

TRANSNATIONAL CONSTRUCTION CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND AILEEN V. BALOIS, RESPONDENTS.

Ponente: BARRIOS, M. M., J.

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BARRIOS, M. M., J.:

This is a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure assailing, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the Decision dated 06 January 2012[1] of the National Labor Relations Commission, which denied its appeal. The dispositive part reads:

X X X

WHEREFORE, premises considered, respondents' appeal is hereby DISMISSED for lack of merit.

SO ORDERED.

Likewise assailed is the Resolution dated 07 March 2012[2] denying petitioner's motion for reconsideration.

The Antecedents

In February 1998, private respondent Aileen V. Balois was employed as parking attendant at the New Galleria Baclaran Mall belonging to petitioner. In 2009, her decade's long service to petitioner earned for private respondent a loyalty award. On 13 December 2010, however, private respondent received a memorandum[3] from petitioner citing her to explain within twenty-four (24) hours the commission of infraction where she allegedly punched in a co-employee's time card even though the latter was not yet at work. In another memorandum[4] dated 13 December 2010, she was informed that a panel inquiry will be conducted the following day. During the panel inquiry held on 14 December 2010, petitioner formally charged private respondent of punching in the time card of one "Thotie", but there were no details nor documents shown as to the date and manner the infraction was committed. Likewise, private respondent was advised for the first time of other infractions supposedly committed, to wit: 1) use of the manual, as opposed to computerized, system of logging in the data of vehicles entering and exiting the parking lot of New Galleria; and 2) failure to account for several missing parking cards. Private respondent, however, averred that these latter infractions transpired five (5) years ago and for which, she had already been meted the appropriate disciplinary action by petitioner. The next day, petitioner issued a memorandum[5] dated 15 December 2010 informing private respondent that her employment was being terminated as she was incompetent, incapable and ineffective in her job. Thus, private respondent filed a complaint for illegal dismissal and other claims.

In response, petitioner maintained that private respondent's dismissal was substantially and procedurally justified. It averred that private respondent was able to submit her written explanation on the charge that she punched in her co-employee's time card even though the latter was not yet present. It also averred that during the panel inquiry, private respondent was also made to explain and seems to admit that she violated several company rules since she made an apology.

In a Decision dated 28 June 2011, the Labor Arbiter ruled in favor of private respondent finding the dismissal is illegal as it was done without due process of law.

Petitioner appealed to public respondent NLRC which rendered the now assailed Decision dated 06 January 2012, affirming the Labor Arbiter. Petitioner moved for reconsideration, but the same was denied. Hence, this instant petition premised on the following arguments:

I

THE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE FIRST NOTICE STATES AN ALLEGED OFFENSE BUT WITHOUT PARTICULAR.

II

THE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE DISMISSAL OF THE RESPONDENT HEREIN IS BOTH SUBSTANTIVELY AND PROCEDURALLY INFIRMED (sic).

III

THE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN UPHOLDING THAT RESPONDENT IS ENTITLED TO SEPARATION PAY AND IN FAILING TO CORRECT THE ERRONEOUS COMPUTATION OF AWARD.

Our Ruling

At the onset, We first address private respondent's contention that the instant petition must be dismissed for failure of petitioner to allege acts which constitute grave abuse of discretion on the part of public respondent as a ground for filing this petition for certiorari under Rule 65 and hence, this Court lacks jurisdiction.

We do not agree. The power of this Court to review NLRC decisions via a petition for certiorari under Rule 65 of the Revised Rules of Civil Procedure has been confirmed by the Supreme Court in the case of *St. Martin Funeral Homes, Inc. vs NLRC*.^[6] Moreover, it is also the settled rule that under Section 9^[7] of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902, this Court – pursuant to the exercise of its original jurisdiction over petitions for certiorari – is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues.^[8] Necessarily, this Court can only evaluate the materiality or significance of the evidence which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record.^[9] Therefore, this Court can review the findings of facts of the NLRC and the evidence of the parties to determine whether the NLRC gravely abused its discretion in affirming the decision of the Labor Arbiter that private respondent is illegally dismissed.

Now, on the substantive issues prevailing in this case, this Court gives approbation to the reason and correctness of the assailed decision of the NLRC. It is very glaring from the evidence that there was no just cause for the dismissal nor was private respondent afforded due process. It is the elementary rule that no worker shall be dismissed except for a just or valid cause provided by law, and only after due process is properly observed. Relative thereto, dismissals have two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and, second, the legality of the manner of dismissal, which constitutes procedural due process.^[10]

It is firmly entrenched in jurisprudence that procedural due process entails compliance with the two notice rule, to wit: 1) the employer must inform the employee of the specific acts or omissions for which his dismissal is sought; and, 2) after the employee has been given the opportunity to be heard, the employer must inform him of the

decision to terminate his employment.[11]

In *Lima Land, Inc., Leandro Javier, Sylvia Duque and Premy Ann Beloy vs. Marlyn Cuevas*,[12] it was stressed therein that the first notice should contain the specific causes or grounds for termination against them and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. “Reasonable opportunity” under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense.

In the present case, the Memo dated 13 December 2010 merely reads: “Report reached this office that you watched TV while on duty, frequent absenteeism and overstaying during lunch break. Please explain in writing within TWENTY FOUR (24) HOURS why no disciplinary action must be taken against you. Failure on your part will mean an expressed waiver, thus the management will act on your case accordingly.” Nowhere in said memorandum was private respondent fully and substantially apprised of her alleged violations since the Memo did not contain with particularity the circumstances as to when and how such violations were committed. Neither did it inform private respondent that such kind of violation shall merit termination of employment. It is true that private respondent was given the opportunity to face the panel during the inquiry, but it does not mean that private respondent's presence and explanation before the panel already cured the defect in the first notice. Incidentally, it was only during the panel inquiry where private respondent was informed that she likewise committed other infractions aside from allegedly punching in one of her co-employee's time card. In order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees.[13]

Moreover, it is not true that private respondent admitted the alleged violations charged against him. On the contrary, the written explanations that she submitted contained a categorical denial of having punched in the time card of a co-employee who was not yet in. She wrote: “x x x Pero wala po akong natandaan na may nagawa ako na mag punch ng card ng kasamahan ko”. And if even if she expressed an apology, it was done in deference to superior authority. Thus, “kahit ito po ay di ko alam na bagay, ako pa rin po ay nagpakumbaba sa inyo pasensya po at ito ay di ko sinasadya”.

Additionally, We note that the grounds recited in the notice of dismissal are far different from those cited in the memorandum dated 13 December 2010. It is observed that the ground given for private respondent's dismissal was supposedly based on the latest performance evaluation allegedly conducted by petitioner on private respondent which assessed her as “incompetent, incapable and inefficient.” Thus, it is glaringly apparent that private respondent's dismissal was not premised on her alleged violation as indicated in the first notice but premised on other grounds which she was not informed of prior to being terminated.

We also take note of the hasty process undertaken by petitioner in the case of private respondent. She received the first notice on 13 December 2010 requiring her to submit a written explanation within twenty-four (24) hours. On the very same day, she received another notice informing her that a panel inquiry will be conducted immediately the following day, 14 December 2010. Worse, not even a day after the inquiry has passed when the notice of termination dated 15 December 2010 was delivered to private respondent. In just a span of three (3) days, petitioner's process of termination of private respondent's employment was completed. This is not the kind of ample or reasonable opportunity to be heard that is required by law to be given to an employee before a termination of employment can be effected. The scenario that presents before Us in this case is a glaring example of deprivation of both substantive and procedural due process. It is, therefore, indubitable that We must sustain the finding of illegal dismissal.

While we are not unmindful of an employer's right to discipline and terminate its employees with just cause in the

exercise of management prerogative, nevertheless, an arbitrary exercise thereof cannot be countenanced when an employee's means of livelihood and her constitutional right to security of tenure is at stake. The determination of the existence and sufficiency of a just cause must be exercised with fairness and in good faith and after observing due process.[14]

In light of the above, petitioner failed miserably in its quest to prove that public respondent NLRC gravely abused its discretion in affirming the Labor Arbiter's finding that private respondent was illegally dismissed.

WHEREFORE, foregoing considered, the petition is DENIED.

SO ORDERED.

Reyes, Jr., (Chairperson) and Pizarro, JJ., concur.

[1] Rollo, pp. 34-40.

[2] Rollo, pp. 42-43.

[3] Id., p. 77.

[4] Id., p. 78.

[5] Id., p. 79.

[6] G.R. No. 130866, 16 September 1998.

[7] x x x

The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. xxx

[8] Prince Transport, Inc. vs. Garcia, G.R. No. 167291, 12 January 2011.

[9] Leonis Navigation Co., Inc. v. Villamater, G.R. No. 179169, 03 March 2010.

[10] Agullano vs. Christian Publishing and Catalina Leonen Pizarro, G.R. No.164850, 25 September 2008.

[11] Mansion Printing Center and Clement Ching vs. Diosdado Bitara, Jr., G.R. 168120, 25 January 2012.

[12] G.R. No. 169523, 16 June 2010.

[13] Supra note 10.

[14] Skippers United Pacific, Inc. v. Maguad, G.R. No. 166363, 15 August 2006.

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