

ALBERT A. AÑONUEVO, PETITIONER, VS. HONORABLE NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), ROCHE PHILIPPINES INCORPORATED/LODIVINA BONONO, RESPONDENTS.

Ponente: GONZALES-SISON, M., J.

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GONZALES-SISON, M., J.:

Before this Court is a Petition for Certiorari[1] seeking to reverse and set aside the twin resolutions of the National Labor Relations Commission Second Division in NCR 00-10-14794-12 dated 25 June 2013 and 30 September 2013.

The 25 June 2013 resolution affirmed the earlier ruling of the Labor Arbiter dismissing petitioner's complaint of constructive dismissal for lack of merit, thus:

“WHEREFORE, premises considered, the appealed Decision is hereby AFFIRMED in toto. The instant appeal is hereby, DISMISSED for utter lack of merit.

SO ORDERED.”[2]

Meanwhile, the 30 September 2013 resolution denied petitioner's motion for reconsideration of the above decision, hence:

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

No further Motion of similar nature shall be entertained.

SO ORDERED.[3]

Briefly, the facts of the case, are as follows:

Private respondent Roche Philippines Inc. (Roche) is a domestic corporation engaged in the distribution of pharmaceutical and diagnostic products. Private respondent Lodovina Bonono (Bonono), on the other hand, is the District Manager of Roche and was petitioner's immediate supervisor.

At the other side of the fence is herein petitioner, Albert Añonuevo (Añonuevo), who was hired by Roche in 2003 as a Product Specialist. Among Añonuevo's responsibilities are sales achievement for assigned product, call planning and message delivery. Añonuevo was then assigned to handle the EAD-04 territory which comprises Makati Medical Center, PGH, Manila Doctors Hospital and Cardinal Santos Hospital.

Problems arose when Bonono sent a Memo-Call Performance Improvement (Memo) to Añonuevo on 20 September 2012 calling the latter's attention about his declining performance and other matters from January-August 2012. A pertinent portion of said Memo reads:

“RE: Call for Performance Improvement

It has been observed that your sale performance has been continuously declining for the past months. Looking at your year to date sales as of August, your performance does not reflect the full potential of the territory. The area has a potential of 143 breast cancer patients per month with 22 HER2 positive patients monthly based on ACE MD segmentation and potential territory. Currently, you have an average of 2 patient's recruitment including the RAP which means that we are missing other possible potential patients in your territory.

To give you a clear view of the your actual performance, I tabulated your sales to know if you really grow the full potential of territory based on patient recruitment.

0%

Jan

Feb

Mar

Apr

May

Jun

Jul

Aug

YTD

Actual 3.6 2.8 1.9 1.8 2.9 2.5 3.4 2.3 21.2

Study 1.3 1.1 0.55 0.55 0.55 0.55 1.1 0 5.7

Absolute Sales 2.3 1.7 1.35 1.25 2.35 1.95 2.3 2.3 15.5

Target 2.6 2.5 2.6 2.6 2.6 2.6 2.7 2.7 20.9

Sales with study 143% 128% 110% 101% 103% 102% 105% 103% 101%

Sales without study 88% 68% 52% 48% 90% 75% 85% 85% 74%

The consistently declining performance is a potential risk to your territory knowing the competitor and biosimilars capability to rule us if you will not act on it immediately.

xxxx.

Objectives:

1. Maximize the RAP program and develop at least 7-11 enrollments per month until September.
2. 100% implementation of the planned activity based on for the month of August and September as stated on CFAR dated August 22, 2012.
3. Develop the level of engagements to CSMC Mds (Dr. Ma. Luisa Tiambeng, Dr. Marina Chua, Dr. Kat Ferrera and Dr. Pauline So-Kaw) and to other Mds (Dr. Belen Tamayo, Dr. Barbara Domingo, Dr. Antonio Villalon and Dr. Reggie Edusma)

We will review your September performance on October 1, 2012. Review dates for October and November will be communicated to you separately. You are expected to demonstrate a high level of compliance to these performance objectives in your Performance Improvement Plan (PIP). Non-meeting of performance

expectations stated in this PIP will be dealt with accordingly in terms of discipline and corrective actions. In the meantime, we closely work with each other to attain the above objectives and feel free to coordinate with me should you need my assistance and support while working on these objectives.”[4]

Añonuevo felt slighted by said Memo as he had received in the same year a National Excellence Awards as Herceptin Champion and he believed that he had been exerting the same amount of diligence to merit Roche's recognition. On 26 September 2012, Añonuevo submitted a letter enumerating his grievances against the contents of the Memo. In this letter, Añonuevo, among others, stated that he was not accorded “due process” when he was placed on Performance Improvement Plan (PIP).

Thereafter, on 1 October 2012, Añonuevo sent a letter to Mr. Jose Buot, the Human Resources Director of Roche that the former would be resigning from his position effective 31 October 2012. Añonuevo, on said letter, averred that the unreasonable imposition of an almost 100% enrollment of potential patients on his part until the month of September, under pain of disciplinary and corrective actions, convinced him that he was being constructively dismissed. Furthermore, Añonuevo expressed his displeasure that he was required to cultivate strong relationship with the MDs in order to influence the latter to consider using Roche's products. Añonuevo felt that such strategy is borderline unethical. Last, Añonuevo took exception when he was allegedly threatened by Mr. Ramon Perfecto, the Business Unit Head of Roche, of disciplinary action by reason of his protest letter.[5]

Thereafter, on 1 October 2012, Añonuevo filed a complaint for constructive dismissal against private respondents Roche and Bonono and thus prayed, among others, for the award of backwages and benefits, moral and exemplary damages and attorney's fees.[6]

In their position paper, the private respondents Roche and Bonono vehemently denied that they constructively dismissed Añonuevo from service. According to the private respondents, the sending of the Memo and the placing of Añonuevo under PIP were intended to help the latter improve his performance and not to ease him out of service.[7]

In a decision dated 25 February 2013, Labor Arbiter Beatriz T. De Guzman, to whom the case was assigned, dismissed Añonuevo's complaint for lack of merit. Labor Arbiter De Guzman ratiocinated that in the absence of proof that the private respondents discriminated against Añonuevo or made his working condition unbearable, there is no constructive dismissal to speak of. Labor Arbiter De Guzman thus decreed:

“WHEREFORE, premises considered, the complaint is hereby dismissed for lack of merit.”[8]

On appeal, the National Labor Relations Commission 2nd Division (NLRC), on 25 June 2013, affirmed the ruling of Labor Arbiter De Guzman. The NLRC thus explained that placing Añonuevo under PIP was only meant to help the latter improve his performance and was a valid exercise of management prerogative. In fine, the NLRC ruled that Añonuevo was not coerced by private respondents to tender his resignation, hence he was not constructively dismissed.

With the denial of Añonuevo's motion for reconsideration of the above resolution, he now comes before this Court via this instant Petition for Certiorari and in support thereof raises the following issues for our consideration, to wit:

I.

PUBLIC RESPONDENT COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE PIECES OF EVIDENCE DID NOT SUFFICE TO PROVE THE GUILT OF PRIVATE RESPONDENT[S] OF THE CHARGES OF CONSTRUCTIVELY DISMISSING PETITIONER BY IMPOSING UNFAIR AND UNREASONABLE STANDARDS AGAINST HIM AND BY SINGLING HIM OUT, AND IN HOLDING THAT HIS RESIGNATION WAS VOLUNTARY AND NOT FORCED.

II.

PUBLIC RESPONDENT COMMISSION COMMITTED SERIOUS AND PALPABLE ERROR IN DISMISSING PETITIONER'S COMPLAINT, CONTRARY TO THE FACTS AND EVIDENCE IN THIS CASE, IN UTTER DISREGARD OF EXISTING LAW AND JURISPRUDENCE, WHICH IF NOT CORRECTED, WOULD CAUSE GRAVE AND IRREPARABLE DAMAGE AND INJURY TO HEREIN PETITIONER.

In essence, Añonuevo decried the lack of basis for the Memo, as he claimed to have exceeded his targets. Añonuevo then characterized the Memo as a written warning to him to achieve unreasonable and unfair future goals, which is thus prelude to his eventual dismissal from service. Also, Añonuevo complained that he was not given sufficient time to comply with the Memo thus depriving him of the right to due process. In addition, Añonuevo stressed that he was compelled to go beyond his job description by fostering strong ties with the MDs and thus perform acts which transgress ethical boundaries. Finally, Añonuevo claimed that he was being singled out in the implementation of the PIP, which is an indication that he was constructively dismissed.

In resolving the issues before this Court, We deem it proper to articulate beforehand the purpose of certiorari and what constitutes grave abuse of discretion.

A petition for certiorari is the proper remedy when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor any plain speedy, and adequate remedy at law. There is "grave abuse of discretion" when respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.[9]

As often repeated by the Supreme Court, the sole purpose of the writ of certiorari is the correction of errors of jurisdiction. A special civil action of certiorari does not include correction of public respondent's evaluation of the evidence and factual findings thereon.[10]

A perusal of the records, however, reveal that the errors assigned by Añonuevo in the instant petition do not pertain to the jurisdiction of the NLRC; it is rather an error of judgment supposedly committed by the NLRC in its resolutions and thus, not the proper subject of a petition for certiorari. Although this Court is aware that there are some instances where an evaluation of the evidence and factual findings is required such as when the facts complained of are not supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the Labor Arbiter; and when necessary to arrive at a just decision of the case,[11] the foregoing are not present in the instant case, thus meriting an immediate dismissal of the instant petition.

Nonetheless, an assiduous examination of the arguments raised by Añonuevo, reveals, that the same hold no water.

Verily, it bears to stress that constructive dismissal is a derivative of dismissal without cause; an involuntary resignation, nay, a dismissal in disguise. It occurs when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit.[12] The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his job under the circumstances.[13]

As it stands, we find that Añonuevo gave too much emphasis to the following words in the Memo, "[n]on-meeting of performance expectations stated in this PIP will be dealt with accordingly in terms of discipline and corrective actions". For Añonuevo said caveat already serves as a penalty for not meeting Roche's

expectations and is expected to be repeatedly imposed as Añonuevo was allegedly given an impossible task of meeting immoderate future targets.

However, far from the notion of Añonuevo that he was slowly being kicked out of the company, a panoptic reading of the circumstances reveals that Roche was only trying to assist Añonuevo improve his performance as a Product Specialist of the company.

Lost in the myriad of allegations and counter-allegations is the last paragraph of the Memo where private respondent Bonono encouraged Añonuevo that they work closely so that the former could assist the latter in his duties, hence:

“ In the meantime, we closely work with each other to attain the above objectives and feel free to coordinate with me should you need my assistance and support while working on these objectives.”

If Roche wanted to make life difficult for Añonuevo, it would have been easier if it left the latter on his own devices. The fact that private respondent Bonono was willing to share her time and effort with Añonuevo reveals that Roche was very much concerned and hoping that Añonuevo reach the goals set for him for the advancement of both the employer and the employee. It is unfortunate however that Añonuevo never gave such collaboration a chance.

To say the least, the Memo is not a penalty but a guide for Añonuevo to improve his performance as a Product Specialist. Whatever Añonuevo's performance previously, it is the management prerogative of Roche to become pro-active and identify performance and behavioral issues that need to be corrected and create a written plan of action to guide the improvement and/or corrective action. This was the sole purpose of placing Añonuevo under the PIP and not to punish him. The Supreme Court thus ruled in *Bankard, Inc., v. NLRC*[14]:

“The Court has always respected a company's exercise of its prerogative to devise means to improve its operations. Thus, we have held that management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, supervision and transfer of employees, working methods, time, place and manner of work.

This is so because the law on unfair labor practices is not intended to deprive employers of their fundamental right to prescribe and enforce such rules as they honestly believe to be necessary to the proper, productive and profitable operation of their business.”

Anent the issue that Añonuevo was singled out by Roche, we adopt the finding of the NLRC that PIP is essentially personal, and is intended to address Añonuevo's own personal behavior so he could have a better output. Verily, it is still a management prerogative whom to include in PIP.

Whether the new goals set under the PIP were indeed attainable, it must be pointed out that the Memo states that Añonuevo must develop at least 7-11 enrollments per month. Considering that Añonuevo admitted to have recruited six (6) enrollments before,[15] the addition of one (1) patient is not an imposition but a reasonable expectation, more so, in light of the additional assistance from Bonono. Regardless, even if Añonuevo failed to reach such targets, it is not a foregone conclusion that he would be penalized. Even Añonuevo admitted that the strict standard imposed in the Memo is still subject to change.[16]

As to the virtue in the manner of attaining said goals, Añonuevo cannot cite the Code of Ethics of the Philippine Medical Association as he is neither a medical practitioner nor a member of the Philippine Medical Association. Even if he developed strong ties with the MDs it is not Añonuevo's responsibility to prescribe Roche's products to patients, but the doctors themselves. The ethical issue lies with the MDs and not with the Product Specialist.

There is no violation of due process either, as Añonuevo was given sufficient time of three (3) months or until

November to comply with the new targets under the PIP. Unfortunately, Añonuevo jumped the gun by tendering his resignation in October of 2012.

As to the allegation that Añonuevo was threatened of disciplinary action for writing a protest letter, we find the same unsubstantiated. Basic is the principle that he who alleges must prove his case.[17]

More significantly, what convinced this Court that Añonuevo was not forced to quit is the letter of the HR Director, Joe Buot, to Añonuevo dated 2 October 2012 for the latter to reconsider his resignation.[18] Indeed, it clearly showed that Roche despite everything, still valued Añonuevo as an employee which is anathema to the claim of the latter that he was being discriminated and spurned by the former.

Ultimately, it has consistently been held that factual findings of quasi-judicial agencies, which have acquired expertise in matters entrusted to their jurisdiction, are accorded not only respect but also finality if they are supported by substantial evidence. Thus, in the absence of proof that the Labor Arbiter or the NLRC had gravely abused their discretion, this Court shall deem conclusive and will not overturn their particular factual findings.[19]

With the above disquisition, the claims of Añonuevo for backwages, damages and attorney's fees has no leg to stand on.

WHEREFORE, premises considered, the instant Petition for Certiorari is DENIED for lack of merit and the assailed resolutions of the National Labor Relations Commission Second Division dated 25 June 2013 and 30 September 2013 are AFFIRMED.

SO ORDERED.

Salazar-Fernando, R. A., Chairperson and Cruz, R.A., JJ., concur.

[1] Rollo, p. 3.

[2] Rollo, p. 347.

[3] Rollo, p. 337.

[4] Annex "2" of Private Respondent's Position Paper, Rollo, pp. 92-94

[5] Rollo, pp. 107-109.

[6] Rollo, pp. 40-42.

[7] Rollo, pp. 65-85.

[8] Rollo, p. 180.

[9] People's Broadcasting v. The Sec. of the Department Labor and Employment, etc., G.R. No. 179652, 08 May 2009.

[10] Cosmos Bottling Corp. v. Nagrama, Jr., G.R. No. 164403, 04 March 2008.

[11] Cocomangas Hotel Beach Resort v. Visca, G.R. No. 167045, 29 August 2008.

[12] United Laboratories Inc., v. Domingo, G.R. No. 186209, 21 September 2011.

[13] Madrigalejos V. Geminilou Trucking Service, G.R. No. 179174, 24 December 2008.

[14] G.R. No. 171664, 6 March 2013.

[15] Rollo, p. 18.

[16] Rollo, p. 10.

[17] Lim v. Equitable PCI Bank, G.R. No. 183918, 15 January 2014.

[18] Rollo, p. 110.

[19] Philippine National Bank v. Velasco, G.R. No. 166096, 11 September 2008. citing Aboitiz Shipping Corp. v. Dela Serna, G.R. No. 88538, July 25, 1991.

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