

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**STARLITE PLASTIC INDUSTRIAL
CORPORATION,**
Petitioner,

-versus-

**G.R. No. 78491
March 16, 1989**

**NATIONAL LABOR RELATIONS
COMMISSION and EDGAR GOMEZ,**
Respondents.

X-----X

DECISION

CORTES, J.:

Petitioner Starlite Plastic Industrial Corporation (STARLITE) seeks to set aside the 18 February 1987 decision of the National Labor Relations Commission (NLRC) ordering the reinstatement of private respondent Edgar Gomez (GOMEZ) with full backwages, and its

Resolution dated 21 April 1987 denying petitioner's motion for reconsideration.

The antecedents of the case are as follows:

Private respondent GOMEZ was employed as a factory worker by STARLITE sometime in March 1981. On 22 June 1984, STARLITE dismissed him on the ground that he was caught attempting to steal one ballast costing P80.00. STARLITE reported the matter to the police on 19 July 1984, after grievance meetings failed to resolve the controversy. A criminal complaint was filed against GOMEZ, but the investigating fiscal dismissed the same saying that STARLITE failed to establish a prima facie case against GOMEZ. On 13 August 1983, private respondent GOMEZ filed a complaint for illegal dismissal against STARLITE. After the parties submitted their respective position papers, the Labor Arbiter rendered his decision on 15 January 1985 dismissing the complaint for lack of merit GOMEZ appealed the decision to the public respondent NLRC which in a decision dated 18 February 1987 reversed the ruling of the Labor Arbiter.

In contending that the decision of the public respondent NLRC was rendered in grave abuse of discretion petitioner argues that the act of dishonesty of GOMEZ led petitioner to lose its trust and confidence in him and is more than sufficient to justify his dismissal.

In his position paper, GOMEZ averred that he started working as laborer in petitioner's factory sometime in March 1981. In the course of his employment, he joined and later became a board member of the labor union KAMPIL, and participated in a strike against STARLITE. On 22 June 1984, STARLITE summarily dismissed him on the claim of having attempted to steal one ballast costing P80.00.

STARLITE's version of the events which led it to dismiss GOMEZ, is as follows:

That on 22 June 1984, at about 12:43 p.m. complainant was about to go out of the factory; that he was about 7 to 12 meters from the gate where the Security Guard was posted when he suddenly turned back and proceeded to the back of the office.

He took something in the front part of his pants and place (sic) the same in the pile of woods (sic). These unusual incident (sic) was witnessed by the security guard because he was alone. Being suspicious, the guard could have followed him and look (sic) at what he put in the pile of woods (sic) but he was not able to do so as he was talking with an office secretary who instructed him to put off the switch of the water pump. That on the same time and date, Bonnie Alvarez, a Delivery Checker was at the toilet and actually saw Edgar Gomez put in the pile of woods (sic) a ballast. That he immediately reported this matter to Mr. Tan Chi Thian Jr. the Production Supervisor Manager and he was instructed to get the said ballast and bring the same to the office. Immediately Edgar Gomez was called to the office and was asked to explain why he took the said ballast. When he replied that he does (sic) not know anything about the said ballast, Mr. Tan asked him to wait for a while and asked one of the office secretary (sic) to prepare a memorandum for Edgar Gomez to answer. That complainant refused to acknowledge receipt of the memorandum and asked Mr. Tan if it would be possible to call Mr. Arsenio Campos, Union Vice-President and Oscar Raymundo another Union Officer. When the two Union Officers were appraised of the incident, they talked with the complainant and later told Mr. Tan that Edgar Gomez could not accept the said memorandum. At this juncture, Mr. Tan told them that he would just refer the matter to the police authority for proper disposition. When the two Union Officers heard this, they requested Mr. Tan that they be allowed to call up Mr. Reynaldo Capa, President of the KAMPIL, the Federation wherein the local union was affiliated. Mr. Capa of the KAMPIL requested Mr. Tan not to take the matter to the police and he will just instruct Edgar Gomez to receive the memorandum and they will just submit the corresponding explanation. Complainant submitted his explanation on June 25, 1984, vehemently denying the imputed charge against him. After a perusal of the incident, the management deemed it proper to place complainant Edgar Gomez under preventive suspension pending the filing of the corresponding criminal charge against him. That the criminal charge was not immediately filed because of the request of the President of the KAMPIL. In the two grievance meetings between the Union and Management,

this case is (sic) always included in the agenda. In the meeting/conference at the National Capital Region in the office of Conciliator Apron Mangabat, this matter was also taken up but did not reach any point of settlement. Finally, on July 19, 1984, the company deemed it proper to report the matter to the police station. [Labor Arbiter Decision, pp. 1-3; Rollo, pp. 17-19]

GOMEZ, on the other hand, claimed that the theft charge was a “frame up” as shown by the resolution of the investigating fiscal dated 31 August 1984, dismissing the criminal complaint filed by STARLITE, as it failed to present the quantum of proof to establish a prima facie case against GOMEZ. The Resolution is attached as Annex “A” of GOMEZ’s position paper.

GOMEZ’s version of the incident leading to his dismissal as culled from his reply to the memorandum given to him the day of the incident, attached as Annex “1” of his position paper, is as follows:

At 12:05 p.m. he went out to buy viand as instructed by a certain Nellie. He arrived five minutes later and soon after, took his own lunch. At around 12:30 p.m. he went out of the compound to buy candy and three minutes later, he went with Rando to the parking area to rest and chat. At around 12:45 p.m., a certain Elmer joined them and they conversed while waiting for the company bell to ring [Record p. 15].

GOMEZ denied the accusation against him arguing that if he was indeed seen attempting to take a ballast, why didn’t the security guard or Alvarez apprehend him immediately. He admitted going to Rando Tamondong’s department at around 11:55 a.m. to use the compressor to clean himself of sawdust, but claimed that he stayed there only for a while and then went back to his post, without taking anything.

This version of GOMEZ was corroborated by Rando Tamondong who, in a statement submitted to the investigating fiscal, attached as Annex “3” of GOMEZ’s position paper, said that he was not aware of any missing ballast in his department and that he had no knowledge of whether GOMEZ took anything from his department. Arsenio Biong also executed an affidavit stating that he saw Bonifacio Alvarez, Assistant Production Manager, personally bring out one canopy

containing one ballast from the painter's room and that he was surprised to learn that GOMEZ was accused of stealing the ballast that Mr. Alvarez had taken [Annex "4", Record, p. 18].

STARLITE filed a supplemental position paper disputing the resolution of the investigating fiscal, contending that it never received any subpoena or summons nor was there any hearing called for or conducted regarding the case before the investigating fiscal. Petitioner also attached the recanting affidavits of Rando Tamondong and Arsenio Biong, executed about three months after they made their previous statements [Record, pp. 32-34].

The Labor Arbiter then rendered his decision dated 15 January 1985, dismissing the complaint for lack of merit, finding that, "except for his flat denial that he did not take the ballast, private respondent GOMEZ filed to present an iota of evidence to prove his innocence" [Rollo, p. 20].

Private respondent GOMEZ appealed the decision to public respondent NLRC which, on 18 February 1987, reversed the ruling of the Labor Arbiter, holding that the facts on record did not support the Labor Arbiter's conclusion. In its decision the NLRC stated thus:

We see no reason why the Labor Arbiter should disregard the findings of the City Fiscal as they are entitled to great weight, and We quote:

Tan Chi Thian Jr., Production Manager of the Starlite Plastics and Industrial Corporation, avers that on June 22, 1984, he received a report that at about 12:40 p.m. of the same date, respondent Edgar Gomez, a factory helper in the said firm for about three years, was seen inserting an OSRAM ballast valued at P80.00 into a pile of wood near the gate of the said firm. A memorandum was later sent to said respondent to shed light on the matter.

Respondent Gomez countered that the charged of Attempted Qualified Theft against him was a mere fabrication intended to justify his dismissal from the said company because of his participation in

the strike against the company by their union of which he was a member of the board of directors.

After carefully evaluating the evidence on record, the undersigned finds the explanation and/or defenses interposed by respondent Gomez to be meritorious particularly on the following points:

1. the statement of Rando Tamondong that he was not aware of any missing ballast from his department and that he did not know whether respondent Gomez took anything from his department.
2. the fact that he was not immediately placed under custody considering that he was actually allegedly seen in the act of committing the crime.
3. the statement of Arsenio Biong that he saw Bonifacio Alvarez, Assistant Production Manager of the firm, bringing out by himself one (1) canopy containing one ballast from the painter's room. Mr. Alvarez allegedly saw from the window of a comfort room where respondent Gomez was inserting the missing ballast into the pile of wood.

The Labor arbiter therefore erred in finding that "complainant failed to present an iota of evidence to prove his innocence" as there were persons who testified in his favor and whose statements are now part of the record. Thus, complainant presented the following arguments for the Labor Arbiter's perusal:

- "a. Counter-affidavit of Mr. Edgar Gomez showing that complainant did not commit the offense of Attempted qualified theft as corroborated by Mr. Rando Tamondong and Mr. Arsenio Biong.
- "b. In the signed statement of Mr. Tamondong (Annex B-3) he exonerated complainant thus:

‘Tungkol sa tinatanong ninyo sa nawawalang ballast sa aking departamento ay wala po akong nalalaman at tungkol naman sa tao sa aking departamento ay

dadalawa lang po kami, ako at si Mr. Elapes may taong pumunta roon si Mr. Gomez pero wala akong alam na kinuha niya.'

"c. In the affidavit executed by Mr. Biong, (Annex B-4) he has this to say:

That sometime on June 22, 1984 my co-worker Mr. Edgar Gomez at around 11:45 to 12:00 noon, came to our place at the painters room to purposely cleanse himself of sawdust.

That immediately right after, I saw him went (sic) out of the room without bringing everything (sic) from our room;

That, however, when Mr. Gomez was already out of our sight, Mr. Bonnie Alvarez went inside and asked me what the former did inside the room; that when told that Mr. Gomez cleaned himself of sawdust in his body, Mr. Alvarez went out bringing along with him the canopy containing the ballast;

That I was surprised to hear after Mr. Gomez was already accused of stealing the ballast which Mr. Alvarez had taken personally from the painter's room.

The above statement was never denied by respondent including Mr. Bonnie Alvarez, himself."

WHEREFORE, the appealed Decision should be as it is hereby REVERSED. Respondent is hereby ordered to immediately reinstate the complainant to his former position without loss of seniority rights and benefits and with full backwages from the time he was dismissed until actually reinstated.

The claim for moral damages is hereby denied for being unsupported by evidence.

SO ORDERED.

[NLRC Decision, pp. 2-5; Rollo, pp. 12-15.]

The NLRC denied STARLITE's Motion for Reconsideration hence, the instant Petition for *Certiorari* was filed on 30 May 1987, with a prayer for the issuance of a writ of preliminary injunction or a temporary restraining order.

The Court issued a temporary restraining order on 10 June 1987 enjoining the NLRC from enforcing its decision and the petition was given due course on 4 November 1987.

Petitioner mainly contends that it was justified in dismissing GOMEZ since it had lost its trust and confidence in him for his act of attempting to steal the ballast and public respondent NLRC therefore committed grave abuse of discretion amounting to lack of jurisdiction when it ordered the reinstatement of GOMEZ with full backwages.

Petitioner argues that even if the fiscal dismissed the charges against GOMEZ, still it has reasonable ground to believe that GOMEZ was responsible for the theft of the ballast and that such act of dishonesty justifies his dismissal on the ground of loss of confidence.

The Court finds petitioner's contentions unmeritorious.

At the outset, the Court finds it necessary to emphasize that contrary to the tenor of the Labor Arbiter's decision, a dismissed employee is not required to prove his innocence of the charges levelled against him by his employer. The Court has laid down the rule that in termination cases, the burden of proving the just cause of dismissing an employee rests on the employer and his failure to do so would result in a finding that the dismissal is unjustified [Polymedic General Hospital vs. NLRC, G.R. No. 64190, January 31, 1985, 134 SCRA 420; Egyptair vs. NLRC, G.R. No. 63185, February 27, 1987, 148 SCRA 125; Asphalt and Cement Pavers, Inc. vs. Leogardo, G.R. No. 74563, June 20, 1988].

There is no dispute that loss of confidence, when adequately proven, constitutes a valid ground for dismissing an employee [Manila Midtown Commercial Corporation vs. Nuwhrain, G.R. No. L-57268, March 25, 1988, 159 SCRA 212] and proof beyond reasonable doubt is

not required to terminate him on this charge [Gatmaitan vs. MRR, G.R. No. L-19892, September 25, 1967, 21 SCRA 191]. It is sufficient that there is some basis for such loss of confidence [Galsim vs. PNB, G.R. No. L-23921, August 29, 1969, 29 SCRA 293; Central Textile Mills vs. NLRC, G.R. No. 50150, May 3, 1979, 90 SCRA 9] and that the employer has reasonable ground to believe or entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein would render him absolutely unworthy of the trust and confidence demanded of his position [Nevans vs. CIR, G.R. No. L-21510, June 29, 1968, 23 SCRA 1321]. The doctrine goes on further to include the basic rule that the conviction of an employee in a criminal case is not indispensable to warrant his dismissal by his employer and that the fact that a criminal complaint against the employee has been dropped by the city fiscal is not binding and conclusive upon a labor tribunal [Sea Land Service Inc. vs. NLRC, G.R. No. 68212, May 24, 1985, 136 SCRA 544].

The Court, however, has time and again stressed that the right of an employer to dismiss employees on the ground that it has lost its trust and confidence in him must not be exercised arbitrarily and without just cause; that although the dropping of a criminal prosecution for an employee's alleged misconduct does not bar his dismissal and proof beyond reasonable doubt is not necessary to justify the same, still the basis thereof must be clearly and convincingly established [Acda vs. Minister of Labor, G.R. No. 51607, December 15, 1982, 119 SCRA 326; Philippine Long Distance Telephone Co. vs. NLRC, G.R. No. 58004, May 30, 1983, 122 SCRA 601].

Thus, the Court in General Bank and Trust Co. vs. CA [G.R. No. L-42724, April 9, 1985, 135 SCRA 569] laid down the following guidelines in the applicability of the doctrine of loss of confidence, to wit:

However, loss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal or unjustified. Loss of confidence may not be arbitrarily asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify earlier action taken in bad faith. [General Bank, supra, at p. 578 cited

in *D.M. Consunji, Inc. vs. NLRC*, G.R. No. 71459, July 30, 1986, 143 SCRA 204, 211].

Applying the foregoing legal precepts to the pertinent facts, the Court finds that there was utter failure here to establish or substantiate the theft charge against GOMEZ. The public respondent NLRC found, amply supported by the record, that contrary to the Labor Arbiter's findings that GOMEZ "failed to present an iota of evidence to prove his innocence," GOMEZ indeed presented exculpatory evidence consisting of the statements of his co-employees Rando Tamondong and Arsenio Biong, the former attesting that he was not aware of any missing ballast from his department and the latter claiming that it was in fact Bonifacio Alvarez who brought out a canopy containing a ballast, which GOMEZ was accused of stealing. Although STARLITE subsequently submitted the recanting affidavits of said witnesses, said recanting affidavits did not inspire belief and the NLRC disregarded the same. The NLRC also found that the findings of the fiscal exonerating GOMEZ from the theft charge was entitled to great weight as these findings reveal at once that the theft charge which is the basis for the dismissal of GOMEZ was not clearly and convincingly established by petitioner.

Moreover, the Court is guided by the well-known principle that findings of facts of quasi-judicial agencies, like the NLRC, are generally accorded great respect and will not be disturbed absent a showing that the findings are unsubstantiated by evidence [*St. Luke's Hospital vs. NLRC*, G.R. Nos. 54068 & 54142, August 30, 1982, 116 SCRA 240; *Manila Mandarin Employees Union vs. NLRC*, G.R. No. 76989, September 29, 1987, 154 SCRA 368]. The NLRC's findings having support in the statements of GOMEZ and his witnesses [Record, pp. 1120,] no cogent reasons exist for the Court to digress from the settled rule.

Petitioner next contends that GOMEZ submitted the alleged statements of his witnesses when the case was already submitted to the investigating fiscal for resolution without furnishing a copy to petitioner. Petitioner thus was not able to rebut the same, and that in any case, these alleged witnesses cannot be expected to tell the truth because they were the close friends of GOMEZ [Rollo, p. 7].

Petitioner's argument instead of buttressing its claim dooms it. Granting that petitioner was not furnished a copy of the affidavits of GOMEZ's witnesses during the proceedings before the investigating fiscal, still, as aforesaid, the same affidavits were attached with the fiscal's resolution to GOMEZ's position paper, and STARLITE had the opportunity to assail the same, as it in fact did in its supplemental position paper, attaching the recanting affidavits of GOMEZ's own witnesses. STARLITE's allegation that it had no opportunity to rebut said affidavits is thus unfounded.

Consequently, the theft charge not having been established, the dismissal of GOMEZ on the ground of loss of trust and confidence cannot be sustained.

In view of the finding that GOMEZ was dismissed illegally, STARLITE is obligated to reinstate GOMEZ to his former position or one reasonably equivalent thereto without loss of seniority rights, and to pay backwages for three years, without qualification or deduction [Mercury Drug vs. CIR, G.R. No. L-23357, April 30, 1974, 56 SCRA 694; PAL, Inc. vs. NLRC, G.R. No. 64809, November 29, 1983, 126 SCRA 223; Lepanto Consolidated Mining Co. vs. Olegario, G.R. No. 77437, June 23, 1988]. In the event such reinstatement is no longer feasible, or if GOMEZ decides not to be reinstated, STARLITE shall pay him separation pay in lieu of reinstatement such separation pay to be computed according to the formula used in the cases of: Santos vs. National Labor Relations Commission, G.R. No. 76721, September 21, 1987, 154 SCRA 116; Soriano vs. National Labor Relations Commission, G.R. No. 75510, October 27, 1987, 155 SCRA 124; and, Manila Midtown Commercial Corporation vs. Nuwhrain, G.R. No. L-57268, March 25, 1988, 159 SCRA 212.

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**. The Decision of public respondent NLRC is hereby **AFFIRMED**, subject to the modification that (1) petitioner shall pay private respondent GOMEZ three (3) years backwages without qualification and deduction and (2) STARLITE shall reinstate GOMEZ to his former position or one reasonably equivalent thereto or if such reinstatement is no longer feasible or should GOMEZ not accept reinstatement, STARLITE shall pay him separation pay to be computed as above

indicated. The Temporary Restraining Order issued on 10 June 1987 is hereby **LIFTED**.

SO ORDERED.

**Fernan, C.J., (Chairman), Gutierrez, Jr. and Bidin, J.J.,
concur.
Feliciano, J., is on leave.**

Philippine Copyright © 2005
ChanRobles Publishing Company
www.chanrobles.com