Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

STERLING PAPER PRODUCTS ENTERPRISES, INC., Petitioner,	**G.R. No. 221493**
	Present:
- versus -	CARPIO, *J., Chairperson*, MENDOZA, LEONEN, JARDELEZA,* and MARTIRES, *JJ.*
KMM-KATIPUNAN and RAYMOND Z. ESPONGA, Respondents.	Promulgated: 02 AUG 2017

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DECISION

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the December 22, 2014 Decision[1] and October 27, 2015 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 124596, which nullified the November 15, 2011 Decision[3] and March 2, 2012 Resolution[4] of the National Labor Relations Commission *(NLRC)* in NLRC CN. RAB-III-11-17024-10/ NLRC LAC No. 09-002429-11. The NLRC reversed and set aside the May 5, 2011 Decision[5] of the Labor Arbiter *(LA)*.

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* Per Raffle dated March 13, 2017.

[1] Penned by Associate Justice Francisco P. Acosta with Associate Justice Fernanda Lampas Peralta and Associate Justice Myra V. Garcia-Fernandez, concurring; *rollo*, pp. 50-58-A.

[2] Id. at 59.

[3] Penned by Presiding Commissioner Leonardo L. Leonida with Commissioner Dolores M. Peralta-Beley and Commissioner Mercedes R. Posada-Lacap, concurring; id. at 133-140.

[4] Id. at 142-145.

[5] Penned By Labor Arbiter Leandro M. Jose; id. at 86-95.

The Antecedents

On July 29, 1998,[6] petitioner Sterling Paper Products Enterprises, Inc. *(Sterling)* hired respondent Raymond Z. Esponga *(Esponga),* as machine operator.

In June 2006, Sterling imposed a 20-day suspension on several employees including Esponga, for allegedly participating in a wildcat strike. The Notice of Disciplinary Action contained a warning that a repetition of a similar offense would compel the management to impose the maximum penalty of termination of services.[7]

Sterling averred that on June 26, 2010, their supervisor Mercy Vinoya *(Vinoya),* found Esponga and his co-employees about to take a nap on the sheeter machine. She called their attention and prohibited them from taking a nap thereon for safety reasons.[8]

Esponga and his co-employees then transferred to the mango tree near the staff house. When Vinoya passed by the staff house, she heard Esponga utter, *"Huwag maingay, puro bawal."* She then confronted Esponga, who responded in a loud and disrespectful tone, *"Puro kayo bawal, bakit bawal ba magpahinga?"*[9]

When Vinoya turned away, Esponga gave her the "dirty finger" sign in front of his co-employees and said *"Wala ka pala eh, puro ka dakdak. Baka pag ako nagsalita hindi mo kayanin."* The incident was witnessed by Mylene Pesimo *(Pesimo),* who executed a handwritten account thereon.[10]

Later that day, Esponga was found to have been not working as the machine assigned to him was not running from 2:20 to 4:30 in the afternoon. Instead, he was seen to be having a conversation with his co-employees, Bobby Dolor and Ruel Bertulfo. Additionally, he failed to submit his daily report from June 21 to June 29, 2010.[11]

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[6] January 29, 1999, as claimed by Sterling.
[7] *Rollo*, p. 87.
[8] Id. at 88.
[9] Id.
[10] Id. at 88-89.
[11] Id. at 89.

Hence, a Notice to Explain, dated July 26, 2010, was served on Esponga on July 30, 2010, requiring him to submit his written explanation and to attend the administrative hearing scheduled on August 9, 2010.

On August 9, 2010, Esponga submitted his written explanation denying the charges against him. He claimed that he did not argue with Vinoya as he was not in the area where the incident reportedly took place. Esponga further reasoned that during the time when he was not seen operating the machine assigned to him, he was at the Engineering Department and then he proceeded to the comfort room.

The July 26, 2010 Notice to Explain, however, indicated a wrong date when the incident allegedly happened. Thus, an amended Notice to Explain, dated August 16, 2010, was issued to Esponga requiring him to submit his written explanation and to attend the administrative hearing scheduled on August 23, 2010. Esponga, however, failed to submit his written explanation and he did not attend the hearing.

In view of Esponga's absence, the administrative hearing was rescheduled. The hearing was reset several more times because of his failure to appear. The hearing was finally set on October 4, 2010. Esponga and his counsel, however, still failed to attend.

Having found Esponga guilty of gross and serious misconduct, gross disrespect to superior and habitual negligence, Sterling sent a termination notice, dated November 15, 2010. This prompted Esponga and KMM-Katipunan *(respondents)* to file a complaint for illegal dismissal, unfair labor practice, damages, and attorney's fees against Sterling.

The LA Ruling

In its May 5, 2011 Decision, the LA ruled that Esponga was illegally dismissed. It held that Sterling failed to discharge the burden of proof for failure to submit in evidence the company's code of conduct, which was used as basis to dismiss Esponga. The *fallo* reads:

> WHEREFORE, premises considered, respondents are found to have failed to discharge their burden of proof, therefore, there is illegal dismissal.
>
> Consequently, respondent corporation is hereby ordered to reinstate complainant to his former position without loss of seniority rights and other privileges, with full backwages initially computed at this time at ₱51,148.36.

> The reinstatement aspect of this decision is immediately executory even as respondents are hereby enjoined to submit a report of compliance therewith within ten (10) days from receipt hereof.
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> Respondent corporation is likewise assessed 10% attorney's fee in favor of the complaint in the sum of ₱5,114,84.
>
> All other claims are hereby dismissed for lack of merit.
>
> SO ORDERED.[12]

Not in conformity, Sterling elevated an appeal before the NLRC.

The NLRC Ruling

In its November 15, 2011 Decision, the NLRC *reversed and set aside* the LA ruling. It declared that Esponga's dismissal was valid. The NLRC observed that as a result of the June 26, 2010 incident, Esponga no longer performed his duties and simply spent the remaining working hours talking with his co-workers. It opined that Esponga intentionally did all these infractions on the same day to show his defiance and displeasure with Vinoya, who prohibited him from sleeping on the sheeter machine. It concluded that these were all violations of the Company Code of Conduct and Discipline, and constituted a valid cause for termination of employment under the Labor Code. The NLRC disposed the case in this wise:

> WHEREFORE, premises considered, the appeal is GRANTED. The Decision appealed from is REVERSED and SET ASIDE, and a new one issued DISMISSING the complaint.
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> SO ORDERED.[13]

Undeterred, respondents filed a motion for reconsideration. In its March 2, 2012 Resolution, the NLRC denied the same.

Aggrieved, the respondents filed a petition for *certiorari* with the CA.

The CA Ruling

In its assailed December 22, 2014 Decision, the CA *reinstated* the LA ruling. It held that the utterances and gesture did not constitute serious misconduct. The CA stated that Esponga may have committed an error of judgment in uttering disrespectful and provocative words against his

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[12] Id. at 94-95.
[13] Id. at 140..

superior and in making a lewd gesture, but it could not be said that his actuations were motivated by a wrongful intent. It adjudged that Esponga's utterances and gesture sprung from the earlier incident which he perceived as unfairly preventing him from taking a rest from work. As such, the CA ruled that Esponga's actuations could only be regarded as simple misconduct. The dispositive portion reads:

> WHEREFORE, the Petition is GRANTED. The Decision dated November 15, 2011 and Resolution dated March 2, 2012 of the National Labor Relations Commission are SET ASIDE. The Decision dated May 5, 2011 of LAbor Arbiter Leandro Jose is REINSTATED in full.
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> SO ORDERED.[14]

Sterling moved for reconsideration, but the CA denied its motion in its assailed October 27, 2015 Resolution.

Hence, this petition for review.

ISSUE

WHETHER THE CAUSE OF ESPONGA'S DISMISSAL AMOUNTS TO SERIOUS MISCONDUCT

Sterling argues that Esponga's utterance of foul and abusive language against his supervisor, demonstrating a dirty finger, and defiance to perform his duties undeniably constitute serious misconduct. It added that Esponga's acts were not only serious, but they also related to the performance of his duties. Further, Sterling asserts that he was motivated by wrongful intent.

In his Comment,[15] dated September 30, 2016, Esponga replied that Sterling failed to establish the validity of his dismissal by clear and convincing evidence. He insisted that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter because the employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.

In its Reply,[16] dated January 30, 2017, Sterling contended that Esponga's failure to participate in the administrative investigation conducted on his infraction was a clear manifestation of his lack of discipline. It asserted that the existence of just and valid cause for Esponga's dismissal and its compliance with the due process requirements had been proven by clear, convincing and substantial evidence on record. Sterling reasoned that

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[14] Id. at 58.
[15] Id. at 153-158.
[16] Id. at 167-181.

an employer has free rein and enjoys wide latitude of discretion to regulate all aspects of employment, including the prerogative to instil discipline in its employees and to impose penalties, including dismissal, upon erring employees.

The Court's Ruling

The petition is meritorious.

Pesimo's retraction has no probative value

In cases of illegal dismissal, the employer bears the burden of proof to prove that the termination was for a valid or authorized cause.[17] In support of its allegation, Sterling submitted the handwritten statement of Pesimo who witnessed the incident between Esponga and Vinoya on June 26, 2010. Pesimo, however, recanted her statement.

A recantation does not necessarily cancel an earlier declaration.[18] The rule is settled that in cases where the previous testimony is retracted and a subsequent different, if not contrary, testimony is made by the same witness, the test to decide which testimony to believe is one of comparison coupled with the application of the general rules of evidence. A testimony solemnly given in court should not be set aside and disregarded lightly, and before this can be done, both the previous testimony and the subsequent one should be carefully compared and juxtaposed, the circumstances under which each was made, carefully and keenly scrutinized, and the reasons and motives for the change discriminately analysed.[19]

In this case, Pesimo's earlier statement was more credible as there was no proof, much less an allegation, that the same was made under force or intimidation. It must be noted that Pesimo's recantation was made only after Esponga came to see her.[20] Nevertheless, in a text message she sent to Vinoya on January 24, 2011, Pesimo did not deny the contents of her earlier statement. She merely expressed concern over Esponga's discovery that she had executed a sworn statement corroborating Vinoya's narration of the incident.[21] Thus, her earlier statement prevails over her subsequent recantation.

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[17] *Ledesma, Jr. v. National Labor Relations Commission,* 562 Phil. 939, 951 (2007).
[18] *Santos v. People,* 443 Phil. 618, 626 (2003).
[19] *Firaza v. People*, 547 Phil. 573, 584 (2007).
[20] *Rollo*, p. 137.
[21] Id. at 138.

Dismissal from employment on the ground of serious misconduct

Under Article 282 (a) of the Labor Code, serious misconduct by the employee justifies the employer in terminating his or her employment.

Misconduct is defined as an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. To constitute a valid cause for the dismissal within the text and meaning of Article 282 of the Labor Code, the employee's misconduct must be serious, *i.e.*, of such grave and aggravated character and not merely trivial or unimportant.[22]

Additionally, the misconduct must be related to the performance of the employee's duties showing him to be unfit to continue working for the employer.[23] Further, and equally important and required, the act or conduct must have been performed with wrongful intent.[24]

To summarize, for misconduct or improper behavior to be a just cause for dismissal, the following elements must concur: (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.[25]

In the case at bench, the charge of serious misconduct is duly substantiated by the evidence on record.

Primarily, in a number of cases, the Court has consistently ruled that the utterance of obscene, insulting or offensive words against a superior is not only destructive of the morale of his co-employees and a violation of the company rules and regulations, but also constitutes gross misconduct.[26]

In *de La Cruz v. National Labor Relations Commission*,[27] the dismissed employee shouted, "*Sayang ang pagka-professional mo*!" and "*Putang ina mo*" at the company physician when the latter refused to give him a referral slip.

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[22] *Imasen Philippine Manufacturing Corp. v. Alcon,* G.R. No. 194884, October 22, 2014,739 SCRA 186, 196-197.
[23] *Tomada, Sr. v. RFM Corporation-Bakery Flour Division*, 615 Phil. 449, 459 (2009).
[24] *Echeverria v. Venutek Medika, Inc.*, 544 Phil. 763, 770 (2007).
[25] *Imasen Philippine Manufacturing Corp. v. Alcon,* supra note 22, at 197.
[26] *Autobus Workers' Union v. National Labor Relations Commission,* 353 Phil. 419, 428-429 (1998).
[27] 258 Phil. 432 (1989).

Likewise, in *Autobus Workers' Union (AWU) v. National Labor Relations Commission*,[28] the dismissed employee told his supervisor "*Gago ka*" and taunted the latter by saying, "*Bakit anong gusto mo, tang ina mo.*"

Moreover, in *Asian Design and Manufacturing Corporation v. Deputy Minister of Labor*,[29] the dismissed employee made false and malicious statements against the foreman (his superior) by telling his co-employees: "If you don't give a goat to the foreman, you will be terminated. If you want to remain in this company, you have to give a goat." The dismissed employee therein likewise posted a notice in the comfort room of the company premises, which read: "Notice to all Sander — Those who want to remain in this company, you must give anything to your foreman."

In *Reynolds Philippines Corporation v. Eslava*,[30] the dismissed employee circulated several letters to the members of the company's board of directors calling the executive vice-president and general manager a "big fool," "anti-Filipino" and accusing him of "mismanagement, inefficiency, lack of planning and foresight, petty favoritism, dictatorial policies, one-man rule, contemptuous attitude to labor, anti-Filipino utterances and activities."

Hence, it is well-settled that accusatory and inflammatory language used by an employee towards his employer or superior can be a ground for dismissal or termination.[31]

Further, Esponga's assailed conduct was related to his work. Vinoya did not prohibit him from taking a nap. She merely reminded him that he could not do so on the sheeter machine for safety reasons. Esponga's acts reflect an unwillingness to comply with reasonable management directives.[32]

Finally, contrary to the CA's pronouncement, the Court finds that Esponga was motivated by wrongful intent. To reiterate, Vinoya prohibited Esponga from sleeping on the sheeter machine. Later on, when Vinoya was passing by, Esponga uttered *"Huwag maingay, puro bawal."* When she confronted him, he retorted *"Puro kayo bawal, bakit bawal ba magpahinga?"* Not contented, Esponga gave her supervisor the "dirty finger" sign and said *"Wala ka pala eh, puro ka dakdak. Baka pag ako nagsalita hindi mo kayanin."* It must be noted that he committed all these

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[28] Supra note 26, at 423.
[29] 226 Phil. 20, 21 (1986).
[30] 221 Phil. 614 (1985).
[31] *Nissan Motors Phils., Inc. v. Angelo*, 673 Phil. 150, 160 (2011).
[32] *Punzal v. ETSI Technologies, Inc.*, 546 Phil. 704, 716 (2007).

acts in front of his co-employees, which evidently showed that he intended to disrespect and humiliate his supervisor.

"An aggrieved employee who wants to unburden himself of his disappointments and frustrations in his job or relations with his immediate superior would normally approach said superior directly or otherwise ask some other officer possibly to mediate and discuss the problem with the end in view of settling their differences without causing ferocious conflicts. No matter how the employee dislikes his employer professionally, and even if he is in a confrontational disposition, he cannot afford to be disrespectful and dare to talk with an unguarded tongue and/or with a baleful pen."[33]

Time and again, the Court has put emphasis on the right of an employer to exercise its management prerogative in dealing with its affairs including the right to dismiss its erring employees. It is a general principle of labor law to discourage interference with an employer's judgment in the conduct of his business. As already noted, even as the law is solicitous of the welfare of the employees, it also recognizes the employer's exercise of management prerogatives. As long as the company's exercise of judgment is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.[34]

WHEREFORE, the petition is **GRANTED**. The December 22, 2014 Decision and the October 27, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 124596 are hereby **REVERSED** and **SET ASIDE**. The November 15, 2011 Decision and the March 2, 2012 Resolution of the National Labor Relations Commission is **REINSTATED**.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[33] *Philippines Today, Inc. v. National Labor Relations Commission,* 334 Phil. 854, 869 (1997).
[34] *Moya v. First Solid Rubber Industries, Inc.,* 718 Phil. 77, 86-87 (2013).

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

SAMUEL R. MARTIRES
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.

ANTONIO T. CARPIO
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.

MARIA LOURDES P. A. SERENO
Chief Justice