

MA. LOURDES P. ROGELIO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION – 3RD DIVISION, ZAHNFABRIK PHILIPPINES, INC., RESPONDENTS.

Ponente: DIMAAMPAO, J.

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DIMAAMPAO, J.:

The constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers. The commitment under the fundamental law is that the cause of labor does not prevent us from sustaining the employer when the law is clearly on its side.[1]

While it is true that compassion and human consideration should guide the disposition of cases involving termination of employment since it affects one's source or means of livelihood, it should not be overlooked that the benefits accorded to labor do not include compelling an employer to retain the services of an employee who has been shown to be a gross liability to the employer. The law in protecting the rights of the employees authorizes neither oppression nor self-destruction of the employer.[2]

We take Our cue from the foregoing doctrinal aphorism as We endeavor to resolve the instant case.

Through this Petition for Certiorari,[3] petitioner fulminates against the Decision[4] dated 30 April 2013 and Resolution⁵ dated 31 May 2013 of the National Labor Relations Commission (NLRC) dismissing her Complaint for Illegal Dismissal, in NLRC LAC No. 08-002322-12.

The material operative facts are as follows:

Petitioner Ma. Lourdes Rogelio was employed by private respondent Zahnfabrik Philippines, Inc. as a Dental Operator. She was absent from her job from 25 January 2010 to 4 March 2012 or for a period of two years. Petitioner reported back for work on 5 March 2012. The next day or on 6 March 2012, petitioner again did not report for work. Consequently, private respondent informed her that her continuous unauthorized absences constituted abandonment of work, in violation of the company's policies. Ensuingly, petitioner was directed to submit a written explanation why no disciplinary action should be imposed upon her. For the nonce, she was placed under preventive suspension for a period of 30 days effective 2 April 2012.[6]

After conducting an investigation, private respondent terminated petitioner's services on 2 May 2012.[7] This impelled her to initiate a Complaint[8] for illegal dismissal, non-payment of salary, separation pay and illegal suspension. Petitioner averred that her employment was terminated without any valid and just cause and in violation of her right to due process. Her indefinite leave of absence for two years was with the conformity of private respondent as she was suffering from an illness. Likewise, she had an approved leave from 6 to 31 March 2012. When she went back to work on 2 April 2012, she was not allowed to resume her job; instead, she was preventively suspended for 30 days.

Traversing the material allegations in the Complaint, private respondent countered that petitioner's employment was legally terminated as she incurred numerous unau-thorized absences. Before her dismissal from employment,

she was accorded the required due process.

Assaying the contrasting postulations of the parties, the Labor Arbiter rendered a Decision,⁹ ratiocinating and disposing in this wise:

"x x x While the complainant alleged that she was on indefinite leave due to an illness, however, there is nothing on record to prove her absence for two (2) years was authorized or approved by the respondent company. x x x

x x x [T]here is no evidence on record corroborating complainant's approved leave of absence from March 6 to 31, 2012.

Verily, it is without doubt that the excessive unauthorized absences of the complainant from January 25, 2010 to March 31, 2012 have already amounted to abandonment of work. Even by offsetting the allowable leaves under the CBA, there is no question that complainant's absences have already reached beyond what is allowed by the Company Rules and Regulations. Therefore, complainant's dismissal is justified as her prolonged absence from work constituted gross and habitual neglect of duty under Article 82 (b) of the Labor Code."

WHEREFORE, premises considered, the instant case is hereby DISMISSED for lack of merit.

SO ORDERED." [10] (Emphases supplied)

Petitioner appealed the foregoing Decision before the NLRC. However, in the impugned Decision, the labor tribunal affirmed the findings of the Labor Arbiter.

Petitioner moved for reconsideration thereof but the NLRC paid no heed to her Motion in the assailed Resolution.

Unflustered, petitioner is now before Us ascribing grave abuse of discretion on the part of the NLRC—

I

IN AFFIRMING THE DECISION OF THE LABOR ARBITER FINDING THAT COMPLAINANT HAS INCURRED EXCESSIVE ABSENCES.

II

(IN FAILING) TO AWARD SEPARATION PAY DESPITE FINDING THAT COMPLAINANT'S "EXCESSIVE ABSENCES" WAS DUE TO HER HEALTH CONDITION.

The Petition bears no merit.

Petitioner steadfastly asserts that she was illegally dismissed and was not accorded any notice to explain why her employment should not be severed due to her alleged excessive absences.

Simply put, the issues called to fore in this Petition are whether or not— one, there exists a valid and just cause to dismiss petitioner, and two, petitioner was accorded due process.

The first issue is factual. It is settled that factual findings of the NLRC, an administrative agency deemed to have acquired expertise in matters within their respective jurisdiction, are generally accorded not only respect but even finality.[11]

Case law teaches Us that the employer has the burden of proving that the dismissal is for just cause, and failure to do so would necessarily mean that the dismissal was unjustified and, therefore, illegal. It is the employer who must prove its validity, and not the employee who must prove its invalidity.[12]

In the case at bench, private respondent was able to discharge such bounden duty. Evidence on record reflects that

the dismissal of petitioner was effected with due regard to the provision of Article 282(b) of the Labor Code—gross and habitual neglect by the employee of his duties. Habitual absenteeism without leave constitutes gross negligence and is sufficient to justify termination of an employee.[13] This is fleshed out in the company rules and regulations (No. F9-Abandonment of work) which explicitly states that 'an employee who incurs six consecutive working days of absence without notice shall be punishable by dismissal.'[14] Petitioner's latest string of unauthorized absences from 6-31 March 2012, taken together with her two-year leave of absence without permission from 5 January 2010 to 4 March 2012, tellingly demonstrated her gross and habitual neglect of duties.

We find and so hold that private respondent complied with the mandatory procedural due process.

Well-ensconced is the rule that the twin requirements of notice and hearing constitute the essential elements of due process in the dismissal of employees. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him.[15]

Invariably, Section 2(d), Rule I of Book IV of the Omnibus Rules Implementing the Labor ordains:

“SEC. 2. Standards of due process; requirements of notice. — In all cases of termination of employment, the following standards of due process shall be substantially observed:

I. For termination of employment based on just causes as defined in Article 282 of the Code:

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(c) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.”

In dismissing an employee, the employer has the burden of proving that the worker has been served two notices.[16]

Here, the twin-notice rule was evidently observed. First, in the Notice to Explain with Preventive Suspension,[17]petitioner was apprised of the particular acts or omissions constituting the charge against her. She was then required to submit a written explanation within 48 hours from receipt of the said Notice. Upon submission of her letter of explanation, the corresponding investigation was conducted and private respondent found that petitioner violated the company policy against unauthorized absences. Second, petitioner was actually served with the dismissal notice. Plain as a pikestaff, she was accorded due process before being dismissed.

In a nutshell, We discern no grave abuse of discretion on the part of the NLRC in rendering the challenged Decision and Resolution.

WHEREFORE, the Petition is hereby DISMISSED.

SO ORDERED.

* Vice Justice Carmelita S. Manahan, per Office Order No. 123-14-ABR dated 2 April 2014.

[1] Salazar v. Philippine Duplicators, Inc., 510 SCRA 288, 308 (6 December 2006). Italics supplied.

[2] See *Philippine Long Distance Telephone Company, Inc. v. Balbastro*, 519 SCRA 233, 248-249 (28 March 2007). Italics supplied.

[3] Rollo, pp. 3-14.

[4] *Id.*, pp. 16-20.

[5] *Id.*, pp. 23-24.

[6] *Id.*, p. 39.

[7] *Id.*, pp. 40-41.

[8] *Id.*, pp. 25-30.

[9] Rollo, pp. 131-135.

[10] *Id.*, pp. 134-135.

[11] See *General Santos Coca-Cola Plant Free Workers Union-Tupas v. Coca-Cola Bottlers Phils., Inc. (General Santos City)*, 579 SCRA 414, 418 (13 February 13, 2009); *Dela Rosa v. Michaelmar Philippines, Inc.*, 648 SCRA 721, 731 (13 April 2011).

[12] See *Tower Industrial Sales v. Court of Appeals*, 487 SCRA 556, 565 (19 April 2006); *Baron Republic v. Theatrical v. Peralta*, 602 SCRA 258, 265 (2 October 2009).

[13] *Challenge Socks Corporation v. Court of Appeals*, 474 SCRA 356, 362 (8 November 2005).

[14] See Notice to Explain with Preventive Suspension, Rollo, p. 39.

[15] See *Solid Development Corporation Workers Association (SDCWA-UWP) v. Solid Development Corporation*, 530 SCRA 132, 140-141 (14 August 2007).

[16] See *Bibiana Farms and Mills v. Lado*, 611 SCRA 302, 311 (2 February 2010).

[17] Rollo, p. 39.

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