

JOHNRAY M. LUNA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (SIXTH DIVISION), CLARMIL MANUFACTURING, INC. / DEOGRACIAS L. VENTURA III, LAURENCE CHIN AND ELIAS ANTONIO A...

Ponente: BRUSELAS, JR. J.

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BRUSELAS, JR. J.:

Before us is a Petition for Certiorari filed by the petitioner pursuant to Rule 65 against the Decision[1] of the National Labor Relations Commission (NLRC) which reversed and set aside the Decision[2] of the Labor Arbiter dated 12 September 2012. The dispositive portion of the NLRC decision is herein quoted as follows:

“WHEREFORE, the decision of the Labor Arbiter is hereby SET ASIDE and a new one entered dismissing the complaint for lack of merit.

SO ORDERED.”[3]

Likewise assailed is the Resolution[4] promulgated on 29 November 2013 which denied the petitioner's motion for reconsideration[5] for lack of merit.

The pertinent and relevant facts, as can be culled from the submissions of the parties, are as follows:

On 15 March 2011, petitioner Johnray M. Luna (“Luna”) was assigned by his agency Royal 168 at respondent Clarmil Manufacturing, Inc. (“Clarmil”) as forklift operator/warehouse crew. After his contract with Royal 168 had expired, Luna was contacted by Clarmil's Human Resource (HR) staff Ms. Lea Opiz and was offered an employment. On 09 November 2011, Luna signed a Notice of Probationary Employment[6] for a period of six (6) months for the same position of forklift operator/warehouse crew whose task is to operate a forklift to transfer raw materials to Clarmil's warehouse. When needed, Luna would transfer the raw materials to the production area, where another operator lifts them through a jack lifter. Aside from operating a forklift, Luna is also tasked to monitor raw materials used at the production and packaging of Clarmil's products and to make reports of the deliveries of stocks through daily and monthly inventories.

On 18 November 2011, Luna was called by Clarmil's HR Manager Deogracias L. Ventura III and a Notice to Explain[7] was served upon him directing him to report to the office of the said HR Manager and to submit a written explanation why he should not be penalized for violating the company's Code of Conduct and Discipline, more particularly -

“Artikulo II. MGA PAGLABAG SA KAPAKANAN NG KOMPANYA: Sek. C-4 Kahit na anong pandaraya, panlilinlang, pagnanakaw, na ginawa ng empleyado laban sa Kompanya, sa mga empleyado o mga Mamimili”

In his handwritten explanation[8], Luna denied having knowledge about the policy which prohibits having relatives employed in the company. He asserted that he was re-hired by Clarmil because he maintained good level of performance as forklift operator and warehouse crew. He further asserted that he did not intend to defraud or

deceive Clarmil but merely aimed to provide for his parents and siblings.

On 23 November 2011, Luna was again called by the HR Manager and was served a Termination of Probationary Contract[9] which was signed by respondent Elias Antonio A. Gonzaga. The pertinent portion of the termination notice is herein quoted as follows:

“Base sa imbestigasyong at ayon na rin sa iyong pag-amin, ikaw nga ay napatunayan na pamangking buo ni Mr. Norvie Mendoza ng PPC Department at ng kabiyaq ni Jessy Caponpon ng Sanitation. Hindi lingid sa iyo na isa sa mga patakaran ng Clarmil ang pagbabawal ng magkaroon ng mag-kamag anak na manggagawa sa loob ng kumpanya.

Dahil dito ikaw ay lumabag sa Alituntunin at Disiplina ng Kumpanya/Code of Conduct and Discipline.

xxx xxx xxx

Kaugnay nito ikinalulungkot naming ipabatid sa iyo na matapos ang huling oras ng iyong trabaho sa araw na ito, November 23, 2011 ay tinatapos at pinapawalang bisa na ng kumpanya ang iyong Probationary Contract na siyang nag-uugnay sa iyo sa Clarmil bilang manggagawa.”[10]

On 24 November 2011, Luna filed a complaint for illegal dismissal, regularization and unfair labor practice against Clarmil. He claimed that his employment with Clarmil attained the status of a regular employee because no standards were made known to him at the time he was hired as probationary employee. He also claimed that his job was directly related to the principal business of Clarmil and the power of control has been exercised by the said company. Luna was terminated because he allegedly defrauded or deceived Clarmil. Luna argued that the policy prohibiting the employment of relatives in the company was not specifically provided in the Code of Conduct and Discipline; thus, Clarmil had no factual and legal bases to justify his dismissal. On the aspect of procedural due process, Luna asseverated that he was deprived of the same when no hearing or conference was conducted by Clarmil to afford him an opportunity to respond to the charge hurled against him as well as to present evidence in his defense.[11]

Clarmil averred that, it has been a company standard procedure to require each job applicant to disclose in his application form and during the job interview whether he has a relative currently employed with the company. It was found out that Luna denied that he had any relative working at Clarmil both in his application form and during the interview. An affidavit[12] to support the said finding was attached to the respondents' position paper. Clarmil further averred that Luna signed the probationary employment contract wherein it was provided that he may be terminated should he “fail to meet and follow the Company Performance Standard and its Code of Discipline”[13]. Clarmil stressed that such performance standard and code of discipline were explained to all newly-hired employees, including Luna, during their orientation seminar conducted prior to the signing of the contract. Clarmil maintained that it did not disregard the procedural process before it decided to terminate Luna's employment. In a notice to explain dated 18 November 2011, Luna was directed to submit a written explanation and to report to the office of Clarmil's HR Manager Ventura where an investigation had been conducted. During the investigation, it was revealed by Luna himself that he intentionally withheld the fact that he had relatives at the company because, otherwise, he could not be hired by Clarmil. A copy of the minutes[14] of the said administrative investigation was likewise attached by the respondents.

Via the 12 September 2012 decision rendered by the Labor Arbiter, Luna was declared to have been illegally dismissed. The Labor Arbiter ratiocinated as follows:

“This Office however, believes otherwise. The non-disclosure of the complainant per se does not constitute fraud or deceit that could be penalized with dismissal from employment. This Office agrees with the complainant that the prohibition regarding the employment of relatives within the 5[th] civil degree has

something to do with the decision making and performance of an employee that might be affected due to the relationship of the employees involved. In this particular case the respondent company failed to establish the connection of the complainant's position with the relatives concerned that will affect the performance of the complainant or the decision making aspect. Neither anyone of them benefited from the relationship insofar as their respective works are concerned.

What is more surprising under the circumstances is the fact that complainant was previously employed with them for five months through the facilitation of the Royal 168 Service which this Office finds to be a "labor only contractor" as it lacks sufficient proof or documents to be an independent contractor. During this period irregardless of whether the complainant was employed through Royal 168 Service still the respondents did not bother to investigate nor inquire regarding the presence of the complainant's relative among the roster of its employees. xxx"[15]

Consequently, a Memorandum of Partial Appeal[16] was filed by Clarmil wherein it traversed the Labor Arbiter's finding that Royal 168 was a labor-only contractor. Clarmil attached Royal 168's Certificate of Registration with the Department of Labor and Employment supporting its claim that Royal 168 is a legitimate, independent contractor authorized to provide manpower services to its clients. Clarmil maintained that Luna was validly dismissed for having committed fraud or deceit, in clear violation of the company's Code of Discipline[17]. The minutes of the investigation, which remained undisputed, bolstered the validity of Luna's dismissal. Clarmil argued that Luna cannot invoke lack of knowledge to be absolved from the penalty of dismissal because he was duly informed of the policy against the hiring of relatives during the orientation and interview and, thus, the non-disclosure was tantamount to fraud or deceit which the company's Code of Discipline prohibits. Clarmil also pointed out that Luna's probationary contract expressly provides the penalty of dismissal should he fail to abide by the Code of Discipline.

In the assailed decision, the NLRC gave credence to the submissions of Clarmil. The NLRC ruled that Clarmil was able to establish the fact that Luna was duly informed of the contents of the Code of Discipline during the orientation. Also during the interview, Clarmil emphasized the importance to disclose an information that a relative is currently employed, as in this case, in order for the company to evaluate whether the decision making and performance of an employee will be affected by the relationships of the employees involved. The NLRC noted the fact that Luna admitted his intention to deceive or defraud Clarmil by withholding the information which would be vital to his employment. Thus, the NLRC viewed Luna's act as fraudulent or deceitful against Clarmil – an act tantamount to a just cause for termination.

Aggrieved, the petitioner comes to us via this petition for certiorari which ascribes to the NLRC the following acts allegedly amounting to grave abuse of discretion, to wit:

"I.

THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN RULING THAT PETITIONER COMMITTED FRAUD WHEN HE FAILED TO DISCLOSE THAT HE HAS RELATIVES IN THE COMPANY IN HIS APPLICATION FORM.

II.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN REVERSING THE WELL WRITTEN RULING OF THE LABOR ARBITER WHO DECLARED THAT COMPLAINANT DID NOT COMMIT FRAUD AND HIS DISMISSAL ILLEGAL.

III.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT PETITIONER IS NOT ENTITLED TO THE RELIEFS PRAYED FOR.”

The petition has no merit.

The appellate court’s jurisdiction to review a decision of the NLRC in a petition for certiorari is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision.[18] Likewise, errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for certiorari. It is thus incumbent upon the petitioner to satisfactorily establish that the NLRC acted capriciously and whimsically in order that the extraordinary writ of certiorari will lie.[19]

In this petition, Luna is fundamentally assailing the judgment rendered by the NLRC finding him to have committed fraud for his non-disclosure of the information about his relatives employed at Clarmil. Luna contends that there was absence of substantial evidence that he committed fraud because the company rules only prohibit the employment of relatives if there would be conflict in decision making. Luna further contends that the respondents failed to show proof that he was related within the fifth civil degree of consanguinity with Norvie Mendoza and the wife of Jessy Caponpon.

We find the contentions to be devoid of merit.

The NLRC, upon reviewing the appeal of the respondents, considered all the available evidence submitted by the parties for consideration on appeal. Otherwise stated, the NLRC did not disregard any material fact and evidence in arriving at its conclusion that Luna indeed committed fraud by intentionally withholding the information that he had relatives currently employed at Clarmil.

In this case, we are in agreement with the NLRC that there is no necessity to establish first the existence of conflict in decision making or the presence of an effect in the performance of one employee by reason of relationship for the rule on prohibition against the employment of relatives to apply. We must bear in mind that the very reason for Luna's termination was his failure to meet and follow Clarmil's Code of Discipline which we reproduce herein:

“Artikulo II. MGA PAGLABAG SA KAPAKANAN NG KOMPANYA: Sek. C-4 Kahit na anong pandaraya, panlilinlang, pagnanakaw, na ginawa ng empleyado laban sa Kompanya, sa mga empleyado of mga Mamimili”

Clarmil's Employee Relations and Recruitment Section Manager Melosantos personally interviewed Luna during the investigation wherein the latter confirmed that he answered in the negative, both in the application form and job interview, when asked whether he had a relative employed with the company. In the said investigation, Luna revealed that he was fearful of not being hired if he disclosed that he had relatives at Clarmil. It has not also escaped our attention that Luna had knowledge of the provisions of the Code of Discipline because he received a copy thereof and agreed to familiarize himself with and read the provisions printed in the handbook.[20] It was therein clearly written that any act of fraud or deceit will be meted the penalty of dismissal or termination on the first offense.[21] Moreover, Luna's awareness of the policy was manifest in his confession that he may not be hired if he divulged that he had relatives in the company.[22]

Fraud is deemed to comprise anything calculated to deceive, including all acts, omissions and concealment involving a breach of legal duty or equitable duty, trust, or confidence justly reposed, resulting in damage to another.[23] The falsification and fraud which Luna committed against Clarmil was inexcusable. His acts constituted dishonesty and serious misconduct, lawful grounds for his dismissal under Art. 282 of the New Labor

Code.

Luna asserts that the NLRC gravely erred in relying on the minutes of the investigation. He deemed the said document as without probative value as it seems difficult to comprehend because of the indistinct state of the writings.

We do not agree with Luna.

Admittedly, the copy of the minutes of the investigation[24] is a bit darker and has a shadowy background. A mindful reading, however, allows for the handwritten minutes to be actually legible. The Court can infer from the entries therein that Luna committed fraud or deceit in filling-up his application form as well as during his job interview before he was considered for employment. We reproduce herein an excerpt of the investigation interview quoted as follows:

“4.) Noong iniinterview ka during application hindi ba tinanong ka rin kung may kamag-anak o kakilala ka dito? Ano ang isinagot mo?

- Wala po akong kamag-anak

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14.) In connection sa tanong #3, king hindi mo alam na bawal ang kamag-anak, bakit hindi mo pa rin sinagot ang tanong sa application form kung sino sa kumpanya and kakilala mo, gayong alam mo sa isip at puso mo na kamag-anak mo si Mr. Norvie Mendoza at Mr. Jessy Caponpon?

- Kung sinagot ko po iyon na kamag-anak ko silang dalawa ay baka hindi po ako natanggap.”[25]

Luna even accepted whatever decision that the company may arrive at and assured that he shall abide by the rules and regulations of the company.

Because Luna signed a Notice of Probationary Employment[26], he remained on probation for a period of 6 months starting from 08 November 2011 up to 07 May 2012. While a probationary employee does not enjoy permanent status, he enjoys the constitutional protection of security of tenure. He can only be terminated for cause or when he otherwise fails to meet the reasonable standards made known to him by the employer at the time of his engagement.[27] In a page[28] attached to the company handbook, Luna affixed his signature wherein he attested that the performance standards prescribed by Clarmil had been discussed and made known to him prior to his employment. Luna, however, failed to meet Clarmil's standard of honesty expected from all its employees, as shown by the investigation, thus:

“12.) So ibig sabihin Johnray, simula ng nagtrabaho ka dito, nagsinungaling ka na sa kumpanya?

- OPO

13.) Nung ginawa mo ang pagsisinungaling, naisip mo ba na maaaring malaman ito ng kumpanya?

- Naisip ko rin po.”[29]

Under the doctrine of management prerogative, every employer has the inherent right to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, the time, place and manner of work, work supervision, transfer of employees, lay-off of workers, and discipline, dismissal, and recall of employees. The only limitations to the exercise of this prerogative are those imposed by labor laws and the principles of equity and substantial justice.[30] While the law imposes many obligations upon the employer, nonetheless, it also protects the employer's right to expect from its employees not only good performance, adequate work, and diligence, but also good conduct, loyalty as well as honesty. In fact, the Labor

Code does not excuse employees from complying with valid company policies and reasonable regulations for their governance and guidance.[31]

On the whole, the NLRC may not be faulted for rendering a decision which reversed and set aside the Labor Arbiter's finding of illegal dismissal. We find no grave abuse on the part of the NLRC in its exercise of discretion because we see no substantial proof that support the petitioner's allegation that it was done whimsically, arbitrarily or despotically, by reason perhaps of passion, prejudice, or personal hostility. The NLRC did not conclude out of thin air.

WHEREFORE, the petition is DENIED DUE COURSE and consequently DISMISSED.

IT IS SO ORDERED.

Bueser and [*]Paredes, JJ., concur.

[*] Acting Junior Member per Office Order No. 55-15-ABR dated 2/23/15.

[1] Dated 31 May 2013 in NLRC LAC No. 01-000370-13, Rollo, p. 420.

[2] Rollo, p. 193.

[3] Rollo, p. 427.

[4] Rollo, p. 438.

[5] Rollo, p. 428.

[6] Rollo, p. 73.

[7] Rollo, p. 74.

[8] Rollo, p. 75.

[9] Rollo, p. 76.

[10] Id.

[11] Position Paper for the Complainant, Rollo, p. 45.

[12] Affidavit of Clarmil's Employee Relations and Recruitment Section Manager, Rosana T. Melosantos, Rollo, p. 139.

[13] See rollo, p. 73.

[14] Rollo, p. 159.

[15] Rollo, pp. 205-206.

[16] Rollo, p. 208.

[17] See No. 4, rollo, p. 94

[18] Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union vs. Manila Water Company, Inc., GR No. 174179, 16 November 2011, 660 SCRA 263.

[19] Leonis Navigation Co., Inc. and World Marine Panama, S.A. vs. Catalino U. Villamater, et al., GR No.

179169, 03 March 2010, 614 SCRA 182.

[20] See attachment, rollo, p. 100.

[21] See no. 4, rollo, p. 94.

[22] See no. 2, rollo, p. 159.

[23] Galvez vs. Court of Appeals, GR Nos. 187919, 187979 and 188030, 25 April 2012, 671 SCRA 222.

[24] Rollo, pp. 159-162.

[25] See rollo, pp. 159-161.

[26] Supra note 6.

[27] Aliling vs. Feliciano, GR No. 185829, 25 April 2012, 671 SCRA 186.

[28] Rollo, p. 100.

[29] Rollo, p. 161.

[30] Peckson vs. Robinsons Supermarket Corporation, GR No. 198534, 03 July 2013, 700 SCRA 668.

[31] Id.

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