

HENRY M. CAOC, REYLITO L. FUENTES, JOSE ACOSTA, CHARLIE WANDRY, CHRISTOPHER BAUTISTA, CARLOS R. IGHARAS, JR., LUCKY T. GREGORIO, EDUARDO R. PEÑANO AND NOLY E. MISAJON, PETITIONE...

Ponente: LANTION, J.A.C., J.

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LANTION, J.A.C., J.:

Before Us is a Petition for Certiorari[1] under Rule 65 of the Rules of Court filed by Petitioners Henry M. Caoc, Reyrito L. Fuentes, Jose Acosta, Charlie Wandry, Christopher Bautista, Carlos R. Igharas, Jr., Lucky T. Gregorio, Eduardo R. Peñano, and Noly E. Misajon (hereinafter “Petitioners”) challenging the Decision[2] dated 20 May 2013 rendered by the National Labor Relations Commission, Sixth Division (“NLRC”) in NLRC LAC No. 11-003384-12 and NLRC Case Nos. NCR 05-06901-12, NCR 05-07452-12, the fallo of which reads:[3]

WHEREFORE, premises considered, judgment is hereby rendered finding the appeal impressed with merit. Judgment is hereby rendered finding complainants not dismissed. Accordingly, the decision of the Labor Arbiter dated September 28, 2012 is hereby VACATED and SET ASIDE.

SO ORDERED.

The Resolution[4] dated 28 June 2013 of the NLRC dismissing Petitioners' Motion for Reconsideration,[5] is likewise assailed.

THE FACTS

Petitioners are all-around stevedores (lashers, porters, dock workers) who render services for Private Respondent Asian Terminals, Inc. (“ATI”). ATI is in the business of port operations and performs general services related to the management and operation of port terminals in the country.

The instant case originates from a number of complaints[6] filed before the NLRC by Petitioners claiming that ATI had illegally dismissed them and seeking the payment of money claims. The complaints were eventually consolidated and raffled to Labor Arbiter J. Potenciano F. Napenas, Jr. (“Labor Arbiter”). Unfortunately, as the parties could not amicably settle, they were directed to file their respective position papers.

In their Position Paper,[7] Petitioners alleged that they had worked for several years for ATI as stevedores, by virtue of which they had attained the status of regular employees. On separate dates, Petitioners claim that they were all illegally dismissed from work without legal basis and without any notices having been sent to them. Worse, Petitioners averred that not only were they paid wages less the minimum wage as prescribed by law, they were never given the following benefits that they are entitled to: Overtime Pay, 13th Month Pay, Night Shift Differential, Service Incentive Leave Pay, ECOLA, and so on. Thus, invoking the doctrine that the spirit of labor laws are to give full protection to labor, Petitioners prayed for the award of said money claims.

On the other hand, ATI argued in its Position Paper[8] that it did not dismiss the services of the Petitioners.

According to ATI, Petitioners work as “extras,” meaning that they are deployed only when there is an irregular, high demand of business which exceeds the capability of ATI's regular and casual reserve employees. In other words, for “extras” there is no guarantee as to the regularity of deployment because such work depends on the volume of business. Consequently, “extras” are not required to report to the company every day. ATI outlines the deployment process of “extras” as follows:[9]

- The Passenger Terminal Officer (PTO) will e-mail the Manpower Resources Allocator (MRA) officer on duty for the manpower requirements. The PTO will also encode the additional requirements in a computer application called KEA.
- The MRA will then “prioritize” the request in the KEA system and call the Hiring Hall Officer (HHO). Once prioritized, the [HHO] will be able to view the requirements.
- At the Hiring Hall, the HHO will make the rotation calls. Each CRE [Casual Reserve Employee] and Extra Worker (EW) has an assigned rotation number. At the time of making the calls, if the CRE or EW is there, then they get “deployed” and a Certificate of Attendance (COA) is generated under their name, and reflected in the Personnel Tracking System (PTS). If the CRE or EW is not present when his assigned rotation number is called, then the CRE or EW is placed at the bottom of the roll.

Moreover, in support of its supposition that it did not terminate Petitioners' services, ATI points out that, during mediation conferences with Petitioners, it called upon them to report back to the company for possible deployment, but to no avail.

After the filing of additional pleadings by both parties, on 28 September 2012, the Labor Arbiter rendered a Decision[10] finding that Petitioners (complainants a quo) were illegally dismissed and ordering ATI and one Erwin Cabantog (respondents a quo) to pay their money claims, the computation of which was attached thereto,[11] in this wise:[12]

WHEREFORE, premises considered, judgment is hereby rendered finding complainants to have been illegally dismissed from the service.

Accordingly, respondents are hereby ordered to pay complainants HENRY CAOC, CARLOS IGHARAS, JR., CHRISTOPHER BAUTISTA, JOSE ACOSTA, EDUARDO PEÑANO, LUCKY GREGORIO AND CHARLIE WANDRY, REYLITO L. FUENTES, NOLY E. MISAJON full backwages, 13th month pay, service incentive leave pay, cola (sic) separation plus 10% of the total monetary (sic) as attorney's fees.

Attached is the computation of complainants (sic) total monetary awards which also form part of this decision.

SO ORDERED.

Aggrieved, on 19 November 2012, ATI filed its Memorandum of Appeal[13] questioning the abovementioned Decision.

On 20 May 2013, the NLRC issued the assailed Decision[14] finding that the Petitioners were not dismissed from employment and reversing the Labor Arbiter's ruling.

On 05 June 2013, Petitioners filed their Motion for Reconsideration of the NLRC's Decision, but the same was denied by the said commission in the challenged Resolution[15] dated 28 June 2013.

Hence, the present Petition.

ISSUE

Petitioners raise the following assignment of error:[16]

Masyadong inabuso ng kanilang discretion sa parte ng mga Hon. Commissioner kung saan ang isa sa mga Hon. Commissioner ay nag DISSENT sa paggawad nila ng hatol, na ang naging Decision ni Hon. Labor Arbiter J. Potenciano F. Napenas, Jr. dated September 28, 2012 is hereby VACATED and SET ASIDE, na kung hindi mai-wasto o mapanatili ang Decision ni Hon. Labor Arbiter J. Potenciano F. Napenas, Jr. ay magresulta ng DAMAGE or INJURY (PAGHIHIRAP NG MGA PETITIONERS).

OUR RULING

Settled is the rule that a special civil action of certiorari, under Rule 65 of the Rules of Court, will not lie unless the petitioner can sufficiently show that the tribunal, board, or officer exercising judicial or quasi-judicial functions has acted with grave abuse of discretion amounting to lack or excess of jurisdiction.[17] The term “grave abuse of discretion” is defined as “capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be 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 and hostility.”[18] Moreover, the burden to prove not merely reversible error, but grave abuse of discretion rests on the shoulders of the petitioner.[19]

In the Petition at hand, Petitioners essentially argue that they are not extra workers, project employees, or contractual employees, but regular employees of ATI. In support of their argument, Petitioners highlight that they have rendered several years of work as all-around stevedores, whose services are necessary and desirable in the usual business and trade of ATI. As regular employees, whose employment cannot be terminated without observing due process of law, it was consequently illegal for ATI to dismiss them without any basis and without sending them notices of such fact of dismissal. Worse, ATI had never given Petitioners an employment agreement and, as such, the latter were not apprised of the terms and conditions of employment. Thus, Petitioners posit that the NLRC gravely abused its discretion in issuing the assailed Decision, which found that Petitioners were not dismissed and, consequently, prayed that the Decision of the Labor Arbiter be set aside.

The Petition fails.

In illegal dismissal cases, it devolves upon the employee to establish the fact of his or her dismissal from employment, otherwise, there would be no illegal dismissal to speak of. In *Basay v. Hacienda Consolacion*, the Supreme Court held:[20]

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We are not unmindful of the rule in labor cases that the employer has the burden of proving that the termination was for a valid or authorized cause; however, it is likewise incumbent upon the employees that they should first establish by competent evidence the fact of their dismissal from employment. The one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing. In this case, aside from mere allegations, no evidence was proffered by the petitioners that they were dismissed from employment. The records are bereft of any indication that petitioners were prevented from returning to work or otherwise deprived of any work assignment by respondents. (Emphasis supplied)

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The pleadings at hand are bereft of proof evincing the fact of Petitioners' dismissal other than their bare allegations of the same. It is noteworthy that Petitioners could not describe, even in general terms, the

circumstances surrounding their supposed dismissal such as how they were informed not to report for work, the dates they attempted to return to their jobs, if they were barred entry into the company premises, and so on. That ATI did not terminate Petitioners' services is further supported by the fact their deployment depends on the existence of an unusually high demand of business, which exceeds the capabilities of ATI's regular and casual reserve employees.[21] In other words, because of the infrequent nature of their deployment, Petitioners are not required by ATI to report for work everyday.[22] Moreover, that ATI requested Petitioners to return to work during mediation conferences bolsters the conclusion that the latter were not dismissed from work.[23]

Verily, it is a fundamental rule of evidence that the party who alleges a fact has the burden of proving it.[24] This rule is embodied in the latin maxim *et incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit* – the proof lies upon him who affirms, not upon him who denies.[25] Since Petitioners did not sufficiently establish, through substantial evidence, the fact of their dismissal, it thus stands to reason that they were not actually dismissed by ATI.

All told, certiorari will not lie where the tribunal, board, or officer concerned has not been shown to have acted with grave abuse of discretion. Having found earlier that the Petitioners did not sufficiently establish the fact of their dismissal from employment, it cannot be said that the NLRC acted in a capricious or whimsical manner, much less arbitrarily in arriving at and rendering the assailed Decision and Resolution. Thus, We hold that there was no grave abuse of discretion on the part of the NLRC in issuing the same.

WHEREFORE, premises considered, the instant Petition is hereby DISMISSED for lack of merit. ACCORDINGLY, the challenged Decision dated 20 May 2013 and the Resolution dated 28 June 2013 rendered by the NLRC, Sixth Division in NLRC LAC No. 11-003384-12 and NLRC Case Nos. NCR 05-06901-12, NCR 05-07452-12 are AFFIRMED.

SO ORDERED.

Veloso (Chairperson) and Antonio-Valenzuela, JJ., concur.

[1] Rollo, pp. 6-11.

[2] Penned by Presiding Commissioner Joseph Gerard E. Mabilog, Rollo, pp. 219-225.

[3] Rollo, p. 26.

[4] Id. at 217-218.

[5] Id. at 62-65.

[6] Id. at 46-51.

[7] See Rollo, pp. 52-56.

[8] Id. at 77-89.

[9] Rollo, pp. 79-80.

[10] Penned by Labor Arbiter J. Potenciano F. Napenas, Jr., Rollo, pp. 226-234.

[11] Rollo, pp. 235-242.

[12] Id. at 233-234.

[13] Id. at 116-145.

[14] Id. at 219-225.

[15] Id. at 217-218.

[16] Id. at 8.

[17] See *Tan v. Antazo*, G.R. No. 187208, February 23, 2011.

[18] *Ganaden v. Court of Appeals*, G.R. Nos. 170500 & 170510-11, June 1, 2011.

[19] *Pimentel III v. COMELEC*, G.R. No. 178413, March 13, 2008.

[20] G.R. No. 175532, April 19, 2010; See also *Cañedo v. Kampilan Security and Detective Agency, Inc.*, G.R. No. 179326, July 31, 2013 citing *Montederamos v. Tri-Union International Corporation*, G.R. No. 176700, September 4, 2009.

[21] See *Rollo*, pp. 79-80.

[22] Id. at 80.

[23] Id. at 81.

[24] See *Sps. Hutchison v. Buscas*, G.R. No. 158554, May 26, 2005; *Alonzo v. San Juan*, G.R. No. 137549, February 11, 2005.

[25] See *Ching v. Nicdao*, G.R. No. 141181, April 27, 2007.

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