

BENEDICT C. COLINGAN, PETITIONER, VS. LEPANTO CONSOLIDATED MINING COMPANY, FELIPE U. YAP AND NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), RESPONDENTS.

Ponente: SORONGON, J.

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SORONGON, J.:

This resolves the Petition for Certiorari filed pursuant to Rule 65 of the 1997 Rules of Civil Procedure seeking to set aside the Decision[1] dated April 29, 2011 of the National Labor Relations Commission (NLRC), First Division, in NLRC LAC No. 02-000405-11, which affirmed the December 30, 2010 Decision[2] of the Labor Arbiter dismissing petitioner's complaint for illegal dismissal. Also assailed is the NLRC Resolution[3] dated July 15, 2011, denying petitioner's motion for reconsideration.

The facts, as culled from the records, follow:

Lepanto Consolidated Mining Company (LCMC for brevity) is a domestic corporation engaged in mining while petitioner Benedict C. Colingan (petitioner) was under its employ as miner.

On April 29, 2010 at about one-twenty (1:20) o'clock in the afternoon, petitioner together with Alfred Faroden and another miner were about to take a bath when they were stopped by security guards (also called mine patrols) Copernico Sayson, Roy Balajo, Cornel Awal, Benny Bugtong and Dao-ey Ngapan at the 950 Main Level Drift, Nayak Underground of LCMC, Lepanto, Mankayan, Benguet. Then Roy Balajo confronted petitioner about the suspicious object he was holding but the latter turned his back and threw it to the ground landing near Copernico Sayson who immediately picked it up. When examined, the suspicious object turned out to be several pieces of stone ores wrapped in a dirty white cellophane. Petitioner was immediately brought to the Security Office for investigation.

Thereat, petitioner was given a copy of the Incident Report[4] and a Notice to Explain[5] for the offenses of Serious Misconduct, Highgrading[6] and Breach of Trust and Confidence with preventive suspension starting on April 30, 2010 to May 29, 2010. He was also directed to submit his written explanation during the hearing on May 12, 2010.

On May 1, 2010, the confiscated stones were brought to the Mill Assay Department for assay testing. The result revealed that the stones are highgrade materials specifically having an assay of 9,805.9489 g/t gold.

At the hearing on May 12, 2010, the security guards were present and narrated the incident. Petitioner also appeared who was then accompanied by the officers of his labor union. He submitted his written explanation[7] and that of his witnesses. His narrations run this way:

"xxx xxx xxx

I was so surprised that you charged me for violation of code of conduct for an allegation of high grading which was merely imputed against me.

At any rate, I deny having doing act of high grading on April 29, 2010 at about 1:20 o'clock at the main drift of 950, level. The truth is:

- I freely submitted my self (sic) to SG BALAJO when he came to my position and frisked me then he confiscated my wrapped soap.
- I am not holding any thing from my right hand, only my wrapped soap which I am holding from my left hand.
- I did not resist and turned my back from SG BALAJO nor threw anything and landed in front of SG SAYSON as they alleged from their statement.
- They, mine patrols only showed to me a wrapped object when we were at 950, level shaft station and they are saying that the said wrapped object belongs to me which I vehemently deny.
- I know nothing about the wrapped object which the mine patrols is claiming that is belongs (sic) to me.

xxx xxx xxx"

On June 1, 2010, petitioner received a copy of the notice of his termination[8] dated May 27, 2010. To vindicate his plight, petitioner filed a complaint[9] for illegal dismissal with the Labor Arbiter against LCMC and its Chairman of the Board, Felipe U. Yap (Yap).

Petitioner's complaint essentially alleged that (1) the charges against him were fabricated; (2) the security guards or mine patrols who apprehended him did not execute any written statement or report about the incident; (3) the incident report and the notice to explain were prepared by a certain PCI Michael AB. Martin, who has no personal knowledge about the incident involving his possession of stone ores; (4) the stone ores, which were allegedly confiscated from him, were not presented during the investigation hearing; (5) his right to due process was violated as he was not duly furnished a copy of the written statement of the security guards, he was not allowed to cross-examine them and he was denied the opportunity to examine the confiscated stone ores; (6) since 2008, respondents failed to give him his salary but only allowed him to make cash advances in the amount of One Thousand Pesos (Php 1,000.00) per pay day; and (7) aside from his prayers for reinstatement, backwages, damages and attorney's fees, he also asked for payment of his unpaid salaries.

Petitioner also submitted the written testimonies of Alfred Faroden[10], Jose Van M. Ngalew, Samuel B. Seling, Johnny N. Pindosan,[11] Orlando B. Betong, Moreno S. Palayen, and Ricardo H. Chinolong[12] whose combined statements showed that petitioner did not resist when the security guards conducted body search on him. It is not true that petitioner turned his back and threw the stone ores covered with dirty white cellophane when accosted by the security guards. They insisted that what was taken from petitioner was a soap wrapped in a cellophane.

On December 30, 2010, Labor Arbiter Monroe C. Tabingan dismissed the complaint but ordered the private respondents to pay petitioner his unpaid salaries in the amount of One Hundred Seven Thousand Two Hundred Seventy Four and 13/100 Pesos (Php 107,274.13) and attorney's fees equivalent to 10% of the total monetary award[13].

Upon appeal by petitioner, the NLRC affirmed the ruling of the Labor Arbiter, with the fallo of its decision reading in this wise:

WHEREFORE, complainant's appeal is DISMISSED for lack of merit, and the appealed decision, dated 30 December 2010, is AFFIRMED.[14]

Petitioner's motion for reconsideration likewise failed per NLRC Resolution[15] dated July 15, 2011 denying the same.

Undaunted, petitioner seeks redress via this recourse alleging grave abuse of discretion amounting to lack and in excess of jurisdiction on the NLRC because:

- IT DID NOT GIVE DUE CONSIDERATION AND/OR CREDENCE TO THE TESTIMONY OF PETITIONER AND THAT OF HIS EYE WITNESSES WHEN THEIR TESTIMONIES WERE NEVER REFUTED BY THE SECURITY GUARDS AND PRIVATE RESPONDENTS; AND
- IT DID NOT CONSIDER THE FACT THAT THE CHAIN OF CUSTODY OF THE ALLEGED WRAPPED OBJECT WAS NOT ESTABLISHED BY PRIVATE RESPONDENTS AND THE SECURITY GUARDS.

Petitioner's arguments lack merit.

At the outset, it must be stressed that a petition for certiorari under Rule 65 of the Rules of Court will lie only where a grave abuse of discretion or an act without or in excess of jurisdiction on the part of the respondent commission is clearly shown.[16] As enunciated in the case of Protacio vs. Laya Mananghaya & Co.: [17]

As a general rule, in certiorari proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence. The Court has not hesitated to affirm the appellate court's reversals of the decisions of labor tribunals if they are not supported by substantial evidence.

In the instant case, there is nothing irregular, capricious and oppressive in the factual findings of the NLRC that would convince us to delve into its accuracy and conduct our own evaluation of evidence. On the contrary, We find the decision of the NLRC and the Labor Arbiter to be duly supported by substantial evidence. Their findings are generally binding on the appellate court, unless there was a showing that they were arrived at arbitrarily or in disregard of the evidence on record[18]. They correctly ruled that petitioner's dismissal was based on just and valid ground when he committed the offense of highgrading, defined and penalized by Presidential Decree No. 581 and the Code of Conduct of LCMC. Both labor tribunals based their findings on the written testimonies of the security guards as well as the incident report.

Thus, the factual findings of the labor tribunal commends our approval for they do not only possess acquired expertise in the matters within their jurisdiction but they, as trier of facts, are also in a unique position to observe the demeanor of the witnesses appearing before them and is most competent in judging the credibility of the contending parties.[19]

Regarding petitioner's claim that the charge of highgrading was merely concocted and fabricated by private respondents, the same does not inspire belief for lack of sufficient proof to show ill will or ill-motive on the part of the private respondents to accuse him of the serious offense of highgrading.

And as to his allegation that the chain of custody of the confiscated stone ores was not established, we would like to point out to petitioner Article 221 of the Labor Code which specifically provides:

Article 221. Technical rules not binding and prior resort to amicable settlement. - In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling, and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.

Clear from the foregoing provision of law and in a long line of jurisprudence that technical rules of evidence are not strictly binding in labor cases.[20] Thus, it is not mandatory that the confiscated pieces of stone ores be presented and identified by the security guards during the hearing of petitioner's case. Petitioner is reminded that this is not a criminal case which requires the evidence to be proven beyond reasonable doubt. In labor cases, such as in the case at bench, only substantial evidence, which is more than a mere scintilla of evidence and such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise,[21] is needed in order to establish ones claim. It is enough that LCMC was able to prove its case by substantial evidence. There is no need to prove the chain of custody of the confiscated pieces of stone ores which were weighed, sealed and kept inside the vault, in the presence of petitioner.

Since petitioner's unpaid salaries were never refuted by LCMC, its award thereof stands. However, we absolve Felipe U. Yap from any liability for failure of petitioner to allege and establish that he acted in bad faith or malice or much less participated in refusing to pay petitioner's salary on time. It is a well-entrenched rule that a corporation is an artificial being invested by law with a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected.[22] Thus, a corporate officer is not personally liable for the money claims of discharged corporate employees unless he acted with evident malice and bad faith.[23]

In closing, we would like to stress that while the Constitution mandates to provide full protection to labor, this does not mean that the rights of the employer should be ignored, disregarded or undermined. In the present case, petitioner committed the offense of highgrading tantamount to breach of trust and confidence, which under the Labor Code and LCMC's Code of Conduct is a valid ground for dismissal. Surely, an employer is not compelled to continue employing a person who is admittedly guilty of misfeasance or malfeasance and whose continued employment is patently inimical to the employer.[24] The social justice clause does not protect an employee, like petitioner in this case, who is guilty of serious misconduct, highgrading and breach of trust and confidence. As held in the case of *Philippine Long Distance and Telephone Company, Inc. v. Balbastro*[25]:

While it is true that compassion and human consideration should guide the disposition of cases involving termination of employment since it affects one's source or means of livelihood, it should not be overlooked that the benefits accorded to labor do not include compelling an employer to retain the services of an employee who has been shown to be a gross liability to the employer. The law in protecting the rights of the employees authorizes neither oppression nor self-destruction of the employer. It should be made clear that when the law tilts the scale of justice in favor of labor, it is but a recognition of the inherent economic inequality between labor and management. The intent is to balance the scale of justice; to put the two parties on relatively equal positions. There may be cases where the circumstances warrant favoring labor over the interests of management but never should the scale be so tilted if the result is an injustice to the employer. *Justitia nemini neganda est* (Justice is to be denied to none)

WHEREFORE, the petition is DENIED. The Decision dated April 29, 2011 and Resolution dated July 15, 2011 of the National Labor Relations Commission, First Division in NLRC LAC No. 02-000405-11 are AFFIRMED with the MODIFICATION that private respondent Felipe U. Yap is hereby ABSOLVED from any liability.

SO ORDERED.

[*]Gonzales-Sison, (Acting Chairman), and [**]Ybañez, JJ., concur.

[*] Acting Chairperson per Office Order No. 485-14 -RSF dated November 24, 2014

[**] Acting Senior Member per Office Order No. 485-14 -RSF dated November 24, 2014

[1] Rollo, pp. 201-208.

[2] Id., pp. 133-145

[3] Rollo, p. 209-210.

[4] Rollo, p. 72.

[5] Rollo, p. 73.

[6] Highgrading

(a) Concealing highgrade material/ore in his person without proper authority.

(b) Possessing highgrade material while inside Company premises without authority.

(c) Unauthorized extraction of ore in a manner not consistent with his normal work, i.e. breaking, pounding, panning, sluicing, washing or segregating highgrade materials or wrapping highgrade materials with cellophane and/or burlap sheets.

(d) Carrying or attempting to carry highgrade materials out of any working area except as required by normal working procedures such as tramming, trucking or delivery of sample bags.

[7] Rollo, p. 74, letter dated May 7, 2009.

[8] Rollo, p. 81.

[9] Rollo, pp. 38-71.

[10] Rollo, p. 75.

[11] Rollo, pp. 76-77.

[12] Rollo, pp. 78.

[13] Supra at Note 2.

[14] Rollo, p. 208.

[15] Rollo, p. 209-210.

[16] Palomado vs. NLRC, G.R. No. 96520, June 28, 1996.

[17] G.R. No. 168654, March 25, 2009.

[18] Prince Transport, Inc. vs. Garcia, G.R. No. 167291, January 12, 2011

[19] Gan vs. Galderma Philippines, Inc. G.R. No. 177167, January 17, 2013.

[20] Spic n' Span Services Corporation vs. Paje, G.R. No. 174084, April 25, 2010.

[21] Honorable Ombudsman Simeon Marcelo vs. Leopoldo Bungubung, G.R. No. 175201, April 23, 2008, Montemayor vs. Bundalian, 453 Phil 158, 167, (2003).

[22] McLeod vs. NLRC, G.R. No. 146667, 23 January 2007.

[23] Carag vs. National Labor Relations Commission, G.R. No. 147590, 2 April 2007.

[24] Agabon vs. NLRC, G.R. No. 158693, November 17, 2004.

[25]

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