

FERNANDO B. FRIGILLANA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), JEJ INTERNATIONAL MANPOWER SERVICES, BENEDICTO T. JAVIER AND MARINA BAY SANDS PTE. ...

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before this Court is a Petition for Certiorari[1] filed pursuant to Rule 65 of the Revised Rules of Court assailing, for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction, the December 27, 2013 Decision[2] of the National Labor Relations Commission (NLRC), Third Division, in labor case docketed as NLRC LAC OFW-L No. 11- 001095-13, NLRC NCR (L) 01-01051-11 which reversed and set aside the September 20, 2013 Decision[3] of the Labor Arbiter. Also assailed in this petition is the January 30, 2014 Resolution[4] of the same Commission which denied the Motion for Reconsideration filed by the petitioner.

The material and relevant facts, as culled from the record, are as follows:

Private respondent Marina Bay Sands Pte. Ltd. (“Marina Bay Sands”) is a Singapore-based company acting as a foreign principal/employer and duly registered and accredited with the Philippine Overseas Employment Administration (“POEA”). Marina Bay Sands is a famous tourist destination in Singapore which boasts of its impressive architectural design and its world famous casino frequented by gamers from all throughout the globe.

Private respondent JEJ International Manpower Services (“JEJ International”) is a duly licensed recruitment agency with Benedicto Javier as its sole proprietor.

Petitioner Fernando B. Frigillana (“petitioner”) was hired by the private respondent Marina Bay Sands on December 12, 2009 as a Pit Supervisor for a contract period of two (2) years. His monthly salary was SG\$3,500.00[5].

On December 21, 2010, an incident took place which involved herein petitioner and Pit Manager Mr. John Liew (“Liew”), a Malaysian national.

According to the petitioner, he was assigned as marketing agent at the time of the incident. Although it was beyond his usual task as Pit Supervisor, he obliged.

On the said date, Pit Manager Liew allegedly got mad at him after he assisted a new check-in dealer in his presence. He approached Liew on the matter but, instead, he received unsavory words and was taunted in front of the customers and their co-workers. He was even purportedly challenged to a fistfight by Liew which he only ignored as he opted to go back to his assignment.

As a result of the incident, the petitioner was suspended from work for seven (7) days and eventually, dismissed from employment on December 29, 2010. Consequently, he was immediately repatriated to the Philippines.

On account of the premature termination of his contract and his separation from employment without valid cause,

the petitioner filed a complaint with the Labor Arbiter. He alleged that he had been unlawfully dismissed for equivocal grounds and without observance of due process as he was not afforded the opportunity to explain his position with respect to the incident.

The private respondents, on the other hand, claimed that the petitioner was validly terminated from employment after consideration of his written explanation, the statements of the witnesses and the video recording of the incident which took place on December 21, 2010. The private respondents averred that the petitioner was dismissed from employment for having exhibited aggressive behavior and belligerent attitude towards his superior. According to the private respondents, the petitioner admitted that he tapped the hand of Liew and also pushed the latter's hand in a hard manner. The petitioner likewise admitted having uttered the following vulgarities against Liew, "You want to fight with me, its up to you what you want. Fuck you!"

As all efforts to reach an amicable settlement proved futile during the conciliation conference conducted by the Labor Arbiter, the case underwent proceedings to determine the merit of petitioner's complaint. The parties were made to submit their respective position papers and evidence in support thereof which they did dutifully submit.

On September 20, 2013, Labor Arbiter Joel S. Lustria rendered a Decision granting the complaint, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, judgment is hereby rendered, declaring respondents guilty of illegal dismissal. Accordingly, respondents are hereby ordered jointly and severally liable:

- 1) To pay complainant the amount of SG\$ 21,000.00, or its equivalent in Philippine currency prevailing at the exchange rate at the time of payment, representing his unrealized earnings of three (3) months salary for every year of the unexpired term;
- 2) To pay complainant an amount equivalent to ten (10%) percent of the total judgment award, as attorney's fees.
- 3) Other claims are dismissed for lack of merit.

"SO ORDERED."

The Labor Arbiter found that, aside from the private respondents' sweeping allegations of petitioner's serious breach of the company's Disciplinary Manual which included insubordination and behavior that embarrasses or negatively impacts the company, no other evidence, be it a documentary or testimonial one, was ever adduced that was substantial enough to prove that end.

Moreover, the Labor Arbiter ratiocinated that the issuance by private respondent Marina Bay Sands of the memorandum of suspension dated December 22, 2010 and the termination letter dated December 29, 2010 were mere afterthoughts to give semblance of legality to the termination from employment of petitioner.

The Labor Arbiter likewise ruled that dismissal from employment was too harsh a penalty to be imposed on the petitioner since he had been an employee of Marina Bay Sands and was assigned in its different branches for almost nine years already with good record. The petitioner's act of uttering obscene words towards Liew was merely a result of provocation due to the maltreatment that he received from the latter.

Dissatisfied, the private respondents appealed from the decision of the Labor Arbiter to the NLRC.

On December 27, 2013, the NLRC, Third Division, rendered the assailed Decision which reversed and set aside the decision of the Labor Arbiter, to wit:

"WHEREFORE, the appeal filed by respondents is hereby GRANTED. The Decision dated 20 September

2013 is VACATED and SET ASIDE. The subject complaint is hereby DISMISSED for lack of merit.

“SO ORDERED.”

In reversing the findings of the Labor Arbiter, the NLRC stated that there was valid cause to dismiss the petitioner from employment on account of his insubordination and serious misconduct. The NLRC opined that the petitioner had categorically admitted in his handwritten explanation that he lost his temper and uttered the words, “Fuck you” against Pit Manager Liew. The minutes of the due process inquiry conducted by Marina Bay Sands Senior Officer and Human Resource Officer likewise revealed that he had, indeed, shouted invectives against Liew. The petitioner even admitted to pushing the hand of his superior.

With respect to the observance of the due process requirement in termination cases, the NLRC ruled that there was no violation of the same. According to the NLRC, the following events showed compliance with the due process requirement: the first notice dated December 21, 2010 was given to the petitioner which informed him that an investigation shall be conducted in relation to the incident which involved him and Pit Manager Liew; a handwritten explanation was then submitted by the petitioner; an interview was conducted where the petitioner was given the chance to explain his side; and the last notice dated December 29, 2010 finally informed the petitioner of his termination from employment.

The petitioner filed a Motion for Reconsideration of the decision of the NLRC but the said motion was denied in a Resolution dated January 30, 2014, viz:

“ACCORDINGLY, the instant Motion for Reconsideration is hereby DENIED for lack of merit. “No further Motions for Reconsideration shall be entertained.

“SO ORDERED.”

Undaunted by the foregoing disposition of the NLRC, the petitioner filed the instant petition with this Court assigning the following acts of grave abuse of discretion which were purportedly committed by the NLRC:

I.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION DESPITE A CLEAR SHOWING THAT THE PETITIONER WAS DISMISSED WITHOUT JUST CAUSE UNDER ARTICLE 282 OF THE LABOR CODE AND THE JURISPRUDENTIAL PRONOUNCEMENTS OF THE SUPREME COURT.

II.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION DESPITE A CLEAR SHOWING THAT THE PETITIONER WAS DISMISSED WITHOUT DUE PROCESS OF LAW UNDER ARTICLE 277 OF THE LABOR CODE AND THE JURISPRUDENTIAL PRONOUNCEMENTS OF THE SUPREME COURT.

III.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION DESPITE A CLEAR SHOWING THAT THE PETITIONER'S DISMISSAL FROM EMPLOYMENT IS TOO HARSH FOR A PENALTY CONSIDERING HIS UNBLEMISHED SERVICE RECORD AND HIS SUSPENSION FOR SEVEN DAYS.

IV.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION DESPITE A CLEAR SHOWING THAT THE PETITIONER IS ENTITLED TO MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES BY REASON OF HIS TERMINATION WITHOUT JUST CAUSE AND DUE PROCESS OF LAW.

In sum, the primordial issue brought before this Court for resolution is whether or not the private respondents had unlawfully terminated the petitioner from employment on the ground of serious misconduct and gross insubordination and without the observance of due process of law.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant petition to be devoid of merit.

The petitioner contends that he could not be held guilty of serious misconduct and gross insubordination because his utterance of the vulgar and obscene words was merely a result of the provocation exerted upon him by Liew. Also, the higher rank and position of Liew did not give the latter an unbridled license to shout and humiliate him in public. He claims that, at the time of the incident, he was merely doing his job for the benefit of the casino business.

The just causes for the termination of employment are specifically enumerated in Article 282 of the Labor Code. Article 282 provides thus:

“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 representative;
- (e) Other causes analogous to the foregoing.”

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 must be of such a grave and aggravated character and not merely trivial or unimportant[6].

Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation[7]. Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it 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[8]. Indeed, an employer may not be compelled to continue to employ such person whose continuance in the service would be patently inimical to his employer's business[9]. The charge of serious misconduct finds ample support in the record. Petitioner failed to satisfactorily rebut this accusation, his only defense being provocation.

Mr. Liew was acting in the performance of his duty when he particularly signaled the petitioner to wait with the use of hand gestures. But the petitioner's temper got the best of him when he chose to confront his superior, Mr. Liew, in front of their customers as well as their co-employees instead of finding a way to amicably settle their

differences on their own. Obscene and vulgar words were admittedly directed by the petitioner against his superior as evidenced by his handwritten explanation[10] dated December 21, 2010, portions of which read:

“I would like to make an (sic) incident report regarding the misunderstanding between me and the Pit Manager. It all (sic) happened when I informed him that there (sic) was a check-in dealer. It so happened (sic) that I know he is the Pit Man Assign and I informed (sic) him. When I got his attention, I don't know why his (sic) response was (sic) so rude. So I (sic) came close to him and told (sic) him, I'm (sic) just informing you, why are you angry (sic)? Then suddenly (sic) he said again in a rude way, you wait and pointing his finger on my face, (sic) that time I also lost (sic) my temper and tap (sic) away his finger on my face. Then after that he ask me what do you like? Because I also (sic) lost my temper I said its up to you and I also said some bad words (Fuck you). xxx”

The petitioner even admitted that he used force in shoving the hand of his superior which only attracted more unwanted attention from their customers. These were not only acts of gross disrespect and insubordination against his superior but also acts which evidently embarrassed and tarnished the company's image.

Otherwise stated, the utterance by petitioner of obscene, insulting or offensive words against a supervisor was not only destructive of the morale of his co-employees and a violation of the company rules and regulations but also constitute gross misconduct which is one of the grounds provided for by law to terminate the services of an employee[11]. His attitude toward his supervisor, John Liew, amounted to insubordination and conduct unbecoming of an employee which merited the penalty of dismissal[12].

In the same manner, the petitioner's act of shoving the hand of his superior showed that he was unfit to continue working for his employer. His admitted grievances translated into the concrete act of insubordination and disrespect performed against his supervisor who represented his employer. Undoubtedly, his continued employment would cause undue strain in the workplace. If taken lightly, the incident would only inspire the breakdown of respect and discipline among the workforce[13].

Veritably, that the petitioner's transgression merits the penalty of dismissal is fully supported. It is, at the very least, a serious misconduct of a grave and aggravated character that directly violated the person of another employee due to an employment-related cause. Thus, the disciplinary measure of termination from employment imposed upon the petitioner is a matter where the company and this Court should tread carefully and not show administrative leniency.

It is a settled jurisprudential teaching that an employee may be validly dismissed for violation of a reasonable company rule or regulation adopted for the conduct of the company's business[14]. Terminating employment is one of private respondent Marina Bay Sands' prerogatives as an employer. As an employer, it has the right to regulate, according to its discretion and best judgment, work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers; and the discipline, dismissal and recall of workers. Management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations[15].

The foregoing notwithstanding, the petitioner further assails the violation of his due process as he was not allegedly afforded the opportunity to explain his side. The petitioner asseverated that he was never interviewed by the HR supervisor on December 22, 2010 as claimed by the private respondents. He also insinuated that the first notice failed to identify the specific cause of his termination from employment. We are not convinced.

The pertinent provision of the Labor Code on the matter of hearing is Article 277, which provides—

“ART. 277. Miscellaneous provisions. – x x x (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without

prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The Secretary of the Department of Labor may suspend the effects of the termination pending resolution of the dispute in the event of a prima facie finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass lay-off.”

The law itself only requires "ample opportunity to be heard". The essence of this requirement as an element of due process in administrative proceedings is the chance to explain one's side. The twin requirements of notice and hearing constitute the essential elements of due process. Due process of law simply means giving opportunity to be heard before judgment is rendered. In fact, there is no violation of due process even if no hearing was conducted, where the party was given a chance to explain his side of the controversy. What is frowned upon is the denial of the opportunity to be heard[16].

Indeed, an employee's right to be heard in termination cases is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof[17]. "To be heard" does not mean verbal argumentation inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings[18]. A formal trial-type hearing is not essential to due process. It is enough that the parties are given a fair and reasonable opportunity to explain their respective sides of the controversy and to present supporting evidence on which a fair decision can be based[19].

A perusal of the record reveals that petitioner was duly notified of the charges against him. The first notice given to him clearly indicated that he was being suspended pending investigation of the December 21, 2010 incident wherein he used vulgarities towards his Pit Manager, Mr. Liew[20]. More importantly, he was given the opportunity to defend himself when he submitted a written explanation which was even in his own handwriting. These instances only show substantial compliance by the private respondent Marina Bay Sands of the due process requirement.

Finally, moral damages are recoverable only where the dismissal of the employee was attended by bad faith or constituted an act oppressive to labor or was done in a manner contrary to morals, good customs or public policy[21]. Exemplary damages may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner[22]. Corollary thereto, attorney's fees may be awarded when a party is compelled to litigate or to incur expenses to protect his interest by reason of an unjustified act of the other party[23].

Since the petitioner was validly dismissed from employment for just cause, the private respondents cannot be held liable for moral and exemplary damages as well as attorney's fees.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DENYING the petition filed in this case.

SO ORDERED.

Elbinias and Paredes, JJ., concur.

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- [1] Rollo, pp. 3-38.
- [2] Ibid, pp. 42-52.
- [3] Ibid, pp. 97-110.
- [4] Ibid, pp. 54-55.
- [5] Ibid, pp. 91-96.
- [6] Dept. of Labor Manual, Sec. 4343.01, cited in C.A. Azucena, The Labor Code with Comment and Cases, Volume II, Revised Edition, 1996, p. 662.
- [7] Samson v. National Labor Relations Commission, 386 Phil. 669, 682 (2000).
- [8] Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission, 387 Phil. 250, 261 (2000).
- [9] GT Printers v. National Labor Relations Commission, G.R. No. 100749, 24 April 1992, 208 SCRA 321, 324-325.
- [10] Supra, Note 1, p. 83.
- [11] Asian Design and Manufacturing Corporation vs. Deputy Minister of Labor, 142 SCRA 79 (1986).
- [12] De la Cruz vs. NLRC, 177 SCRA 626 (1989).
- [13] Gatus v. Quality House, Inc., G.R. No. 156766, April 16, 2009.
- [14] Tanala vs. NLRC, G.R. No. 116588, January 24, 1996, 252 SCRA 314, 320, citing Soco vs. Mercantile Corporation of Davao, et. al., G.R. Nos. 53364-65, March 16, 1987, 148 SCRA 526.
- [15] Deles, Jr. v. National Labor Relations Commission, 384 Phil. 271, 281-282 (2000).
- [16] China City Restaurant Corporation vs. NLRC, 217 SCRA 443, 449 (1993), citing Philippine Airlines, Inc. vs. NLRC, 198 SCRA 748 (1991).
- [17] Ibid.
- [18] Ibid.
- [19] Abiera vs. NLRC, 215 SCRA 476, 481-482.
- [20] Supra, Note No. 1, p. 238.
- [21] Belaunzaran vs. National Labor Relations Commission, 265 SCRA 800, 809, December 23, 1996.
- [22] Kay Products, Inc., et al. v. Court of Appeals, G.R. No. 162472, July 28, 2005, 464 SCRA 544.
- [23] Producers Bank of the Philippines v. Court of Appeals, 417 Phil. 646, 661 (2001).

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