

## MARILOU PINO, PETITIONER, V. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), SUMINAC PHILS., INC., MR. SHOGO AOKI, AND JOEL CAAWAY, RESPONDENTS.

Ponente: ELBINIAS, J.

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### ELBINIAS, J.:

For disposition is a Petition for Certiorari[1] filed under Rule 65 of the Rules of Court. The Petition assails the Decision[2] dated January 21, 2013 of public respondent National Labor Relations Commission (“public respondent NLRC” for brevity) in NLRC LAC NO. 06-001922-12 (NLRC-RAB IV-07-01082-12), which set aside and reversed the Decision[3] dated March 29, 2012 of the Labor Arbiter in NLRC CASE NO. RABIV-07-01082-11-C. The Petition also questions public respondent NLRC's Resolution[4] dated March 20, 2013, which denied petitioner's eventual Motion for Reconsideration[5].

Among the salient facts are those as stated in the Labor Arbiter's Decision[6] of March 29, 2012, which are as follows:

“Complainant Marilou Pino (petitioner here) was an employee of the respondent company (private respondent here) and one of the officers of the Samahan ng Mga Mangagawa sa Suminac-Independent (SMS-Independent).

xxx sometime February 9, 2011 the respondent's company security guard presented a leaflet to individual respondent Caaway (respondent here) which was allegedly distributed by members of the Union including the herein complainant at the company's pedestrian entrance located at the respondent's main gate.

The leaflet is said to contain malicious imputations against the respondent company (private respondent) and individual respondent Caaway (private respondent). It accused, among others, respondent company (private respondent) of continuously violating the employee's right, union busting, unfair labor practice and guilty of cheatings in the election of the respondent Company's Welfare Committee. It also cast aspersions on the character of Mr. Caaway (private respondent) by insinuating that he continue[s] to commit acts that violates the labor laws, by referring him as poisonous, that he misrepresented himself as lawyer and use[s] pressure on labor union and prevents the union officers from attending hearings xxx.

Respondent company (private respondent) conducted investigation on the personalities involved in the preparation and distribution of the leaflets. One of the members, Mr. Balogo admitted the Union's involvement. Thus, in a meeting requested by complainant Dimaano, who is the Union President then, Mr. Balogo and a certain Marife Lagmay, Dimaano admitted to Mr. Aoki (private respondent) and Caaway (private respondent) that it was the union who prepared the distributed the (sic) leaflets.

Following the admission, the respondent company (private respondent) sent Show Cause Memo to complainants Dimaano, Pino (petitioner) and Flores. Complainant Pino (petitioner) in her explanation letter dated May 5, 2011 denied that she has participation in the distribution and in the preparation but admitted that it was the union through the data gathered by the union members that prepared the leaflets.

On May 12, 2011 respondent company (private respondent) sent another show cause Memo to complainant

Pino (petitioner) since it was dissatisfied with her explanation on her exact role on the preparation and distribution of leaflets. Complainant (petitioner) submitted her written explanation dated May 16, 2011 where she explained that she did not violate any laws and she merely did her job as officers (sic) of the Union and insisted that under the constitution she has the right to express and provide information in whatever means.

Thereafter, respondents (private respondents) conducted hearing on June 9, 2011 and after considering all the surrounding circumstances decided to terminate the employment of complainant Pino (petitioner) through a Letter of Termination dated June 9, 2011.”[7] (Emphasis supplied)

As a result, petitioner Marilou Pino (“petitioner Pino” for brevity) filed a Complaint for Illegal Dismissal and Monetary Claims[8] against private respondents Suminac Philippines, Inc., as well as Shogo Aoki and Joel Caaway (“private respondents” for brevity), who were sued in their capacity as President and Human Resource Manager, respectively.[9]

On March 29, 2012,[10] the Labor Arbiter rendered a Decision in favor of petitioner Pino, ordering private respondents to reinstate petitioner to her former position, and to pay petitioner's Backwages and Attorney's Fees. The dispositive portion of the Decision decreed:

“WHEREFORE, premises considered, complainant Marilou Pino is hereby declared illegally dismissed. Respondent Suminac Philippines, Inc. is ordered to reinstate the complainant to her former position without loss of seniority rights and to pay her backwages in the total amount of P94,805.48.

The reinstatement aspect of this decision is immediately executory and the respondent is enjoined to submit report of compliance to this Office within ten (10) days from receipt thereof.

Respondent is also ordered to pay ten percent (10%) attorney's fees.

xxx xxx xxx

SO ORDERED”[11]

Upon petitioner's appeal, public respondent NLRC set aside and reversed the Labor Arbiter's Decision in its assailed Decision[12] of January 21, 2013. Public respondent NLRC's reasoning was that private respondents were “able to prove by substantial evidence that complainant was validly dismissed from service”[13].

After petitioner's Motion for Reconsideration was denied by public respondent NLRC in its assailed Resolution[14] of March 20, 2013, petitioner filed the Petition at bench, praying that:

“xxx this Petition for Certiorari be given due course and let the Public Respondent's January 21, 2013 Decision and March 30, 2013 Resolution be reversed and set aside and declare petitioner as illegally dismissed”[15]

Petitioner raised the following grounds:

**“A.**

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN GRANTING THE APPEAL AND DECLARED THAT PETITIONER WAS VALIDLY DISMISSED WITHOUT CONSIDERING AND TOTALLY IGNORING THE CONTEXT OF UNIONISM IN RESOLVING THE DISMISSAL ISSUE WHEN IT IS AN OBVIOUS TRUTH THAT THE DISMISSAL OF THE PETITIONER WAS BROUGHT ABOUT BY HER UNION INVOLV[E]MENT.

**B.**

THE HONORABLE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN TOTALLY DISREGARDING THE FACT THAT THERE IS [A] PENDING LABOR DISPUTE AT THE TIME PRIVATE RESPONDENTS INTEND TO DISMISS HEREIN PETITIONER.

C.

THE HONORABLE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN NOT GRANTING THE REINSTATEMENT AND PAYMENT OF LEGAL MONETARY CLAIMS OF THE PETITIONER.”[16] (emphasis supplied)

As properly argued by petitioner in her assigned grounds A and B, petitioner was illegally dismissed.

In ruling that petitioner Pino was validly dismissed from employment by private respondents, public respondent NLRC stated the following in its Decision[17] dated January 21, 2013:

“A perusal of the records of the case would show that the termination of complainant stemmed from malicious leaflet distributed and prepared by complainant and several other persons. xxx

The leaflet as earlier reproduced, contains accusations against management which when read would make one believe that the company is a bad company with bad management. xxx

xxx

The leaflet which was distributed accused management of union busting. The leaflet publicly imputed that the company management violated and is continuously violating employee's rights.

xxx

The respondent company is correct when it said that complainant's statements in the leaflet constitutes serious misconduct.

xxx

Furthermore, the leaflet maligned and ridiculed respondent Caaway. xxx

The statements made against Mr. Caaway tend to cause dishonor and discredit to his person. The leaflet ridiculed Mr. Caaway and made him look like a laughing stock.

xxx

Clearly, in the case at bar, complainant was guilty of serious misconduct which is a just cause for termination.

While complainant alleged free speech, the exercise of such right or any right enshrined in the Bill of Rights comes with an equal burden of responsibility. The Constitution does not protect defamatory and injurious statements.

xxx

Respondent was able to prove by substantial evidence that complainant was validly dismissed from service.”[18] (Emphasis Supplied)

Contrary to the findings of public respondent NLRC however, is that private respondents failed to sufficiently prove that petitioner committed Serious Misconduct, which in turn is a ground for validly dismissing the latter from employment. Records revealed that aside from private respondents' failure to support their claim that petitioner had caused the preparation and distribution of the malicious leaflets,[19] the allegations stated in the

leaflets did not imply any wrongful intent of petitioner against private respondents. All of these matters were as also found by the Labor Arbiter, to wit:

“In the case at bar, respondent's main contention is that the complainant dismissal was grounded on just cause specifically for serious misconduct in view of her supposed participation in the distribution and preparation of the leaflets.

xxx xxx xxx

From the facts and evidence extant in the records of this case, this Office finds that complainant Pino is not guilty of serious misconduct as what the respondents are trying to establish in the case at hand. First, and foremost the complainant in her explanation letter denied having caused the preparation and distribution of the leaflets. She pointed out that it was the idea of union entire union members and it would be an act of discrimination and highly questionable if the respondents would impose penalty only to the union officers.

Worth noting, also at this point, is the fact that the allegations stated in the leaflets, if at all prepared by them, do not imply wrongful intent of the complainant against the personalities mentioned therein. The contents on the leaflets should be taken in the context of unionism and not on individual personalities.”[20] (Emphasis Supplied)

That wrongful intent must be shown on the part of an employee who is being charged of Serious Misconduct, such as petitioner here, in order for such Misconduct to be considered as a just cause for dismissal under Article 282 (a) of the Labor Code. This was as declared by the Supreme Court in *Joeb M. Aliviado, Arthur Corpuz, Eric Aliviado, et al. vs. Procter & Gamble Phils., Inc. and PROMM-GEM Inc.*, G.R. No. 160506, March 9, 2010, to wit:

“Misconduct has been defined as improper or wrong conduct; the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful in character implying wrongful intent and not mere error of judgment. The misconduct to be serious must be of such grave and aggravated character and not merely trivial and unimportant. To be a just cause for dismissal, such misconduct (a) must be serious; (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer.

In other words, in order to constitute serious misconduct which will warrant the dismissal of an employee under paragraph (a) of Article 282 of the Labor Code, it is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been performed with wrongful intent.” (Emphasis supplied)

Considering that private respondents failed to prove that the dismissal of petitioner was for a just cause, then petitioner's dismissal was not justified, and was therefore illegal. This situation was as similarly pronounced by the Supreme Court in *Tacloban Far East Marketing Corporation and Francisco Y. Romualdez vs. the Court of Appeals, National Labor Relations Commission and Benjamin Q. Sabulao*, G.R. No. 182320, September 11, 2009:

“It is well-settled that in termination cases, the burden of proof rests upon the employer to show that the dismissal was for a just and valid cause and failure to discharge the same would mean that the dismissal is not justified and therefore illegal.” (Emphasis Supplied)

Given that petitioner was illegally dismissed, then, as properly argued by petitioner in her assigned ground C, petitioner is entitled to reinstatement and payment of her monetary claims.[21] This being the consequence is in accordance with the following pronouncement of the Supreme Court in *Session Delights Ice Cream and Fast Foods vs The Court of Appeals (Sixth Division), National Labor Relations Commission (Second Division)* and

Armenio M. Flora, G.R. No. 172149, February 8, 2010:

“xxx An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.” (Emphasis Supplied)

The findings of the Labor Arbiter that are correct, are accorded greater weight, as in the case here, than the findings of public respondent NLRC. This is in line with the disposition of the Supreme Court in *Association of Independent Unions in the Philippines et. al. vs. National Labor Relations Commission, et. al.*, [22] as follows:

“The NLRC is bound by the factual findings of the Labor Arbiter as the latter was in a better position to observe the demeanor and deportment of the witnesses. Absent any substantial proof that the trial court’s decision was based on speculation, the same must be accorded full consideration and should not be disturbed on appeal.” (Emphasis supplied)

Thus, after an independent and careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, and, in accordance with what is best determined to be proper under the circumstances, the following disposition is made on these matters.

IN VIEW OF ALL THESE, the Petition is GRANTED. The assailed Decision[23] and Resolution[24] of public respondent National Labor Relations Commission are SET ASIDE. The Decision[25] of the Labor Arbiter is REINSTATED.

**SO ORDERED.**

Dicdican (Chairperson) and Paredes, JJ., concur.

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[1] Rollo, pp. 3-21.

[2] Rollo, pp. 22-36.

[3] Rollo, pp. 261-267.

[4] Rollo, pp. 37-38.

[5] Rollo, pp. 39-45.

[6] Rollo, pp. 261-267.

[7] Rollo, pp. 262-263.

[8] Rollo, p. 261.

[9] Rollo, p. 5.

[10] Rollo, pp. 261-267.

[11] Rollo, p. 267.

[12] Rollo, pp. 22-36.

[13] Rollo, p. 35.

[14] Rollo, pp. 37-38.

[15] Rollo, p. 19.

[16] Rollo, pp. 9-10.

[17] Rollo, pp. 22-36.

[18] Rollo, pp. 31-35.

[19] Rollo, p. 178 & p. 184.

[20] Rollo, pp. 265-266.

[21] Rollo, p. 261,

[22] G.R. No. 120505 March 25, 1999

[23] Rollo, pp. 22-36

[24] Rollo, pp. 37-38.

[25] Rollo, pp. 261-267.

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