

MANUEL M. PANISA, JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION & RAMOSCO LOGISTICS, INC. AND/OR MARY GRACE AVELLANO. RESPONDENTS.

Ponente: GONZALES-SISON, M., J.

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GONZALES-SISON, M., J.:

Before Us is a Petition for Review on Certiorari under Rule 65 of the 1997 Rules of Civil Procedure, seeking to nullify and set aside the Decision[1] and Resolution[2] in NLRC LAC No. 08-002284-13, both promulgated by herein public respondent National Labor Relations Commission (NLRC) on February 27, 2014 and April 14, 2014, respectively. The NLRC dismissed the Complaint[3] for illegal dismissal and payment of wages and other benefits filed by herein petitioner Manuel Panisa, Jr. The facts as culled from the Records are as follows:

Sometime in October 2011, Manuel M. Panisa, Jr. (Panisa) was hired as a salesman by herein private respondent Ramosco Logistics, Inc., (Ramosco Logistics), a juridical entity duly formed and organized under the laws of the Philippines, engaged in the business of providing its clients and customers with solutions to their logistics problems.[4] As a salesman, Panisa was tasked to distribute the products of San Miguel Corporation (San Miguel), a client of Ramosco Logistics, to different Mercury Drug outlets as well as to withdraw the merchandise already delivered but returned or rejected for certain reasons.[5] Panisa's schedule of work was from Monday to Saturday from 8:00 in the morning until 5:00 in the afternoon,[6] for which Panisa received a daily salary of four hundred and fifty-four pesos (P454.00).[7]

Meanwhile, during the last week of September 2012, the Channel Manager of San Miguel conducted an audit and monthly operations review wherein all sales agents were asked about the products and the performance of the corporation. When probed, Panisa was unable to answer questions regarding the amount of sales as well as the quantity of the lost goods.[8] His evasiveness prompted San Miguel to report the matter to Ramosco Logistics, who in turn conducted a more thorough investigation on the matter.[9] Consequently, a Memorandum[10] dated October 10, 2012 was issued to Panisa, placing him under preventive suspension for thirty days beginning from October 10, 2012 to November 14, 2012. In response to the said Memorandum, Panisa submitted a handwritten explanation relating why he was not able to answer the questions posed by the San Miguel auditor, and likewise asked to be forgiven and to be granted a second chance.[11]

In the course of the investigation, Ramosco Logistics discovered that Panisa visited the Mercury Drug Cainta Branch on August 27, 2012, and the Mercury Drug Nepa Q-Mart on August 29, 2012, where he withdrew merchandise from both stores, as reflected in the security guard logbooks.[12] Ramosco Logistics likewise learned that Panisa also withdrew goods from Mercury Drug Broadway and Broadway Centrum. Worse, while under suspension, he was found to have visited Mercury Drug Ever Gotesco Branch on October 12, 2012.[13] In all his aforementioned visits, he failed to render an accounting of all the withdrawn merchandise, or return the same items to the warehouse. The unaccounted merchandise belonged to San Miguel and the other clients of Ramosco Logistics.[14]

Subsequently, Panisa failed to return to work on the last day of his preventive suspension on November 14, 2012, or in the days thereafter.[15] Pursuant thereto, Ramosco Logistics sent him a third Memorandum dated November 29, 2012, giving him a last chance to explain. Similar to all the other Memoranda and Notices sent by Ramosco Logistics to him, the third Memorandum likewise remained unheeded. As of November 29, 2012, Ramosco Logistics had discovered that the missing merchandise amounted to thirty-one thousand five hundred ninety-six pesos and fifty-four centavos (P31,596.54).[16]

On December 5, 2012, Panisa filed a Complaint[17] for illegal dismissal (constructive), underpayment of salary/wages, non-payment of holiday pay, 13th month pay, separation pay, ECOLA, illegal deduction, illegal suspension, moral and exemplary damages and attorney's fees.

The Ruling of the Labor Arbiter:

On June 28, 2013, the Labor Arbiter dismissed Panisa's Complaint. The Labor Arbiter held that as a salesman, Panisa occupied a position of trust and confidence as he had the duty of delivering and pulling out goods belonging to Ramosco Logistics' clients.[18] Accordingly, his failure to render an accurate accounting or inventory of the exact figures of the lost merchandise, implies a gross irregularity, which constitutes a gross misconduct that serves as a valid ground for termination.[19] Furthermore, Panisa's act of pulling out various merchandise from the Mercury Drug outlets he serviced without rendering an accounting thereof, constitutes dishonesty.[20] However, the Labor Arbiter noted that Ramosco Logistics had not yet terminated Panisa's employment at the time the latter filed the Complaint for Illegal Dismissal.[21] Finally, the Labor Arbiter found that Panisa was entitled to his thirteenth month pay equivalent to nine thousand and one pesos and sixty-three centavos (P9,001.63) and his unpaid salary from October 1 to 9, 2012 amounting to four thousand six hundred fifty-two pesos (P4,652.00), yet ordered the same amounts as subject to legal compensation against the sum of P31,596.54, which Panisa owed to Ramosco Logistics.[22]

Aggrieved by the Decision of the Labor Arbiter, on July 29, 2013, Panisa filed a Memorandum of Appeal with Notice of Appeal²³ before the NLRC.

The NLRC's Ruling:

Finding that the Decision rendered by the Labor Arbiter was supported by substantial evidence and due to Panisa's failure to controvert the charges leveled against him, the NLRC affirmed the earlier ruling of the Labor Arbiter. Furthermore, the NLRC observed that Panisa even apologized for his misdeeds, which act laid to rest any doubts on his culpability.[24]

On March 13, 2014, Panisa filed a Motion for Reconsideration,[25] which was denied in the NLRC's Resolution[26] dated April 14, 2014.

Undeterred, on June 27, 2014, Panisa filed the instant Petition for Certiorari,[27] seeking for the nullification of the assailed Decision and Resolution issued by the NLRC on the following grounds, to wit:

I. THAT THE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT THERE WAS NO ILLEGAL SUSPENSION AND DISMISSAL;

II. THAT THE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT PETITIONER IS NOT ENTITLED TO ALL HIS MONETARY CLAIMS.[28]

Upon a careful consideration of the arguments raised by both parties and a meticulous scrutiny of the laws and

jurisprudence involved, We find the instant petition partly impressed with merit.

Indeed, our laws endeavor to breathe life to the constitutional policy on social justice and on the protection of labor. However, this does not mean that every labor dispute will be decided in favor of the workers. The law also recognizes that management has rights which are also entitled to respect and enforcement in the interest of fair play.[29] In this regard, management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations.[30] Disciplinary action against an errant employee is a management prerogative which,

generally, is not subject to judicial interference, as long as the disciplinary action is dictated by legitimate business reasons and is not oppressive.[31]

Pitted against each other in the case at bar, is Panisa's cry of constructive dismissal, versus Ramosco Logistics' firm stand that no such illegal dismissal took place.

Constructive dismissal exists where there is cessation of work, because continued employment is rendered impossible, unreasonable or unlikely.[32] It is regarded as a "dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, and may exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment." [33]

Guided by the foregoing definition, We find that Panisa was not constructively dismissed. Panisa utterly failed to show any act of discrimination, insensibility or disdain committed by Ramosco Logistics against him that would have left him with no alternative but to forego his employment. Likewise, there was no evidence indicating that he was barred from work or prevented from reporting, aside from his bare and unsubstantiated allegation that the HR Manager told him not to report for work.

Neither was the preventive suspension imposed upon Panisa tantamount to constructive dismissal.

The various Memoranda/Notices sent to Panisa are bereft of any words implying an actual or constructive dismissal. The phraseology and content of the Memoranda evince a clear-cut notice of suspension pending investigation, rather than a notice of

termination. Juxtaposed against the clear and unequivocal wordings and intent of the notice of suspension that Panisa signed, his claim that he was verbally dismissed from the service, falters.

Moreover, the continued presence of Panisa pending the investigation posed a serious threat to the properties of Ramosco Logistics and its clients. Being a salesman who was charged with the distribution and recall of the various merchandise of Ramosco's clients, Panisa's daily work exposed him to voluminous financial transactions involving the clients' goods. The Supreme Court acknowledged in numerous cases that salesmen are considered to occupy positions of trust and confidence, and therefore affirmed an employer's right to take the proper disciplinary action against the employee, upon a breach of the employer's confidence.[34]

Significantly, the Implementing Rules and Regulations of the Labor Code provides that "the employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or his co-workers." [35] Evidently, preventive suspension may be legally imposed against an employee whose alleged violation is the subject of an investigation in order to prevent him from causing harm or injury to the company as well as to his fellow employees.[36] However, the right to place an employee under preventive suspension, albeit necessary, should not last longer than thirty (30) days, "and the employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the

employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.”[37]

Undoubtedly, the aforementioned rules require that the employer must act on the suspended worker’s status of employment within the 30-day period and conclude the investigation either by absolving the employee of the charges, meting out the corresponding penalty, or ultimately dismissing the errant employee. Conversely, if the suspension exceeds the 30-day period without any corresponding action on the part of the employer, the employer must reinstate the employee or extend the period of suspension, and in the latter case, pay the employee's wages and benefits in the interim.[38] Constructive dismissal merely sets in when the suspension is for an indefinite period.[39]

In the case at bar, the Memorandum[40] received and signed by Panisa stated that Ramosco Logistics decided to put him under a “Thirty Day Preventive Suspension,” to last from October 10, 2012 to November 14, 2012, for the proper conduct of investigation and judgment on his case. Although Ramosco Logistics was justified in placing Panisa under preventive suspension as a precautionary measure to protect its clients' properties, We cannot overlook the fact that the preventive suspension exceeded the period allowed by the Implementing Rules of the Labor Code. However, the extension does not ipso facto evince a constructive dismissal. Ramosco must pay Panisa his wages for November 12 to 14, 2012, excluding November 11, which was a Sunday.

Additionally, Panisa claimed the following monetary benefits, namely, (i) separation pay/backwages;[41] (ii) moral and exemplary damages;[42] (iii) attorney's fees;[43] (iv) holiday pay and holiday premium;[44] (v) underpayment of salary/wages and non-payment of ECOLA;[45] (vi) illegal deductions;[46] (vii) salaries/wages corresponding to the period of October 1 to 9, 2012;[47] and (viii) thirteenth month pay.[48]

In view of Our finding that Panisa was not constructively dismissed, the award of backwages (or separation pay in lieu of reinstatement), moral and exemplary damages, as well as attorney's fees are unwarranted. Anent the charge of non-payment of holiday premium, We find that Panisa was not entitled thereto as he did not render work on April 9, 2012 and May 1, 2012.[49] As for February 25, the same date was not declared a legal holiday. The charge of underpayment is likewise untenable as the records show that Panisa himself admitted in his Complaint that he received a salary of P454.00 per day, an amount above the minimum wage mandated by law. Moreover, Panisa's claim for illegal deduction was not sufficiently proven, and hence, cannot be granted. However, Panisa is entitled to his salary for the period of October 1 to 9, 2012 amounting to P4,652.00, as well as his thirteenth month pay of P9,001.63.

However, the Labor Arbiter ruled that the amounts of P4,652.00 and P9,001.63 must be set-off against the sum of P31,596.54, which represents the value of the lost merchandise that Panisa must pay to Ramosco Logistics.

We do not agree.

Under the Civil Code, the requisites of legal compensation are as follows, viz:

“ARTICLE 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other.

ARTICLE 1279. In order that compensation may be proper, it is necessary:

- 1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
- 2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind,

and also of the same quality if the latter has been stated;

3) That the two debts be due;

4) That they be liquidated and demandable;

5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.”

Notably, legal compensation may not take place as Panisa and Ramosco Logistics are not mutually principal debtors and creditors of each other. A perusal of the Records shows that Panisa was assigned to distribute products of Ramosco Logistics' clients, including San Miguel. In fact, Panisa's transgressions and misconduct were discovered through the audit and monthly operations review conducted by San Miguel. Evidently, assuming that Panisa indeed owed an amount of P31,596.54 in bad orders, then the same will be due to the owners of the same goods- the clients of Ramosco Logistics.[50]

Analogously, in the case of *Special Steel Products, Inc. vs. Villareal and So*, the Supreme Court prohibited the setting off of an employee's wage against his alleged liability to his employer, on the ground that the employee and employer are not mutually debtors and creditors of each other, considering that the charges against the employee, were not actually due to the employer, but to the latter's principal company.[51]

All told, no constructive dismissal took place as Ramosco Logistics was justified in placing Panisa, a salesman who occupied a position of trust and confidence, under preventive suspension pending the investigation conducted against him, in order to protect its clients' properties. The fact that the suspension exceeded thirty days merely warranted the payment of Panisa's wages for the interim. However, Ramosco Logistics had no authority to withhold

Panisa's wages and thirteenth month pay. What the former has worked for, the latter must pay. Indeed, “it should be remembered that the Philippine Constitution, while inexorably committed towards the protection of the working class from exploitation and unfair treatment, nevertheless mandates the policy of social justice so as to strike a balance between an avowed predilection for labor, on the one hand, and the maintenance of the legal rights of capital, the proverbial hen that lays the golden egg, on the other.”[52]

WHEREFORE, premises considered, the NLRC Decision dated February 27, 2014 in NLRC LAC No. 08-002284-13 is **AFFIRMED** with modification awarding the payment of wages for October 1 to 9, 2012 and thirteenth month pay to Manuel Panisa, Jr. and further remanding the case to the Labor Arbiter for the proper computation of wages from November 12 to 14, 2012.

SO ORDERED.

Salazar-Fernando, R., Chairperson and Cruz, R.A., JJ., concur.

[1] Rollo, pp. 30-37

[2] *Id.*, pp. 39-40

[3] *Id.*, p. 54

[4] *Id.*, p. 83

[5] *Id.*

[6] Id., p. 60

[7] Id., p. 54. Although Panisa claims that he received P404.00, the Complaint he filed with the Labor Arbiter shows that he received a daily wage of P454.00

[8] Id., p. 60

[9] Id., p. 83

[10] Id., p. 98

[11] Id., pp. 99-100

[12] Id., pp. 84; 101-103

[13] Id., p. 84

[14] Id.

[15] Id., p. 85

[16] Id.

[17] Id., p. 54

[18] Id., p. 48

[19] Id., p. 50

[20] Id., pp. 50-51

[21] Id., p. 52

[22] Id.

[23] Id., pp. 127-141

[24] Id., p. 36

[25] Id., pp. 166-175

[26] Id., p. 89

[27] Id., pp. 3-26

[28] Id., p. 10

[29] *Portuguez vs. GSIS Family Bank and Court of Appeals*, G.R. No. 169570, March 2, 2007, citing *Duncan Association of Detailman-PTGWO v. Glaxo Wellcome Philippines, Inc.*, G.R. No. 162994, September 17, 2004

[30] *Artificio vs. National Labor Relations Commission, et al.*, G.R. No. 172988, July 26, 2010

[31] *Areno, Jr. vs. Skycable PCC-Baguio*, G.R. No. 180302, February 5, 2010

[32] *Verdadero vs. Barney Autolines Group of Companies Transport, Inc.*, G.R. No. 195428, August 29, 2012, citing *Morales vs. Harbour Centre Port Terminal, Inc.*, G.R. No. 174208, January 25, 2012; *Globe Telecom, Inc. vs. Florendo-Flores*, 438 Phil. 756, 766 (2002); *Uniwide Sales Warehouse Club vs. NLRC*, G.R. No. 154503, February 29, 2008; *Hyatt Taxi Services, Inc. vs. Catinoy*, 412 Phil. 295, 306 (2001).

[33] Id.

[34] Hormillosa vs. Coca-Cola Bottlers Phils., Inc., G.R. No. 198699, October 9, 2013, citing Coca Cola Bottlers, Phils. vs Kapisanan ng Malayang Manggagawa sa Coca-Cola-FFW and Ramirez, 492 Phil. 570, 589 (2005).

[35] Section 8 of Rule XXIII, Book V of the Implementing Rules and Regulations of the Labor Code

[36] Mandapat vs. Add Force Personnel Services, Inc. and Court of Appeals, G.R. No. 180285, July 6, 2010

[37] Section 9 of Rule XXIII, Book V of the Implementing Rules and Regulations of the Labor Code

[38] Genesis Transport Service, Inc. and Jalbuna vs. Unyon ng Malayang Manggagawa ng Genesis Transport (UMMGT) and Taroy, G.R. No. 182114, April 5, 2010

[39] Supra note 36, citing Pido vs. National Labor Relations Commission, G.R. No. 169812, February 23, 2007

[40] Supra note 1, p. 98

[41] Id., p. 64

[42] Id., p. 68

[43] Id., p. 69

[44] Id., p. 66

[45] Id., p. 65

[46] Id., p. 67

[47] Id., p. 65

[48] Id., p. 66

[49] Id., p. 214

[50] Id., p. 84

[51] In the cited case, employees Villareal and So were employed as assistant sales manager and salesman, respectively of petitioner Special Steel Products, Inc., a domestic corporation engaged in the principal business of importation, sales and marketing of its principal company, Bohler.

[52] Supra note 29, citing Cebu Metal Corporation vs. Roberto Saliling, G. R. No. 154463, September 5, 2006.

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