

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**EDDIE MANUEL, ROMEO BANA,
ROGELIO PAGTAMA, JR. and JOEL
REA,**

Petitioners,

-versus-

**G.R. No. 127553
November 28, 1997**

**N.C. CONSTRUCTION SUPPLY,
JOHNNY LIM, ANITA SY and
NATIONAL LABOR RELATIONS
COMMISSION (SECOND DIVISION),**

Respondents.

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DECISION

PUNO, J.:

This Special Civil Action for *Certiorari* seeks to Review the Decision of the National Labor Relations Commission (NLRC) dated June 27, 1996 in NLRC-NCR-00-07-04925-95 entitled Eddie Manuel, Romeo Bana, Rogelio Pagtama, Jr. and Joel Rea vs. N.C. Construction Supply, Johnny Lim and Anita Sy.^[1]

Petitioners Eddie Manuel, Romeo Bana, Rogelio Pagtama, Jr. and Joel Rea were employed as drivers at N.C. Construction Supply

owned by private respondents Johnny Lim (a.k.a. Lao Ching Eng) and Anita Sy.

On June 3, 1995, the security guards of respondent company caught Aurelio Guevara, a company driver, and Jay Calso, his helper (“pahinante”), taking out from the company premises two rolls of electrical wire worth P500.00 without authority. Calso was brought to the Pasig Police station for questioning. During the investigation, Calso named seven other employees who were allegedly involved in a series of thefts at respondent company, among them petitioners Manuel, Bana, Pagtama, Jr. and Rea.^[2]

On June 5, 1995, petitioners received separate notices from respondent company informing them that they were positively identified by their co-worker, Jay Calso, as perpetrators of the series of thefts committed at respondent company. They were thus invited to the Pasig police station for investigation regarding their alleged involvement in the offense.

Atty. Ramon Reyes, private respondents’ counsel conducted in their behalf an investigation regarding petitioners’ involvement in the theft. Atty. Reyes interrogated the petitioners on their alleged participation in the series of thefts committed at respondent company. Petitioners initially denied the charge. However, after being positively identified by Jay Calso, petitioners admitted their guilt and offered to resign in exchange for the withdrawal of any criminal charge against them.^[3] Petitioners Bana and Rea filed separate resignation letters while petitioners Manuel and Pagtama, Jr. tendered their resignations orally. Petitioner Bana’s resignation Letter^[4] reads:

Hunyo 6, 1995

Dear Bong,

Sa ganitong sitwasyon nagpapasalamat rin ako na humantong sa ganito para hindi na tumagal ang masama naming gawain. Piro lubos rin ako nagpapasalamat sa iyong pagpapatawad sa akin, at ang masasabi ko lang na I’m very, very sorry na lang. Kasi alam mo naman na kapos na kapos talaga ako. Kaya alam

mo halos hindi na nga ako nag-a-absent dahil sa sahod ko lang kapos pa sa pamilya ko. Kaya sana sa pag-resign ko sana mabigyan mo man lang ako nang kaunti para makapamasahi man lang pau-wi sa Mindanao kasama ang mga anak ko. Yon lang.

Gumagalang,

Boy

Petitioner Rea's resignation Letter,^[5] on the other hand, states:

Hunyo 6, 1995

Boss,

Dahil sa hindi maganda ang aking naging performance sa inyo sa loob ng NC Construction Supply sa nakakahiya na aking nasangkutan magresign na ho ako, magsisimula Hunyo 6, 1995. Siguro naman Boss alam naman ninyo ang totoo nakikisama lang ako sa mga dati ninyong tauhan dahil kailangan ko talaga ng trabaho kahit labag man sa aking kalooban ang gumawa ng hindi maganda.

Boss, kahit paano sana maintindihan mo ako, tatanggalin nyo na ho ako sana bigyan nyo na lang ako ng kahit pamasaher namin pauwing probinsya para makapagbagong buhay na ako.

Salamat po.

Sumasainyo,

Joel Rea

Atty. Reyes accepted petitioners' resignation effective June 5, 1995.

On July 17, 1995, petitioners filed a complaint against private respondents for illegal dismissal. Petitioners alleged that they were not informed of the charge against them nor were they given an opportunity to dispute the same. They also alleged that their

admission made at the Pasig police station regarding their involvement in the theft as well as their resignation were not voluntary but were obtained by private respondents' lawyer by means of threat and intimidation.

Labor Arbiter Manuel R. Caday ruled in favor of petitioners and found their dismissal to be illegal. He held that private respondents failed to show a just cause for the termination of petitioners' services. He declared that petitioners' admission regarding their involvement in the theft was inadmissible in evidence as it was taken without the assistance of counsel, in violation of Section 12 Article III of the 1987 Constitution.^[6] He also held that petitioners were not afforded due process before their services were terminated. Hence, Labor Arbiter Caday ordered private respondents to reinstate petitioners to their former position without loss of seniority rights and to pay them full backwages. He also ordered private respondents to pay petitioners their service incentive leave benefits plus attorney's fees.^[7]

On appeal, the NLRC reversed the decision of the Labor Arbiter. It ruled that petitioners were dismissed for a just cause. It held that petitioners failed to adduce competent evidence to show a vitiation of their admission regarding their participation in the theft. It further stated that such admission may be admitted in evidence because Section 12 Article III of the 1987 Constitution applies only to criminal proceedings but not to administrative proceedings. The NLRC, however, agreed with the Labor Arbiter that petitioners were denied due process. Hence, it ordered private respondents to pay petitioners the amount of P1,000.00 as indemnity. The dispositive portion of the decision reads:

“WHEREFORE, premises duly considered, the decision appealed from is hereby reversed and set aside. A new one is hereby entered ordering respondents to pay to the complainants the amount of P1,000.00 each as and for indemnity for failure of the respondents to observe due process.

“SO ORDERED.”^[8]

Petitioners filed the instant petition on the following grounds:

1. The National Labor Relations Commission committed grave abuse of discretion in declaring the dismissal legal;
2. The National Labor Relations Commission committed grave abuse of discretion in declaring that the admission of petitioners is admissible in evidence despite the fact that it was obtained in a hostile environment and without the presence or assistance of counsel;
3. The National Labor Relations Commission committed grave abuse of discretion in finding that respondents N.C. Construction Supply et. al. are right in withdrawing their trust and confidence with petitioners without any valid and legal basis.^[9]

We affirm the decision of the NLRC.

An employer has a right to terminate the services of an employee subject to both substantive and procedural limitations. This means that (1) the dismissal must be for a just or authorized cause provided in the Labor Code,^[10] and (2) the employee must be accorded due process before his employment is terminated. The validity of the dismissal hinges on the employer's compliance with these two requirements.^[11]

In the case at bar, petitioners who were employed as drivers at respondent company were found guilty of stealing company property consisting of electrical wire, welding rod, G.I. sheet, steel bar and plywood. Article 282 of the Labor Code authorizes an employer to terminate the services of an employee for loss of trust and confidence, provided that the loss of confidence arises from particular proven facts. The law does not require proof beyond reasonable doubt of the employee's misconduct. Substantial evidence is sufficient.^[12] Substantial evidence has been defined as such relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.^[13]

Petitioners' culpability in the instant case was sufficiently proved by private respondents. Jay Calso, an employee of respondent company who has personal knowledge about the series of thefts that has been

going on at respondent company, positively identified petitioners as among the perpetrators of the theft. Petitioners have not shown any ill motive on the part of Calso to implicate them in the offense, unless it was true. In addition, petitioners admitted their participation in the theft during an investigation conducted by private respondents' lawyer.

We are not convinced by petitioners' allegation that such admission was obtained by means of threat or intimidation as such allegation is couched in general terms and is unsupported by evidence.

We also reject petitioners' argument that said admission is inadmissible as evidence against them under Section 12 Article III of the 1987 Constitution. The right to counsel under Section 12 of the Bill of Rights is meant to protect a suspect in a criminal case under custodial investigation. Custodial investigation is the stage where the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect who had been taken into custody by the police to carry out a process of interrogation that lends itself to elicit incriminating statements. It is when questions are initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. The right to counsel attaches only upon the start of such investigation.^[14] Therefore, the exclusionary rule under paragraph (3) Section 12 of the Bill of Rights applies only to admissions made in a criminal investigation but not to those made in an administrative investigation.

In the case at bar, the admission was made by petitioners during the course of the investigation conducted by private respondents' counsel to determine whether there is sufficient ground to terminate their employment. Petitioners were not under custodial investigation as they were not yet accused by the police of committing a crime. The investigation was merely an administrative investigation conducted by the employer, not a criminal investigation. The questions were propounded by the employer's lawyer, not by police officers. The fact that the investigation was conducted at the police station did not necessarily put petitioners under custodial investigation as the venue of the investigation was merely incidental. Hence, the admissions

made by petitioners during such investigation may be used as evidence to justify their dismissal.

Private respondents, however, failed to observe due process in terminating the employment of petitioners. Due process demands that the employer should furnish the worker whose employment is sought to be terminated a written notice containing a statement of the cause(s) for termination and afford him ample opportunity to be heard and to defend himself with the assistance of a representative if he so desires. Specifically, the employer must furnish the worker with two written notices before termination of employment can be legally effected: (1) notice which appraises the employee of the particular acts or omissions for which his dismissal is sought, and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him.^[15] There is no showing in this case that private respondents furnished petitioners with such notices. Private respondents, through their counsel, Atty. Reyes, immediately terminated petitioners' services upon conclusion of the investigation. Private respondents must therefore indemnify petitioners for failure to observe due process before dismissing them from work.

IN VIEW WHEREOF, the Petition is **DISMISSED**. The assailed Decision is hereby **AFFIRMED**. No costs.

SO ORDERED.

Regalado and Martinez, JJ., concur.
Mendoza, J., is on official leave.

[1] Penned by Commissioner Rogelio I. Rayala with the concurrence of Presiding Commissioner Raul I. Aquino and Commissioner Victoriano R. Calaycay.

[2] Sworn Statement executed by Jay S. Calso before the PO1 Enrique R. Jimenez on June 4, 1995 at the Pasig Police Station; Annex "A" of private respondents' Comment; Rollo, p. 78.

[3] Police Blotter of the Pasig Police Station dated June 5, 1995; Annex "B" of private respondent's Comment; Rollo, p. 80.

[4] Annex "C" of private respondents' Comment; Rollo, p. 82.

[5] Annex "D" of private respondents' Comment; Rollo, p. 83.

[6] Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

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(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

[7] Rollo, pp. 13-25.

[8] NLRC Decision, p. 8; Rollo, p. 33.

[9] Petition, p. 5; Rollo, p. 7.

[10] Articles 282 and 283 of the Labor Code provide:

Art. 282. Termination by employer. — An employer may terminate an employment for any of the following reasons:

(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 any crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

Art. 283. Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title.

[11] *Ranises vs. NLRC*, 262 SCRA 371 (1996); *Shoppers Gain Supermart vs. NLRC*, 259 SCRA 411 (1996); *Midas Touch Food Corp. vs. NLRC*, 259 SCRA 652 (1996).

[12] *ComSavings Bank vs. NLRC*, 257 SCRA 307 (1996); *MGG Marine Services, Inc. vs. NLRC*, 259 SCRA 664 (1996).

[13] Section 5 Rule 133 of the Revised Rules of Court; *Domasig vs. NLRC*, 261 SCRA 779 (1996).

[14] *People vs. Bandula*, 232 SCRA 566 (1994), citing *Gamboa vs. Judge Cruz*, 162 SCRA 642 (1988); see also *People vs. Evangelista*, 256 SCRA 611 (1996).

[15] *Stolt-Nielsen Marine Services (Phils.), Inc. vs. NLRC*, 264 SCRA 307 (1996).