

GREAT EASTERN HOTEL AND NATHALIE ANG, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, AND JULIETO B. PAJUAY, RESPONDENTS.

Ponente: ANTONIO-VALENZUELA, J.

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ANTONIO-VALENZUELA, J.:

This is the Petition[1] filed by Great Eastern Hotel and Nathalie Ang (“petitioners Hotel and Ang”), imputing grave abuse of discretion amounting to lack of jurisdiction on the part of the National Labor Relations Commission (“NLRC”) in issuing the following: (1) Decision dated 16 July 2012;[2] and (2) Resolution dated 31 August 2012.[3]

The facts are as follows: Juelito B. Pajuay (“respondent Pajuay”) filed the Complaint[4] before the NLRC, NCR, Quezon City for illegal dismissal, non-payment of salaries, overtime pay, service incentive leave, and 13th month pay, payment of moral damages, exemplary damages, and separation pay, against petitioners Hotel and Ang.

The Position Paper[5] of petitioners Hotel and Ang alleged: petitioners Hotel and Ang are engaged in the business of hotel and restaurant services; on 15 April 2006, petitioners Hotel and Ang hired respondent Pajuay as store keeper, and later on petitioners Hotel and Ang promoted respondent Pajuay as regular employee and head storekeeper; respondent Pajuay repeatedly violated management rules and regulations, and for respondent Pajuay's misconduct and tardiness, petitioners Hotel and Ang issued series of notices to respondent Pajuay; on 7 January 2006, petitioners Hotel and Ang issued a memorandum requiring respondent Pajuay to explain why he repeatedly committed negligence and violations while at work, and on 9 January 2006 respondent Pajuay wrote petitioners Hotel and Ang to defend his side; the petitioners Hotel and Ang were not satisfied with respondent Pajuay's explanation (i.e., while the records show that respondent Pajuay was late five times in the month of January 2006, respondent Pajuay claimed that he was late only twice; while respondent Pajuay who was a “stay-in employee” should stay in his assigned quarter and ask the permission of the management if he wished to sleep/stay outside the premises of the petitioner Hotel, respondent Pajuay chose to go out and sleep wherever he wanted, without the knowledge and notice of the petitioners Hotel and Ang; while the use of petitioner Hotel's telephone for personal calls was strictly prohibited, respondent Pajuay repeatedly defied this rule; respondent Pajuay was caught sleeping and eating during working hours; respondent Pajuay is shown to be guilty of willful disobedience and gross negligence); on 11 January 2006, petitioners Hotel and Ang issued the termination notice against respondent Pajuay; petitioners Hotel and Ang have paid all respondent Pajuay's money claims.

Respondent Pajuay's Position Paper[6] countered: on 15 April 2004, petitioners Hotel and Ang hired respondent Pajuay as a storekeeper at the Aberdeen Hotel (one of petitioner Hotel's affiliated businesses); respondent Pajuay's net pay was P1,400.00 per week, and he worked from 7:00 a.m. to 7:00 p.m. everyday, six days a week, without overtime pay; on 16 July 2005, petitioners Hotel and Ang transferred respondent Pajuay to Jade Valley Restaurant (petitioner Hotel's affiliated business), and promoted him to officer-in-charge for storekeeping, and paid him P4,100.00 every 15 days (and deducted food and lodging expenses even if respondent Pajuay had decided to live outside the company provided quarters); respondent Pajuay was late for work on 2 January 2006, 3 January 2006,

and 4 January 2006, and on 5 January 2006, he did not report for work because it was his day-off; on 6 January 2006, respondent Pajuay had a fever, so he called petitioners Hotel and Ang about it; on 7 January 2006, respondent Pajuay reported for work at the Jade Valley Restaurant, but they directed him to go to petitioner Hotel's main office; at the main office, petitioners Hotel and Ang required respondent Pajuay to explain why they should not fire him; on 9 January 2006, petitioners Hotel and Ang gave respondent Pajuay a notice of termination, and asked respondent Pajuay to execute a letter of voluntary resignation, but respondent Pajuay did not resign; petitioners Hotel and Ang gave respondent Pajuay P2,000.00 representing his unpaid salary, without making him sign any document acknowledging receipt of the money and indicating the purpose of the P2,000.00.

On 15 June 2006, petitioners Hotel and Ang filed Reply with Motion for Leave to Amend Complaint.[7] On 3 July 2006, respondent Pajuay filed the Reply.[8]

On 25 November 2011, the Labor Arbiter issued the Decision.[9] The dispositive portion of the Decision read:

WHEREFORE, a Decision is hereby rendered DISMISSING the claim for illegal dismissal for lack of merit.

However, respondents are hereby ordered to pay Complainant his unpaid salaries for 4 days, = P1,643.74, 5 days service incentive leave pay = P2,054.68 and nominal damages equivalent to P10,000.00 or a total of P13,698.42.

All other claims are DISMISSED for lack of merit.

SO ORDERED.[10]

Petitioners Hotel and Ang appealed to the NLRC. On 16 July 2012, the NLRC issued the assailed Decision,[11] ruling that petitioners Hotel and Ang illegally dismissed respondent Pajuay from employment. The dispositive portion of the NLRC Decision read:

WHEREFORE, premises considered, the Appeal is GRANTED and the Decision dated November 25, 2011 is hereby MODIFIED in that complainant is declared to have been illegally dismissed from work.

Respondents are ordered to pay him separation pay in lieu of reinstatement and backwages starting from the date of his dismissal on January 11, 2006 until finality of this decision, and as determined by the Labor Arbiter, his unpaid salaries for four days and service incentive leave.

SO ORDERED.

The petitioners Hotel and Ang filed Motion for Reconsideration.[12] The NLRC denied the Motion for Reconsideration in the Resolution[13] dated 31 August 2012.

Thus, this Petition[14], with petitioners Hotel and Ang making a lone assignment of error, thus:

PUBLIC RESPONDENT NLRC HAS COMMITTED GRAVE ABUSE OF DISCRETION AS WELL AS SERIOUS AND PALPABLE ERRORS IN RENDERING/ISSUING THE NOW ASSAILED DECISION AND RESOLUTION.

The issue is whether the NLRC committed grave abuse of discretion in declaring that petitioners Hotel and Ang illegally dismissed respondent Pajuay.

The Petition argues in the affirmative. The NLRC committed grave abuse of discretion when it modified the Decision of the Labor Arbiter, and declared that petitioners Hotel and Ang illegally dismissed the respondent Pajuay.

The Petition thrusts: the NLRC's ruling was not fully supported by the evidence on record, and was not in accord

with law and jurisprudence; there was no illegal dismissal because the petitioners Hotel's and Ang's dismissal of respondent Pajuay was valid (i.e. procedural and substantive requirements were complied with; respondent Pajuay committed malfeasance, non-feasance or misfeasance, violated company policies, rules and regulations, committed tardiness, was absent without official leave, ate and slept during work time, and stayed out of the living quarters without permission, all of which acts constitute valid grounds to terminate his employment); the series of acts committed by the respondent Pajuay, constitutes serious misconduct, which is one of the just causes for termination under the Labor Code; petitioners Hotel and Ang have proved that respondent Pajuay's termination was for a valid cause, with observance of due process, thus, the termination was valid; since petitioners Hotel and Ang did not illegally dismiss respondent Pajuay, respondent Pajuay is not entitled to separation pay (in lieu of reinstatement) and backwages.

In the Resolution dated 1 November 2012,[15] we directed respondent Pajuay to file Comment to the Petition, and directed petitioners Hotel and Ang to file Reply to the respondent Pajuay's Comment.

The respondent Pajuay's Comment on Petition for Certiorari[16] argues in the negative. The NLRC did not commit grave abuse of discretion when it declared that petitioners Hotel and Ang illegally dismissed respondent Pajuay.

The Comment parries: the NLRC did not commit grave abuse of discretion, because the assailed Decision was based on law and jurisprudence; petitioners Hotel and Ang did not substantiate their claims with sufficient evidence; petitioners Hotel and Ang attempted to prove their baseless allegations by presenting mere print-outs of supposed attendance records (which bore no signatures of any of the parties), hence these print-outs are self-serving; the time record allegedly belonging to respondent Pajuay was not authenticated, thus the NLRC was correct in rejecting it as competent evidence to support the allegation of habitual tardiness on the part of the respondent Pajuay; petitioners Hotel and Ang failed to present evidence to prove the claim that respondent Pajuay repeatedly violated company rules; petitioners Hotel and Ang did not prove what the official company rules and standards of conduct were, and did not prove what standard operating procedure respondent Pajuay failed to comply with; petitioners Hotel and Ang violated respondent Pajuay's right to due process because petitioners Hotel and Ang gave respondent Pajuay only 24 hours to explain the numerous and vague charges against him, and they did not conduct a hearing, where respondent Pajuay could have defended himself, and instead they dismissed respondent Pajuay; the NLRC did not commit grave abuse of discretion in ordering petitioners Hotel and Ang to pay respondent Pajuay separation pay and full backwages; since petitioners Hotel and Ang illegally dismissed respondent Pajuay, respondent Pajuay is entitled to separation pay and full backwages.

Petitioners Hotel and Ang's Reply[17] reiterates the averments in Petition for Certiorari. Respondent Pajuay's Memorandum[18] reiterates the averments in his Comment.

THE COURT'S RULING:

The Court rules in the negative. The NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that petitioners Hotel and Ang illegally dismissed the respondent Pajuay from employment.

Under Rule 65, a petition for certiorari seeks solely to correct defects in jurisdiction,[19] and does not correct just any error or mistake committed by a court, board, or officer exercising judicial or quasi-judicial functions unless such court, board, or officer thereby acts without jurisdiction or in excess of jurisdiction or with such grave abuse of discretion amounting to lack of jurisdiction.[20] It does not include an inquiry as to the correctness of the evaluation of evidence, which served as the labor official's basis in determining his conclusion.[21] However, when the factual findings and conclusion of the Labor Arbiter and the NLRC are clearly in conflict with each

other, this Court is behooved to give utmost attention and thoroughly scrutinize the records of the case, more particularly the evidence presented, to arrive at a correct decision.[22]

There was illegal dismissal in this case.

Applicable is Article 282 of the Labor Code. It reads:

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.

As provided in Article 282 (b) above-quoted, an employer may terminate an employee for gross and habitual neglect of duty. Petitioners Hotel and Ang alleged the following grounds for respondent Pajuay's dismissal from employment: tardiness; absence without official leave; eating and sleeping during working time; using the company telephone for personal calls during working time; and staying out of the quarters without permission.

There was insufficient evidence to prove the allegation of habitual tardiness on the part of respondent Pajuay. To prove that respondent Pajuay was always late for work, petitioners Hotel and Ang submitted a photocopy of the respondent Pajuay's alleged attendance record.[23] We cannot give credence to this document to prove the alleged habitual tardiness by respondent Pajuay. It is a mere photocopy, and was not authenticated. It appears to be a computer print out of a summary of dates, with a time "in" and "out" of an employee named "Pajuay Juliето." Notably it does not bear any signature (no signature of the person who prepared it; no signature of respondent Pajuay).

The charge that respondent Pajuay violated company rules and was negligent in his duties (i.e., eating and sleeping during working time; using the company telephone for personal calls during working time; and staying out of the living quarters without permission), was not proved by evidence. Petitioners Hotel and Ang failed to present any evidence to identify what particular company rule or duty respondent Pajuay failed to comply with.

Clearly, petitioners Hotel and Ang did not overcome the burden of proof to show the just cause for the dismissal of the respondent Pajuay.

Further, there is no evidence that the due process requirement of notice and hearing under the Labor Code, was complied with. To justify the dismissal of an employee, the employer must, as a rule, prove that the dismissal was for a just cause, and that the employee was afforded due process prior to dismissal. As a complimentary principle, the employer has the onus of proving with clear, accurate, consistent, and convincing evidence the validity of the dismissal.[24]

Thus, there are serious doubts as to the factual basis of the charges against respondent Pajuay. These doubts shall be resolved in his favor in line with the policy under the Labor Code to afford protection to labor and construe doubts in favor of labor.[25] Not having satisfied its burden of proof, we conclude that the petitioners Hotel and

Ang dismissed the respondent Pajuay without any just cause. Hence, the termination was illegal.

We DISMISS the petition, and AFFIRM the Decision dated 16 July 2012 of the National Labor Relations Commission, Sixth Division, Quezon City, in NLRC NCR Case No. 00-03-02319-06.

IT IS SO ORDERED.

Veloso (Chairperson) and Lantion, JJ., concur.

[1] C.A. Rollo, p. 3.

[2] C.A. Rollo, p. 20.

[3] C.A. Rollo, p. 29.

[4] C.A. Rollo, p. 32.

[5] C.A. Rollo, p. 34.

[6] C.A. Rollo, p. 60.

[7] C.A. Rollo, p. 102.

[8] C.A. Rollo, p. 90.

[9] C.A. Rollo, p. 147.

[10] C.A. Rollo, pp. 153-154.

[11] C.A. Rollo, p. 20.

[12] C.A. Rollo, p. 201.

[13] C.A. Rollo, p. 29.

[14] C.A. Rollo, p. 3.

[15] C.A. Rollo, p. 218.

[16] C.A. Rollo, p. 219.

[17] C.A. Rollo, p. 235.

[18] C.A. Rollo, p. 249.

[19] Sps. Yusay v. CA, G.R. No. 156684, 6 April 2011, citing Delos Santos v. CA, G.R. No. 169498, 11 December 2008.

[20] Id., citing Republic v. Yang Chi Hao, G.R. No. 165332, 2 October 2009, Herrera v. Barrett, 25 Phil 245).

[21] Odango v. NLRC, G.R. No. 147420, 10 June 2004.

[22] San Miguel Corporation v. NLRC, G.R. No. 125606, 7 October 1998.

[23] C.A. Rollo, p. 51.

[24] Aliling v. Feliciano, G.R. No. 185829, 25 April 2012, citing Dacuita v. L. M. Camus Engineering Corporation, G.R. No. 176748, 1 September 2010, 629 SCRA 702.

[25] These policies are embodied in Articles 3 and 4 of the Labor Code, which read:

ART. 3. Declaration of basic policy. The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. x x x [Emphasis supplied].

ART. 4. Construction in favor of labor. All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.

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