

COFFEE MASTERS, INC., BERNARDINE T. SIY, FREDERICK T. SIY, JULIET GAMIDO AND MARY JEAN P. FLORES, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) AND JOE E...

Ponente: BARZA, J.

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BARZA, J.:

Before the Court is a petition for certiorari seeking to nullify the NLRC decision[1] dated May 16, 2012 as well as its resolution[2] dated June 25, 2012, in NLRC LAC No. 02-000593-12 (NLRC-NCR-05-08018-11). The antecedent facts of the case are as follows:

Private respondent Joe Emman M. Pasamba was employed by petitioner Coffee Masters, Inc. (CMI for brevity) as a “barista” on August 16, 2007. He was initially assigned at the company's Seattle's Best Coffee Bonifacio High Street branch in Fort Bonifacio, Taguig City and thereafter at the Rockwell branch in Makati City. When the Rockwell branch closed on January 3, 2011, he was reassigned at Seattle's Best Coffee in Valero, Makati City.

The controversy between the parties spawned from private respondent's attendance record. It appears that private respondent had been incurring frequent tardiness from January 16-31, 2011 (a total of 172 minutes), February 1-15, 2011 (a total of 235 minutes), February 16-28, 2011 (a total of 117 minutes) and finally on March 1-15, 2011 (a total of 287 minutes). On top of it he incurred absences for three (3) consecutive days on February 11-13, 2011 without official leave. In all of the said infractions, private respondent was issued several show cause memoranda[3] dated February 17, 2011, March 2, 2011, March 7, 2011 and April 7, 2011 directing him to explain why he should not be subjected to disciplinary action concerning his tardiness and absences. He was also issued several written warnings[4] pertaining to the same violations.

In a handwritten letter[5] dated March 3, 2011, private respondent explained that his absences from February 11-13, 2011 was brought about by a family emergency when he had to rush home to the province due to the death of his uncle. In another letter[6] of even date, he attributed his tardiness to his weekly work shift which made it difficult for him to adjust his sleep. He gave two other letters[7] on various dates still ascribing his tardiness on his difficulty to adjust to his work schedule.

A hearing conducted by CMI was scheduled on April 7, 2011 to afford private respondent the opportunity to fully explain himself regarding the infractions he committed. On May 9, 2011, CMI issued a notice of termination[8] of private respondent's employment effective May 13, 2011 on the ground of habitual tardiness. Private respondent refused to sign the same because he blamed his tardiness on the erratic work schedules he was given.

Thereafter, private respondent filed a complaint[9] for illegal dismissal with money claims against petitioners before the Regional Arbitration Branch of the NLRC. The Labor Arbiter rendered its decision[10] on the case on November 2, 2011 finding for private respondent. The Labor Arbiter found that private respondent was justified in his tardiness because of the irregular and difficult work schedules given to him. In view thereof, the Labor Arbiter granted backwages, separation pay, proportionate holiday and 13th month pay, exemplary damages and

attorney's fees to private respondent which amounted to a sum of Php127,462.75. Aggrieved by the findings of the Labor Arbiter, petitioners appealed the same to the NLRC. In the assailed decision dated May 16, 2012, the NLRC agreed with the findings of the Labor Arbiter and affirmed with modification the latter's judgment. Petitioners' motion for reconsideration on the NLRC decision was denied in the assailed resolution dated June 25, 2012. Thereafter, the NLRC issued an entry of judgment[11] on August 30, 2012.

Petitioners thus filed the instant petition raising the following issues for the Court's consideration:

The NLRC acted with grave abuse of discretion amounting to lack of or in excess of jurisdiction when it issued the assailed decision and assailed resolution in light of the following reasons:

A. There is no dispute that private respondent incurred gross and habitual tardiness which is tantamount to just cause under Art. 282 of the Labor Code.

B. Private respondent was never given an erratic schedule by petitioner's cafe manager. As such his gross and habitual tardiness could not be attributed thereto.

C. The law merely requires petitioner (as employer) to present substantial evidence to prove the existence of just cause against private respondent.

D. Private respondent having been validly dismissed from his employment is not entitled to his monetary claims, i.e. backwages, separation pay, damages and attorney's fees.

In a special civil action for certiorari, the Court of Appeals has ample authority to make its own factual determination. Thus, the Court of Appeals can grant a petition for certiorari when it finds that the NLRC committed grave abuse of discretion by disregarding evidence material to the controversy. To make this finding, the Court of Appeals necessarily has to look at the evidence and make its own factual determination.[12]

It is undisputed that private respondent had committed several counts of tardiness in the workplace. Consequently, his employment was terminated on account of gross and habitual negligence.

Gross negligence under Article 282 of the Labor Code connotes want of care in the performance of one's duties, while habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. Gross negligence has been defined as the want or absence of even slight care or diligence as to amount to a reckless disregard of the safety of person or property. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. To constitute a just cause for termination of employment, the neglect of duties must not only be gross but habitual as well. The single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.[13]

Contrary to the findings of the Labor Arbiter and the NLRC, the Court finds just cause in terminating private respondent. Private respondent's habitual tardiness finds no excuse at all even if he claims that his work schedule is unreasonable.

The Supreme Court has held that management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place, and manner of work, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers, and discipline, dismissal and recall of workers. The exercise of management prerogative, however, is not absolute as it must be exercised in good faith and with due regard to the rights of labor.[14]

The rotation of work shifts of employees is not unusual in 24-hour establishments such as CMI's coffee shop where private respondent was assigned. The change of his work shift is not arbitrary. It appears from the work schedules[15] and attendance records[16] submitted by petitioners that the drastic change in private respondent's

work shift (from opening shift to night shift and vice versa) is implemented after his rest day. Private respondent usually came in late the day after his rest day when the new schedule is enforced. Moreover, private respondent would come in late despite the fact that his request for change of schedule had been granted.

We cannot countenance private respondent's tardiness. It is common for businesses to rotate their workers' schedules due to exigencies of the business. For as long as the worker is given enough time to complete his rest before drastically changing his schedule, We find no reason to strike down management policy as arbitrary and declare that private respondent was justified in being late. He was given an adequate amount of time to complete his rest before his work schedule was shifted. His request to adjust his schedule was also granted and yet despite management's consideration he still came to work late. Punctuality is a reasonable standard imposed on every employee, whether in government or private sector. As a matter of fact, habitual tardiness is a serious offense that may very well constitute gross or habitual neglect of duty, a just cause to dismiss a regular employee.[17]

The power to dismiss an employee is a recognized prerogative inherent in the employer's right to freely manage and regulate his business. The dismissal of an employee, in a way, is a measure of self preservation. The law, in protecting the rights of the laborers, authorizes neither oppression nor self-destruction of the employer. The worker's right to security of tenure is not an absolute right, for the law provides that he may be dismissed for cause.[18] To be sure, an employer cannot be compelled to continue with the employment of workers when continued employment will prove inimical to the employer's interest.[19]

Indeed, in a special civil action for certiorari brought against a court or quasi-judicial body with jurisdiction over a case, petitioner carries the burden of proving that the court or quasi-judicial body committed not a merely reversible error but a grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the impugned order. Showing mere abuse of discretion is not enough, for it is necessary to demonstrate that the abuse of discretion was grave. Grave abuse of discretion means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.[20] Apparently, the NLRC committed grave abuse of discretion when it failed to consider that private respondent's tardiness was not a result of an arbitrary or despotic exercise of management prerogative as private respondent would want the Court to believe. Private respondent was never able to justify his wrongdoing. On the other hand, petitioners were able to prove by substantial evidence that there is just cause in terminating the services of private respondent.

WHEREFORE, the Court finds the petition impressed with merit and hereby GRANTS the petition. Accordingly, the assailed decision and resolution of the NLRC are hereby ANNULLED and a new judgment is hereby entered finding private respondent to have been lawfully dismissed from employment.

SO ORDERED.

Abdulwahid (Chairperson) and Cruz, JJ., concur.

[1] Rollo, pp. 74-82.

[2] Ibid., pp. 85-86.

[3] Ibid., pp. 105, 108, 115 and 120.

[4] Ibid., pp. 113-114.

- [5] Ibid., p. 107.
- [6] Ibid., p. 112.
- [7] Ibid., pp. 117-123.
- [8] Ibid., pp. 124-125.
- [9] Ibid., pp. 87-88.
- [10] Ibid., pp. 164-173.
- [11] Ibid., p. 23.
- [12] Plastimer Industrial Corporation, et al. vs. Natalia C. Gopo, et al., G.R. No. 183390, February 16, 2011.
- [13] AMA Computer College-East Rizal, et al. vs. Allan Raymond R. Ignacio, G.R. No. 178520, June 23, 2009.
- [14] Royal Plant Workers Union vs. Coca Cola Bottlers Philippines, Inc. - Cebu Plant, G.R. No. 198783, April 15, 2013.
- [15] Rollo, pp. 204-206, 208-211, 213-217 and 219-222.
- [16] Ibid., pp. 203, 207, 212 and 218.
- [17] Mylene Carvajal vs. Luzon Development Bank, et al., G.R. No. 186169, August 1, 2012.
- [18] Rolando P. Ancheta vs. Destiny Financial Plans, Inc., et al., G.R. No. 179702, February 16, 2010.
- [19] Ibid.
- [20] Zuellig Freight and Cargo Systems vs. NLRC, et al., G.R. No. 157900, July 22, 2013.

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