1, 2012, the LA dismissed the Complaint, ruling that Bautista was validly dismissed for dishonesty and that his preventive suspension was valid. Moreover, the LA held that Bautista was accorded due process and he was ordered to pay his admitted financial obligations to ELPI.¹³ The dispositive portion of the LA Decision states:

⁵ Id. at 32, 49-50.

⁶ Id. at 32.

⁷ Id. at 32-33.

⁸ Id. at 33.

⁹ Id.

¹⁰ December 21, 2012 in the NLRC Decision, id. at 51.

¹¹ *Rollo*, pp. 31, 51.

¹² See id. at 51.

¹³ Id. at 33-34, 49 and 54.



“WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for lack of merit. Respondent’s compulsory counterclaims are likewise dismissed for lack of merit.

However, complainant is directed to pay his admitted outstanding obligations to Eli Lilly for the total amount of P24,500.00[.]

SO ORDERED.”¹⁴

Bautista brought an appeal before the NLRC.

NLRC Decision

In a Decision¹⁵ dated November 19, 2013, the NLRC granted the appeal, vacated the LA’s Decision, and ruled that Bautista’s dismissal and preventive suspension were illegal. The dispositive portion of the NLRC Decision states:

WHEREFORE, complainant’s appeal is **GRANTED** and the 01 October 2012-Decision is vacated and set aside. Complainant is declared to have been illegally suspended and dismissed. Consequently, respondent Eli Lilly Philippines, Inc. is ordered to pay complainant his salary equivalent to the period of his preventive suspension (i.e., 04 November 2011 to 03 December 2011), his full backwages from date of termination until finality of the decision and separation pay of one month per year of service as well as attorney’s fees equivalent to 10% of his total monetary awards. Complainant’s separation pay and backwages are tentatively computed as follows:

A) Backwages			
1) Basic Salary			
65,000.00 x 22.22 =		1,480,050.00	
2) 13th month pay			
1,480,050.00/12 =		<u>123,337.50</u>	1,603,387.50
B) Separation pay (9 yrs)			
65,000.00 x 9 yrs. =		585,000.00	
C) Salary for 11/4/2011 to 12/3/2011		<u>65,000.00</u>	2,253,387.50
D) 10% Attorney’s Fee			
2,123,387.50 x .10 =		<u>212,338.75</u>	<u>2,335,726.25</u>
TOTAL AWARD =			₱2,478,726.25

SO ORDERED.¹⁶

ELPI filed a motion for reconsideration.

¹⁴ Id. at 33-34.

¹⁵ Supra note 4.

¹⁶ Id. at 64-65.

In its Resolution¹⁷ dated May 30, 2014, the NLRC partly granted the motion for reconsideration as regards its finding on the illegality of Bautista's suspension. The NLRC ruled that Bautista failed to assail the LA's finding that his suspension was illegal, thus the LA's findings as to this issue had already attained finality.¹⁸ The NLRC likewise made revisions in its computation, which it attached to the Resolution.¹⁹ The dispositive portion of the Resolution states:

WHEREFORE, the motion for reconsideration is **PARTLY GRANTED**. The 19 November 2013-Decision is **MODIFIED** in that the award pertaining to complainant's salary covering his preventive suspension is **DELETED**; and the 01 October 2012-Decision of Labor Arbiter Jonalyn M. Gutierrez insofar as the aspect directing complainant to pay Eli Lilly Philippines, Inc. the amount of Twenty-Four Thousand Five Hundred [Pesos] (₱24,500.00) representing his admitted outstanding obligation to the latter is **REINSTATED**. All the other monetary awards in the 19 November 2013-Decision are **AFFIRMED**.

No motion of similar nature shall hereafter be entertained.

SO ORDERED.²⁰

Only ELPI filed a petition for *certiorari* before the CA to assail the NLRC's Decision and Resolution.

CA Decision

In the assailed Decision, the CA granted the petition, set aside the NLRC's Decision and Resolution, and reinstated the LA's Decision. The dispositive portion of the Decision states:

WHEREFORE, premises considered, We **GRANT** this petition. The NLRC Decision and Resolution dated November 19, 2013 and May 30, 2014, respectively are hereby **SET ASIDE** and the Decision of the Labor Arbiter dated October 1, [2012] is hereby **REINSTATED**.

SO ORDERED.²¹

The CA ruled that ELPI was able to establish the factual bases for its loss of trust and confidence in Bautista arising from his dishonesty, making the latter's dismissal valid.

Bautista filed a motion for reconsideration, but this was denied.

¹⁷ Id. at 67-71. Penned by Presiding Commissioner Grace E. Maniquiz-Tan, with Commissioner Dolores M. Peralta-Beley concurring while Commissioner Mercedes R. Posada-Lacap was on leave.

¹⁸ Id. at 69.

¹⁹ Id. at 72.

²⁰ Id. at 70.

²¹ Id. at 45.



Hence, this Petition. In due course, ELPI filed its Comment²² and Bautista also filed his Reply.²³

Issue

Whether the CA was correct in setting aside the NLRC's Decision and Resolution and in ruling that Bautista's dismissal was valid.

The Court's Ruling

The Petition is granted.

The NLRC was correct in ruling that ELPI failed to prove that Bautista's dismissal was valid.

In a petition for review on *certiorari* arising from labor cases, the Court is limited to the examination of whether the CA correctly determined the existence of grave abuse of discretion on the part of the NLRC.²⁴ In fact, the Court has ruled that even the CA does not have to assess and weigh the sufficiency of evidence on which the NLRC bases its decision. The CA only has to determine the existence of grave abuse of discretion.²⁵

Grave abuse of discretion may arise when the NLRC violates or contravenes the Constitution, the law or existing jurisprudence.²⁶ It is "such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or 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."²⁷

It is settled that the employer has the right to terminate the services of an employee for a just or authorized cause. The dismissal of employees must, however, be made within the parameters of law and pursuant to the tenets of fair play.²⁸ As the Court held in *Mayon Hotel & Restaurant v. Adana*:²⁹ "in termination disputes, the burden of proof is always on the employer to prove that the dismissal was for a just or authorized cause.

²² Id. at 87-119.

²³ Id. at 125-136.

²⁴ See *San Fernando Coca-Cola Rank-and-File Union (SACORU) v. Coca-Cola Bottlers Philippines, Inc. (CCBPI)*, G.R. No. 200499, October 4, 2017, 842 SCRA 1, 10.

²⁵ Id. at 11.

²⁶ See id. at 10.

²⁷ Id. at 10-11, citing *Banal III v. Panganiban*, 511 Phil. 605, 614-615 (2005).

²⁸ *Mayon Hotel & Restaurant v. Adana*, G.R. No. 157634, May 16, 2005, 458 SCRA 609, 639.

²⁹ Id.



Where there is no showing of a clear, valid and legal cause for termination of employment, the law considers the case a matter of illegal dismissal.”³⁰

Here, the CA found that the NLRC committed grave abuse of discretion when the NLRC found ELPI to have failed to prove by substantial evidence that it had just cause to terminate Bautista’s employment.

The CA’s finding is based on the following pieces of evidence which the CA considered as sufficient to support ELPI’s termination of Bautista’s employment:

a. The affidavit of Timothy Jerome S. Ong (Ong) dated December 18, 2011 where he narrated that Bautista directed him to give Bautista a receipt for the purchase of tires so Bautista can claim reimbursement for it. He alleged that he obtained the receipt from BTS and gave it to Bautista who, in turn, used it to obtain reimbursement.³¹

b. The affidavit of Sojit Du (Du) dated December 19, 2011 where Du narrated that sometime in 2009, Ong told Du that Bautista had directed him to produce a receipt and that if he failed to do so, Bautista would be angry. He also narrated that Ong was very afraid at that time of their conversation.³²

c. Official Receipt No. 00475 dated May 14, 2008 with a BIR permit number issued on August 10, 1999, which Bautista submitted to support his request for reimbursement cannot be relied on in light of receipt number 0851 dated April 22, 2008, which had a BIR permit number issued on April 18, 2008, which Ong presented. The CA found that the fact that Bautista presented an old receipt which was valid for the year 1999 cast doubt as to the genuineness of the sale.³³

As against these findings of the CA, the NLRC had, in finding that ELPI had failed to show through substantial evidence that Bautista simulated the sale, relied on the following:

a. The official receipt, the sales invoice, and the certification of Lilia that the receipt was issued for the purchase of tires on May 14, 2008 show that there was a genuine sale transaction.³⁴ The official receipt is likewise presumed to be regular and in accordance with the

³⁰ Id. at 639.

³¹ *Rollo*, pp. 42-43.

³² Id. at 43.

³³ Id. at 41-42.

³⁴ Id. at 60.



ordinary course of business pursuant to Rule 131, Section 3(p) and (q) of the Rules of Court.³⁵

b. The testimonies of Ong and Du are incredible. Ong indeed narrated that he obtained Official Receipt No. 000475 from the owner of BTS, but he failed to account for the corresponding Sales Invoice No. 27274 which Bautista submitted together with the official receipt.³⁶ On the other hand, Du's allegations that despite the lapse of one year since Ong obtained the receipt, Ong was still afraid of Bautista was hard to believe. Both affidavits were also only shown to Bautista at the time ELPI submitted its Position Paper.³⁷ This cast doubt on the credibility of their testimonies in addition to the fact that they were still employees of ELPI at the time they executed the affidavits.³⁸

c. The Car Repairs Request No. 8911 was approved by ELPI through its Human Resource Department (HRD) Manager, who had the duty to first ascertain that repairs were actually conducted on the car.³⁹ The approval of the Repair Request shows that ELPI's HRD Manager confirmed that the tires were purchased for Bautista's company-issued car and that the repairs were necessary and actually conducted on the car.⁴⁰

d. It was baffling that Ong and the HRD Manager were not even directed to explain their participation in the purported simulation and approval of the reimbursement, respectively.⁴¹

e. Bautista was not previously found guilty of any misconduct or that he violated company rules while he was employed by ELPI. In fact, after he was retrenched, ELPI re-hired him and even promoted him several times.⁴²

After a review of the findings of both the NLRC and the CA, the Court finds that the NLRC did not act with grave abuse of discretion in ruling that ELPI had failed to prove through substantial evidence that Bautista simulated the sale of the tires and was therefore guilty of dishonesty resulting in ELPI's loss of trust and confidence in him.

The NLRC was correct in its observation that when ELPI issued its Show-Cause Letter, the affidavits of ELPI's witnesses were not shown to Bautista. In fact, Bautista did not know who ELPI's source was for his alleged violation of company rules. To recall, after Bautista submitted his

³⁵ Id. at 61.

³⁶ Id. at 59.

³⁷ Id. at 59-60.

³⁸ Id. at 60.

³⁹ Id. at 61.

⁴⁰ Id.

⁴¹ Id.

⁴² Id. at 62.

explanation questioning ELPI's lack of source for the Show-Cause Letter, it was only then that ELPI sent copies of Official Receipt No. 000475, Sales Invoice No. 27274, and Car Repairs Request No. 8911.⁴³ This prompted Bautista to submit the certification of Lilia affirming that she had indeed issued Official Receipt No. 000475. In response, ELPI confronted Bautista with a certification of Arnulfo, stating that Bautista did not purchase tires from BTS. The records undisputedly show, however, that Arnulfo had issued another statement stating that he lacked knowledge of the sale and that it was his wife who had issued the official receipt.⁴⁴

Thus, during the administrative proceedings that ELPI conducted, it had in its possession, the official receipt, the sales invoice, the repairs request, Lilia's statement, and the two contradicting statements of Arnulfo, as basis for its decision that Bautista committed dishonesty.

The Court finds that these pieces of evidence fail to prove that Bautista simulated the sale. To the mind of the Court, there was no anomaly in Bautista's claim for reimbursement as this was supported by documents.

The CA's position that the official receipt cannot be relied upon because it was an old receipt with a BIR permit number issued on August 10, 1999⁴⁵ is erroneous. The fact that the official receipt was an old one does not make Bautista guilty of simulating the purchase of tires — in the face of Lilia's undisputed admission to having herself issued the receipt for the purchase of four tires. That she used an old receipt does not mean that the purchase of the tires did not happen.

In fact, one evidence that was supposed to contradict Lilia's statement was Arnulfo's first statement. However, in both of their decisions, the NLRC and the CA were in agreement in disregarding the statement of Arnulfo given the inconsistencies in his two statements.⁴⁶ Thus, the fact that Lilia sold tires to ELPI over which Bautista claimed reimbursements remained undisputed at the time of the administrative proceedings conducted by ELPI.

As to the affidavits of Ong and Du, the Court agrees with the NLRC that they cannot be relied on given the circumstances under which they were executed. The affidavits and their contents were only made known to Bautista when ELPI submitted its Position Paper.

As already summarized above, at the time Bautista was dismissed, he was charged with having simulated the purchase of the tires. But at the time of the filing of the Position Papers, ELPI claimed that not only did Bautista

⁴³ Id. at 32-33.

⁴⁴ Id. at 33.

⁴⁵ Id. at 42.

⁴⁶ Id. at 40-41, 58.

simulate the purchase of the tires, he also directed Ong to personally obtain the simulated receipt from BTS. Further, Du would narrate that a year after obtaining the receipt from BTS, Ong would confide to Du about obtaining the receipt and that Ong was still visibly afraid of Bautista.

To the eyes of the Court, this is but an attempt to validate Bautista's termination *post facto*. These new allegations contained in the affidavits of Ong and Du were not available at the time ELPI conducted the administrative hearing. It could therefore not have been its basis for dismissing Bautista.

And even if the Court were to consider these affidavits, the Court sides with the NLRC's posture in not believing the statements of Ong and Du. Indeed, as Ong had participation in the simulation of the sale as he himself admitted, the Court therefore finds it unusual that ELPI did not initiate administrative proceedings against Ong. It also remains unexplained why it took Ong more than three years to inform ELPI of such simulated sale.

There are also other matters on record that leave a nagging doubt in the Court's mind on the validity of Bautista's dismissal. It remains unexplained why ELPI initiated administrative proceedings against Bautista three years after his request for reimbursement was made and approved by ELPI's HRD Manager. The reimbursement covers tires for only ₱9,000.00 that were used by Bautista for a company-owned car. These were all readily verifiable and which were indeed verified and approved by ELPI's HRD Manager.

Another matter that disturbs the Court is the fact that ELPI was the one who introduced as evidence the statement of Arnulfo that Bautista did not purchase any tires from BTS, only for Arnulfo to issue a statement of recantation.

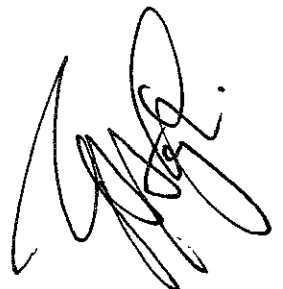
Adding to the Court's discomfort with ELPI's evidence, on May 9, 2018, Bautista filed with the Court a *Manifestation with Motion to Admit Attached Affidavit of Recantation*⁴⁷ (*Manifestation*), informing the Court that Du recently communicated to him the severance of the latter's connection with ELPI. Du likewise disclosed to Bautista that Du was pressured to sign his purported affidavit corroborating Ong's statements, under threats of including him in the investigation and dismissal should he refuse. Hence, on April 4, 2018, Du executed an *Affidavit of Recantation*,⁴⁸ denying that Ong had informed him that Bautista directed Ong to obtain the receipts and that Ong was visibly afraid of Bautista.⁴⁹

All told, ELPI failed to show a clear, valid and legal cause to dismiss Bautista. The pieces of evidence it presented are riddled with inconsistencies and unexplained material facts that leave much to be desired — leading the

⁴⁷ Id. at 75-84.

⁴⁸ Id. at 81-82.

⁴⁹ Id. at 82.



Court to arrive at the same conclusion arrived at by the NLRC, that is, that Bautista's dismissal was indeed illegal. The Court therefore affirms the NLRC's award of separation pay in lieu of reinstatement and backwages:

Having been illegally dismissed, [Bautista] is entitled to reinstatement without loss of seniority rights and other privileges and to full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of his actual reinstatement.

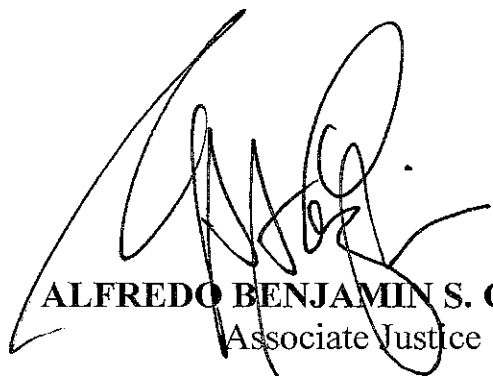
However, since [Bautista] prayed for an award of separation pay in lieu of reinstatement, he forecloses reinstatement as a relief by implication. Consequently, in addition to full backwages which shall be paid until the finality of this decision, he is entitled to separation pay equivalent to one month for every year of service.⁵⁰

The NLRC's award of attorney's fees of ten percent (10%) of the total monetary award is likewise affirmed as Bautista was indeed compelled to litigate in order to seek redress for his illegal dismissal.

Finally, if the monetary awards in the NLRC Decision and Resolution have not been paid after they have attained finality in due course,⁵¹ consistent with the Court's pronouncement in *Nacar v. Gallery Frames*,⁵² interest at the rate of six percent (6%) *per annum* is hereby imposed on the total monetary awards counted from the date the NLRC Decision and Resolution attained finality until full payment.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated August 17, 2017 and Resolution dated November 22, 2017 of the Court of Appeals in CA-G.R. SP No. 136537 are **REVERSED and SET ASIDE**. The National Labor Relations Commission's (NLRC) Decision dated November 19, 2013 and Resolution dated May 30, 2014 in NLRC NCR CN. 01-00005-12 NLRC LAC No. 11-003331-12 are **REINSTATED** with **MODIFICATION** that the total monetary awards granted by the NLRC, if still unpaid, shall earn interest at six percent (6%) *per annum* from finality of the NLRC Decision and Resolution until full payment.

SO ORDERED.

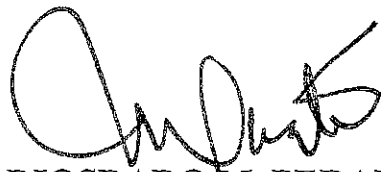

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁵⁰ Id. at 64.

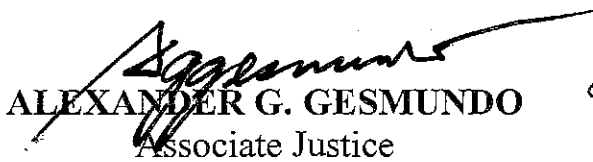
⁵¹ Following Rule XI, Section 4 of the NLRC Rules of Procedure, as amended, the NLRC monetary award already became final and executory despite the filing of a petition for *certiorari* with the CA.

⁵² G.R. No. 189871, August 13, 2013, 703 SCRA 439.

WE CONCUR:



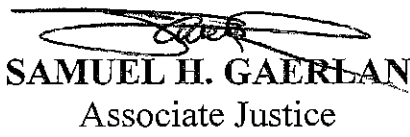
DIOSDADO M. PERALTA
Chief Justice
Chairperson



ALEXANDER G. GESMUNDO
Associate Justice



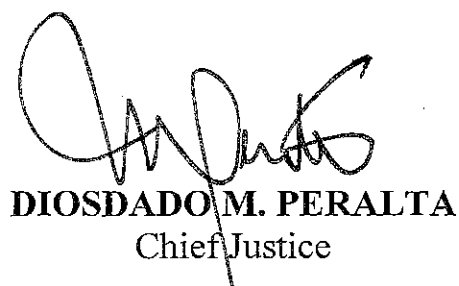
ROSLARI D. CARANDANG
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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



