



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

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SECOND DIVISION

UNIVERSAL
CORPORATION,

ROBINA
Petitioner,

G.R. No. 255864
Present:

-versus-

LEONEN, *SAJ.*,
Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J.Y., and
KHO, JR., *JJ.*

ROBERTO DE
MAGLALANG,

GUZMAN
Respondent.

Promulgated:

JUL 06 2022

[Signature]

X-----X

DECISION

LOPEZ, M., *J.*:

This Court resolves Universal Robina Corporation's (URC) Petition for Review on *Certiorari*¹ assailing the Court of Appeals' (CA) September 15, 2020 Decision² and February 8, 2021 Resolution³ in CA-G.R. SP No. 155421, which reversed the National Labor Relations Commission's (NLRC) December 29, 2017 Decision⁴ and January 31, 2018 Resolution⁵ in NLRC

¹ *Rollo*, pp. 10-46.
² *Id.* at 52-62. Penned by Associate Justice Ronaldo Roberto B. Martin with the concurrence of Associate Justices Manuel M. Barrios and Tita Marilyn B. Payoyo-Villordon.
³ *Id.* at 63-64.
⁴ *Id.* at 271-279.
⁵ *Id.* at 293-295.

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LAC No. 12-003716-17/NLCR NCR Case No. 05-07755-17, finding respondent Roberto De Guzman Maglalang's (Roberto) dismissal valid.

Facts of the Case

In his complaint, Roberto alleged that he started working as URC's machine operator on November 17, 1997. On March 26, 2015, he went to the parking lot to clean his motorcycle seat using the alcohol provided by the company for the employees' use within the company premises. Afterward, he submitted a bag for inspection before going home. The security guard noticed a bottle. Roberto realized that the alcohol was still in his bag. Roberto panicked and threw the bottle away before the security guard could retrieve it. When the security guard recovered the bottle, he discovered that it contained ethyl alcohol belonging to the company. Roberto was brought to the police station for investigation. The following day, he was criminally charged with qualified theft. He was detained at the police station for five days and was placed under preventive suspension for 30 days, which was extended for another 30 days.⁶

On March 27, 2015, URC issued a Notice to Explain, informing Roberto of the charges⁷ against him and giving him five days to submit a written explanation. Roberto submitted a written explanation to the union, but URC refused to accept it. He also asked for the union's help to be reinstated, but to no avail.⁸

For its part, URC alleged that Roberto failed to submit a written explanation, so they gave him another opportunity to present his side.⁹ In an administrative hearing held on April 27, 2015, Roberto admitted that he took the bottle but denied stealing it. URC was not convinced. Thus, on May 14, 2015, URC issued a Notice of Termination.¹⁰

URC added that during the pendency of the criminal case, they received various apology letters with pleas for the withdrawal of the criminal case and reinstatement from Roberto. On July 15, 2016, the parties entered into a compromise agreement wherein they agreed to waive any and all claims or cause of actions that they may have against one another, given URC's withdrawal of the criminal case. However, URC denied Roberto's request for reinstatement and payment of money claims. On August 23, 2016, the criminal case against Roberto was dismissed. But then, Roberto filed an illegal dismissal case against URC.¹¹

⁶ Id. at 53-54.


⁷ Theft under Section 1.01 of the Company's Offenses Subject to Disciplinary Action (OSDA) or Code of Discipline, id. at 54.

⁸ Id. at 53-54.

⁹ Id. at 54-55.

¹⁰ Id. at 228.

¹¹ Id. at 55.



On September 29, 2017, the Labor Arbiter (LA) dismissed the case for lack of merit. The LA found Roberto guilty of serious misconduct for theft of company property. The LA ordered URC to pay Roberto ₱12,939.81, representing the balance of his money claims,¹² thus:

WHEREFORE, premises considered, the complaint for illegal dismissal is DISMISSED for lack of merit.

However, respondent [URC] is ordered to pay complainant [P]12,939.81 representing the balance of his money claims, after deducting government loans in the amount of [P]13,843.50 and [P]15,249.66 from Pag-ibig and SSS, respectively.

SO ORDERED.¹³

In a Decision¹⁴ dated December 29, 2017, the NLRC upheld the LA's findings that Roberto was validly dismissed for committing serious misconduct.

Unable to secure a reconsideration,¹⁵ Roberto filed a petition for *certiorari* with the CA.¹⁶ He argued that the NLRC committed grave abuse of discretion when it dismissed his complaint for illegal dismissal.

On September 15, 2020, the CA issued a Decision¹⁷ finding that Roberto was illegally dismissed. The CA ruled that Roberto was only guilty of simple misconduct because URC recovered the bottle of alcohol, and its value was only ₱60.00. Roberto was also not guilty of willful breach of trust because he was not occupying a position of trust and confidence. With this, the penalty of dismissal was not commensurate with the misconduct. However, since reinstatement was no longer possible because of strained relations between the parties, the CA granted Roberto separation pay in lieu of reinstatement, with backwages.¹⁸ The dispositive part of the CA's Decision reads:

WHEREFORE, premises considered, the Petition is **GRANTED**. The *Decision* and *Resolution* dated 29 December 2017 and 19 February 2018, respectively, of the [NLRC], Sixth Division in NLRC LAC No. 12-003716-17 / RAB Case No. 05-07755-17 are **REVERSED** and **SET ASIDE**. A new judgment is **ENTERED** finding [Roberto] as illegally dismissed from his employment by [URC]. Furthermore, the [LA] of origin is **DIRECTED** to compute the following with dispatch:

¹² Id. at 226–232. The Decision in NLRC-NCR-Case No. 05-07755-17 was penned by Presiding Labor Arbiter Rosalina Maria O. Apita-Battung.

¹³ Id. at 232.

¹⁴ Id. at 271–279. Docketed as NLRC LAC No. 12-003716-17/NLRC NCR Case No. 05-07755-17.

¹⁵ NLRC Resolution dated January 31, 2018, id. at 293–295.

¹⁶ Id. at 52.

¹⁷ Id. at 52–62.

¹⁸ Id. at 60.

1. [Roberto's] backwages from the time his salary was withheld on 26 March 2015 up to the date of finality of this Decision;
2. [Roberto's] separation pay from the date he was employed on 17 November 1997 up to the date of finality of this Decision.

[URC] is also ordered to pay [Roberto] attorney's fees equivalent to 10% of the total monetary award. Furthermore, the total monetary award shall earn legal interest at the rate of 6% from the date of the finality of this Decision until fully paid.

SO ORDERED.¹⁹

URC moved for reconsideration, but the CA denied it in a February 8, 2021 Resolution.²⁰

Hence, this petition.

Parties' Arguments

URC insists that Roberto was validly dismissed because theft of company property is serious misconduct. Roberto's length of service, the value of the item, and its recovery does not decrease the gravity of the offense. His actions manifest his inexcusable irresponsibility and expose his depravity and scorn for disciplinary rules. These caused damage to URC's interest and constituted a willful breach of trust. Besides, the compromise agreement bars Roberto from filing any claim arising from his act of theft. Hence, he is not entitled to separation pay, backwages, and attorney's fees.²¹

As a defense, Roberto avers that his misconduct is not serious because the item only costs ₱60.00, and URC was able to recover it from him. He maintains that he does not occupy a position of trust and confidence. Roberto also argues that the compromise agreement does not preclude him from filing a labor case against URC because it only pertains to the crime of theft and has nothing to do with his employment. For these reasons, he was illegally dismissed. Thus, he is entitled to his money claims.²²

Court's Ruling

The petition is partly meritorious.

The Rules of Court provides that a review under Rule 45 is a matter of judicial discretion and will be granted only when there are special and important reasons. In *Miro v. Vda. de Erederos*,²³ the Court identified the parameters of a judicial review under Rule 45, *i.e.*, limitations on questions of

¹⁹ Id. at 61–62.

²⁰ Id. at 63–64.

²¹ Id. at 22–44.

²² Id. at 947–950; and 954–956.

²³ 721 Phil. 772 (2013).

law and errors of the appellate court.²⁴ A case presents a question of law when there is doubt as to what the law is on a certain state of facts. In other words, “[t]he resolution of the issue must rest solely on what the law provides on the given set of circumstances.”²⁵ Here, the facts are not disputed. As such, the Court is only confronted with the issue of whether the value of the company property stolen, damage to the company, and employee’s length of service may be considered in determining the gravity of the misconduct committed.

Unquestionably, employers have the right to discipline and terminate their employees.²⁶

Article 297 [282] of the Labor Code provides the just causes for dismissal of employees, thus:

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;

(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 offence 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)

Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

“Misconduct is x x x improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, [or a willful] dereliction of duty, x x x and *implies a wrongful intent*[.]”²⁷ To be a just cause for dismissal, “(a) the misconduct must be serious; (b) it must relate to the performance of the employee’s duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.”²⁸ On the other hand, loss of trust and confidence can be a ground for dismissal when:

²⁴ Id. at 785–788.

²⁵ *Century Iron Works, Inc. et al. v. Bañas*, 711 Phil. 576, 585–586 (2013).

²⁶ See *St. Luke’s Medical center, Inc. v. Sanchez*, 755 Phil. 910, 922–923 (2015).

²⁷ *Adamson University Faculty and Employee Union v. Adamson University*, G.R. No. 227070, March 9, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/docmonth/Mar/2020/1>>.

²⁸ *Sterling Paper Products Enterprises, Inc. v. KMM-Katipunan*, 815 Phil. 425, 436 (2017).

- (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. And in order to constitute a just cause for dismissal, the act complained of must be work-related such as would show the employee concerned to be unfit to continue working for the employer.²⁹ (Citation omitted)

The employers' "right is, however, subject to [the State's] reasonable regulation x x x in the exercise of its police power. Accordingly, the finding that an employee violated company rules and regulations is subject to scrutiny by the Court to determine if the dismissal is justified and, if so, whether the penalty imposed is commensurate to the gravity of his offense."³⁰

In *PAL Inc. v. PALEA (PAL)*,³¹ the Court found that outright termination of an employee caught with a piece of lead is unjustified. Retaining the erring employee would not necessarily result in oppression or self-destruction on the employer's part.³² Later, in *Firestone Tire and Rubber Co. of the Philippines v. Lariosa (Firestone)*,³³ the Court upheld the employer's right to self-preservation when it sustained the validity of the dismissal of an employee because retaining him could, in the long run, endanger the viability of the company. The employee was entrusted with twenty wool flannel swabs for cleaning disks, but he only used four and kept the rest in his bag. The employee's act of dishonesty in handling company property and breach of trust are valid grounds for dismissal.³⁴ However, the Court explained in *Gelmart Industries Phils., Inc. v. NLRC (Gelmart)*³⁵ that its ruling in *Firestone* is not "a limitation on the [State's right] to regulate or temper the [management's prerogative] to dismiss an erring employee. [Even if the employee and employer agreed upon some rules on dismissal, the State can still inquire] whether or not its rigid application would work too harshly on the employee."³⁶ The Court reiterated its ruling in *Gelmart*³⁷ and found that dismissing an employee caught with a container filled with used motor oil is improper. The Court considered the employee's clean record in 15 years of service, the minimal value of the used oil, and the employer's failure to reasonably establish that non-dismissal of the employee would work undue prejudice to the viability of their operation, or is patently inimical to the company's interest.

Similarly, in *Caltex Refinery Employees Association vs. NLRC (Caltex)*,³⁸ the Court considered the employee's clean record in his 8 years of service, the minimal value of the property and its timely retrieval, and the

²⁹ *Cadavas v. CA, et al.* G.R. No. 228765, March 20, 2019, <<https://sc.judiciary.gov.ph/2902/>>.

³⁰ *Holcim Phils., Inc. v. Obra*, 792 Phil. 594, 604 (2016).

³¹ 156 Phil. 489 (1974).

³² *Id.* at 493-494.

³³ 232 Phil. 201 (1987).

³⁴ *Id.* at 206-207.

³⁵ 257 Phil. 301 (1989).

³⁶ *Id.* at 310.

³⁷ Cited in *Philippine Airlines, Inc. v. Air Lines Employees Association*, 57 SCRA 489 (1974).

³⁸ 316 Phil. 335 (1995).

employer's failure to show that "retention [of the employee] in the service would work undue prejudice to the viability of [its] operations or is patently inimical to its interest, [in finding that] the penalty of dismissal x x x is [too] harsh and [unreasonable for an employee who was caught with a lighter fluid during inspection]." The Court held "that the preventive suspension x x x is a sufficient penalty for the misdemeanor."³⁹ But then, 15 years later, the Court held in *Nagkakaisang Lakas ng Manggagawa sa Keihin (NLMK-OLALIA-KMU), et al. v. Keihin Philippines Corp. (Keihin)*,⁴⁰ that the dismissal of an employee who "attempted to bring home [a] packing tape"⁴¹ for her personal use was proper. The Court did not apply its ruling in *Caltex* because the employee was not even in her second year of service when the incident occurred, and the company was already dealing with several cases of theft and vandalism of company and employees' property when the incident happened. Moreover, the employee's intent to benefit herself and defy the company's reminders against theft showed that it was not just an error of judgment but a deliberate act of stealing company property.⁴² Then, in *Holcim*,⁴³ the Court considered another factor, *i.e.*, the employee's position, in determining whether theft of scrap electrical wires warrants dismissal. The Court explained that dismissal is not commensurate with the employee's act, especially since the employee, a packhouse operator, does not occupy a position of trust and confidence.⁴⁴

Thus, the following factors should be considered in determining whether theft of company property by an employee warrants the penalty of dismissal: (a) period of employment and existence of a derogatory record; (b) value of the property involved; (c) cost of damage to the employer; (d) effect on the viability of employer's operation or company's interest; and (e) employee's position.

Here, Roberto had been in URC's employ for 18 years, and this is the first time that he had been involved in taking company property. The bottle of ethyl alcohol valued at ₱60.00 is very minimal. URC did not lose anything as the bottle was timely retrieved. Further, it was not shown that Roberto's retention would work undue prejudice to the viability of URC's operations, or is patently inimical to its interest. Neither does Roberto occupy a position of trust and confidence, the loss of which would justify his dismissal. Hence, the Court finds that the penalty of dismissal is not proportional with Roberto's misconduct. His preventive suspension was a sufficient penalty for the misdemeanor.⁴⁵

³⁹ Id. at 344.

⁴⁰ 641 Phil. 300 (2010).

⁴¹ Id. at 310.

⁴² Id. at 311-313.

⁴³ Supra note 30.

⁴⁴ See supra at 604.

⁴⁵ Supra note 35 at 307-308; and supra note 38 at 340.

The Court cannot apply its ruling in *Reno Foods, Inc. and/or Khu v. Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan (Reno)*⁴⁶ and *Keihin*, as URC proffers. In *Holcim*, the Court clarified that *Reno* is not applicable in determining whether theft of company property is a serious misconduct because the issue in *Reno* is the entitlement of the dismissed employee to separation pay—not whether her dismissal for taking six cans of *Reno* is valid.⁴⁷ Meanwhile, *Keihin* is inapplicable here because the dismissed employee, in that case, was not even in her second year of service when the incident occurred, and the company was already dealing with several cases of theft and vandalism when the incident happened.⁴⁸ Here, Roberto had a clean record for 18 years, and the circumstance that the company is dealing with incidents of theft and vandalism of both company and employees' property is absent. Thus, the Court's ruling in *Caltex* is more apt.

Likewise, URC's argument that the compromise agreement bars Roberto from filing an illegal dismissal case is unconvincing. Paragraph 2 of the compromise agreement reads:

2. In view of the foregoing, the FIRST PARTY (the Company) and the SECOND PARTY (the petitioner) hereby release, waive and relinquish any and all other claim(s) or cause(s) of action that they may have against one another that arose or may arise relative to the crime of theft which is the subject of [this] criminal case.⁴⁹ (Underscoring supplied)

Clearly, the Waiver of Claims or other causes of action in the compromise agreement pertains to those that may arise from the crime of theft. Whether Roberto's misconduct is serious to justify his termination under the Labor Code is a different matter.

In fine, Roberto's misconduct is not serious to constitute a just cause for dismissal under Article 297 [282] of the Labor Code. Neither does Roberto hold a position of trust and confidence, which could justify his dismissal based on loss of trust. Therefore, Roberto was illegally dismissed.

An illegally dismissed employee is entitled to reinstatement or separation pay if reinstatement is not viable. The award of separation pay is a mere exception.⁵⁰ The Court allows separation pay in lieu of reinstatement when reinstatement is no longer feasible, *i.e.*, when the dismissed employee opts not to be reinstated.⁵¹ Payment of separation pay is also allowed when there are strained relations between the employer and employee, which must be demonstrated and adequately supported by substantial evidence. It cannot be based on impression alone.⁵²

⁴⁶ 629 Phil. 247 (2010).

⁴⁷ *Supra* note 30 at 607.

⁴⁸ *Supra* note 40 at 311–312.

⁴⁹ *Rollo*, p. 955.

⁵⁰ *Fernandez v. Manila Electric Company (Meralco)*, 834 Phil. 137, 147 (2018).

⁵¹ *Verizon Communications Philippines, Inc. v. Margin*, G.R. No. 216599, September 16, 2020. <<https://elibrary.judiciary.gov.ph/thebookshelf/docmonth/Sep/2020/1>>.

⁵² *Supra* note 50 at 148.

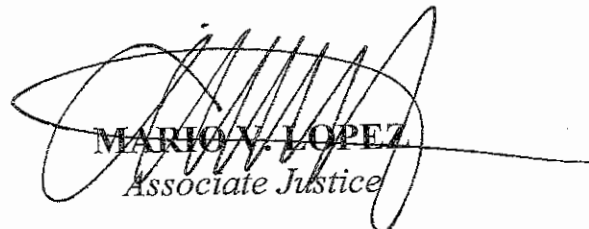
In this case, the CA awarded separation pay in lieu of reinstatement, but there is no compelling evidence that reinstatement is impracticable. We reiterate that the filing of criminal and illegal dismissal cases between the parties does not automatically result in strained relations, rendering the reinstatement impossible. At any rate, the Court sustains the award of separation pay since reinstatement is no longer feasible. In his comment, Roberto prayed that the CA's decision awarding separation pay in his favor be affirmed. He is no longer interested in being reinstated to his former position.

An illegally dismissed employee is also entitled to backwages. However, backwages may not be awarded to an illegally dismissed employee if dismissal is too harsh of a penalty and the employer terminated the employment in good faith.⁵³ Such is the case here. Certainly, Roberto violated the company rules when he took a bottle of ethyl alcohol. But then, the penalty of dismissal is not commensurate to his infraction. As the Court held in *Caltex*, preventive suspension, not to mention Roberto's imprisonment, is a sufficient penalty for the misdemeanor. Believing that Roberto committed serious misconduct under the Labor Code, URC acted in good faith in dismissing him. For these reasons, Roberto is not entitled to backwages.

Lastly, Roberto is not entitled to attorney's fees. Invariably, the Court has held that attorney's fees "may be awarded [to] employees [who were] illegally dismissed in bad faith and is compelled to litigate or incur expenses to protect [their] rights[.]"⁵⁴ Considering that Roberto was not dismissed in bad faith, the Court cannot sustain the award of attorney's fees.

ACCORDINGLY, the petition is **PARTLY GRANTED**. The Court of Appeals' Decision dated September 15, 2020 and Resolution dated February 8, 2021 in CA-G.R. SP No. 155421 are **AFFIRMED** with **MODIFICATION** in that the award of backwages and attorney's fees are **DELETED**. This case is **REMANDED** to the Labor Arbiter for the computation of separation pay due to Roberto De Guzman Maglalang from the date of his employment on November 17, 1997, up to the date of his illegal dismissal, subject to legal interest at the rate of six (6%) *per annum* from the date of finality of this Decision until full payment.

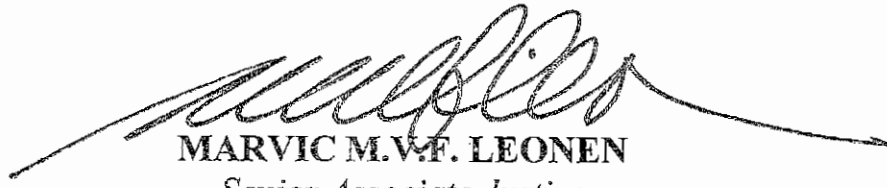
SO ORDERED.


MARIO V. LOPEZ
Associate Justice

⁵³ Supra note 51.

⁵⁴ *Philippine Airlines, Inc. v. NLRC*, 648 Phil. 238, 366 (2010); *Pepsi Cola Products Philippines, Inc. v. Santos*, 574 Phil. 400, 408 (2008); and *Pascua v. NLRC (Third Div.)*, 351 Phil. 48, 74-75 (1998).

WE CONCUR:



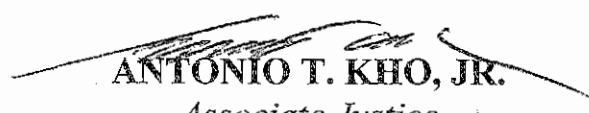
MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson



AMY C. LAZARO-JAVIER
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

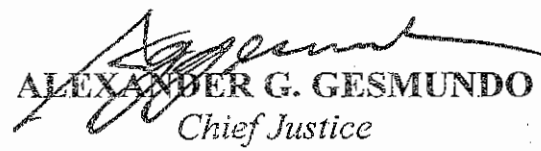
I attest that the conclusions in the above Decision has been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

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.



ALEXANDER G. GESMUNDO
Chief Justice