

REAL MARIS RESORT AND HOTEL, INC., PETITIONER, VS. ROMULO C. ARBIOL, JR., AND THE NATIONAL LABOR RELATIONS COMMISSION, SEVENTH DIVISION, CEBU CITY, RESPONDENTS.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the: (1) Decision[1] dated March 27, 2013 affirming with modification the decision of the labor arbiter dated July 26, 2012;[2] and (2) Resolution[3] dated July 31, 2013 denying petitioner's motion for reconsideration. Both were issuances of public respondent National Labor Relations Commission (NLRC) in NLRC Case No. VAC-10-000609-2012.

The Antecedents

Private respondent Romulo Arbiol, Jr. (Arbiol) started working for petitioner Real Maris Resort and Hotel Inc. (Real Maris/resort) in March 2006. He became waiter on December 15, 2006 and was later appointed as officer-in-charge (OIC) of the Food and Beverage Department (F&B) on July 11, 2011.

On March 29, 2011, Real Maris issued a notice[4] requiring Arbiol to explain the irregularity in Order Slip (OS) No. 30716. The OS detailed 2 orders of rum coke and indicated that it was 2 shots per order, instead of 1 shot per order which was the standard policy used in the F&B, thereby, resulting in a discrepancy in the amount of P98.00.

In his letter[5] dated March 30, 2011, Arbiol explained that he had a Filipino guest who requested for extra 2 shots of rum. He asked Eric, the bartender about the extra shots and the latter told him that there was no need to charge it. Eric also told Arbiol that for inventory purposes, the latter had to write in the OS the extra 2 shots of rum which was not charged to the guest. Arbiol stated in his letter that he would not consent to have the P98.00 charged to him as it was not only his fault.

On November 28, 2011, Real Maris issued a memorandum to Arbiol on his alleged failure to account or report information required by the company within the prescribed period; and for his failure to record, accomplish or submit the required forms or reports.[6] As OIC of the F&B, Arbiol's attention was called regarding the submission of every report or accountable forms to the Human Resource Department upon receipt or within the prescribed period. He was warned in the memorandum not to commit again the same violation, otherwise, a more serious disciplinary action would be imposed.

On the same date, November 28, 2011, Real Maris issued another memorandum[7] to Arbiol requiring him to give, within 24 hours from notice, his written explanation regarding the fire incident that occurred in the boy's locker room on November 26, 2011. Upon investigation by the management and on the statements that he himself issued, Arbiol was found to be the one who smoked and left a lighted cigarette in the plastic trash bin of the locker room.

In a letter[8] dated November 30, 2011, Arbiol admitted that he smoked in the comfort room (CR) of the locker room. He however disclaimed liability as he averred that only a little was left of his cigarette. He pressed it first

against the metal above the toilet seat and thereafter on a piece of rug in order to put it off. It was no longer smoldering when he threw it in a plastic trash bin. He even double-checked the trash bin before leaving the locker room.

Meanwhile, the management investigated the fire incident further by inquiring from Arbiol's fellow employees and requiring their statements regarding the incident. The employees gave their written accounts of what they knew about it.[9]

On December 20, 2011, Arbiol was issued another memorandum[10] for having allegedly incurred on December 16, 2011, the following violations against Real Maris' company policies, viz.:

1)

failure to account or report correctly any information required by the company within the prescribed period; failure to record, accomplish or submit required forms or reports when Arbiol failed to collect the exact amount of 1 bottle of Jose Cuervo wine from the guest under the name of Mr. Choi staying at room 107;

2)

Staying overtime, or overnight in the office, unless with prior authorization or approval from the management. It was found from the records of the security that Arbiol stayed until 12:33 a .m. when he was supposed to stay only until 11:00 pm;

3)

Offering services to guests or employees which are immoral in nature and entering guest room without prior authorization from department head. Arbiol was allegedly seen by other staff and security personnel staying in room 106 after his duty, and he even told his co-employees, Mr. Lacuesta and Mr. Torre about what happened between him and the guest inside the room;

In a letter[11] dated December 21, 2011, Arbiol gave his written explanations on the incidents alluded to in the memorandum. He claimed that on December 17, 2011 at around 10:45 in the evening, he and Mr. Lacuesta, a fellow employee, were already cleaning up when Mr. Choi, a guest, inquired what time the bar would be closing. When he told Mr. Choi that it was only up to 11:00 o'clock in the evening, the latter requested Arbiol to extend his service even for just an hour. Arbiol knew that it was prohibited to render overtime without authority from the head so he extended his duty and served Mr. Choi's group but did not claim overtime pay. Mr. Choi ordered tequila. Arbiol was not familiar with the price so he got the menu. When he looked at the price, he saw it as P1,500.00. He did not notice that below it was the price of P2,500.00 since he allegedly focused only on the P1,500.00. He admitted his mistake and just had the discrepancy charged to him.

On the alleged immoral services, Arbiol explained that on December 17, 2011, Joseph Ferre and his friends were drinking outside Real Maris. When Joseph Ferre came to get ice, he told Arbiol that Mr. Choi would come back on February the following year and would get Arbiol as their bartender. They would give him a tip, albeit it would be a kiss; and for every shot, there would be a kiss. Arbiol just laughed at what Joseph told to him. Arbiol was already out on duty at about 12:33 in the morning but he had not gone home. He was sitting and resting when the guard asked him what he was doing in room 106. He told the guard that the guest asked to have something translated in her cellphone. The guard asked Arbiol why he did not enter the guest's room and he replied that he knew it was prohibited. The guard allegedly replied that it was prohibited only if somebody sees or squeals.

Arbiol insisted in his letter that he did not violate anything as he did not enter the guest's room. He, however, admitted that he told his co-workers what Mr. Choi said while still in the resort.

On December 22, 2011, Real Maris issued investigation notices to concerned employees regarding the incident involving Arbiol as referred to in the Memorandum dated December 20, 2011. The employees also gave their written explanation thereon.[12]

Also on December 22, 2011, Real Maris issued a memorandum[13] to Arbiol informing him that the management received his explanation regarding the fire incident and found him liable for gross negligence under Article 282 of the Labor Code. Thus, he was suspended for one (1) month starting January 10, 2012. On the same day, Arbiol received another memorandum[14] informing him that after his explanation dated December 21, 2011, he was also found to have violated the company policies stated in the notice to explain dated December 20, 2011. Hence, the memorandum served as his final written warning and notice of his 7-day suspension to start on February 11, 2011.

On December 24, 2011, Real Maris issued a memorandum[15] dismissing Arbiol effective December 25, 2011. According to the memorandum, Arbiol already committed six (6) violations within the year and under the company policy, an employee who has been warned five (5) times for various offenses within one year would be subject to dismissal. Arbiol was served a copy of the memorandum but he refused to sign his name to evidence his receipt thereof.[16]

Arbiol filed a case[17] for illegal dismissal and money claims with the Sub-Regional Arbitration Branch of the NLRC in Iloilo City. The labor arbiter ruled in his favor and the dispositive portion of his decision is hereby quoted, viz.:

WHEREFORE, premises considered complainants were found to be illegally dismissed, respondents REAL MARIS IN BORACAY BEACH RESORT/TOM KIM/MYUNG-SUNG-YANG, are DIRECTED to immediately pay complainant the following:

Separation Pay

Php 43,680.00

Unpaid Salary (December 14-25, 2011)...

2,800.00

Service Incentive Leave Pay

4,200.00

13th Month Pay

21,639.80

Total:

Php 72,319.80

Attorney's fees

7,231.98

GRAND TOTAL:

Php 79,551.78

or in the amount of SEVENTY NINE THOUSAND FIVE HUNDRED FIFTY ONE PESOS AND SEVENTY EIGHT CENTAVOS (Php 79,551.78).

SO ORDERED.[18]

Real Maris appealed to the NLRC.[19] The NLRC, however, affirmed the ruling of the labor arbiter that Arbiol was illegally dismissed, although it modified the monetary awards by adding backwages considering that there was illegal dismissal. The dispositive portion of the NLRC's decision reads, viz.:

WHEREFORE, PREMISES CONSIDERED, the decision of the Labor Arbiter is AFFIRMED WITH MODIFICATION. Respondent Real Maris Resort and Hotel, Inc. is hereby ordered to pay complainant the following:

Backwages -

P110,073.60

Separation Pay -

P 43,680.00

Unpaid Salary -

P 2,800.00

Service Incentive Leave Pay -

P 4,200.00

13th Month Pay -

P 21,639.80

Total

P182,393.40

10% Attorney's Fees

18, 239.34

GRAND TOTAL

P200,632.74

SO ORDERED.[20]

Real Maris moved for reconsideration[21] but the NLRC stood pat on its decision.[22] Aggrieved, Real Maris brought this petition on the lone ground that:

THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED WITH MODIFICATION THE DECISION RENDERED BY THE LABOR ARBITER IN NLRC'S RAB CASE NO. VI-01-001-AKLAN-2012 AND DENIED THE MOTION FOR RECONSIDERATION FILED BY THE PETITIONER.

Real Maris contended that Arbiol was legally dismissed. He had violated their company policies and committed at least five offenses in a span of one year, which under the Table of Offenses and Penalties in the Staff Manual, warranted the discharge of the employee. Real Maris insisted that it observed procedural due process in effecting Arbiol's dismissal as he was given notices and had the chance to explain himself. Other employees were likewise investigated so the management could determine the truth and Arbiol was dismissed only after the investigation. With these circumstances, the dismissal was valid and the awards for separation pay and backwages had no basis.

As for the unpaid salary from December 14-24, 2011, night shift differential and the unused leave and holiday pay for December 25, 2011, the management prepared the total sum of P4,234.65 for Arbiol to claim before he left the resort but he did not get the amount. Regarding the award for 13th month pay in the sum of P21,639.80, Real Maris protested this because Arbiol already received the amount before he was dismissed.

This Court's Ruling

The petition is impressed with merit.

This Court notes that the labor arbiter and the NLRC were in unison in declaring that Arbiol was illegally

dismissed. On the part of the labor arbiter, he resolved the case without Real Maris' position paper since he decided the case even before the extension requested by Real Maris expired. Thus, on the issue regarding Arbiol's dismissal, the labor arbiter declared that Real Maris had no evidence to discharge the burden of proving its legality.

When the case was appealed to the NLRC, the NLRC noted the labor arbiter's blunder of deciding the case even before Real Maris' deadline came to pass. Hence, the NLRC took into account Real Maris' position paper and the evidence attached thereto, which documented the events that led to Arbiol's termination. Notwithstanding the consideration of Real Maris' evidence, however, the NLRC still ruled in Arbiol's favor. It found that the employee did not have a reasonable opportunity to explain his side as he was only given either 24 hours or 2 days to submit his explanation regarding the offenses charged against him. The NLRC also found Real Maris' observance of procedural due process pretentious as it suspended Arbiol even before it finished gathering other employees' accounts and concluded its investigation.

After thoroughly evaluating the circumstances of this case, however, this Court finds that the NLRC erred in sustaining the labor arbiter's finding that Arbiol was illegally dismissed.

Although it is well-established that the findings of facts of the NLRC are entitled to great respect and are generally binding on this Court, it is equally well-settled that the Court will not uphold erroneous conclusions of the NLRC when the Court finds that the latter committed grave abuse of discretion or when the findings of facts from which the conclusions were based were not supported by substantial evidence.[23]

This Court's authority to make its own factual findings in a petition for certiorari on a decision of the NLRC is also well-settled. In *Plastimer Industrial Corporation v. Gopo*, [24] it was held that the Court of Appeals has ample authority to make its own factual determination; thus, the Court of Appeals can grant a petition for certiorari when it finds that the NLRC committed grave abuse of discretion by disregarding evidence material to the controversy. This authority of the appellate court was well elucidated in *Maralit v. PNB*, [25] thus:

xxx In a special civil action for certiorari, the Court of Appeals has ample authority to make its own factual determination. In *Gutib v. Court of Appeals*, the Court held:

It has been said that a wide breadth of discretion is granted a court of justice in certiorari proceedings. xxx. In the exercise of our superintending control over inferior courts, we are to be guided by all the circumstances of each particular case "as the ends of justice may require". So it is that the writ will be granted where necessary to prevent a substantial wrong or to do substantial justice.

xxx xxx xxx

The Court in the exercise of its equity jurisdiction may look into the records of the case and re-examine the questioned findings. xxx The same principles are now necessarily adhered to and are applied by the Court of Appeals in its expanded jurisdiction over labor cases elevated through a petition for certiorari; thus, we see no error on its part when it made anew a factual determination of the matters and on that basis reversed the ruling of the NLRC. [Emphasis supplied.]

It is in the light of the foregoing authority that We reverse the findings of the NLRC.

For an employee's dismissal to be valid, (a) the dismissal must be for a valid cause, and (b) the employee must be afforded due process.[26] We find both requisites to have been satisfied in this case.

ON THE EXISTENCE OF JUST CAUSE

The records show that Arbiol had indeed committed the requisite number of violations for the year 2011 to warrant his dismissal. Under Real Maris' Staff Manual,[27] which Arbiol acknowledged to have been clearly explained and thoroughly discussed to him,[28] dismissal is warranted when an employee had been warned for 5 times for various offenses within a year.[29] An examination of Arbiol's violations for the year 2011 also show that these constituted as grounds for termination under Article 282 of the Labor Code.

The provision reads, thus:

Article 282. Termination by employer. - An employer 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.

Examining the violations that Arbiol incurred, this Court finds that these were just causes under Article 282 (a) and (b) of the Labor Code, specifically willful disobedience of lawful order of the employer in connection with the employee's work and gross and habitual neglect by the employee of his duties, respectively.

For willful disobedience to constitute as ground for dismissal, two (2) requisites must concur: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude;" and, (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[30]

When Arbiol violated Real Maris' overtime policy, he committed willful disobedience to the lawful order of his employer. From his own explanation Arbiol admitted that he knew of the company's policy of requiring prior authorization for rendering overtime services. Yet, despite knowledge thereof, Arbiol consciously and deliberately violated the policy by extending the bar's service hours for a customer without requesting authority from the concerned head. Arbiol knew the rule, yet he chose to transgress it. Clearly, this constituted willful disobedience of the lawful orders of his employer. His excuse that it was the guest who requested him to extend his service was not acceptable. If he was indeed in good faith, he could have reported the incident to the management immediately the following day and seek excuse by invoking customer service considerations. Unfortunately, he did not make effort to reveal the incident, and just waited for the management to confront him about it and take it against him as a deliberate violation of company policy. Jurisprudence[31] has decreed that employees may object to, negotiate and seek redress against employers for rules or orders that they regard as unjust or illegal. However, until and unless these rules or orders are declared illegal or improper by competent authority, the employees ignore or disobey them at their peril.

Meanwhile, in order for neglect of duty to become a ground for dismissal, it must be both gross and habitual. Gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.[32] These requisites and

characteristics for neglect of duty obtain in this case.

Arbiol incurred his first violation on March 2011 when there was a discrepancy in the recording of the orders of rum coke. He reflected it as two shots per order in the OS, instead of 1 shot per order as required by the F&B policy. Arbiol offered the explanation that it was the bar tender who told him, upon his inquiry, that there was no need to charge the 2 extra shots of rum coke. The explanation is too flimsy considering that he had been a waiter in Real Maris since December 15, 2006. If Arbiol had been conscientious in his job, the length of his service should have acquainted him well of the resort's policy. There was no need for him to consult the matter with the bar tender and worse, subscribe to the latter's alleged information that there was no need to charge the extra 2 shots of rum.

Arbiol committed again two violations constituting negligence in November 2011: first, he failed to accomplish and submit the required forms or reports which he ought to have known being the OIC of the F&B; and second, he caused the fire in the resort's boy's locker room. Arbiol admitted in his explanation letter that he smoked in the comfort room. Even if he insisted that he already put off his cigarette before he left, this self-serving claim was negated by the occurrence of the fire. It was utterly negligent for Arbiol to smoke in the CR of the locker room and throw his cigarette in the plastic trash bin. His negligence was very serious in nature for it could have resulted in danger to, or even loss of lives and property if not averted.

Even before the investigation of the fire incident could be concluded, Arbiol again committed three (3) violations in December 2011. He failed to collect the right amount for the bottle of tequila ordered by the customer. He priced it for only P1,500.00 when it actually cost P2,500.00. Such was clearly gross negligence of his duty as this Court finds it hard to believe Arbiol's explanation that he was not familiar with the price of the liquors that they serve, and that he did not notice a different price despite him actually looking at the menu. It is worthy to emphasize that at the time he committed the violation, Arbiol was not a novice in the F&B. On the contrary, he was the OIC of the department, hence, he was expected to be familiar of their beverage list and its corresponding prices.

Regarding his act of offering immoral services to a guest, Arbiol's denial of the charge is weak. A number of his fellow employees confirmed that they saw him kissed the resort's Korean guest and even detailed what they saw in their written statements. Moreover, it was Arbiol himself who narrated to his fellow employees what happened to him and the guest. According to Sherlyn Albania,[33] one of those persons to whom Arbiol related the incident, Arbiol proudly told her that “kada tapos mag shot ng tequila, may pulutang kiss” (after every shot of tequila, there was a kiss as appetizer) from his Korean girlfriend. This story of Sherlyn Albania appears to coincide with what Arbiol stated in his own written explanation, albeit Arbiol had a tamer version as he only averred that the guests would tip him with a kiss. Arbiol's claim that the guard told him that entering the guest's room was prohibited only if somebody sees or squeals, does not actually work for his favor. Arbiol occupied a supervisory position as he was the in-charge of the F&B, a vital section in the resort. As one whose duty was to enforce the company's policy, Arbiol was even expected to take offense at the guard's remarks and not just be passive about it.

From the foregoing, it is clear that a number of just causes existed for terminating Arbiol's employment. He just had the proclivity to violate company rules and his violations were deleterious to Real Maris. It has to be emphasized that Arbiol was not an ordinary employee. His transgressions were inexcusable considering that these pertained to basic company policies and to his tasks. His termination was, therefore, justified. An employer cannot be compelled to retain an employee who is guilty of acts inimical to the interests of the employer. A company has the right to dismiss its employees as a measure of protection, more so in the case of supervisors or personnel occupying positions of responsibility.[34]

ON THE OBSERVANCE OF DUE PROCESS

Well-settled is the dictum that the twin requirements of notice and hearing constitute the essential elements of due process in the dismissal of employees. It is a cardinal rule in our jurisdiction that the employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. From the records of this case, this Court finds that Real Maris complied with procedural due process requirements. The resort gave show cause notices to Arbiol for his several violations and also notified him of his dismissal. Anent the requirement of a hearing, case law^[35] has decreed that this is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.

In the assailed decision, the NLRC declared that the period of 24 hours or 2 days that were given to Arbiol to submit his explanation to the charges, did not constitute reasonable opportunity to explain himself.

This Court cannot subscribe to the NLRC's view. Arbiol had the opportunity to be heard and he, in fact, availed of it by submitting his written explanations. The short period given to him to explain the charges did not negate due process. The briefness of time would have mattered if it prevented Arbiol from airing out his side, but this did not happen in this case. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense,^[36] both of which were clearly afforded to Arbiol.

In the light of the foregoing, Arbiol's dismissal was legal. Real Maris' however, still had to pay Arbiol his unpaid salary for December 14-25, 2011. The labor tribunals computed the award to be in the sum of P2,800.00. However, Real Maris itself averred in its petition that the amount due to Arbiol for his unpaid services was P4,234.65, which represented his salary and night shift differential for the duration, as well as unused leave and holiday pay for December 25, 2011. This amount should therefore be the sum given to him. Real Maris is also liable to pay Arbiol's service incentive leave (SIL) pay in the sum of P4,200.00. The SIL pay is a statutory benefit and Arbiol's payslips did not show that Real Maris paid it to him. As for the 13th month pay, the labor arbiter awarded the benefit to Arbiol and the NLRC sustained it in the assailed decision. However, Real Maris protested the award as Arbiol already received the same. This Court believes Real Maris. Arbiol himself did not include 13th month pay in his monetary claims before the labor arbiter. Besides, under Presidential Decree No. 851,³⁷ employers are required to give the 13th month pay to their employees not later than December 24 of every year. Considering that Arbiol was dismissed on December 25, 2011, the claim of Real Maris that they already paid him the benefit is favorably considered.

WHEREFORE, the petition is GRANTED. The Decision dated March 27, 2013 and Resolution dated July 31, 2013 of the National Labor Relations Commission in NLRC Case No. VAC-10-000609-2012 are hereby NULLIFIED AND SET ASIDE.

Real Maris Resort and Hotel, Inc. is hereby ORDERED to PAY Romulo C. Arbiol, Jr. the sums of P4,234.65 for unpaid salaries and benefits from December 14-25, 2011, and P4,200.00 as service incentive leave pay.

SO ORDERED.

Hernando, Chairperson and Azcarraga-Jacob, JJ., concur.

[1] Rollo, pp. 190-200.

[2] Rollo, 165-171.

- [3] Rollo , pp. 207-208.
- [4] Rollo, p. 105.
- [5] Rollo, p. 106.
- [6] Rollo, p. 108.
- [7] Rollo, p. 109.
- [8] Rollo, p. 110.
- [9] Rollo, pp. 111-120.
- [10] Rollo, p. 121-122.
- [11] Rollo, pp. 123-124.
- [12] Rollo, pp. 125-135.
- [13] Rollo, p. 138.
- [14] Rollo, pp. 136-137.
- [15] Rollo, pp. 139-140.
- [16] See rollo, p. 140.
- [17] Complaint, rollo, p. 20.
- [18] Rollo, p. 170-171.
- [19] Notice of Appeal, rollo, pp. 172-173; Appeal Memorandum, rollo, pp. 175-186.
- [20] Rollo, p. 201-204.
- [21] Rollo, pp. 57-59.
- [22] See Resolution dated July 31, 2013, rollo, pp. 207-208.
- [23] See Labor v. NLRC, G.R. No. 110388. September 14, 1995.
- [24] G.R. No. 183390. February 16, 2011.
- [25] G.R. No. 163788. August 24, 2009.
- [26] See Sy v. Honorable Court of Appeals, G.R. No. 142293. February 27, 2003.
- [27] Rollo, pp. 142-162.
- [28] See Acceptance and Commitment dated January 29, 2009, rollo, p. 163.
- [29] See Section on Others, rollo, p. 161.
- [30] See Villeno v. NLRC, G.R. No. 108153. December 26, 1995.
- [31] See Allied Banking Corporation v. Court of Appeals, G.R. No. 144412. November 18, 2003.
- [32] See Hospital Management Services, Inc.- Medical Center Manila v. Hospital Management Services, Inc.- Medical Center Manila Employees Association-AFW. G.R. No. 176287. January 31, 2011.

[33] See written explanation in rollo, p. 133.

[34] See Santos v. San Miguel Corporation, G.R. No. 149416. March 14, 2003.

[35] See Solid Development Corporation Workers Association v. Solid Development Corporation, G.R. No. 165995. August 14, 2007.

[36] See Batongbakal v. Zafra, G.R. No. 141806. January 17, 2005.

[37] Requiring All Employers To Pay A 13th Month Pay.

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