

HAROLD V. NIEVA, PETITIONER, V. NATIONAL LABOR RELATIONS COMMISSION, LBC EXPRESS – NEMM INC., RONNIE CARANDANG, FERNANDO ARANETA, CARLITO TAN, APRILYN VERGARA, RESPONDENTS.

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is a Petition for Certiorari[1] under Rule 65 of the 1997 Revised Rules of Civil Procedure assailing the Resolutions dated May 31, 2013[2] and August 16, 2013[3] of the National Labor Relations Commission (NLRC), Third Division in NLRC LAC No. 01-000185-13(8) NLRC NCR CN. 02-02866-12 entitled “Emerson Garvida, Jo Dexter Antonio and Harold V. Nieva Complainants, vs. LBC Express-NEMM, Inc., Ronnie Carandang, Carlito Tan, Aprilyn Vergara and Fernando Araneta, Respondents.”, the dispositive portions of which read:

Resolution dated May 31, 2013:

“WHEREFORE, the appeal is DISMISSED. The decision is AFFIRMED.

SO ORDERED.”[4]

Resolution dated August 16, 2013:

“WHEREFORE, for lack of merit, complainants' Motion for Reconsideration is DENIED.

SO ORDERED.”[5]

The facts are:

Petitioner Harold Nieva (Nieva for brevity) together with Emerson Garvida (Garvida for brevity), Jo Dexter Antonio (Antonio for brevity) were employees of private respondent LBC Express-NEMM, Inc. (LBC for brevity), assigned at its Zabarte Branch in Quezon City.

The controversy began with the filing of several incident reports[6] and later a formal complaint[7] by Aprilyn Vergara (Vergara for brevity), a Customer Associate of said branch, against Garvida, the Team Leader of LBC-Zabarte branch, Antonio and petitioner Nieva both Customer Associates at the same branch, accusing them of violation of the company's Code of Conduct and policy on sexual harassment.[8] Succinctly, the incident reports and the complaint alleged that several acts of sexual harassment, in the form of lewd remarks[9] and gestures,[10] were committed against Vergara when she was a probationary Customer Associate. Subsequently, on November 28, 2011 the company's head office, through its Area Head Ronnie A. Carandang, sent petitioner Nieva, Garvida and Antonio a Notice to Explain[11] and required them to submit their Formal Explanation[12] on the charge against them. After filing their explanations,[13] an investigation was conducted.[14] After the investigation, they were found guilty of the offense charged, thus they received their Notice of Termination on February 16, 2012.[15] Aggrieved, they filed a complaint[16] for illegal dismissal against private respondent

LBC, its President Fernando Araneta, its Operations Staff Carlito Tan, its Area Head Ronnie A. Carandang, and Customer Associate Aprilyn Vergara (private respondents for brevity).[17] Efforts to forge an amicable settlement between the parties proved unavailing, thus they were directed to file their respective position papers.[18]

In their Position Paper,[19] petitioner Nieva and therein co-complainants averred that their dismissal due to acts of sexual harassment was illegal because it was not based on a just cause. They argued that their alleged infraction failed to satisfy the elements of serious misconduct required by law as such offense was not done with any wrongful intent, neither did it relate to their duties nor affected their performance thereof so as to render them unfit to continue their work. Furthermore, they contended that the penalty of outright dismissal meted upon them was too harsh. In imposing the penalty for such infraction, the company should have considered their length of service and the fact that this was their first offense. Due to strained relations brought about by their illegal dismissal, they claimed for the payment of separation pay in lieu of reinstatement and their full backwages, including damages and attorney's fees.

In their Position Paper,[20] private respondents claimed that the dismissal was warranted considering that the acts of sexual harassment, which were duly substantiated, constituted not only a major offense but is also listed as a form of serious misconduct as per company policy with a corresponding penalty of termination from the service. The dismissal was a reasonable exercise of their management prerogative to instill discipline and impose penalties upon their erring employees pursuant to company rules and regulations. They also observed due process before they implemented the dismissal. Consequently, since the termination is valid, they maintained, that the grant of monetary benefit is not justified.

In a Decision[21] dated October 12, 2012, the Labor Arbiter dismissed the complaint for lack of merit, prompting petitioner Nieva and others to elevate the case to public respondent NLRC.[22] On May 31, 2013 public respondent NLRC rendered the assailed Resolution,[23] affirming the validity of their dismissal. Their motion for reconsideration[24] was denied.[25]

Hence, petitioner filed this petition based on this sole ground:[26]

THE NATIONAL LABOR RELATIONS COMMISSION (3rd DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION IN RENDERING A DECISION NOT IN ACCORDANCE WITH LAW, JURISPRUDENCE AND EVIDENCE ON RECORD, AND, IF NOT CORRECTED, WILL CAUSE INJUSTICE AND IRREPARABLE DAMAGE TO PETITIONER.

The petition raised the following issues:

I.

WHETHER PETITIONER HAS COMMITTED ACTS OF SEXUAL HARASSMENT IN VIOLATION OF THE LBC EXPRESS INC., SEXUAL HARASSMENT POLICY AND PROCEDURES.

II.

WHETHER THE PRIVATE RESPONDENTS OBSERVED THE TWIN NOTICE RULE IN DISMISSING THE PETITIONER.

III.

WHETHER PETITIONER IS ENTITLED TO BACKWAGES AND SEPARATION PAY IN LIEU OF REINSTATEMENT.

IV.

WHETHER PRIVATE RESPONDENTS ARE LIABLE FOR DAMAGES.

The petition is without merit.

Initially, this Court notes that the petition raises only factual issues which are not the proper subject of a Petition for Certiorari. It is a basic rule that the sole object of such petition is to correct errors of jurisdiction or grave abuse of discretion.[27] It does not encompass an error of law, nor does it include a mistake in the appreciation of the contending parties' respective evidence or the evaluation of their relative weight.[28] Questions of fact are not entertained, and in the review of labor cases, this doctrine applies with greater force because it is an established rule that factual questions are for the labor tribunals to resolve.[29]

Significantly, for a petition for certiorari to prosper, it is incumbent upon the petitioner to prove that the court or quasi-judicial body committed not merely a reversible error but a grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the impugned decision.[30] Grave abuse of discretion means either that the judicial or quasijudicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.[31] In labor disputes, the findings of the NLRC are said to be tainted with grave abuse of discretion only when its conclusions are not supported by substantial evidence.[32] In this case, a review of the records show that the alleged grave abuse of discretion committed by public respondent NLRC when it upheld the validity of petitioner's dismissal is not apparent. In fact, the records reveal that the components of a valid dismissal are present.

Jurisprudence dictates that in order to validly dismiss an employee, it is fundamental that the employer observe both substantive and procedural due process — the termination of employment must be based on a just or authorized cause and the dismissal can only be effected, after due notice and hearing.[33]

The dismissal is justified after it was proven that certain acts of sexual harassment was indeed committed by the petitioner and therein co-complainants. Sexual harassment, a crime in itself, is a major offense in the company's handbook and is properly penalized with termination from employment.[34] This dismissal from employment of erring employees for violations of company policy, rules and regulations is recognized in this jurisdiction as an exercise of management's prerogative.[35] Under this concept, an employer is given a wide latitude of discretion in managing its own affairs, and this includes the implementation of company rules and regulations and the imposition of disciplinary measures on its employees.[36] Nevertheless, the exercise of a management prerogative like this is not limitless, but hemmed in by good faith and due consideration of the rights of the worker.[37] Therefore, as long as the company's exercise of judgment is done in good faith and with due regard to the rights of the employees under the laws or valid agreements, such exercise is valid and will be sustained.[38]

Likewise, due process was observed in this case. Procedural due process entails that the employee is given a notice of the charge against him, an ample opportunity to be heard, and a notice of termination.[39] Jurisprudence has expounded on the guarantee of due process, requiring the employer to furnish the employee with two (2) written notices before termination of employment can be effected: a first written notice that informs the employee of the particular acts or omissions for which his or her dismissal is sought, and a second written notice which informs the employee of the employer's decision to dismiss him.[40] In considering whether the charge in the first notice is sufficient to warrant dismissal under the second notice, the employer must afford the employee ample opportunity to be heard.[41] It is established in the records that petitioner received several notices requiring him to explain and state his defenses for the infraction imputed against him.[42] Furthermore, he was also given a chance

to be heard at the investigation conducted by the company.[43] Finally, his dismissal was carried out only after his violation was established and the company informed him about this decision via a Notice of Termination.[44]

Accordingly, these undisputed facts are wellsubstantiated and provided ample support to public respondent NLRC's ruling. Concomitantly, factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded with great respect and are deemed binding on this Court especially when supported by substantial evidence.[45] In the absence of a clear showing that such findings are arbitrary or bereft of any rational basis, the same will not be disturbed on appeal.[46]

WHEREFORE, premises considered, the petition is DENIED. The Resolutions dated May 31, 2013 and August 16, 2013 of the National Labor Relations Commission in NLRC LAC No. 01-000185-13(8) NLRC NCR CN. 02-02866- 12 are hereby AFFIRMED.

SO ORDERED.

Bruselas, Jr., and Barrios,[*] JJ., concur.

[*] Vice Justice Samuel H. Gaerlan, Jr. per Office Order No. 270-14-RSF dated June 6, 2014.

[1] Rollo, pp. 3-21

[2] Rollo, pp. 231-236

[3] Rollo, pp. 250-251

[4] Rollo, p. 236

[5] Rollo, p. 250

[6] Rollo, pp. 89-96, 118-128

[7] Rollo, pp. 96-98, 129-133

[8] Rollo, pp. 55-57, 96, 129-131

[9] Rollo, pp. 58, 90-93, 97, 119-124, 132

[10] Rollo, pp. 58, 91, 97, 120, 132

[11] Rollo, pp. 60-62

[12] Rollo, pp. 66-68

[13] Rollo, pp. 63-65, 69-71

[14] Rollo, pp. 150-162

[15] Rollo, pp. 163-168

[16] Rollo, pp. 23-25

[17] Rollo, pp. 5, 27, 87

[18] Rollo, pp. 6, 30, 192

[19] Rollo, pp. 27-38

- [20] Rollo, pp. 86-117
- [21] Rollo, pp. 192-214
- [22] Rollo, pp. 216-227
- [23] Supra, footnote 2
- [24] Rollo, pp. 237-243
- [25] Supra, footnote 3
- [26] Rollo, pp. 8-9
- [27] *Malayang Manggagawa ng Stayfast Phils., Inc. vs. National Labor Relations Commission, et al.*, (G. R. No. 155306, August 28, 2013)
- [28] Id.
- [29] *Jenny F. Peckson vs. Robinsons Supermarket Corporation, et al.* (G. R. No. 198534, July 3, 2013)
- [30] *Zuellig Freight and Cargo System vs. National Labor Relations Commission and Ronaldo V. San Miguel* (G. R. No. 157900, July 22, 2013)
- [31] *Zuellig Freight and Cargo System vs. National Labor Relations Commission and Ronaldo V. San Miguel* (G. R. No. 157900, July 22, 2013)
- [32] *Xavier C. Ramos vs. BPI Family Saving Bank, Inc., et al.* (G. R. No. 203186, December 4, 2013)
- [33] *Jonathan I. Sang-an vs. Equator Knights Detective and Security Agency. Inc.* (G. R. No. 173189, February 13, 2013)
- [34] Rollo, p. 182
- [35] *Reynaldo Hayan Moya v. First Solid Rubber Industries, Inc.* (G.R. No. 184011, September 18, 2013), citing *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan* (G.R. No. 164016, March 15, 2010)
- [36] *Nathaniel N. Dongon vs. Rapid Movers and Forwarders Co., Inc. and/or Nicanor E. Jao, Jr.* (G. R. No. 163431, August 28, 2013)
- [37] Id.
- [38] *Reynaldo Hayan Moya v. First Solid Rubber Industries, Inc.* (G.R. No. 184011, September 18, 2013), citing *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan* (G.R. No. 164016, March 15, 2010)
- [39] *Jonathan I. Sang-an vs. Equator Knights Detective and Security Agency. Inc.* (G. R. No. 173189, February 13, 2013)
- [40] *Jonathan I. Sang-an vs. Equator Knights Detective and Security Agency. Inc.* (G. R. No. 173189, February 13, 2013)
- [41] Id.
- [42] Rollo, pp. 136-137
- [43] Rollo, pp. 141, 154-159
- [44] Rollo, pp. 165-166

[45] Hypte R. Aujero vs. Philippine Communications Satellite Corporation (G. R. No. 193484, January 18, 2012)

[46] Id.

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