

ALERTO SERVIZIO MANPOWER RESOURCE, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND RANDY L. VIDAL, RESPONDENTS.

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MACALINO, J:

This is a Petition for Certiorari under Rule 65 of the Rules of Court which seeks to annul and set aside the 19 November 2013 Decision[1] (“assailed Decision”) and the 30 January 2014 Resolution[2] (“assailed Resolution”) of the National Labor Relations Commission (NLRC) Second Division (“Public Respondent”) in NLRC LAC No. 08-002440-13 entitled “Randy Liveta Vidal v. Alerto Servizio Manpower Resource, Inc., Trends and Technologies Holdings Inc., Ross Mangaser, Ramon Mangaser, Hassan Pardes, Adelaida Ramos and Jefferson Rabang” for allegedly having been issued by the Public Respondent with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Factual and Procedural Antecedents of the Case[3]

Private Respondent Randy L. Vidal (“Private Respondent”) was hired by Petitioner Alerto Servizio Manpower Resource, Inc. (“Petitioner”) as a company driver and was assigned to Trends and Technologies Holdings, Inc. (“TTHI”).

It appears that on 8 October 2012, Private Respondent and some personnel of Trends Solutions, Inc. (“TSI”), a sister company of TTHI, were conducting a routine inspection of a project the two companies had with Metropolitan Waterworks and Sewerage System (“MWSS”) along Balara, Quezon City. The routine inspection entailed the visual checking of the fiber optic cables. In the course of the inspection, an incident transpired between Private Respondent and one Diana Mariano (“Mariano”), a lady guard of MWSS, regarding the manner by which Private Respondent drove their service vehicle.

According to Private Respondent, as they were inspecting cables, it was necessary for him to drive their service vehicle at a slow speed. In fact, he drove the said vehicle at a speed of 20 kph. While driving, a tricycle behind them continuously blew its horn informing him that it wanted to overtake, so he allowed it to overtake. However, after overtaking, the tricycle continued blowing its horn and stopped in front of their service vehicle. Thus, Private Respondent parked their service vehicle on the side of the road. The passenger of the tricycle alighted and introduced herself as Mariano and tried to confiscate Private Respondent's driver's license. As Private Respondent refused to surrender his license to Mariano, the latter got mad and shouted at him. Mariano refused that Private Respondent and the inspecting team leave the premises. Thus, they went to Barangay Pansol Outpost to have the incident blotted.[4]

On 11 October 2012, Mariano wrote a letter-complaint[5] to the management of MWSS regarding the 8 October 2012 incident. In the said letter-complaint, Mariano alleged:

“Nakasakay po ako sa tricycle habang nakasunod sa tricycle nina Randy Vila (sic), sa sobrang bagal ng takbo nila at yong driver nakatingin sa mga kawad ng kuryente, hindi naman sila nagsisignal at wala rin namang traffic guide kung anong meron. Bumubusina ngayon yong driver ng tricycle na babala para mag over take

kami na pinagbigyan nya naman pero ang masama ng makalampas na kami sa kanya hinabol at binilisan rin pagpapatakbo niya na kahit nasa sigsag at makitid na daan kami, para bang tinatakot niya kami, hindi ko alam kung anong gusto niyang palabasin o kung anong dahilan niya pero kahit ano man yung rason niya wala siyang karapatang gawin sa amin xxx isang matinong driver lalo na yang sasakyan niya isang Elf kompara sa tricycle para karerahin niya kami sa makitid at sigsag na daan. Kung naaksidente kami kaya niya bang panagutan pinagbubuntis ko.”

In a letter dated 12 October 2012, Petitioner notified Private Respondent that it received a report from its client TTHI regarding a complaint from Mariano on the 8 October 2012 incident. Hence, Private Respondent was given 72 hours within which to explain his side.[6] In compliance with the same, Private Respondent emailed Gerard Jefferson Rabang, HR Officer of Petitioner, explaining his side and denying the allegation of Mariano that he drove the service vehicle in a reckless manner.[7]

On 16 October 2012, Private Respondent was placed by Petitioner on preventive suspension for thirty (30) days effective on that date.[8]

Surprisingly, on 29 October 2012 or prior to the expiration of his preventive suspension, Private Respondent's employment was terminated by Petitioner alleging that TTHI decided not to hire his services anymore due to the complaint against him by Mariano.[9]

Aggrieved by the turn of events, Private Respondent, on 8 February 2013, filed a Complaint[10] for illegal dismissal, damages and non-payment of 13[th] month pay against herein Petitioner and its officers.

As the parties failed to reach an amicable settlement of the case, the Labor Arbiter subsequently ordered them to file their respective Position Papers[11] and Replies.[12] Subsequently, the case was deemed submitted for decision.

On 28 June 2013, the Labor Arbiter rendered a Decision[13] finding Private Respondent illegally dismissed by Petitioner. The dispositive portion of the Labor Arbiter's Decision states:

“WHEREFORE, premises considered, the dismissal of complainant is hereby ruled to be illegal. Respondent Alerto Servizio Manpower Resource, Inc. is hereby ordered to:

1. Pay complainant backwages computed from the date of his dismissal up to finality of this decision or in the aggregate provisional sum of Php111,219.54;

2. Reinstate complainant to his position as company driver or to any other position of equivalent rank and pay. Respondent is reminded that the reinstatement aspect is immediately executory for which, it is hereby directed to submit a manifestation of compliance on the reinstatement aspect within ten (10) days from receipt hereof; and

3. Attorney's fees equivalent to ten (10%) of judgment award, or in the sum of Php11,121.95.

All other claims are dismissed for lack of merit. The computation hereto attached is made an integral part of this Decision.

SO ORDERED.”[14]

In his Decision, the Labor Arbiter observed that:

“xxx xxx xxx

The Office has gone over the record and finds nothing to show that complainant committed an infraction that would warrant his dismissal or the imposition of any disciplinary measure for that matter.

While it may be true that a complaint was filed against complainant by a lady guard of the MWSS and that the complainant was asked to explain his side, the Office cannot see any investigation that was conducted to determine the truthfulness of the complaint and the liability of the complainant if there be any.

As a matter of fact, respondents have not presented any investigation report that would at least show what transpired between complainant and the lady guard, how complainant acted during the incident complained of, and how complainant was at fault. All that the Office sees is the bare allegation of respondents that complainant committed serious misconduct.

Needless to state, bare allegations are not evidence. Uncorroborated, they cannot be the basis in making a judgment in favor of respondent company.

Nor can a simple complaint be the basis in terminating the employment of a person. A complaint cannot be equated to be guilty. Procedural and substantive due process must be provided the employee.

As stated above, there is absolutely no evidence showing that complainant committed serious misconduct.

Having failed to prove the validity of complainant's dismissal, the dismissal must be ruled to be illegal. Complainant should be paid backwages and be reinstated to work.

xxx xxx xxx."

Petitioner thus filed a Memorandum of Appeal.[15]

On 19 November 2013, Public Respondent rendered the assailed Decision[16] affirming with modification the Decision of the Labor Arbiter. The decretal portion of the assailed Decision reads:

"WHEREFORE, premises considered, the Labor Arbiter's Decision is hereby AFFIRMED, subject to MODIFICATION that complainant's backwages be computed based on the P11,596.00 monthly salary plus 13th month pay and service incentive leave pay; and the P30.00 ECOLA computed from 01 November 2012.

SO ORDERED."[17]

Petitioner filed a Motion for Reconsideration[18] but the same was however denied in the assailed Resolution,[19] the fallo of which provides:

"WHEREFORE, in view of the foregoing premises, the the Motion for Reconsideration is hereby DENIED for lack of merit.

SO ORDERED."[20]

Dissatisfied with the ruling of Public Respondent, Petitioner filed the instant Petition[21] on 3 March 2014.

On 12 August 2014, Private Respondent filed his Comment[22] thereto.

On 27 August 2014, Petitioner filed its Reply with Motion to Issue Temporary Restraining Order.[23]

With the submission of the parties' respective Memoranda,[24] the instant case was deemed submitted for decision on 18 February 2015.[25]

Ground in Support of the Petition

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED DECISION AND ASSAILED

RESOLUTION.

The Court's Ruling

Article 282 of the Labor Code, as amended, provides for instances when employment may be legally terminated by the employer, to wit:

“Art. 282. Termination by employer. An employer may terminate an employment for any of the following causes:

- a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- b. Gross and habitual neglect by the employee of his duties;
- c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- e. Other causes analogous to the foregoing.”

In its Memorandum, Petitioner alleges that Private Respondent was not illegally dismissed as his employment was severed because he committed serious misconduct or willful disobedience of the lawful orders of his employer or representative in connection with his work. Petitioner points to the 8 October 2012 incident between Private Respondent and Mariano, a lady guard of MWSS, as ground for Private Respondent's dismissal from service.

Serious misconduct, as a justifying ground for the dismissal of an employee, has been explained in *Aliviado v. Procter & Gamble, Phils., Inc.*:^[26]

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.

Clearly, to justify the dismissal of an employee on the ground of serious misconduct, the employer must first establish that the employee is guilty of improper conduct, that the employee violated an existing and valid company rule or regulation, or that the employee is guilty of a wrongdoing.^[27]

In the instant case, Petitioner failed to even establish that Private Respondent indeed violated its rules and regulations as it failed to conduct its own investigation on the 8 October 2012 incident. While it alleged in its pleadings that it conducted its own investigation, Petitioner failed to show proof, that indeed, it did so. Assuming that the 8 October 2012 incident was true, the same was not enough to merit the supreme penalty of dismissal as it did not amount to serious misconduct. Petitioner could have opted to impose other form of disciplinary action as the same was his first offense.

In *Negros Slashers, Inc. v. Teng*^[28] citing *Sagales v. Rustan's Commercial Corporation*,^[29] the Supreme Court ruled:

“Truly, while the employer has the inherent right to discipline, including that of dismissing its employees, this prerogative is subject to the regulation by the State in the exercise of its police power.

In this regard, it is a hornbook doctrine that infractions committed by an employee should merit only the corresponding penalty demanded by the circumstance. The penalty must be commensurate with the act, conduct or omission imputed to the employee and must be imposed in connection with the disciplinary

authority of the employer.”

Hence, Petitioner illegally dismissed Private Respondent.

It also appears that Petitioner failed to observe the requirements of procedural due process. Book VI, Rule I, Section 2 (d) of the Omnibus Rules Implementing the Labor Code further provides:

Section 2. Security of tenure. — . . .

xxx xxx 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 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.[30]

Here, it is undisputed that the written notice given to Private Respondent merely mentioned that “we have received a report from our client TTHI regarding a complaint from Ms. Diana Mariano which happened last October 08, 2012”. Petitioner failed to elaborate on what the complaint of Mariano was all about. As a rule, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employee.[31] Further, Petitioner failed to conduct a hearing or conference where Private Respondent could explain and clarify his defense to the charge against him and present evidence in support of the same.

In an effort to evade liability for illegally dismissing Private Respondent, Petitioner now contends that the former abandoned his job. Petitioner avers that Private Respondent failed to report for re-assignment. According to Petitioner, before the service of the notice terminating Private Respondent, its President contacted Private Respondent to report for interview for a possible transfer of assignment but the latter allegedly told the former that he could not report for work as he was busy in the construction of his house.

To prove abandonment, two elements must concur: (a) failure to report for work or absence without valid or justifiable reason and (b) a clear intention to sever the employer-employee relationship.[32] Records of this case are however bereft of any evidence showing that indeed Petitioner sent a notice to Private Respondent informing him to report for work for possible reassignment. Intention to sever employer-employee relationship on the part of Private Respondent was likewise not proved by Petitioner. Moreover, how could Private Respondent report back for work after his preventive suspension when prior to its expiration Petitioner already terminated his employment?

As Private Respondent was illegally dismissed, Public Respondent correctly affirmed the Decision of the Labor Arbiter ordering Petitioner to reinstate Private Respondent to his position as company driver or to any other position of equivalent rank and pay. The payment of backwages to Private Respondent is also in order. Under Article 279 of the Labor Code, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, inclusive of allowances, and other benefits or their monetary equivalent from the time the compensation was withheld up to the time of actual reinstatement.[33]

Petitioner however alleges that it cannot anymore reinstate Private Respondent to its former position of company driver as he was merely a project employee as evidenced by the Contract of Limited Employment[34] he signed with it. With the completion of the project after his services were terminated, he can no longer be reinstated to the said position as the same no longer exists.

Jurisprudence is settled that for an employee to be validly categorized as a project employee, it is necessary that the specific project or undertaking had been identified and its period and completion date determined and made known to the employee at the time of his engagement. This provision ensures that the employee is completely apprised of the terms of his hiring and the corresponding rights and obligations arising from his undertaking.[35]

In this case, Private Respondent cannot be said to be a project employee of Petitioner. Although the contract signed by Private Respondent was denominated as Contract of Limited Employment, the completion date of the alleged project was not stated in the contract and made known to Private Respondent. It was only stated in the contract that “this agreement shall take effect on May 6, 2012 up to the completion of the project, unless sooner terminated by the Client or by us xxx” Hence, Private Respondent was not a project employee but a regular employee of Petitioner.

With respect to the award of attorney's fees, Public Respondent correctly affirmed the award as Private Respondent was compelled to litigate to seek redress for his illegal dismissal.[36]

From the foregoing, Public Respondent did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it rendered the assailed Decision and assailed Resolution.

WHEREFORE, premises considered, the instant Petition is hereby DENIED. Accordingly, the 19 November 2013 Decision and 30 January 2014 Resolution of the National Labor Relations Commission Second Division in NLRC LAC No. 08-002440-13 are AFFIRMED.

SO ORDERED.

Castillo, M., Chairperson and Galapate-Laguilles, Z. T., JJ., concur.

[1] Rollo, pp. 22-27.

[2] Id. at pp. 18-20.

[3] As culled from the records.

[4] Rollo, p. 58.

[5] Id. at p. 57.

[6] Id. at p. 81.

[7] Id. at p. 80.

[8] Id. at p. 86.

[9] Id. at p. 85.

[10] Rollo, pp. 48-49.

[11] Petitioner's Position Paper, Rollo, pp. 50-55; Private Respondents' Position Paper, Rollo, pp. 63-74.

[12] Petitioner's Reply, Rollo, pp. 87-91; Private Respondents' Reply, Rollo, pp. 93-101.

- [13] Rollo, pp. 29-38.
- [14] Id. at pp. 36-37.
- [15] Id. at pp. 113-122.
- [16] Supra note 1.
- [17] Rollo, p. 26.
- [18] Id. at pp. 130-133.
- [19] Supra note 2.
- [20] Rollo, p. 19.
- [21] Id. at pp. 3-16.
- [22] Id. at pp. 154-159.
- [23] Id. at pp. 161-163.
- [24] Petitioner's Memorandum, Rollo, pp. 170-177; Private Respondent's Memorandum, Rollo, 178-184.
- [25] Rollo, p. 186.
- [26] G.R. No. 160506, March 9, 2010 614 SCRA 563, 583-584 as cited in *Naranjo v. Biomedica Health Care, Inc.*, G.R. No. 193789, September 19, 2012.
- [27] *Naranjo v. Biomedica Health Care, Inc.*, supra.
- [28] G.R. No. 187122, February 22, 2012.
- [29] G.R. No. 166554, November 27, 2008, 572 SCRA 89, 104, citing *Manila Trading and Supply Co. v. Zulueta*, 69 Phil. 485, 486 (1940); *Caltex Refinery Employees Association (CREA) v. NLRC (Third Division)*, G.R. No. 102993, July 14, 1995, 246 SCRA 271, 279; *Radio Communications of the Phils., Inc. v. NLRC*, G.R. No. 102958, June 25, 1993, 223 SCRA 656, 667.
- [30] See *Stanley Fine Furniture v. Galano*, G.R. No. 190486, November 26, 2014.
- [31] See *Stanley Fine Furniture v. Galano*, supra citing *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108 (2007).
- [32] See *Stanley Fine Furniture v. Galano*, supra note 30 citing *Josan, JPS, Santiago Cargo Movers v. Aduna*, G.R. No. 190794, February 22, 2012, 666 SCRA 679, 686, See also *E.G. & I. Construction Corporation v. Sato*, G.R. No. 182070, February 16, 2011, 643 SCRA 492, 499-500 and *Dimagan v. Dacworks United, Incorporated*, G.R. No. 191053, November 28, 2011, 661 SCRA 438, 447 .
- [33] *Aliviado v. Procter & Gamble, Phils., Inc.* supra note 26 citing *Premier Development Bank v. Mantal*, G.R. No. 167716, March 23, 2006, 485 SCRA 234, 242-243 and *Philippine Amusement and Gaming Corporation v. Angara*, G.R. No. 142937, July 25, 2006, 496 SCRA 453, 457.
- [34] Rollo, p. 56.
- [35] See *FVR Skills and Services Exponents, Inc. v. Seva*, G.R. No. 200857, October 22, 2014 .
- [36] See *PICOP v. Resources, Inc. v. Dequilla*, G.R. No. 172666, December 7, 2011.

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