

## **RHOMEL S. ADORADOR AND AKINS B. CASTRO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND TOYOTA SHAW-PASIG, INC., RESPONDENTS.**

Ponente: INTING, S.B., J.

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### **INTING, S.B., J.:**

This Petition for Certiorari[1] seeks to nullify the following issuances of public respondent National Labor Relations Commission (NLRC) in NLRC LAC No. 10-002826-12: 1) Decision[2] dated 7 February 2013 and; 2) Resolution[3] dated 5 March 2013.

The relevant facts, as culled from the records, follow.

Petitioners Rhomel S. Adorador and Akins B. Castro were hired as auto mechanics by private respondent Toyota-Shaw Pasig, Inc. in May 2004 and November 2006, respectively. On 29 October 2011 they were dismissed due to the complaints filed by Markgil N. Galeja, Richard Ian C. Dolor and Mike Chester M. Patagan who were then on the job trainees (OJTs) of private respondent.

Complainant Galeja alleged that on 28 September 2011 at around 4:50 pm petitioners tried to forcibly remove his pants while he was changing in the locker room.[4] Complainant Dolor claimed that petitioners did the same thing to him in July 2011 which caused his hips to swell and his neck to ache because of the force used by petitioners to undress him. Complainant Dolor further narrated that petitioners warned him as follows: "Si Akins Castro ay nagbabantang tusukin o ipasok nya ang kanyang daliri sa aking pwet kung sakaling magbihis ulit ako sa locker room".[5] On the other hand, complainant Patagan asserted that petitioners warned him that his pants will also be removed if he will go inside the locker room.[6]

In a notice[7] dated 29 September 2011 private respondent required petitioners to submit a written explanation on the matter. They were also preventively suspended pending the result of the investigation.[8]

Petitioners repeatedly failed to attend the scheduled administrative hearings. On 29 October 2011 they were terminated from service. Private respondent held that petitioners were guilty of misconduct or undesirable behavior as provided in Acts 24, 42 and 47 provided of the Team Member's Handbook.[9]

Their dismissal from service prompted petitioners to file a complaint[10] before the Labor Arbiter (LA) for Unfair Labor Practice, Illegal Dismissal, Non-payment of 13[th] Month Pay, Illegal Suspension, Moral and Exemplary Damages, and Attorney's Fees.

After due hearing, the LA[11] ruled as follows:

"WHEREFORE, foregoing premises considered, this case is ordered DISMISSED for lack of merit. Respondent Toyota Shaw, Inc. is ordered to pay complainants Rhomel S. Adorador and Akins B. Castro their 13[th] month pay for the year 2011, computed as follows:

For Rhomel S. Adorador

$P12,600 \times 9/12 = P9,450.00$

For Akins B. castro

$13,000 \times 9/12 = P9,750.00$

All other claims are Dismissed for lack of merit.

SO ORDERED."[12]

On appeal, the NLRC affirmed the Decision of the Labor Arbiter.[13]

Petitioners filed a motion for reconsideration but the same was denied by the NLRC for lack of merit.[14]

Hence, the instant petition anchored on the following grounds:[15]

THE NLRC GRAVELY ABUSED ITS DISCRETION AND ERRED IN AFFIRMING THE LABOR ARBITER'S RULING THAT TOYOTA NEED NOT CONVENE THE COMMITTEE ON DECORUM AND INVESTIGATION TO INVESTIGATE AND DISMISS PETITIONERS;

THE NLRC GRAVELY ABUSED ITS DISCRETION AND ERRED IN AFFIRMING THE LABOR ARBITER'S RULING THAT TOYOTA OBSERVED DUE PROCESS IN INVESTIGATING AND DISMISSING PETITIONERS;

THE COMMISSION GRAVELY ABUSED ITS DISCRETION IN AFFIRMING THE LABOR ARBITER'S DECISION THAT DID NOT (SIC) AWARD NOMINAL DAMAGES;

THE NLRC GRAVELY ABUSED ITS DISCRETION IN AFFIRMING THE LABOR ARBITER'S RULING THAT PETITIONERS WERE VALIDLY DISMISSED FOR SERIOUS MISCONDUCT AND DISORDERLY BEHAVIOR BECAUSE OF THE LOCKER ROOM INCIDENT;

THE NLRC GRAVELY ABUSED ITS DISCRETION AND ERRED IN AFFIRMING THE LABOR ARBITER'S RULING THAT PETITIONERS' SUSPENSION WAS LAWFUL.

The grounds relied upon by petitioners boil down to the sole issue of whether there was valid dismissal.

We answer in the affirmative.

The Labor Code provides that an employer may terminate the services of an employee for a just cause. Among the just causes in the Labor Code is serious misconduct. Misconduct is improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct to be serious within the meaning of the Labor Code must be of such a grave and aggravated character and not merely trivial or unimportant.[16]

In this case, a perusal of the records and the evidence shows that petitioners on separate occasions forcibly removed the pants of complainants while they were changing in the locker room which caused them bodily pain. Worst, petitioners continuously threatened complainants that they will be subjected to similar treatments should they use the locker room again. These acts of threats and intimidation of petitioners clearly constitute serious misconduct of a grave and aggravated character which directly violated the personal security of complainants. We are thus convinced that petitioners' dismissal was based on a just cause.

Proceeding therefrom, We now determine whether or not private respondent complied with the requirements of due process prior to the termination as embodied in Section 2 (d) of Rule I of the Implementing Rules of Book VI

of the Labor Code, viz:

"Section 2. Security of tenure.— xxx

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

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

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

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

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

xxx xxx"

The essence of due process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek for a reconsideration of the action or ruling complained of. A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is the absolute lack of notice and hearing. There is no denial that the essence of due process was sufficiently complied with in the present case.[17]

Private respondent furnished petitioners a notice dated 29 September 2011 requiring them to submit a written explanation on the matter:[18] Administrative hearings were set and reset but petitioners repeatedly failed to appear during said dates. Thereafter, a second notice dated 29 October 2011 was given to petitioners containing private respondents decision to dismiss them.[19]

Needless to say, irresponsible and unruly employees like petitioners do not deserve a place in the workplace and it is within the private respondent's rights to terminate their employment.

In view of the foregoing, We find no grave abuse of discretion on the part of NLRC in upholding petitioners' dismissal.

WHEREFORE, the petition is DISMISSED. Consequently, the assailed issuances of the National Labor Relations Commission STAND.

**SO ORDERED.**

Reyes, (Chairperson), and Lopez, JJ., concur.

[1] Filed under Rule 65 of the Rules of Court.

[2] Rollo, pp. 31-39.

[3] Rollo, pp. 41-42.

[4] Rollo, pp. 158-159.

- [5] Rollo, pp. 156-157.
- [6] Rollo, p. 160.
- [7] Rollo, p. 153.
- [8] Rollo, pp. 115-117.
- [9] Rollo, p. 169-170.
- [10] Rollo, pp. 93-94.
- [11] Geobel A. Bartobalac.
- [12] Rollo, p. 57.
- [13] Supra note 2.
- [14] Supra note 3.
- [15] Rollo, pp. 14-15.
- [16] PLDT v. Bolso, G.R. No. 159701, 17 August 2007.
- [17] Zacarias v. National Police Commission, G.R. No. 119847, 24 October 2003.
- [18] Supra note 7.
- [19] Ibid.

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