

REYNALDO ORTIZ[, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND KEYMAN'S CAFÉ AND/OR MA. PILAR RECTO, RESPONDENTS.

Ponente: PAREDES, J.

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PAREDES, J.:

THE CASE

This is a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure assailing the: (1) Resolution[1] dated May 21, 2012 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 04-001256-12 (NLRC NCR Case No. 07-11170-11) which MODIFIED the Decision[2] of the Labor Arbiter dated December 29, 2011; and (2) the Resolution[3] dated June 28, 2012 denying the petitioners' partial motion for reconsideration.

THE ANTECEDENTS

The facts, as culled from the records, are as follows:

Petitioner Reynaldo Ortiz (petitioner) was employed as a dishwasher since 2001 at Keyman's Café (café), an establishment whose registered owner[4] is Ma. Pilar Recto (Recto). On June 23, 2011, at around 8:30 o'clock in the morning, an argument ensued between petitioner and Terry Bernal (Bernal), chief cook of the café, over a defective water faucet. The argument escalated when Bernal called petitioner "gago". Demeaned and insulted by the curse, the petitioner took a knife and went after Bernal. Due to the timely intervention of their co-workers, petitioner was disarmed and he went back to washing dishes. The incident was reported[5] to the police and other authorities.

An investigation followed and employees of the café present at the time of the incident were requested to submit written accounts[6] of what they witnessed. Petitioner was suspended for fifteen (15) days without pay and was ordered to explain in writing his side of the incident. Petitioner complied[7] with the order. On July 15, 2011, an administrative hearing was conducted where petitioner appeared without counsel. When petitioner reported back to work, he was summoned and informed of his termination[8].

On July 20, 2011, petitioner filed a complaint[9] for illegal dismissal with underpayment of wages and overtime pay as well as non-payment of holiday premiums, rest day premiums, 13th month pay, and separation pay. Conciliation and mediation proceedings failed. After submission of the parties' respective position papers[10] and reply[11], the Labor Arbiter issued a Decision[12] on December 29, 2011 disposing of the case in this wise:

WHEREFORE, respondent Pilar Recto doing business under the name and style Keyman's Café is found guilty of illegal dismissal and is hereby ordered to pay complainant the total sum of Php146,818.37, representing:

- Separation pay equivalent to one month pay for every year of service computed from the year 2003 until the date

of this Decision;

- Underpayment of overtime pay of one hour a day; and

- 13[th] month pay.

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

SO ORDERED[13]. (Emphasis in the original)

Recto appealed[14] before the NLRC. Petitioner opposed[15] the appeal. Thereafter, the NLRC issued the assailed Resolution[16] dated May 21, 2012, the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is partially GRANTED. The 29 December 2011 [Decision] of Labor Arbiter Raymund M. Celino is hereby MODIFIED. Complainant-appellee (petitioner) is declared to have been dismissed for just cause but without due process. Consequently, the award for separation pay is deleted. Respondent-appellant (Recto) however is ordered to pay petitioner the amount of P30,000.00 as nominal damages and his proportionate 13[th] month pay for the year 2011. In all other respect, the decision stands affirmed.

SO ORDERED[17].

The petitioner filed a partial motion[18] for reconsideration, but it was denied in the Resolution[19] dated June 28, 2012; hence, this Petition.

Petitioner raises, for Our consideration, the sole issue of:

WHETHER THE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT MODIFIED THE LABOR ARBITER'S FINDING AND DECLARED THAT THE PETITIONER WAS DISMISSED FOR JUST CAUSE AND DELETED THE AWARD FOR SEPARATION PAY AND HIS 13[th] MONTH PAY FOR THE YEARS 2008 TO 2010[20].

THE COURT'S RULING

The petition is without merit.

Petitioner claims[21] that he did not commit serious misconduct within the meaning of Article 282[22] of the Labor Code as to justify his dismissal. He insists[23] that he was dismissed without just cause thereby entitling him to payment of separation pay in lieu of reinstatement. We are not persuaded.

In modifying the decision of the Labor Arbiter and ruling that petitioner was dismissed with just cause, the NLRC ruled, and We affirm, that:

In the instant case, complainant-appellee (petitioner) engaged in a fight with his superior in the work premises and in full view of the other employees. This is indeed serious misconduct which cannot be taken lightly. Even the Labor Arbiter recognized the gravity of petitioner's offense:

In attacking Mr. Bernal, complainant committed a forbidden act. His conduct may even well be considered as a felony punishable criminally. It was done consciously and intentionally and was not simply a product of a mistake in judgment or negligence (Records, p. 119).

Granting that he was provoked when Bernal uttered to him the word “gago”, still petitioner was not justified to assault the latter with a knife. He could have easily called the attention of the café's supervisor who was likewise present when the altercation occurred. But no, petitioner continued brandishing the knife at Bernal while the supervisor tried to pacify him. It took Head Waiter Edito Nistal and Cook Baltazar Casuncad's intervention before he was pacified and convinced to lay down the knife.

We do not agree with the Labor Arbiter's ruling that dismissal was too harsh a penalty to be imposed under the circumstances. Wielding a knife at a person is a serious threat and an assault in itself. The fact that petitioner had served for almost nine (9) years with no recorded infractions did not obliterate the seriousness of his offense[24].

There is no question that petitioner and Bernal had a verbal altercation which eventually led to petitioner running after Bernal with a knife. Is the aggression of petitioner constitutive of serious misconduct which would warrant the dismissal under the Labor Code?

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 defined as 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. Ordinary misconduct would not justify the termination of services of the employee as the Labor Code is explicit that the misconduct must be serious[25]. The misconduct, to be serious under the Labor Code, must be of such a grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation[26].

The altercation in this case took place in the work area between the petitioner and his superior, the cook, Bernal. The altercation escalated from a verbal argument to an attempt on the life of the cook by the dishwasher. Though no harm came to Bernal because the petitioner was held back by their colleagues, it cannot be denied that, without the intervention from co-workers, the incident could have resulted in grave harm to Bernal, who was unarmed. Even though the petitioner was merely retaliating against the perceived misdeed committed by Bernal uttering the denigrating word against him, the resort chosen by petitioner to redress the wrong committed by Bernal is not that which a person with no wrongful intent would do.

Petitioner points[27] out a supposed disparity between the findings of the Labor Arbiter and the NLRC, because the latter modified the decision earlier issued by the Labor Arbiter, must necessarily result in a re-examination of the factual findings to ascertain which opinion should be sustained. Upon closer perusal, however, We find that there is no disparity in factual findings between the NLRC and the Labor Arbiter. Both labor agencies agreed that the petitioner committed serious misconduct. The Labor Arbiter found, that:

On the issue of illegal dismissal, respondents (Recto and the café) aver that complainant (petitioner) committed serious misconduct when he (petitioner) took a knife and pursued the chief cook.

Truly, the office believes that what petitioner did constituted serious misconduct. A serious misconduct is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not mere error in judgment. It is serious and relates to the performance of the employee's duty. (Marcial Aparece vs. J Marketing Corporation, et. al., G.R. No. 174224, October 17, 2008).

In attacking Mr. Bernal, petitioner committed a forbidden act. His conduct may even well be considered as a felony punishable criminally. It was done consciously and intentionally and was not simply a product of a mistake in judgment or negligence.[28] (Emphasis supplied)

Although finding that petitioner had committed a serious misconduct which would warrant dismissal, nonetheless,

the Labor Arbiter ruled that payment of separation pay was proper considering the following circumstances, that: the aggression was not committed against the employer, Recto; Bernal was the unlawful aggressor when he compounded the altercation by uttering disparaging words against petitioner; petitioner had been in Recto's employ for eight (8) years without any black mark against him; and a sanction less grievous would suffice[29]. This is erroneous.

The grant of separation pay or some other financial assistance to an employee dismissed for just causes is based on equity. Severance compensation, or whatever name it is called, on the ground of social justice shall be allowed only when the cause of the dismissal is other than serious misconduct or for causes which reflect adversely on the employee's moral character[30]. Therefore, the Labor Arbiter cannot, on the one hand, find petitioner guilty of serious misconduct, a just cause for dismissal, and on the other, rule that dismissal was too harsh a penalty and order, instead, the payment of separation pay. The grant of separation pay are allowed to stand as "a measure of social justice" only where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character[31].

Since petitioner was dismissed for serious misconduct, separation pay cannot be awarded in his favor. In a similar manner, the fact that petitioner had no negative record prior to his dismissal and the long years that he had been an employee of Recto do not justify the award of separation benefits for, if an employee's length of service is to be regarded as justification for moderating the penalty of dismissal, such gesture will actually become a prize for disloyalty, distorting the meaning of social justice and undermining the efforts of labor to clean its ranks of undesirables[32]. In this sense, We agree with the NLRC that petitioner should be paid nominal damages as he was denied his procedural right to due process[33].

In termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing[34]. The law requires that the employer must furnish the worker, sought to be dismissed, with two written notices before termination of employment can be legally effected: (1) notice which appraises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him[35]. The requirement of notice, it has been stressed, is not a mere technicality but a requirement of due process to which every employee is entitled[36].

In the present case, a reading of the first notice[37] sent to the petitioner would reveal that, while an explanation was required of him about the incident, nowhere did it state that his dismissal was being sought. The second notice[38], meanwhile, was not clearly shown to have been received by petitioner himself. It was supposedly received in his behalf by one Renato Aquino despite the fact that petitioner was present. However, while the written notices given to petitioner appear to be insufficient, such insufficiency does not affect the propriety of petitioner's dismissal. When the dismissal is for just cause, the lack of due process does not render the dismissal ineffectual but merely gives rise to the payment of P30,000 in nominal damages[39].

Petitioner also claims[40] that the proofs of payment of 13[th] month pay presented by Recto were only vouchers without the signatures of employees; and, the evidence of payment, the vouchers, is not the evidence contemplated by law. We do not agree.

Contrary to the claim of petitioner, vouchers may be presented to prove payment of monetary benefits[41]. In the case at bar, Recto was able to submit proof[42] of payment of petitioner's 13[th] month pay. It is of no moment that Recto submitted only the voucher for the payment of 13[th] month pay for the year 2010 in the position paper and only attached the proof of payment of petitioner's 13[th] month pay for the years 2004-2010 in the appeal memorandum submitted before the NLRC. As the NLRC ruled, they should be accepted in the interest of justice[43]. We concur.

Well-settled is the rule that technical rules of procedure are not binding in labor cases. In fact, it is the spirit and intention of the law that labor officials shall use all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process[44]. The submission of additional and/or cumulative evidence before the NLRC is not prohibited by its rules of procedure. After all, rules of evidence prevailing in courts of law or equity are not controlling in labor cases. The NLRC and Labor Arbiters are directed to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law and procedure all in the interest of substantial justice. In keeping with this directive, it has been held that the NLRC may consider evidence, such as documents and affidavits, submitted by the parties for the first time on appeal. The submission of additional evidence on appeal does not prejudice the other party for the latter could submit counter-evidence[45].

The employer's right to conduct the affairs of his business, according to its own discretion and judgment, is well-recognized. An employer has a free reign and enjoys wide latitude of discretion to regulate all aspects of employment, including the prerogative to instill discipline on its employees and to impose penalties, including dismissal, upon erring employees. This is a management prerogative, where the free will of management to conduct its own affairs to achieve its purpose takes form. The law, in protecting the rights of workers, authorizes neither oppression nor self-destruction of the employer[46].

WHEREFORE, the Petition is DENIED. The Resolutions of the National Labor Relations Commission in NLRC LAC No. 04-001256-12 (NLRC NCR Case No. 07-11170-11), dated May 21, 2012 and June 28, 2012, are AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Didican, I.P., Chairperson and Elbinias, M.P., JJ., concur.

[*] Deceased. Substituted by his heirs Eliza Ortiz and Ester Ortiz per Resolution dated March 11, 2013, rollo, p. 286.

[1] Rollo, pp. 158-63.

[2] Rollo, pp. 91-7.

[3] Rollo, pp. 178-9.

[4] Rollo, p. 39.

[5] Rollo, pp. 43-5.

[6] Rollo, pp. 40-2, 46-9.

[7] Rollo, pp. 50-1.

[8] Rollo, pp. 52-3.

[9] Rollo, pp. 20-2.

[10] Position Paper (Petitioner), rollo, pp. 23-30; Position Paper (Keyman's Cafe), rollo, pp. 31-8.

[11] Reply (Petitioner), rollo, pp. 85-9.

[12] Rollo, pp. 91-8.

[13] Rollo, p. 97.

[14] Appeal Memorandum, rollo, pp. 99-115.

[15] Opposition, rollo, pp. 155-7.

[16] Rollo, pp. 158-63.

[17] Rollo, p. 163.

[18] Rollo, pp. 164-71.

[19] Rollo, pp. 178-9.

[20] Rollo, p. 8.

[21] Rollo, p. 9.

[22] The provision reads in full:

Article 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.

[23] Rollo, p. 8.

[24] Rollo, pp. 160-1.

[25] PLDT vs. Berbano, Jr., G.R. No. 165199, November 27, 2009.

[26] AMA Computer College-East Rizal vs. Ignacio, G.R. No. 178520, June 23, 2009.

[27] Rollo, p. 8.

[28] Rollo, pp. 93-4.

[29] Rollo, pp. 94-5.

[30] See SAMASAH-NUWHRAIN vs. Magsalin, G.R. Nos. 164939 & 172303, June 6, 2011, citing PLDT v. NLRC, G.R. No. L-80609, August 23, 1988.

[31] Villaruel vs. Yeo, G.R. No. 169191, June 1, 2011.

[32] See Central Pangasinan Electric Cooperative, Inc. vs. NLRC, G.R. No. 163561, July 24, 2007 .

[33] Rollo, p. 161.

[34] New Puerto Commercial vs. Lopez, G.R. No. 169999, July 26, 2010.

[35] WPP Marketing Communications, Inc. vs. Galera, G.R. Nos. 169207 & 169239, March 25, 2010.

[36] Oasay, Jr. vs. Palacio Del Gobernador Condominium Corp., G.R. No. 194306, February 6, 2012.

[37] Rollo, p. 46.

[38] Rollo, pp. 52-3.

[39] Jose, Jr. vs. Michaelmar Philippines, Inc., G.R. No. 169606, November 27, 2009.

[40] Rollo, p. 12.

[41] See Exodus International Construction Corp. vs. Biscocho, G.R. No. 166109, February 23, 2011.

[42] Rollo, pp. 84, 131-7.

[43] Rollo, p. 163.

[44] See Dacut vs. Court of Appeals, G.R. No. 169434, March 28, 2008.

[45] Sasan, Sr. vs. NLRC, G.R. No. 176240, October 17, 2008.

[46] See Torreda vs. Toshiba Information Equipment (Phils.), Inc., G.R. No. 165960, February 8, 2007.

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