

EDWARD A. SARMIENTO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) UNITED PHILIPPINE LINES, INC., HOLLAND AMERICA LINE, INC. AND/OR MR. DENNY ESCOBAR, RES...

Ponente: BARRIOS, M. M., J.

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BARRIOS, M. M., J.:

This petition for certiorari under Rule 65 of the Rules of Court assails, for having been rendered with grave abuse of discretion, the Decision dated 30 May 2012 and the Resolution dated 16 July 2012 of public respondent National Labor Relations Commission, Third Division in NLRC LAC No. (OFW-M) 04-000339-12(8), which dismissed petitioner's complaint and likewise denied petitioner's Motion for Reconsideration.

The Antecedents

Petitioner was hired by private respondents as Chief Housekeeper on vessel MS RYNDAM for a duration of four (4) months, plus another two (2) months upon mutual consent, pursuant to their contract dated 08 July 2011. Prior thereto, he had served out earlier contracts with private respondents on the vessels MS WESTERDAM, and MS VOLENDAM. Petitioner continued working for private respondents until he was terminated from employment on 07 September 2011 for violating the shipping lone's Marine Regulation 1000 (MR 1000), specifically "Trading for private gain, including the misappropriation of Company property" and "Violation of the Company's Business Ethics Guidelines", which infractions carry the penalty of Dismissal. It appears that petitioner brought on board a suitcase of fake Puma T-shirts (93 pieces) and shorts (20 pieces) which he asked a subordinate, Stateroom Inspection Bagus Barata, to sell on board the vessel for US\$15.00 and US\$10.00 respectively.

Claiming that he was unjustly removed, upon his arrival in Manila, petitioner filed a complaint for illegal dismissal against private respondents with prayer for payment of various money claims.

After due proceedings, Labor Arbiter Adolfo C. Babiano in a Decision[1] dated 14 February 2012, ruled in favor of herein petitioner since the selling of the T-shirts and shorts that he bought from a factory in Manila involves "The resale of items on board the ship x x x" which merited only a "warning". The decretal part reads:

x x x

"WHEREFORE, judgment is hereby rendered ordering respondents to jointly and severally pay complainant as follows:

1.

US\$10,916.40 representing three (3) months of the unexpired portion of his modified contract, including US\$1,635.51 representing his guaranteed overtime pay for three (3) months and US\$1,453.80 as his vacation leave pay for three (3) months;

2.

US\$810.00 representing the refund of his airfare;

3.

P50,000.00 for exemplary damages and another P50,000.00 for moral damages; and.

4.

US\$1,481.57 + P10,000.00 or 10% of the total award as attorney's fees.

SO ORDERED.”

x x x

Private respondents appealed to public respondent NLRC which later rendered the Decision[2] dated 30 May 2012 reversing the Labor Arbiter. It posited that there was just cause to terminate petitioner's employment.

Now, petitioner files this petition for certiorari alleging that public respondent committed grave abuse of discretion amounting to want or excess of jurisdiction in dismissing his complaint, arguing that:

I.

THE DECISION, ANNEX “A” HEREOF, WAS ISSUED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, FOR BEING PATENTLY CONTRADICTORY TO THE FACTS AND EVIDENCE AS FOUND BY NO OTHER THAN THE PUBLIC RESPONDENT NLRC. PETITIONER WAS CLEARLY NOT AFFORDED BOTH SUBSTANTIVE AND PROCEDURAL DUE PROCESS AND THE PROVISIONS OF THE POEA STANDARD CONTRACT ON GRIEVANCE AND TERMINATION WERE NOT FOLLOWED WHEN HIS EMPLOYMENT WITH THE PRIVATE RESPONDENT WAS TERMINATED.

II.

THE ADMISSION MADE BY PETITIONER NEVER ACKNOWLEDGED THE ALLEGATIONS. ACCORDINGLY, PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN STATING THAT PETITIONER ADMITTED TO THE BREACHES STATED IN THE NOTICE, CONTRARY TO THE FACTS AND EVIDENCE PRESENTED BY PETITIONER AND AS CORRECTLY APPRECIATED BY THE LABOR ARBITER.

III.

PUBLIC RESPONDENT NLRC ISSUED THE QUESTIONED DECISION AND RESOLUTION WITH INDECENT HASTE. AS A CONSEQUENCE, THE DECISION AND RESOLUTION ARE NULL AND VOID FOR BEING ISSUED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

The Court's Ruling

The petition is bereft of merit.

In Our review of the records, there is evidence to show that petitioner had, indeed, breached company rules

regarding “Trading for private gain” and “Violation of Company's Business Ethics Guidelines”. Petitioner admitted having brought on board the ship the fake Puma T-shirts and shorts that he caused to be sold to cabin stewards and others for the price of US\$15.00 and US\$16.00. In his written statement during the investigation, he stated that:

x x x

“On July 24, 2011 I brought on some merchandise such as T-shirts and shorts. After 2 weeks I called Bagus SI to dispose them whoever wants to buy at a reasonable price. Sometimes in mid August, Bagus handed over to me \$1,060 for the sale with the merchandise. I really don't have any idea Bagus sold the items.

On behalf of the Capt. Hotel Manager, I'm terribly sorry for the terrible mistake I have committed in my life. Apology for the trouble I made to the people involved. Truly indeed guilty with the mistake I made, and again I'm terribly sorry.”

x x x

In his statement during the investigation, Bagus Barata stated that petitioner, who is his superior, asked him to sell the Puma T-shirts and shorts and that he was able to sell 63 t-shirts and 13 shorts, after which he handed over the sales proceeds to the petitioner.

We quote with approbation the dissertation of public respondent on this matter, thus:

x x x

“It cannot be overemphasized that in illegal dismissal cases, the employer has the burden to prove the legality of the dismissal. Respondents were able to discharge this burden as the evidence on record clearly substantiate the charges against complainant.

Based on the records, complainant was terminated for the following breaches of Holland America's Marine Regulation 1000 (MR-1000):

1. trading for private gain, including the misappropriation of company property;
2. violation of the company's Business Ethics Guidelines; and
3. the resale of any items on board the ship or shore side.

There is no question that despite knowing and agreeing to abide by the company's Code of Conduct as embodied in MR-1000, complainant still chose to violate it by selling merchandise on board and using his subordinate to sell for him. The statements of the crewmen and stewards who sold for him and who bought the items are all on record and are never disputed. Complainant himself, in the meeting of September 4 and in a letter, eventually admitted committing an infraction and even asked for respondents' apology. Complainant's acts clearly constitute trading for gain. That these also amount to a violation of the company's business ethics is clear. Complainant not only simply sold merchandise on board but sold fake or imitation Puma items. The same does not only involve an offense against the company and business ethics and practices but constitutes a crime. As a matter of fact, a protocol was further issued for complainant's violation of the Dutch Civil Code for theft, embezzlement, deceit or other crimes.”

x x x

It is apropos to state that under Rule 65 of the Rules of Court, a writ of certiorari may be issued only upon showing that the tribunal, board or officer exercising judicial or quasi-judicial functions had acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. “Grave abuse of discretion” is defined as a capricious and whimsical exercise of judgment as is equivalent to lack

of jurisdiction. Mere abuse of discretion is not enough, it must be so grave as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law. It should be stressed that it is not sufficient that a tribunal, in the exercise of its power, abused its discretion; such abuse must be grave.[3]

In this case, petitioner failed to show such capricious and whimsical exercise of judgment or abuse of power on the part of public respondent. In point of fact, its findings and disposition are in accord with the established circumstances and the law on the matter.

WHEREFORE, in view of the foregoing, the petition is DENIED. The Decision dated 30 May 2012 and the Resolution dated 16 July 2012 of public respondent National Labor Relations Commission, Third Division in NLRC LAC No. (OFW-M) 04-000339-12(8) are sustained.

SO ORDERED.

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

[1] Rollo, pp. 208-218.

[2] Rollo, pp. 36-44.

[3] Tible & Tible Company, Inc., et al. vs. Royal Savings & Loan Ass'n., et al., G. R. No. 155806, April 8, 2008 citing Pilipino Telephone Corporation v. Pilipino Telephone Employees Association, G.R. No. 160058, June 22, 2007, 525 SCRA 361.

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