

KARLO MAR V. DEL ROSARIO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), KYLEMED INCORPORATED, NEW MYREX PHARMACEUTICAL LABORATORIES, LUMAR PHARMACEUTICAL...

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before us is a Petition for Certiorari[1] filed pursuant to Rule 65 of the 1997 Revised Rules of Court by Karlo Mar V. Del Rosario (“petitioner”) seeking to set aside the Resolution of the First Division of the National Labor Relations Commission (“NLRC”) dated November 25, 2013 in NLRC Case No. NCR-07-10240-12 (NLRC LAC No. 05-001539-13) which reversed its previous Decision promulgated on July 24, 2013 declaring the herein petitioner to have been illegally dismissed.

The material and relevant facts of the case, as culled from the record, are as follows:

The present petition arose from a Complaint[2] for illegal dismissal, underpayment of wages, overtime pay, holiday pay, holiday premium, rest day premium, 13th month pay, illegal suspension, moral and exemplary damages and attorney's fees.

As synthesized by the NLRC in its Decision dated July 24, 2013, the following factual antecedents are as follows:

“Complainant initially worked as contractual employee at New Myrex Pharmaceutical Laboratories, a company under respondent Kylemed Inc. ('Kylemed'), located at Sitio Sulucan, Brgy. Catmon, Sta. Maria, Bulacan. In the latter part of 2010, he was assigned to work as a Warehouse Helper in one of respondent Kylemed's warehouse (C-1 Warehouse) in Cubao, Quezon City. Eventually, he was transferred to still another warehouse of Kylemed (C-3 Warehouse) in Tandang Sora, Quezon City. While he actually worked at Warehouse C-3, he clocked in and out of work at Warehouse C-1, shutting between the two (2) locations via a company truck. By January 5, 2012, he was receiving a daily salary of 298.50. This was supposedly based on the prevailing basic salary rate in Bulacan notwithstanding that complainant is working in Quezon City. He often rendered overtime work up to 10:00 P.M.

"On June 9, 2012, complainant and his fellow workers were told to clock out at 5:00 P.M. upon an advice that a party would be held at C-1 Warehouse to celebrate the birthday of the company manager, respondent Ernan Calayag. They were invited to the celebration which included a drinking session. For fear of being tagged as 'walang pakikisama', he joined the drinking session, taking in two (2) to three (3) drinks were offered to him. At around 7:30 P.M., he sneaked out of the party by going with a co-employee who was asked to buy some ice. While eating dinner at home, he received a text message from another co-worker informing him that a fight erupted at the party, involving three (3) of their colleagues, namely, Ruel Vicente, Gilbert Ebare, and Dennis Calderon.

"On June 15, 2012, complainant received a memorandum from management requiring him to submit an incident report about 'the drinking and fighting incident' that transpired on June 9, 2012 at the C-1 Warehouse. He complied with the directive, promptly submitting his written response on June 16, 2012.

"On June 27, 2012, complainant received another memorandum from management charging him with 'participating in a drinking session with (his) co-employees within the company premises, an act which is strictly prohibited by management'. He was directed to submit his written explanation and to present himself for investigation within forty-eight (48) hours from notice. In the same memorandum, he was advised that he was being placed under preventive suspension. Again, he immediately complied, submitting his written explanation on that same day. He reiterated that he only joined the drinking session out of 'pakikisama'. He explained that went home early, having already left the warehouse premises by the time the fight among his co-workers ensued.

"The following day, June 28, 2012, complainant was served with a notice of termination.

The petitioner filed his Complaint for illegal dismissal, underpayment of wages, overtime pay, holiday pay, holiday premium, rest day premium, 13th month pay, illegal suspension, moral and exemplary damages and attorney's fees against the herein private respondents before the Labor Arbiter in Quezon City.

By reason of the filing by the private respondent of the said Complaint against the petitioner, proceedings were conducted by the Labor Arbiter. First, there was a mandatory conciliatory conference with the parties which was held by the Labor Arbiter. When no settlement was arrived at, the parties were directed to file their respective position papers which the parties filed in due time.

Eventually, on March 25, 2013 Labor Arbiter Padolina rendered a Decision dismissing the Complaint filed by the herein petitioner. The pertinent portion of the said Decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for lack of merit. However, for failure to observe the procedural due process, this Office awards nominal damages to complainant in the amount of thirty thousand pesos (P30,000.00).

"Likewise, respondents Kylemed Inc. and Lumar Pharmaceutical are held jointly and severally liable to pay complainant the following:

- "1. Salary differentials in the amount of P16,349.32 and;
- "2. 13th month pay (2012) in the amount of P5,142.76

"All other claims are DISMISSED for lack of merit.

"SO ORDERED."

Unsatisfied with the Labor Arbiter's disposition, the herein petitioner partially appealed from the former's Decision to the NLRC. On July 24, 2013, the NLRC promulgated its Decision in favor of the herein petitioner, the decretal portion of which reads:

"WHEREFORE, premises considered, the instant appeal is GRANTED.

"For having illegally dismissed , respondents Kylemed, Inc. and Lumar Pharmaceutical are held jointly and severally liable to complainant for the following:

"a) reinstatement without loss of seniority rights;

"b) full backwages plus allowances and other benefits to be computed from date of complainant's dismissal on June 28, 2012 until he is reinstated. As of the date of this Decision, complainant's backwages amount to P139,941.50, broken down as follows:

- "i) salary P121,836.00
- "ii) 13th month pay 10,153.00

"iii) service incentive leave.....1,952.50

"Complainant is likewise entitled to holiday pay for the year 2010 in the amount of P4,716.00

"The Labor Arbiter's award of salary differentials in the amount of P16,349.32 and 13th month pay for 2012 in the amount P5,142.76 also stands.

"Finally, complainant is entitled to attorney's fees equivalent to ten (10%) of the total award.

"SO ORDERED."

Not in conformity with the foregoing decision, the private respondents filed a Motion for Reconsideration thereof. On November 25, 2013, the NLRC promulgated the assailed Resolution reversing its previous Decision, dated July 24, 2013, the dispositive portion of which reads:

"WHEREFORE, premises considered, respondents' Motion for Reconsideration is GRANTED. Our Assailed Decision dated July 24, 2013 is REVERSED and SET ASIDE and in lieu thereof, a new one is entered declaring complainant to have been validly dismissed.

"The award of holiday pay for year 2010, salary differentials, 13th month pay for 2012 and attorney's fees STANDS.

"SO ORDERED."

Feeling aggrieved, petitioner filed the present petition before this Court raising the following acts of grave abuse of discretion purportedly committed by the NLRC:

I.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DECLARING PETITIONER TO NOT HAVE BEEN DENIED DUE PROCESS DESPITE THE FACT THAT THE DECLARATION OF THE LABOR ARBITER THAT PETITIONER WAS DENIED DUE PROCESS AND PENALIZED PRIVATE RESPONDENTS FOR NOMINAL DAMAGES IN THE AMOUNT OF THIRTY THOUSAND PESOS HAD ALREADY LAPSED TO FINALITY FOR FAILURE OF THE PRIVATE RESPONDENTS TO INTERPOSE AN APPEAL WITHIN THE PRESCRIBED PERIOD.

II.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN REVERSING ITSELF OR REVERSING ITS PREVIOUS DECISION DECLARING PETITIONER TO HAVE BEEN ILLEGALLY DISMISSED.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the petition at bench to be devoid of merit.

Prefatorily, a petition for the writ of certiorari does not deal with errors of judgment nor does it include a mistake in the appreciation of the contending parties' respective evidence or the evaluation of their relative weight.[3] It bears stressing that a writ of certiorari can be availed of only if the public respondent has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. The burden is on the part of the petitioner to prove, not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned decision or order. Mere abuse of discretion is not enough; it must be grave.[4]

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment which is equivalent to

an excess or lack of jurisdiction.[5] A public respondent judge acts without jurisdiction if it does not have the legal power to determine the case; there is excess of jurisdiction where the respondent, being clothed with the power to determine the case, oversteps its authority as determined by law.[6] The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility[7].

In the case at bench, petitioner contended that the public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it reversed its previous Decision declaring the petitioner to have been illegally dismissed.

Petitioner also argued that the findings of the Labor Arbiter that the petitioner was denied due process and was entitled to nominal damages lapsed to finality and, thus, already final and could no longer be legally reversed by the public respondent. According to him, the records of the case would reveal that the petitioner was instantly dismissed on June 28, 2012, only a day after he submitted his written explanation.

Petitioner's contentions, ingenious as they may seem, are baseless and bereft of merit.

After an exhaustive review of the record of the case, there is no quibble that both the Labor Arbiter and the NLRC recognized that the herein petitioner was validly dismissed from his employment. Indeed, in her Decision dated March 25, 2013, the Labor Arbiter ratiocinated that:

“To the mind of this Office, a just cause exists to terminate complainant's services.

“As for due process, complainant was afforded the opportunity to be heard. However, this Office notes that in the June 27, 2012 letter, complainant was told of an investigation but which did not push through as on June 28, 2012, complainant was already issued a Notice of Termination. This Office believes that there was a procedural lapse on respondent's part.

“xxx.

“Considering the procedural lapse, this Office award nominal damages to complainant in the amount of thirty thousand (P30,000.00).”

On the other hand, in its Resolution dated November 25, 2013, the NLRC reversed its previous Decision dated July 24, 2013 which granted the appeal of the herein petitioner and exhaustively discussed that the private respondents have sufficiently complied with the substantial and procedural due process required in dismissing the herein petitioner from his employment, thus:

“We likewise stand corrected on our appreciation of facts that led us to conclude that the pictures presented by complainant pertain to the June 9, 2012 incident. The truth is, as respondents rightfully claim, the June 9, 2012 drinking spree which resulted to the ruckus was not company-sanctioned as it was a guerilla-type drinking binge.

“xxx. Hence, the pictures presented by complainant depicting the birthday are not in any way related to the subject drinking spree which led to the commotion. Verily, the party held on the occasion of the birthday of one of the bosses was not the drinking spree which occurred on June 9, 2012.

“xxx.

“A cursory inspection of the record shows that respondents faithfully complied with the rudiments of procedural due process. Prior to their issuance of the first notice contemplated by law, respondents exerted efforts to be apprised of the subject incident as shown in their letter dated June 15, 2012, requiring complainant

to submit an incident report relative to the matter. xxx."

We adhere to the basic rule that, when supported by substantial evidence, factual findings made by quasi-judicial and administrative bodies are accorded great respect and even finality by the courts. These findings are not infallible, though; when there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. Hence, when factual findings of the NLRC are contrary to those of the labor arbiter, the evidentiary facts may be reviewed by the appellate court.

Time and again, the Supreme Court had elucidated that, in termination of employment, two requisites must be satisfied to constitute a valid dismissal, viz: (1) the legality of the act of dismissal- the dismissal must be for a just cause under Article 282 of the Labor Code which constitutes substantive due process, and (2) legality of the manner of dismissal – the employee must be given ample opportunity to be heard and defend himself – which constitutes procedural process.

Section 2 of Rule XXIII, Book V of the Rules Implementing the Labor Code expressly states:

"Section 2. Standard of due process: requirements of notice.

"In all cases of termination of employment, the following standards of due process shall be substantially observed.

"I. For termination of employment based on just causes as defined in Article 282 of the Code:

"(a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

"(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

"(c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination.

The case of *King of Kings Transport, Inc. v. Mamac*,^[8] detailed the steps on how procedural due process can be satisfactorily complied with.

"To clarify, the following should be considered in terminating the services of employees:

"(1) The first written notice to be served on the employees 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. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, 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. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

"(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by

the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

“(3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.”

Applying the foregoing principles in the present case, it is worthy to note that, on June 15, 2012, the private respondents required the herein petitioner to submit an Incident Report regarding what had transpired on the drinking and fighting incident involving the petitioner which happened last June 9, 2012. The herein petitioner complied and prepared his report dated June 16, 2012. On June 27, 2012, the private respondents issued another Memorandum directing the herein petitioner to submit a written explanation which reads:

“As such, you are hereby directed to submit your written explanation, as well as to present yourself for an investigation, both within 48 hours from receipt hereof, as to why you should not be terminated from employment due to drinking within the company premises. In the meantime, you are preventively suspended from employment until further orders from management.”

On the same day, the herein petitioner prepared his explanation and complied with the memorandum. Until the next day, June 28, 2012, the private respondents issued the Memorandum dismissing the petitioner from employment.

Considering the foregoing, it is worthy to emphasize that there was a procedural lapse in the termination of the herein petitioner. After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. However, in the case at bench, the herein petitioner was already issued a Notice of Termination a day after the first notice was served. The record of the case would reveal that there was no hearing, conference, or investigation that took place which could have given the herein petitioner the opportunity to defend himself personally, with the assistance of a representative or counsel of his choice.

On this score, the Supreme Court’s ruling in the case of *Suico, et al. vs. NLRC, et al.*[9] is instructive, to wit:

“All told, the procedure adopted by PLDT in dismissing *Suico, et al.* fell short of the requirements of due process.

“It should be emphasized, however, that, consistent with our ruling in *Agabon*, the procedural deficiency in the dismissal of *Suico, et al.* did not affect the validity or effectivity of the dismissal as the substantive bases thereof were never put in issue. Thus, the April 12, 2002 CA Decision in *G.R. No. 163793* was erroneous as it declared the dismissal of *Borje* illegal merely for failure of PLDT to observe due process. The CA should have affirmed the validity of the dismissal of *Borje* and awarded him nominal damages for the impairment of his statutory right to due process.”

Withal, the herein assailed Resolution dated November 25, 2013 promulgated by the NLRC does not appear to have been issued with grave abuse of discretion except for the grant of nominal damages which should have been awarded to the herein petitioner for the impairment of his statutory right to procedural due process.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DENYING the instant petition. However, the Resolution promulgated by the National Labor Relations Commission dated November 25, 2013 in NLRC NCR Case No. 00-07-10240-2012 (NLRC LAC No. 05-001539-13) is MODIFIED in that the award of nominal damages to the herein petitioner in the amount of Thirty Thousand Pesos (P30,000.00) for

failure of the private respondents to observe the procedural due process is hereby ORDERED.

SO ORDERED.

Paredes[*] and Galapate-Laguilles,**] JJ., concur.

[*] Acting Senior member per Office Order No. 258-14-ABR dated June 2, 2014.

**]Acting Junior member per Office Order No. 258-14-ABR dated June 2, 2014.

[1] Rollo pages 3-29.

[2] Id, pp. 186-187.

[3] Tan vs. Sps. Antazo G.R. No. 187208, February 23, 2011.

[4] Id.

[5] First Women's Credit Corporation v. Perez, G.R. No. 169026, June 15, 2006.

[6] People of the Philippines v. Court of Appeals, G.R. No. 144332, June 10, 2004.

[7] Estrada v. Desierto, G.R. No. 156160, December 9, 2004.

[8] G.R. No. 166208, June 29, 2007.

[9] G.R. No. 146762, January 30, 2007.

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