

BENJAMIN MARTI GUTIERREZ, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD., CRISTINA BECKENDORF, ROWENA QUIJENCIO AND GERAL...

Ponente: BUESER, J.

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BUESER, J.:

This is a Petition for Certiorari[1] under Rule 65 of the 1997 Rules of Civil Procedure seeking to annul the Resolution[2] dated November 29, 2013 of public respondent National Labor Relations Commission (“NLRC”) that affirmed the Decision[3] of the Labor Arbiter (“LA”) dated August 30, 2013 dismissing the complaint for illegal dismissal, the dispositive portion of the assailed Resolution reads:

“WHEREFORE, premises considered, the appeal is hereby declared with partial merit; the appealed decision is hereby MODIFIED in that Respondents are also ordered to pay Complainant Language allowance of P10,000.00 and 10% attorney’s fees.”

and its Resolution[4] dated January 21, 2014 denying the Motion for Reconsideration[5] dated December 9, 2013 filed by petitioner.

THE ANTECEDENT FACTS

As culled from the records the undisputed facts of this case are as follows:

Petitioner was hired by private respondent Maersk Global Services Centres (“Maersk”) on November 28, 2011 as a Spanish Speaking Senior Associate with a basic salary of Php20,000.00 per month. On July 16, 2012, petitioner was interviewed by Maersk’s Human Resource (“HR”) Officer in relation to his application for a higher position. When he was asked to comment on his present work, he described it as “autistic”. As a consequence, the interviewer then concluded that petitioner was “arrogant and immature” who thought highly of himself. On July 29, 2012, petitioner sent an electronic mail (“e-mail”) to a colleague complaining about Maersk’s inaction on his application for a finance manager position in the said company. This exchange of e-mails showed how petitioner insinuated that there were “money making” anomalies in the application process. Another e-mail coming from the petitioner had this remark, “looks like the 25K is more appealing”, referring to the incentive given by Maersk to existing employees, who successfully refer outside applicants for employment in the said company.

On August 17, 2012, there was a formal complaint filed against petitioner regarding the latter’s insinuations that Maersk’s recruiting team was conniving with other employees to prioritize and favor outside applicants for employment all for the “referral bonus” without substantiating such accusations.

Another incident happened sometime in September 2012, when petitioner uploaded the resume of a certain Ricardo Herrero (“Herrero”) in Maersk’s Employee Referral System and if the latter was successfully hired by Maersk, then petitioner would be entitled to his referral fee. On September 4, 2012, a certain Mr. Tabuyan, an HR

Assistant, advised herein petitioner through e-mail that Maersk had secured Herrero's application from Jobstreet and not from petitioner's own effort. Thus, if proved to be true, petitioner would not be entitled to a referral fee. Thereafter, there was an exchange of e-mails between petitioner and Mr. Tabuyan wherein petitioner accused Mr. Tabuyan of lying. Petitioner further accused Maersk's HR of curtailing employees' rights to their referral fee by resorting to what Mr. Tabuyan had done to him. However, after investigation by Maersk, it was established that Mr. Tabuyan had indeed submitted Herrero's bio-data to Jobstreet from where Mr. Tabuyan had subsequently secured it. On the ground of the foregoing incidents, petitioner was formally directed to explain his side on September 13, 2012. On September 16, 2012, petitioner submitted his explanations to the charges against him by e-mail. Thus, to give petitioner ample opportunity to explain further his side, Maersk scheduled a hearing on September 19, 2012 and another hearing was held on September 21, 2012.

On September 25, 2012, pending the administrative investigation for the first two (2) charges against petitioner, he failed to report for work after his vacation leave had expired. That, on September 27, 2012, he was then formally required to submit his explanation which he did through another e-mail dated September 29, 2012.

Then, on October 5, 2012, petitioner was formally advised that he was found guilty of the offense of "using disrespectful, impolite, profane, insulting or obscene language in addressing or speaking with co-employees, superiors or business partners", which is accordingly contained in the company's Code of Conduct. As a consequence, he was imposed a penalty of two (2) - day suspension.

On September 21, 2012, petitioner sent an e-mail to one Sheila Gonzales and sent the same to several other persons, complaining about the work place. Another e-mail followed on September 28, 2012.

On November 28, 2012, Maersk formally advised petitioner that his employment was being terminated because of the manner by which he expressed himself in a very disrespectful and insulting manner "to the people in authority, management and the company".

In petitioner's position paper, he asserted that he was illegally dismissed; denied due process; and was not administratively charged and given the opportunity to explain his subsequent infractions pertaining, among others, to his e-mails of September 21 and 28, 2012. He further argued that the penalty of termination was too harsh a penalty. That being illegally dismissed, he is entitled to reinstatement to his former position without loss of seniority rights and backwages; his salary for October 1-15, 2012, which remains unpaid, damages and attorney's fees; that the administrative hearing conducted by Maersk was for his alleged violation of company rules and regulations for using disrespectful language in two (2) instances.

On the part of private respondent Maersk, it asserts that there were more than enough valid reasons to terminate the employment of petitioner, hence, the case be dismissed.

On the issue of whether petitioner was illegally dismissed, the Labor Arbiter in its Decision[6] dated August 30, 2013 ruled in favor of Maersk saying in part that:

"From whatever angle the complainant's emails are viewed and whatever amount of liberality be extended in the interpretation of the impact of the words used by the complainant in his emails, nothing can be elicited therefrom than a deliberate intent to insult, degrade and undermine, not only his colleagues, and superiors but the company itself, its systems and goodwill, albeit his philosophical arguments and denials to the contrary."

On appeal to the NLRC, the latter affirmed the Decision dated August 30, 2013 of the Labor Arbiter with modification ordering Maersk to pay petitioner a Language Allowance of Php10,000.00 and 10% attorney's fees.

Hence, this petition.

THE ISSUES

1. Whether public respondent NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it upheld the dismissal of the complaint for illegal dismissal filed by petitioner against Maersk.
2. Whether public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied petitioner's Motion for Reconsideration.

THE RULING OF THE COURT

The petition is not meritorious. As both issues are interrelated, this Court shall resolve them jointly.

We affirm the findings of both the LA and public respondent NLRC in so ruling that the exchanges of e-mails between petitioner, his co-employees and his superiors proved that petitioner was being impolite and disrespectful in his choice of words. Further ruled by the LA, the e-mails of petitioner disclosed the "offensive and insulting tenor and import of the words he (petitioner) used and the manner he expressed his opinion or reason". And, taken from the Decision dated August 30, 2013, the LA correctly found that:

"From whatever angle the complainant's emails are viewed and whatever amount of liberality be extended in the interpretation of the impact of the words used by the complainant in his emails, nothing can be elicited therefrom than a deliberate intent to insult, degrade and undermine, not only his colleagues, and superiors but the company itself, its systems and goodwill, albeit his philosophical arguments and denials to the contrary."

After a thorough investigation, in a Memorandum[7] dated October 5, 2012, Maersk imposed unto petitioner a two (2)-day suspension for having been found guilty of "using disrespectful, impolite, profane, insulting or obscene language in addressing or speaking with co-employees, superiors, or business partners, whether oral or in writing, e-mail, or other forms of communications, while on the job, within the Company premises or during official Company functions", which falls under Class B in Maersk's Code of Conduct.[8]

It is duly established by the records that petitioner repeatedly committed said offense despite previous notices sent to him to give his explanation regarding his use of offensive language.

Thus, on October 15, 2012, through a Memorandum[9] issued by Maersk, petitioner was terminated from his employment saying:

"Your foregoing actuations taken as a whole has more than sufficiently shown and all but demonstrated your total disrespect and utmost disdain to the entire organization, its employees as well as established practice and procedures."

Petitioner, on the other hand, argued that his dismissal was illegal because he was already suspended for two (2) days for his alleged use of "disrespectful language in addressing co-employees or superiors". That, he cannot be terminated based again on the same ground of "using disrespectful language" and other alleged violation of company rules and regulations for which he was not given the opportunity to be heard.

Respondents, on the other hand, in their position paper before the NLRC, declared that the different infractions committed by petitioner might not deserve the penalty of termination but "when each act is taken as a whole however, they clearly demonstrate that Mr. Gutierrez (petitioner) who has not yet even stayed with the company for one year from the time his services were engaged---- really deserved to have his employment terminated".

From the foregoing circumstances and after a perusal of the records, We find that the NLRC correctly ruled that petitioner was dismissed on the ground of the totality of his offenses and that the penalty of dismissal is not too

harsh as opposed to what petitioner alleged because of his obstinate and persistent disrespect to his superiors. Further, NLRC ruled that the rules of his employers gave the latter the right to dismiss petitioner.

The power to dismiss an employee is a recognized prerogative inherent in the employer's right to freely manage and regulate his business. The law, in protecting the rights of the laborers, authorizes neither oppression nor self-destruction of the employer. The worker's right to security of tenure is not an absolute right, for the law provides that he may be dismissed for cause.[10] As a general rule, employers are allowed wide latitude of discretion in terminating the employment of managerial personnel. The mere existence of a basis for believing that such employee has breached the trust and confidence of his employer would suffice for his dismissal.[11] Needless to say, an irresponsible employee like respondent does not deserve a place in the workplace, and it is petitioner's management prerogative to terminate his employment. To be sure, employer cannot be compelled to continue with the employment of workers when continued employment will prove inimical to the employer's interests.[12]

On the matter of attorney's fees, the Supreme Court ruled that attorney's fees may be awarded only when the employee is illegally dismissed in bad faith, and is compelled to litigate or incur expenses to protect his rights by reason of the unjustified acts of his employer.[13] In the case at bench, We find that petitioner was validly dismissed because of the totality of infractions he committed while in service and because of lack of evidence that his dismissal was tainted with bad faith.

Hence, the grant of 10% of the total monetary award as attorney's fees cannot be sustained.

WHEREFORE, the petition is DENIED. The Resolution dated November 29, 2013 of the NLRC is partly MODIFIED deleting the award of 10% attorney's fees.

IT IS SO ORDERED.

Bruselas, Jr., A. D., Chairman, and [*]Reyes Carpio, A., JJ., concur.

[*] Acting Junior Member for 15 working days only from March 17-April8, 2015, per Office Order No. 81-15-ABR dated March 16, 2015.

[1] Rollo, p. 3.

[2] Id., p. 130.

[3] Id., p. 51.

[4] Id., p. 177.

[5] Id., p. 156.

[6] Supra. Note 3.

[7] Id., p. 44.

[8] Id., p. 37.

[9] Id., p. 46.

[10] Wuerth Philippines, Inc. vs. Ynson, G.R. No. 175932, February 15, 2012 citing Ancheta v. Destiny Financial Plans, Inc., G.R. No. 179702, February 16, 2010.

[11] Supra. citing Molina v. Pacific Plans, Inc., G.R. No. 165476, March 10, 2006.

[12] Supra. note 10.

[13] Supra. citing M+W Zander Philippines, Inc. v. Enriquez, G.R. No. 169173, June 5, 2009.

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