

EDGAR P. DINALO REPRESENTED HEREIN BY HIS WIFE NILDA C. DINALO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (SIXTH DIVISION), ADAMAY INTERNATIONAL CO. INC., ZENAIDA VINL...

Ponente: GARCIA, R. R. J.

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GARCIA, R. R. J.:

Before Us is a Petition for Certiorari[2] under Rule 65 of the 1997 Rules of Civil Procedure assailing the Decision[3] dated June 18, 2013 of the National Labor Relations Commission (NLRC), Sixth Division, which affirmed with modification the Decision[4] dated October 30, 2012 of the Labor Arbiter dismissing the complaint for illegal dismissal filed by petitioner Edgar P. Dinalo but awarding the latter P30,000.00 as nominal damages in addition to the Labor Arbiter's award of P20,000.00 as financial assistance; and, the Resolution[5] dated September 30, 2013 denying the motion for reconsideration[6] thereof.

THE FACTS

The instant case stemmed from a complaint[7] for illegal dismissal, moral, exemplary and nominal damages with prayer for reinstatement, money claims and attorney's fees filed on May 3, 2011 by petitioner Edgar P. Dinalo against private respondent Adamay International Co., Inc., its Human Resource Manager Zenaida Vinluan and its President Meiko Yamada.

Petitioner alleged in his Position Paper[8] and Reply[9] that he was hired as a machine operator in August 2002 by private respondent company in its business of printing and seal services. On April 11 to 14, 2011, he was not able to report for work due to chest pains. On those dates, he informed his supervisors by way of text message about his inability to report due to said condition. However, he was not able to see a doctor due to financial constraints. On April 15, 2011, he submitted himself for medical check-up at their accredited clinic, St. Baraqui Medical Clinic, and was given a medical certificate. Upon his return to work on April 18, 2011, he filed his sick leave for April 11 to 15, 2011, but it was denied. Consequently, while petitioner was working on April 26, 2011, he was summoned by their HR Manager, Ms. Zenaida Vinluan, who told him that he was just feigning his sickness because his x-ray result was negative. He was then told that he was being terminated for being absent without official leave. Petitioner claims that there was no just or authorized cause for his dismissal because his absences were due to sickness. Procedural due process was also not observed as the Notice to Explain he received from respondent company failed to specify that he might be dismissed. Further, he also cannot be dismissed for his previous absences because private respondent company failed to prove that he incurred the same.

In its traverse, private respondent company countered that petitioner's dismissal was based on just cause. He was issued several Disciplinary Warnings/Action Form[10], Explanation Memo[11], Memorandum[12] and Notice to Explain[13] resulting from his unauthorized absences on November 3, 2010; January 5, 6, 14, 17, 18, 19, 20, 21, 22, 24, 2011; February 8, 14, 16, 25, and 26, 2011; March 19, 2011 and April 7, 11, 12, 13, 14 and 15, 2011. He was also informed of his flagrant violations of existing rules and policies when he acted impolitely and discourteously to his superiors on January 10, 2011 and exceeded his breaktime period on January 12, 2011. In

response to the company's Notice to Explain[14] dated April 18, 2011, petitioner reasoned out that his absences were due to alleged health concerns. However, the company found out that he was feigning his illness because the medical results showed that nothing was wrong with him. Consequently, a Notice of Termination[15] was issued to him on April 28, 2011 which he unjustifiably refused to receive. As a machine operator, it is imperative for petitioner to regularly report for work so as not to impede the business activities of the company. His repeated non-compliance with the company's established rules and regulations shows his indifference and unfitness to continue with his employment. Private respondent merely exercised its management prerogative to instill discipline to its erring employee.

In a Decision[16] dated October 30, 2012, the Labor Arbiter dismissed petitioner's complaint for illegal dismissal ratiocinating that his termination was a valid exercise of management prerogative. Petitioner did not offer any explanation for his absences in January, February and March 2011, despite receipt of the corresponding show-cause letters. As an employer, the company should not be compelled to continue in its business a person who is admittedly guilty of misfeasance or malfeasance and whose continued employment is patently inimical to its interest. Petitioner's attitude of incurring several unauthorized absences manifests utter disregard of his work and his employer's interest. However, considering that petitioner has long worked for private respondent company, it would be in accord with compassionate justice that he be given financial assistance in the amount of P20,000.00. The pertinent portions of the Labor Arbiter's decision are quoted:

x x x

In the present case, this Office finds respondents ably substantiated the just cause of gross neglect of duty on the part of the complainant. On the substantive aspect of dismissal, records disclose that complainant incurred several unauthorized absences. Although he was already penalized for his past unauthorized absences, such as in January, 2010 (7x) and October 11-15, 26-27, 2010 (4x), still he committed anew succeeding unauthorized absences on January 5, 6, 14, 17, 18, 19, 20, 21, 22, 24, 2011 (10x); February 8, 1, 16, 25, 26, 2011 (5x); March 19, 2011 (1x) and April 7, 11, 12, 13, 14, and 15, 2011 (6x), or a total of twenty-two (22) times in such quarter. For such unauthorized absences, he received Disciplinary Warning/Action Form, Show Cause letters dated March 16, 2011, March 21, 2011 and April 18, 2011 x x x. The frequency of his absences along with its "unauthorized nature", prevented him for the same period to perform his job as machine operator, and consequently hampered the production of AIC. Hence, the same may be considered a "gross neglect of duty". x x x "gross neglect of duty becomes serious in character due to frequency of instances."

Significantly, this Office also notes that complainant did not offer any explanation for his absences in January, February and March 2011, despite receipt of the corresponding show-cause letters dated March 16, 2011, March 21, 2011. His explanation was only for his unauthorized absences in April 2011. Such attitude manifests the complainant's utter disregard of his work and his employer's interest. Indeed, there can be no good faith in intentionally and habitually incurring unexcusable absences.

x x x

Accordingly, the complainant's dismissal is a valid exercise by respondents of their management prerogative, as employer should not be compelled to continue employing a person who is admittedly guilty of misfeasance or malfeasance and whose continued employment is patently inimical to its interest.

On the second issue, there being no illegal dismissal, the complainant's claims for reinstatement, backwages, moral, exemplary and nominal damages as well as attorney's fees are not warranted, hence, DENIED. Notwithstanding, as complainant have long worked for AIC, without any record of dishonesty, it would be in accord with 'compassionate justice' that he be given a Financial assistance in the amount of TWENTY THOUSAND PESOS (P20,000.00)

WHEREFORE, premises considered, the complaint is DISMISSED as Complainant was not illegally

dismissed. Notwithstanding, Respondent Adamay International Co. Inc. is held liable to pay Complainant FINANCIAL ASSISTANCE in the amount of TWENTY THOUSAND PESOS (P20,000.00).

All other claims are DISMISSED for lack of merit.

SO ORDERED.[17]

Unsatisfied, petitioner appealed to public respondent NLRC which, in a Decision[18] dated June 18, 2013, affirmed with modification the decision of the Labor Arbiter dismissing the complaint for illegal dismissal. It ruled that petitioner's acts of frequent absences without leave and despite several warnings, constitute gross misconduct. Private respondent company considered not only his present unauthorized absences but his previous absences, as well. Nonetheless, the NLRC found that the company failed to comply with the procedural requirements for a proper termination of employment, hence, petitioner was further awarded nominal damages of P30,000.00. On the other hand, Zenaida Vinluan and Meiko Yamada were exonerated from liability after petitioner failed to prove that they acted with gross negligence or bad faith in directing the affairs of private respondent company. The pertinent portions of the assailed decision are quoted:

x x x

As correctly ruled by the Labor Arbiter, the Complainant's acts of frequent absences without leave and despite several warnings, constitute gross misconduct.

In arriving at their decision in terminating the Complainant, the company considered not only his present unauthorized absences but his previous unauthorized absences, as well.

x x x

The frequent and unauthorized absences of the Complainant are apparent. In January, February, March and March, 2011, he was absent for sixteen (16) days and in the first and second week of April, 2011, he incurred six (6) absences.

x x x We take note, however, that the Complainant was given a NTE from the Company for his absences in January and February 2011. Another NTE was given for his absence in March 2011. Significantly, if Complainant thinks that he was not absent on the days stated in the NTE, he could have refuted it by submitting his reply to the NTEs. However, despite receiving the NTE's, requiring him to explain and warning him that his failure will be considered a waiver on his part, he did not bother to response at all.

We are not unmindful of the principle that it is the employer who has the burden of proof to show the lawfulness of the dismissal. Thus, in this case, the Company has the onus to show that the Complainant was absent on those days stated in the NTEs. However, the failure of the Complainant to answer the charges of his unauthorized absences, despite ample opportunity, is verisimilitude of his absences. x x x.

The company imposed the penalty of dismissal, not solely on the Complainant's unauthorized absences on 7, 11, 12, 13, 14 and 15 April 2011. The company took into consideration the totality of the Complainant's infractions, specifically his unauthorized absences. This is the doctrine of totality of infractions.

Prior to his absences in January, February, March and April, 2011, the Complainant was issued several disciplinary warnings and Memorandum. Concomitantly, preceding his absences in April, he was issued two NTEs for his absences in January, February, and March. These disciplinary warnings and NTEs should have cautioned him that another infraction of the company policy, particularly on unauthorized absences will lead to a more severe penalty. Too, he cannot claim absence of knowledge of the company policies on unauthorized absences, since he received a copy of the Memorandum pertaining to the Company's policy on leaves on 2 December 2010.

Verily, the Complainant is liable for gross and habitual neglect of duty. His unauthorized absences of twenty

two [22] days, within the span of four months, that is, from January to the second week of April 2011, showed his disdain to his duties which he was required to perform. Obviously, as a machine operator, his functions are essential to the company's business, but his repeated absences indubitably made the company suffered as the production and quality target were not achieved.

x x x The Complainant's frequent absences albeit not authorized despite receiving warnings, memoranda and NTEs, are clear gross negligence on his part. The Complainant's habitual neglect of duty is manifested in his repeated failure to perform his duties due to frequent absences.

Nonetheless, the company failed to comply with the procedural requirements for a proper termination of employment. This is because aside from the requirement of valid and just cause, the law also requires the employer to furnish the employee with two written notices, before termination of employment can be legally done.

In this case, the NTE dated 18 April 2011 cannot be considered to have satisfied the first notice. While the law requires the employer to inform the employee in writing of all the acts or omissions for which dismissal is sought, so that he can submit his explanation to all the charges, the said NTE merely obliges the Complainant to submit a written explanation on his latest infraction, which is his absences on 7, 11, 12, 13, 14 and 15 April 2011. It did not underline that dismissal is being sought. It is established that the first notice must state that the employer seeks dismissal for the act or omission charged against the employee, otherwise, the notice does not comply with the rules.

Plainly, the Complainant was dismissed for valid cause, but the dismissal is procedurally defective.

x x x

WHEREFORE, the assailed Decision dated 30 October 2012 is hereby AFFIRMED with MODIFICATION by awarding to the Complainant the amount of Thirty Thousand Pesos [PHP30,000.00] as nominal damages.

SO ORDERED.[19]

Petitioners' Motion for Reconsideration[20] was likewise denied by public respondent NLRC in Resolution[21] dated September 30, 2013.

Hence the instant Petition for Certiorari in which petitioner, represented herein by his wife Nilda C. Dinalo, raised the following grounds[22] , to wit:

I.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN RULING THAT PETITIONER'S DISMISSAL IS VALID ON THE GROUND OF GROSS AND HABITUAL NEGLECT OF DUTY BY REASON OF ABSENTEEISM.

II.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN RULING THAT PETITIONER IS NOT ENTITLED TO THE RELIEFS PRAYED FOR EXCEPT FOR THE AWARD OF NOMINAL DAMAGES.

THE ISSUE

The primordial issue for the resolution is whether or not public respondent NLRC committed grave abuse of discretion in affirming the Decision dated October 30, 2012 of the Labor Arbiter dismissing the complaint for illegal dismissal but granting P20,000.00 as financial assistance with the modification of further awarding P30,000.00 as nominal damages.

THE RULING

The petition is not impressed with merit.

Petitioner contends that private respondent company merely enumerated the days where he allegedly incurred unauthorized absences, but failed to prove the same by substantial evidence.

We are not persuaded.

The Constitution, statutes and jurisprudence uniformly mandate that no worker shall be dismissed except for a just or valid cause provided by law, and only after due process is properly observed. Dismissals have two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and, second, the legality of the manner of dismissal, which constitutes procedural due process.[23]

The just causes for termination of employment are enumerated in Article 282 of the Labor Code of the Philippines. We quote:

Art. 282. Termination by employer. — An employee 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; and
- (e) Other causes analogous to the foregoing.

(Emphasis supplied)

In the case at bench, unexplained absences of petitioner constitute habitual and gross neglect of duties.

Private respondent company showed by substantial evidence that petitioner was absent on the following dates: November 3, 2010; January 5, 6, 14, 17, 18, 19, 20, 21, 22, 24, 2011; February 8, 14, 16, 25, and 26, 2011; March 19, 2011 and April 7, 11, 12, 13, 14 and 15, 2011, or a total of twenty-three (23) absences. For such unauthorized absences, he was issued several Disciplinary Warnings/Action Form[24], Explanation Memo[25], Memorandum[26] and Notice to Explain[27]. However, petitioner failed to give a reasonable excuse for his acts. He did not present a Medical Certificate to support his claim of illness pursuant to Section 1 of the Employees Handbook Chapter IV-Employee Welfare and Benefits[28]. Worst, private respondent company found out that he was feigning his illness because his medical results showed that there was nothing wrong with him. As correctly discussed by the NLRC, petitioner's function as a machine operator was essential to the company's business, but his repeated absences indubitably made the company suffer as the production and quality targets were not achieved.

Moreover, the private respondent company considered not only his April 11 to 15, 2011 unauthorized absences, but his previous absences and violations as well. Records will also show that since July of 2009, he has been warned several times and even suspended, for violation of company policies. He was also informed of his flagrant violations of existing rules and policies when he acted impolitely and discourteously to his superiors on January 10, 2011 and exceeded his breaktime period on January 12, 2011. As such, it is the management's prerogative to

penalize petitioner for his actions. An employer has the prerogative to prescribe reasonable rules and regulations necessary for the proper conduct of its business, to provide certain disciplinary measures in order to implement said rules and to assure that the same would be complied with.[29] Deliberate disregard of company rules or defiance of management prerogative cannot be countenanced.[30]

Anent the procedural aspect of petitioner's dismissal, We agree with the NLRC that private respondent company failed to observe the due process requirements.

In *First Phil. Industrial Corp. vs. Calimbas*[31], the Supreme Court held that procedural due process in dismissal cases consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first notice apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second notice informs the employee of the employer's decision to dismiss him. Before the issuance of the second notice, the requirement of a hearing must be complied with by giving the worker an opportunity to be heard. It is not necessary that an actual hearing be conducted.

In the instant case, the Notice to Explain dated 18 April 2011 did not specify that dismissal was being sought. It merely directed petitioner to submit a written explanation on his April 7, 11, 12, 13, 14 and 15 absences. The first written notice must inform petitioner of the particular acts or omissions for which his dismissal was being sought, otherwise, the notice does not comply with the rules. It is, therefore, proper that to award nominal damages to petitioner. The payment of indemnity in the form of nominal damages is for the violation of the petitioner's right to statutory due process.[32] It is given to discourage the abhorrent practice of "dismiss now, pay later".[33]

Moreover, We affirm the Labor Arbiter and NLRC's award of P20,000.00 as financial assistance to petitioner. Private respondent company did not question the award nor did it file a timely appeal thereof. It was awarded in accord with "compassionate justice" since petitioner served the company for almost nine (9) years without any record of dishonesty. It is not a condonation of his act which was clearly violative of company rules, but anchored on equitable considerations.

Anent the NLRC's award of nominal damages, the same must be increased from P30,000.00 to P50,000.00. It must be observed that while the dispositive portion of the NLRC Decision dated June 18, 2013 awarded P30,000.00 as nominal damages, the same was obviously a typographical error because the body of the decision clearly intended to grant P50,000.00 as nominal damages. The pertinent portions of the NLRC decision are quoted:

x x x

The recent case of *Lynvil Fishing Enterprises, Inc. and/or Rosendo S. De Borja*, reiterated the leading case of *Agabon vs. NLRC, et. al.*, whereby, in cases where the dismissal is for valid cause, but procedurally defective, the dismissal is still valid and the employee is not entitled to backwages and separation pay but the employer is to pay the employee in the form of nominal damages for non-compliance with the procedural requirements. In the case of *Lynvil* the Court awarded a nominal damage in the amount of P50,000.00 to the employee.

x x x

However, since Respondents' violated the Complainant's right to procedural due process, the latter is entitled to P50,000.00 as nominal damages. (Emphasis supplied)

In *The Insular Life Assurance Co., Ltd. vs. Toyota Bel-Air, Inc.*[34], the Supreme Court held that while the general rule is that the portion of a decision that becomes the subject of execution is that ordained or decreed in the dispositive part thereof, if there is ambiguity or uncertainty, the body of the opinion may be referred to for purposes of construing the judgment, because the dispositive part of a decision must find support from the

decision's ratio decidendi. The body of the decision may be scanned for guidance in construing the judgment.[35]

The NLRC even cited the case of Lynvil Fishing Enterprises, Inc. and/or Rosendo S. De Borja vs. Andres Ariola, et. al.[36], where the Supreme Court, pursuant to the fresh ruling in Culili v. Eastern Communication Philippines, Inc.[37], granted a monetary award of P50,000.00 as nominal damages to the complainants for failure of the company to follow the procedural requirement of two-notice rule despite their dismissal for just cause.

It may also be well to state that grave abuse of discretion under Rule 65 of the Revised Rules of Court connotes an act performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[38] Such is not present in the instant case.

WHEREFORE, premises considered, the instant petition for certiorari is hereby DISMISSED. The Decision dated June 18, 2013 of the National Labor Relations Commission, Sixth Division, is AFFIRMED with MODIFICATION in that private respondent Adamay International Co., Inc. is ORDERED to pay to petitioner Edgar P. Dinalo, represented herein by his wife Nilda C. Dinalo, the amount of Twenty Thousand Pesos (P20,000.00) as financial assistance and Fifty Thousand Pesos (P50,000.00) as nominal damages.

SO ORDERED.

De Guia-Salvador, R., (Chairperson), and Bueser, D. Q., JJ.,

[1] Also referred to as Zaida Vinluan in private respondent company's documents.

[2] Rollo, pp. 18-27.

[3] Decision penned by Commissioner Nieves E. Vivar-De Castro, concurred by Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Isabel G. Panganiban-Ortiguerra, Rollo, pp. 125-135.

[4] Decision penned by Labor Artiber Remedios Tirad-Capinig, Rollo, 104-109.

[5] Rollo, pp. 143-146.

[6] Rollo, pp. 136-141.

[7] Rollo, p. 47.

[8] Rollo, pp. 28-42.

[9] Rollo, pp. 52-59.

[10] Rollo, pp. 72, 74-75;

[11] Rollo, pp. 73, 97.

[12] Rollo, pp. 98, 99.

[13] Rollo, pp. 76, 77-78, 79-80.

[14] Rollo, pp. 79-80.

[15] Rollo, p. 81.

[16] Supra, note 4.

[17] Rollo, pp. 107-109.

[18] Supra, note 3.

[19] Rollo, pp. 129-135.

[20] Rollo, pp. 136-141.

[21] Rollo, pp. 143-146.

[22] Rollo, pp. 13-14.

[23] Agullano v. Christian Publishing, G.R. No. 164850, September 25, 2008.

[24] Rollo, pp. 72, 74-75.

[25] Rollo, pp. 73, 97.

[26] Rollo, pp. 98, 99.

[27] Rollo, pp. 76, 77-78, 79-80.

[28] Section 1. x x x

An employee who was on sick leave shall secure medical certificate from the accredited Medical clinic of the company prior to the start of his/her work schedule for assessment if he/she is already “fit to work”.

[29] San Miguel Corp. v. NLRC, G.R. No. 146121-22, April 16, 2008.

[30] Benguet Electric Cooperative v. Fianza, G.R. No. 158606, March 9, 2004.

[31] G.R. No. 179256, July 10, 2013.

[32] Agullano v. Christina Publishing, G.R. No. 164850, September 25, 2008.

[33] Ibid.

[34] G.R. No. 137884, March 28, 2008.

[35] Raymundo vs. Galen Realty and Mining Corp., G.R. No. 191594, October 16, 2013.

[36] G.R. No. 181974, February 1, 2012.

[37] G.R. No. 165381, February 9, 2011.

[38] Intestate Estate of Carmen de Luna v. IAC, 170 SCRA 246, 254 (1989). See also Soriano v. Atienza, 171 SCRA 284 (1989); Gold City Integrated Port Services, Inc. (INPORT) v. Intermediate Appellate Court, 171 SCRA 579 (1989).

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