

EDDIE M. SUELAN, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, EIGHTH (8TH) DIVISION, APEX MINING COMPANY, INC., PEREGRINO RESABAL, PRESIDENT, NIMFA B. CALERA, HR MANAGER...

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This is a Petition[1] for Certiorari under Rule 65 of the Rules of Court assailing the Resolutions dated 30 June 2011[2] and 24 August 2011[3] of the NATIONAL LABOR RELATIONS COMMISSION (NLRC), 8[th] Division, Cagayan de Oro City denying petitioner's appeal and motion for reconsideration, respectively. The assailed resolutions affirmed the 25 January 2011 Labor Arbiter Decision[4] dismissing petitioner's complaint for lack of merit in the RAB 11-06-00663-2010 for Illegal Dismissal.

Factual Antecedents

The case arose from the Complaint[5] dated 18 June 2010 filed by complainant Eddie Suelan against the defendants Apex Mining Company, Inc., Peregreño Resabal (President), Nimfa B. Calera (HR Manager), and Emelita C. Fabro (VP - Admin) before the Regional Arbitration Branch No. XI of Davao City (Labor Arbiter for brevity) for Illegal Dismissal.

Culled from the Labor Arbiter are the following facts:

The respondent Apex Mining Company, Inc. is a corporation engaged in mining.

The complainant was hired as Underground Senior Supervisor on February 28, 2007 with a monthly compensation of P42,500.00 plus other benefits. Complainant was given several tasks and the last undertaking assigned to him was the rehabilitation of the Cosicol Tunnel in April 2010. On the following month or on May 20, 2010 an accident took place in Cosical tunnel that almost killed two mappers, Mr. Rolando Casangcapan and Mr. Victor Maturan. The respondents immediately conducted an administrative investigation on the incident. The complainant was placed under preventive suspension for 15 days. After the investigation, the management decided to terminate the employment of complainant for gross negligence as provided under Article 282 of the Labor Code.

The complainant claimed that the respondents committed acts oppressive to labor. His dismissal was without any valid cause. The penalty meted on him was too severe for the Cosicol tunnel incident only because no one was injured and it has not cause[d] any damage to the company. The complainant argued that even assuming that he was responsible for the incident, the imposition of dismissal is not in accord with the company's policy, rules and regulations. Complainant even added that there were also incidents of similar nature and yet respondents did not suspend even a single day those employees involved. The statements of the miners that they were not aware that the two mappers entered the tunnel were not also considered by the respondents.

The complainant went further that even prior to the incident, some of the company's officers have already shown indifference to him, like Engr. Salingbay, because of his request to issue a memorandum every time he

will be transferred to another job to make his new assignment official. Engr. Cezar also became hostile to him when he asked for a promotion because of his accomplishments at the Sagay-sagay project and for overtime pay. Engr. Cezar turned down his first request for the reason that he is not a licensed engineer.

Respondents, on the other hand, justified why the employment of [the] complainant has been terminated. They claimed that the complainant was not holding an ordinary position in the company. He was a senior officer and his position was imbued with trust and confidence. Because of the trust, complainant was given delicate and sensitive functions. Complainant was promoted to the position [of] Underground Senior Supervisor and he also sometimes performed the functions of a shift manager. And most of all, he was made unilaterally in charge of [the] undertaking [of] blasting operations.

According to the respondents, in relation to the blasting incident at the Cosicol tunnel, the complainant underwent several trainings and orientation of the company's Guidelines on Drilling and Blasting, specifically on Use of Explosives and Explosive Accessories.

As Underground Senior Supervisor, his duties include overall supervision of all aspects of blasting operations. It is also complainant's sole responsibility to direct his men and to counter check if the blasting area was clear of all unnecessary personnel and equipment that may be affected before any blast is undertaken; to post guards at all possible approaches to the blasting area; to disallow persons in the immediate vicinity of the area during loading and blasting operation and shall give his signal to the blaster from a vantage position where he can see the entire blast area. But complainant failed to follow the procedure and the safeguards before starting the blasting operation on May 20, 2010.

Respondents insisted that, despite his denial, the complainant was aware of the presence of the mapper and mapper-aide in the tunnel as these two have even talked to the complainant discussing the status of Levels 7 and 8 and their reopening, among others. The complainant stopped chatting with them only when the two reached the curve of the underground and stepped backward. Complainant went to the direction of Mr. Alidro.

When asked to explain, the complainant admitted that he had conversed with the two mappers, only he did not know that the latter will go inside the tunnel. That he thought that they will be at the tunnel's portal only.

Thus, for having established that complainant was grossly negligent of his duty they severed his employment. Or else, if the company will allow complainant to continue his employment, the company will be exposed to the possibility of another near miss which they could not compromise. To them, the fact that he was the supervisor who is directly in charge of the blasting activity aggravates his offense and he should be meted a penalty which is higher than his subordinates, who merely received his instructions from him.[6]

On 25 January 2011, the Labor Arbiter rendered the Decision dismissing the complaint for lack of merit.

Aggrieved, the complainant elevated the case on appeal before the NLRC. The complainant faulted the Labor Arbiter with grave abuse of discretion, viz:

“I

LABOR ARBITER LARIDA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ADMITTING AND ALLOWING THE FILING OF RESPONDENTS' POSITION PAPER FOUR (4) MONTHS LATE WITHOUT THE NECESSARY MOTION FOR LEAVE THEREOF[.]

II

LABOR ARBITER LARIDA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONSIDERING RESPONDENTS' POSITION PAPER

EVENTHOUGH THE SAME WAS SIGNED WITHOUT AUTHORITY.

III

LABOR ARBITER LARIDA COMMITTED SERIOUS ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO ABUSE OF DISCRETION OR LACK OR EXCESS OF JURISDICTION IN DISMISSING THE CASE FOR LACK OF MERIT.”[7]

On 30 June 2011, the NLRC, specifically addressing the grounds raised, held that the Labor Arbiter did not commit grave abuse of discretion, viz:

(a) the delay of a party in the submission of a position paper is a procedural flaw and the admission thereof is within the discretion of the Labor Arbiter; and

(b) the records disclose that Atty. Connie del Rio who signed the Verification of respondents’ position paper was duly authorized by respondent Apex Mining Corporation, Inc. through its Board of Director’s Resolution dated 28 October 2010.

On the merits, it held that the complainant was guilty of gross negligence in the performance of his work as Underground Senior Supervisor. Hence, the assailed Decision the dispositive portion of which reads:

“WHEREFORE, the instant appeal is DISMISSED for being unmeritorious. Accordingly, the assailed decision of 25 January 2011 is AFFIRMED.

SO ORDERED.” [8]

On 8 August 2011, the complainant filed a Motion for Reconsideration of the 30 June 2011 NLRC Resolution.

In its 24 August 2011 Resolution[9], the NLRC denied complainant’s Motion for Reconsideration.

Hence, this Petition[10].

Our Ruling

In this recourse, the complainant (hereinafter petitioner) reiterates the following grounds, thus:

“I

LABOR ARBITER LARIDA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ADMITTING AND ALLOWING THE FILING OF RESPONDENTS’ POSITION PAPER FOUR (4) MONTHS LATE WITHOUT THE NECESSARY MOTION FOR LEAVE THEREOF[.]

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IV

THE HONORABLE NLRC, 8[TH] DIVISION COMMITTED SERIOUS AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN AFFIRMING THE DECISION OF THE NLRC, RAB, REGION XI.[11]

We dismiss the petition.

On technicalities

I. Petitioner reiterates his stance that respondents had already waived their right to present countervailing evidence when they failed to file their position paper as directed. He puts emphasis on the following:

- (a) that the respondents did not file their position paper within the 30-day period, or on 31 August 2010, granted by the Labor Arbiter;
- (b) that the 30-day period granted by the Labor Arbiter was even beyond the mandatory non-extendible 10-day period provided under the 2005 NLRC Revised Rule and Procedure;
- (c) that after the lapse of two (2) months or in October 2010, petitioner moved for the case to be submitted for decision on the basis of his position paper and evidence;
- (d) that the Labor Arbiter did not resolve the motion;
- (e) that the Labor Arbiter waited for the filing of respondents' position paper in December 2010 and thereafter rendered the assailed decision on 25 January 2010 taking into consideration the position paper of the respondents.[12]

Petitioner, thus, imputes the Labor Arbiter with grave abuse of discretion in admitting and allowing the filing of respondents' position paper four (4) months late without the necessary motion for leave thereof. He maintains that the Labor Arbiter should have decided the case on the basis of his evidence and position paper to the exclusion of that of the respondents.

Misplaced is the stance of petitioner.

Here, in admitting respondents' position paper, albeit submitted late, the Labor Arbiter acted within her discretion. To the mind of this Court, such discretion was not gravely abused.

Labor arbiters are enjoined by law to use every reasonable means to ascertain the facts in each case speedily and objectively, without technicalities of law or procedure, all in the interest of due process.[13] Indeed, the failure to submit a position paper on time is not a ground for striking out the paper from the records.[14] On the other hand, to decide the case based solely on petitioner's position paper and evidence would deprive respondents of due process and the protection accorded by the Constitution.

II. The Labor Arbiter cannot be faulted in admitting respondents' position paper.

The petitioner claims that respondents' position paper was signed by Atty. Connie del Rio, the legal officer of respondent-Apex Mining, Inc., who failed to present proper authority to sign for and in behalf of the respondent corporation.

This claim is belied by the evidence on record. On this issue, the NLRC held:

xxx Record discloses clearly that the person, Atty. Connie del Rio, who signed the Verification of respondents' position paper is duly authorized by respondent Apex Mining Co., Inc. through its Board of Directors Resolution on October 28, 2010, the full text of which reads:

“RESOLVED, that the Corporation authorize, as it is hereby (sic) authorizes ATTY. CONNIE DEL RIO, Legal Officer of the Company-Maco Operations, to file a position paper, enter appearance and attend hearings in behalf of the Company specifically for the illegal dismissal case filed by EDDIE SUELAN against the company.” [15]

On the merits

The petitioner was dismissed from service on the ground of gross negligence under Article 282[16] of the Labor Code.

Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care.[17] It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[18]

This Court takes emphasis on the following findings of the Labor Arbiter and the NLRC, viz: (a) the petitioner hastily ordered the blasting the Cosicol tunnel on 20 May 2010 which resulted in the near death of the two mappers – Casangcapan and Maturan; (b) the petitioner was fully aware of the presence of the two mappers inside the tunnel; and (c) the petitioner violated the company guidelines in the use of explosives as defined in the company’s main handbook in the conduct of blasting operations.[19]

We find no cogent reason for overturning the congruent findings of the Labor Arbiter and the NLRC. Settled is the rule that the factual findings of labor administrative officials, if supported by substantial evidence, are accorded not only great respect but even finality, unless there is a showing that the Labor Arbiter and the NLRC arbitrarily disregarded evidence before them or had misapprehended evidence of such nature as to compel a contrary conclusion if properly appreciated.[20] Here, a thorough scrutiny of the records reveals that the findings are supported by substantial evidence.

The petitioner, as the Underground Mining Supervisor, was remiss in his obligation to observe the diligence required by the nature of his functions. It is incumbent upon the petitioner to enforce strict compliance with the guidelines on the Use of Explosives, Explosive Accessories and Preparation for Blasting, which reads:

Par. 5.10. It shall be the responsibility of the supervisor to clear the area of all unnecessary personnel and equipment that may be affected before any blasting is undertaken.

Par. 5.13. The Supervisor on duty shall give his signal to blast from a vantage position where he can see the entire area.

Par. 5.46. At least 15 minutes before blasting, warning horns shall be sounded joining workings that can be affected by the blast shall be cleared of equipment and personnel.

(a) Display warning signs (Display “Blasting in Progress” signs at all accesses to the area to be fired)

(b) Ensure no personnel are inside firing signs (Check all areas inside of firing signs are clear of personnel. All personnel not involved with firing operations must be out of the mine or on the verification intake side of the place being fired and where blast fumes travels.)[21]

Taking into consideration the nature of mining operations and the dangers inherently attached thereto, We are constrained to characterize the failure of the petitioner to observe the foregoing guidelines as tantamount to gross negligence. The petitioner was bound to exercise the highest degree of diligence by seeing to it that all safeguards are followed. This is but a logical precaution in order to avoid unnecessary loss of lives in the conduct of the blasting operations. Here, the petitioner’s undisputed non-compliance with the blasting procedures, i.e. failure to sound horns before the blasting began and the failure to place the required warning sign in the blasting vicinity,[22] clearly showed utter want of care; hence, gross negligence on his part.

Further, this Court is not unmindful of the requirement that negligence, in order to constitute a ground for dismissal under Article 282 of the Labor Code, must not only be gross but habitual as well. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.[23] As already explained, the infraction of the petitioner, albeit done on a single occasion only, is sufficient to justify his dismissal from service. It would be absurd to require frequency of the infraction taking into consideration the peculiar nature of the mining operations where the consequence of a single act of negligence could be irreversible. Telling is *LBC Express v. Mateo*, which upheld the dismissal of an employee on the ground of gross negligence though not habitual, viz:

Although Mateo's infraction was not habitual, we must take into account the substantial amount lost. In this case, LBC lost a motorcycle with a book value of P46,000 which by any means could not be considered a trivial amount. Mateo was entrusted with a great responsibility to take care of and protect company property and his gross negligence should not allow him to walk away from that incident as if nothing happened and, worse, to be rewarded with backwages to boot. (Citations Omitted)

If the Supreme Court deemed the foregoing instance of gross negligence which resulted in loss of substantial amount of money as sufficient to justify the dismissal of the employee; with more reason should petitioner's dismissal be justified taking into consideration that, here, human lives were at stake.

The law protecting the rights of the employee authorizes neither oppression nor self-destruction of the employer.[24] Hence, respondent company cannot legally be compelled to continue with the employment of petitioner admittedly guilty of gross negligence in the performance of his duties.

In fine, We hold that the NLRC did not commit grave abuse of discretion in affirming the 25 January 2011 Labor Arbiter Decision[25].

WHEREFORE, the petition is DENIED. The Resolutions dated 30 June 2011[26] and 24 August 2011[27] of the NATIONAL LABOR RELATIONS COMMISSION, 8th Division, Cagayan de Oro City 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.

Borja, J., Ch., and Badelles, JJ., concur.

[1] Rollo, pp. 4-22

[2] Rollo, pp. 46-53

[3] Rollo, pp. 62-63

[4] Rollo, pp. 24-27

[5] Rollo, p. 69

[6] Rollo, pp. 24-26

[7] Rollo, p. 30

[8] Rollo, p. 83

[9] Supra at note 3

[10] Supra at note 1

[11] Rollo, pp. 7-8

[12] Rollo, pp. 14-15

[13] Panlilio v. NLRC, G.R. No. 117459, 17 October 1997

[14] University of Immaculate Concepcion v. UIC Teaching and Non-Teaching Personnel and Employees Union, G.R. No. 144702, 31 July 2001

[15] Rollo, pp. 49-50

[16] (a) Serious misconduct or willful disobedience of the lawful orders of the employer in connection with the employee's work; (b) Gross and habitual neglect; (c) Fraud or willful breach; (d) Commission of a crime by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (e) Other analogous cases.

[17] Jumud v. Hi-Flyer Food, Inc., G.R. No. 187887, 7 September 2011

[18] Ibid

[19] Rollo, p. 50

[20] American Home Assurance Co. v. NLRC, 259 SCRA 280 (1996).

[21] Rollo, p. 51

[22] Rollo, p. 27

[23] Jumud v. Hi-Flyer Food, Inc., G.R. No. 187887, 7 September 2011

[24] Fuentes v. NLRC, G.R. No. L-75955, 28 October 1988

[25] Supra at note 4

[26] Supra at note 2

[27] Supra at note 3

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