

ROWEL S. PADERNAL, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, STI COLLEGE FAIRVIEW AND MARIA ROWENA BASILIO, RESPONDENTS.

Ponente: CRUZ, R.A., J.

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CRUZ, R.A., J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the Resolution dated June 28, 2012[1] of the National Labor Relations Commission (“NLRC”) Second Division in NLRC NCR 12-18267-11 affirming the decision of the labor arbiter which ruled that petitioner was not illegally dismissed but voluntarily resigned and the Resolution dated August 24, 2012[2] denying reconsideration thereof.

THE ANTECEDENTS

Petitioner Rowel Padernal was hired by STI Education Services Group, Inc. “(STI)” as a faculty member on a “part-timeC. full-load” status[3] on June 1, 2008. As of the time of his separation from employment, he was earning a basic monthly salary in the amount of P13,225.00, Philippine Currency.[4] Aside from being a faculty member, he also acts as trainer conducting training programs for STI Faculty Members on a service contract basis.

Petitioner alleges that the last training program he conducted entitled “Teaching Skills Training for STI Faculty Members” at Sta. Maria, Bulacan covered a period from June 7-10, 2011. On July 1, 2011, he submitted his liquidation report for the said training. The liquidation report showed an expense for hotel accommodation in the amount of P7,500.00 with an attached official receipt[5] issued by the hotel.

On November 21, 2011 he received a Show Cause Memo dated November 18, 2011[6] for violation of the STI School Operations Group Code of Conduct. He was directed to answer the accusations against him for misappropriation of company funds, falsification, tampering and alteration of vouchers and receipts to defraud the company.

It appears that petitioner's hotel accommodation amounted to P7,500.00, Philippine Currency. It was paid in full by STI College, Sta Maria, Bulacan branch (Requesting Branch). Petitioner, in turn, was given an official receipt for P4,000.00 by STI College, Sta Maria, Bulacan which corresponds to the share (50%) of the STI Headquarters. However, in the liquidation report submitted by the petitioner, he attached the official receipt for the accommodation issued by the hotel instead of the P4,000.00 official receipt issued by STI College, Sta Maria, Bulacan, resulting in an additional/unaccounted charge of P3,500.00.

On November 23, 2011, petitioner submitted a letter explaining that the discrepancy in the liquidation report was due to “unintentional and honest mistake and thus committed without any malicious intention” and admitted that the incident was due to his negligence.[7]

On November 28, 2011, a committee was convened where petitioner was made to answer queries from its members. In the scheduled meeting of the committee on December 5, 2011, petitioner, the officials of the

respondent school and Atty. Jay Joseph Jamandre (lawyer for STI Headquarters) appeared. Petitioner alleged that Atty. Jamandre informed him that the committee found him guilty for the offenses hurled against him and advised him to resign. Thereafter, an altercation took place between the two where the latter allegedly instructed the dean and department head to terminate him, to which he replied, “then terminate me.”

On the same date, he submitted an irrevocable resignation[8] letter. Three days later, petitioner filed a complaint before the NLRC for illegal dismissal (constructive dismissal) with prayer for separation pay, unpaid wages, moral and exemplary damages.[9]

In a Decision dated March 12, 2012[10], the labor arbiter dismissed the complaint for lack of merit. The labor arbiter ruled that petitioner was not constructively dismissed but opted to terminate his employment by tendering his resignation pending investigation by the committee of his infractions of the STI School Operations Group Code of Conduct. The labor arbiter's findings reveal that petitioner decided to end his employment in order to pre-empt any adverse action that may be taken by the management. After all, there is no showing that he was forced to resign. Consequently, the claims for moral and exemplary damages were denied because there was no evidence to establish that the respondents acted in bad faith or in a fraudulent or oppressive manner.

On April 10, 2012, petitioner filed via registered mail a Memorandum of Appeal[11] before the National Labor Relations Commission (“NLRC”). In a Resolution dated June 28, 2012[12], the NLRC dismissed the appeal for lack of merit and affirmed the decision of the labor arbiter. The NLRC ruled that petitioner was not constructively dismissed. He voluntarily resigned as shown by the resignation letter dated December 5, 2011. Except for his bare allegations, petitioner failed to prove that he was forced to resign. Since the resignation letter is not contrary to law, morals or public policy, there is no reason not to respect the same. The NLRC stated that the employment of professors and instructors are principally governed by the Manual of Regulations for Private Schools, the Labor Code, being applicable, suppletorily.

Petitioner filed a Motion for Reconsideration[13] which was subsequently denied in a Resolution dated August 24, 2012.[14]

Aggrieved, the petitioner filed this petition before us, alleging the sole issue, that:

THE ISSUE BEFORE US

I.

WHETHER OR NOT THE PETITIONER WAS ILLEGALLY DISMISSED BY THE RESPONDENTS;

Petitioner claims that he was illegally dismissed by the respondents as shows by the Affidavit of one of the members of the investigating committee which handled his case. Petitioner argues that he may terminate his employment with or without cause. Failure to reinstate him resulted in constructive dismissal. Petitioner avers that he was forced to resign.

Respondents filed their Comment[15] on February 26, 2013. Respondents asseverate that petitioner was not constructively dismissed. Bare allegations of constructive dismissal when uncorroborated by evidence on record cannot be given credence. The affidavit submitted by the petitioner is self-serving and inadequate to prove the accusations of forced resignation. Petitioner relinquished the position when he submitted his voluntary resignation. He was not forced to resign. Respondents contend that procedural due process was complied with as shown by the following : (1) Show-Cause Memo; (2) Petitioner was required to attend the hearings of the investigation committee and to present all defenses in his favor. Respondents claim that they were not able to send the second notice because petitioner already filed an illegal dismissal case against them. There being no illegal

dismissal, the claim for attorney's fees must be denied.

OUR RULING

The petition is without merit.

At the outset, we noticed that the pleading denominated as a “petition” which was later on amended to reflect the title “Petition for Certiorari”, suffers procedural infirmities namely: (1) improper mode of appeal; (2) failure to allege material dates; (3) filed out of time.

First, neither the first “petition” nor the second “petition for certiorari” is a proper mode of appeal.

Judicial review of the decision of the NLRC should be through a Petition for certiorari under Rule 65 of the Rules of Court filed before Us in accordance with the decision in *St. Martin Funeral Home vs. NLRC*[16], which held:

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“Therefore, all references in the amended Section 9 of B.P. No. 129 to supposed appeals from the NLRC to the Supreme Court are interpreted and hereby declared to mean and refer to petitions for certiorari under Rule 65. Consequently, all such petitions should henceforth be initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts as the appropriate forum for the relief desired.” (Emphasis supplied)

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Neither the first “petition” nor the second “petition for certiorari” is a Petition for Certiorari as contemplated under Rule 65 of the Rules of Court because: (1) The first “petition” is captioned “Petition for Review”; (2) The first “petition” and the second “petition for certiorari” state under paragraph 13 that the petitioner is elevating the case before Us by way of Petition for Review; (3) The first “petition” and the second “petition for certiorari” fail to allege any issue/act which establishes that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. Petitioner failed make any imputation of grave abuse of discretion on the part of the NLRC. No argument was advanced to show that the NLRC exercised its judgment capriciously, whimsically, arbitrarily or despotically by reason of passion and hostility. Petitioner did not even discuss how or why the conclusions of the NLRC were made with grave abuse of discretion. Instead, petitioner limited its discussion on its version of the case, which had been already rejected both by the Labor Arbiter and the NLRC. Thus, petitioner failed in his duty to demonstrate with definiteness the grave abuse of discretion that would justify the proper availment of a petition for certiorari under Rule 65 of the Rules of Court.

By availing of a wrong or inappropriate mode of appeal, the petition merits an outright dismissal pursuant to Circular No. 2-90 dated March 9, 1990, which provides that, "an appeal taken to either Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed." [17]

Second, neither the first “petition” nor the second “petition for certiorari” alleges the material dates. As held in *Dr. Rey Tambong vs. R. Jorge Development Corporation* [18],

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“There are three essential dates that must be stated in a petition for certiorari brought under Rule 65 of the Rules of Court. First, the date when notice of the judgment or final order or resolution was received; second, when a motion for new trial or reconsideration was filed; and third, when notice of the denial thereof was received. Failure of petitioner to comply with this requirement shall be sufficient ground for the dismissal of the petition. Substantial compliance will not suffice in a matter involving strict observance with the Rules.” (Emphasis supplied)

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The requirement of setting forth the three (3) dates in a petition for certiorari under Rule 65 of the Rules of Court is for the purpose of determining its timeliness.

Third, neither the first “petition” nor the second “petition for certiorari” was filed within the reglementary period for filing a petition for certiorari.

Hanjin Heavy Industries and Construction Company, Ltd. vs. Court of Appeals[19], had the occasion to state that, “perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional and failure to do so renders the questioned decision final and executory, thus depriving the appellate court jurisdiction to alter the final judgment, much less to entertain the appeal.”

Here, the first “petition” was filed on November 7, 2012 while the second “petition for certiorari” was filed on November 29, 2012. The second petition denominated as “petition for certiorari” states that the resolution dated August 4, 2012 denying his motion for reconsideration was received last September 5, 2012. Following Rule 65 of the Rules of Court, petitioner had until November 4, 2012 within which to file a petition for ceriorari before Us. But since November 4, 2012 falls on a Sunday, the petition for certiorari should have been filed on November 5, 2012. Hence, the first “petition” and the second “petition for certiorari” were filed out of time.

On these grounds alone, the “petition” and the “petition for certiorari” deserve outright dismissal.

Nonetheless, on its merits, we are constrained to dismiss it just the same.

The settled rule is that factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdiction are generally accorded not only respect, but even finality[20], and bind the Supreme Court when supported by substantial evidence. The findings of both the Labor Arbiter and the NLRC are amply supported by the required quantum of evidence, i.e., evidence as a reasonable mind might accept as adequate to support a conclusion.

Hence, we find no reason to deviate from the conclusion of both the NLRC and the Labor Arbiter that petitioner voluntarily resigned from STI and there was no constructive dismissal.

Resignation is the formal pronouncement or relinquishment of an office. The overt act of relinquishment should be coupled with an intent to relinquish, which intent could be inferred from the acts of the employee before and after the alleged resignation. It appears that petitioner, on his own volition, decided to resign from his employment pending investigation of his infractions of the STI School Operations Group Code of Conduct.

To support their contention that petitioner voluntarily resigned, respondents presented his resignation letter dated December 5, 2011:

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“This is to tender my irrevocable resignation effective today, December 5, 2011.

It has been a challenging experience working at STI Fairview for almost four years. With those fruitful years, I may say, I would like to thank you for giving me the opportunity of being a part of your institution.”

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Petitioner personally drafted his resignation letter in a clear, concise and categorical language. Its content, as quoted above, confirmed his unequivocal intent to resign.

He was convinced that his separation was inevitable as a result of the on-going investigation of the company for

his misappropriation of company funds and padding of liquidation report and for this, he voluntarily resigned. In *Virgilio Callanta vs. National Labor Relations Commission*[21], a national-promoter salesman of Distilleria Limtuaco Co., Inc., assigned in Iligan City, Lanao del Sur and Lanao Del Norte, resigned after he was found to have a shortage of P49,005.49 in a “spot audit” conducted by the company. He later filed an illegal dismissal case claiming that his consent to the resignation was vitiated as he signed the company’s ready made resignation letter because the latter threatened to file a estafa case against him. In rejecting his contention, the Court ruled that a salesman-promoter could not have been confused, coerced or intimidated into signing the resignation letter. Instead of defending himself against the adverse audit report, he voluntarily signed the resignation letter though there is no urgency in signing the same. It was held that he affixed his signature in the said letter of his own free will with full knowledge of the consequences thereof.

Contrary to his unsubstantiated and bare assertion, petitioner was not coerced into signing the resignation letter. It is a basic rule in evidence that the burden of proof is on the part of the party who makes the allegations. Petitioner failed to discharge this burden. Moreover, an employee of petitioner's educational background and professional standing will not easily relinquish his legal rights unless he intends to. As aptly observed by the NLRC, no element of force can be deduced from his letter of resignation as the same even contained expressions of gratitude and thus contradicting his allegations that same was prepared by his employer. In *Globe Telecom and Ma. Caridad Gonzales vs. Jeanette Crisologo*[22],

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“Coercion exists when there is a reasonable or well-grounded fear of an imminent evil upon a person or his property or upon the person or property of his spouse, descendants or ascendants. No such situation existed in this case.

As a matter of fact, respondent's resignation letter and May 2, 2002 letter both contained expressions of gratitude. In her May 2, 2002 letter, she told petitioner Gonzales:

I wish to express my appreciation for the training you readily gave me while I was under your supervision.

In *St. Michael Academy v. NLRC*, we held that expressions of gratitude cannot possibly come from an employee who is just forced to resign as they belie allegations of coercion. Moreover, the May 2, 2002 letter was sent after respondent's April 30, 2002 conversation with petitioner Gonzales. Indeed, if something untoward really took place in the course of that conversation, experience dictates that respondent would not have bothered to thank petitioner Gonzales. Therefore, respondent's assertion that she was forced to resign was simply not true.”

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Moreover, the December 5, 2011 letter was submitted at the same time petitioner and Atty. Jamandre allegedly had an altercation during the scheduled hearing of the investigation committee. Indeed, if something untoward really took place in the course of that hearing/meeting, experience dictates that petitioner would not have bothered to thank respondents. Therefore, petitioner's assertion that he was forced to resign was simply not true. The filing of an illegal dismissal case by petitioner was evidently a mere afterthought. It was filed not because he wanted to return to work but to claim separation pay.

The failure of respondents to pursue the investigation and termination proceedings against petitioner to the very end did not cast doubt on the voluntary nature of his resignation. As ruled in *Willi Hahn Enterprises vs. Lilia Maghuyop*[23],

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“A decision to give a graceful exit to an employee rather than to file an action for redress is perfectly within the discretion of an employer. It is not uncommon that an employee is permitted to resign to save face after the exposure of her malfeasance. Under the circumstances, the failure of petitioner to file action against the respondent should be considered as an act of compassion for one who used to be a trusted employee...”

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WHEREFORE, the Petition for Certiorari is DISMISSED. The Resolutions dated June 28, 2012 and August 24, 2012 of the National Labor Relations Commission Second Division in NLRC NCR 12- 18267-11 are AFFIRMED.

SO ORDERED.

Abdulwahid (Chairperson) and Barza, JJ., concur.

[1] Rollo, pp. 125-133.

[2] Rollo, pp. 149-150.

[3] Rollo, p. 30.

[4] Rollo, p. 31.

[5] Rollo, p. 50.

[6] Rollo, pp. 47-50.

[7] Rollo, pp. 52-54.

[8] Rollo, p. 51.

[9] Rollo, pp. 8-10.

[10] Rollo, pp. 88-95.

[11] Rollo, pp. 98-103.

[12] Rollo, pp. 125-133.

[13] Rollo, pp. 135-141.

[14] Rollo, pp. 149-150.

[15] Rollo, pp. 179-182.

[16] G.R. No. 130866, September 16, 1998.

[17] GUIDELINES TO BE OBSERVED IN APPEALS TO THE COURT OF APPEALS AND TO THE SUPREME COURT.

[18] G.R. No. 146068, August 31, 2006.

[19] G.R. No. 167938, February 19, 2009. citing Asuncion vs. National Labor Relations Commission , G.R. No. 109311, June 17, 1997, 273 SCRA 498.

[20] Ricardo Vergara, Jr. vs. Coca-Cola Bottlers Philippines, Inc., G.R. No. 176985, April 01, 2013.

[21] G.R. No. 105083 , August 20, 1993 .

[22] G.R. NO. 174644, August 10, 2007 .

[23] G.R. No. 160348, December 17, 2004.

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