

JOSEPH V. CUEVO, PETITIONER, VS. THUNDERBIRD RESORT EASTBAY RESORTS, INC.,/MR. ROMULO ALARCIO III, RESPONDENTS.

Ponente: GONZALES-SISON, M., J.

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GONZALES-SISON, M., J.:

Before this Court is a Petition for Certiorari[1] which seeks to modify the Decision[2] and Resolution[3] of the National Labor Relations Commission Sixth Division in NLRC LAC No. 03-000990-13 (NLRC NCR Case No. 10-15567-11) dated 30 July 2013 and 29 October 2013 respectively.

Briefly, the facts of the case are as follows:

Private respondent Eastbay Resorts, Inc. (ERI) is a local company which operates and manages Thunderbird Resorts-Rizal a hotel complex located in Binangonan, Rizal. Meanwhile, private respondent Romulo Alarcio III (Alarcio III) used to head the Human Resource Department of ERI.

On the other hand, petitioner Joseph V. Cuevo (Cuevo) was initially hired by ERI in 2005 as a Room Attendant and later promoted as a Cage Cashier 2 at the “Fiesta Casino” of the hotel.

On 20 September 2011, Cuevo received a Memorandum from Ms. Rowena Duriano, the Cage Manager, directing Cuevo to explain why no corrective action should be taken against him for arriving at work under the influence of alcohol on 12 September 2011.

On 23 September 2011, Cuevo submitted his handwritten explanation vehemently denying that he went to work inebriated.

Afterwards, administrative hearings were conducted on 30 September 2011 and 6 October 2011 to determine Cuevo's culpability.

In the end, ERI decided to let go Cuevo on the ground of intoxication aggravated by Cuevo's giving of false information or testimony during an official investigation and thus served upon him a notice of termination on 10 October 2011.

Aggrieved, Cuevo, on 11 October 2001, filed a case for Illegal Dismissal and Unfair Labor Practice against ERI and Alarcio III. According to Cuevo, the charge of drunkenness was merely concocted by ERI in order to ease him out as the President of the employee's union. Cuevo thus prayed inter alia that he be reinstated to his former position with full backwages and other benefits from the time of dismissal up to actual reinstatement.

In their Position Paper, ERI and Alarcio III denied the accusation of Cuevo of union busting and were adamant that ERI's Internal Security Officers attested to the fact that Cuevo went to work on 12 September 2011 in a state of stupor. ERI and Alarcio III thus prayed that the case against them be dismissed for utter lack of merit.

Nonetheless, in a Decision[4] dated 24 January 2013, the Labor Arbiter, to whom the case was assigned, ruled in favor of Cuevo after finding that the ERI and Alarcio III miserably failed to prove their allegation that Cuevo went to work drunk. In the meantime, the charge of Cuevo for Unfair Labor Practice was also dismissed for lack

of merit. The Labor Arbiter thus ordered Cuevo's reinstatement to his former or equivalent position with full backwages from the time of dismissal until actual reinstatement.

On appeal, the National Labor Relations Commission Sixth Division (NLRC) affirmed the ruling of the Labor Arbiter that there was no justifiable cause for Cuevo's dismissal. However, the NLRC modified the Decision of the Labor Arbiter in ordering the payment of separation pay in lieu of reinstatement due to "strained relations". The fallo of the Decision of the NLRC dated 30 July 2013 reads:

"WHEREFORE, premises considered, the appeal is hereby DENIED. The Labor Arbiter's Decision is AFFIRMED WITH MODIFICATION that in lieu of reinstatement respondent Thunderbird Resorts Eastbay Resorts Inc. is ordered to pay complainant separation pay equivalent to one month salary for every year of service, to be computed from the time of his employment as well as backwages reckoned from the time of his dismissal. Both awards are to be computed up to the finality of this Decision.

Further, aforementioned respondents are ordered to pay complainant attorney's fees equivalent to 10% of the monetary awards in his favor.

SO ORDERED."[5]

Both parties filed a Motion for Reconsideration of the above Decision. Cuevo prayed that the Labor Arbiter's Decision that he be reinstated as he is the President of the employee's union. On the other hand, ERI sought to overturn the decisions of the NLRC and the Labor Arbiter all together as ERI maintained that there is substantial evidence to justify Cuevo's termination from service.

Both Motions for Reconsideration were however, denied by the NLRC in the Resolution dated 29 October 2013, the decretal portion of which reads:

"WHEREFORE, premises considered, the respective motions for reconsideration filed by both parties are DENIED for lack of merit.

No further motions of similar nature shall be entertained.

SO ORDERED."[6]

Undaunted, Cuevo now comes to this Court via this instant Petition for Certiorari and in support thereof, assigns the following errors on the part of the NLRC:

A.

PUBLIC RESPONDENT HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN ORDERING THE PRIVATE RESPONDENTS TO PAY COMPLAINANT-PETITIONER HIS SEPARATION PAY IN LIEU OF REINSTATEMENT.

B.

PUBLIC RESPONDENT HAD OVERLOOKED THAT PETITIONER JOSEPH V. CUEVO IS THE CURRENT PRESIDENT OF THE UNRECOGNIZED UNION (TRRUCEE-AGLO) AND THE COMPLAINT WAS FOR UNFAIR LABOR PRACTICE.

In essence, Cuevo asserts that to allow his removal from employment would be tantamount to a union busting in the pretext of "strained relations" and prevent the reinstatement of an otherwise unjustly dismissed employee. Again, Cuevo prays that he be restored to his former position without loss of seniority rights and benefits with full backwages.

However, due to a supervening circumstance, this Court is constrained to deny the instant petition.

It would appear that Cuevo has already moved for the execution of the Decision of the Labor Arbiter as modified by the NLRC.[7] Hence, for all intents and purposes, Cuevo has already waived or abandoned this instant Petition for he cannot seek the modification of the Decision of the NLRC before this Court while at the same time, causes its execution before the Labor Arbiter. The two remedies belie one another. Thus, this Court will refrain from expressing its opinion in a case where no practical relief may be granted in view of a supervening event.

WHEREFORE, premises considered, the instant Petition for Certiorari is DENIED due to abandonment by petitioner and the assailed Decision and Resolution of the National Labor Relations Commission Sixth Division dated 30 July 2013 and 29 October 2013 respectively are hereby AFFIRMED.

SO ORDERED.

De Guia-Salvador, R. Chairperson and Cruz, R. JJ., concur.

[1] Rollo, p. 3.

[2] Penned by Commissioner Isabel G. Panganiban-Ortiguerra with Commissioners Joseph Gerard E. Mabilog and Nieves E. Vivar-Castro concurring.

[3] Penned by Commissioner Isabel G. Panganiban-Ortiguerra with Commissioners Joseph Gerard E. Mabilog and Nieves E. Vivar-Castro concurring.

[4] Penned by Labor Arbiter Jaime M. Reyno.

[5] Rollo, p. 26.

[6] Rollo, pp. 31-32

[7] Motion for Issuance of Writ of Execution dated 25 March 2014, Rollo, pp. 369-371.

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