

THE REDSYSTEMS COMPANY, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND NONILON B. BATAIN, RESPONDENTS.

Ponente: VELOSO, J.

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VELOSO, J.:

Assailed by petitioner in this Petition for Certiorari[1] which it filed under Rule 65 of the 1997 Rules of Court, are the Decision dated May 21, 2013[2] and Resolution dated July 15, 2013[3] which the National Labor Relations Commission (“NLRC”) rendered in NLRC LAC Case No. 03-000930-13 (NLRC RAB IV No. 03-00462-12-L), entitled “Nonilon B. Batain, Complainant-Appellant -versus- The Red Systems Company, Inc./Eduardo P. Quintos XVIII-Site Operations Manager, Respondents-Appellees”, the dispositive portions of which read:

(1) Decision dated May 21, 2013:

“WHEREFORE, the herein Appeal is hereby GRANTED and the Decision of the Labor Arbiter dated 04 December 2012 is REVERSED and SET ASIDE and a new one is entered as follows:

1. Declaring complainant Nonilon B. Batain to have been illegally dismissed;
2. Ordering respondent The Redsystems Company Inc., through its responsible officers, to immediately reinstate complainant Batain to his former position without loss of seniority rights and other privileges;
3. Ordering respondent The Redsystems Company Inc., through its responsible officers, to pay complainant Batain, his one-month salary due to his suspension from work for the period November 3 to December 2011 and his full backwages computed from the date he was illegally dismissed on 21 December 2011 until the finality of this decision; and
4. Ordering the respondent company, through its responsible officers, to pay complainant Batain his attorney's fees equivalent to ten percent (10%) of the total monetary award

SO ORDERED.”[4] (emphasis supplied)

and

(2) Resolution dated July 15, 2013:

“WHEREFORE, in accordance to Section 15, Rule VII of the 2011 NLRC Rules of Procedure, let this Motion for Reconsideration be DISMISSED for lack of merit. No second motion of the same nature and substance shall be entertained.

SO ORDERED.”[5]

The Facts

The antecedent facts of this case are those as narrated by Labor Arbiter Edgar B. Bisana in his December 4, 2012 Decision, viz.:

“The facts as narrated by respondents considering that complainant's position paper does not contain a detailed narration of facts, are as follows:

In November 2010, complainant Nonilon B. Batain (“Complainant”) was hired by Redsystems as Forklift Operator. A copy of Complainant's employment contract is hereto attached as Annex “1”.

At the time complainant was hired, he was fully apprised, among others, of his duties and responsibilities, his job description, the standards of employment required by Redsystems, his compensation, policies & procedures of Redsystems, and confidential information relating to intellectual property. As Forklift operator assigned as [sic] the loading area, complainant was required to report regularly, to make sure that all outgoing full goods (products for delivery) are properly and correctly loaded on board delivery vehicles which are either trucks or container vans of Redsystems, and to comply with Redsystems' Code of Conduct as well as all company policies, rules and regulations. Complainant was likewise required to make sure that all goods put on hold by Redsystems are not loaded to any delivery vehicles of Redsystems.

xxx xxx xxx

On 13 October 2011, the quality assurance of Redsystems put on hold for delivery four (4) pallets of 200 cases of Sprite 1.5L. On same date, complainant reported for work and was assigned at the loading area as the only available Forklift Operator, the other assigned Forklift Operator was absent or on leave;

As the only Forklift Operator present, complainant was given Load Diagram and pallet details to load 192 cases of Sprite 1.5L to container van NEPU-3340200 intended for Cebu with Shipment No. 3436171.

However, for no apparent reason, and notwithstanding a very large and visible tag “HOLD”, complainant loaded on the said container van intended for Cebu four (4) pallets or 200 cases of Sprite 1.5L which were put on hold by the quality assurance of Redsystems. The said goods were eventually delivered or shipped to Cebu and produced a damaging effect to the name of Redsystems and its client.

Thus, notwithstanding the rules, regulations, and policies of Redsystems made known to complainant at the start of his employment, particularly its strict policy on on-hold goods/products for delivery, or disregard or deviation from established control and other policies and procedures, complainant was found to have violated the above-quoted Section 3, Rule 5, Article IV of the Redsystems' Code of Conduct.

Notice to Explain (NTE) was duly served on complainant, directing him to explain in writing why Redsystems should not penalize him for his violation/offense. A copy of the notice to Explain is hereto attached as Annex '3'.

Complainant submitted his written explanation denying any violation of the policy. A copy of complainant's written explanation is hereto attached as Annex '4'.

Redsystems conducted preliminary investigation on how the goods which were put on hold by the quality assurance of Redsystems with a very large and visible 'HOLD' tag were loaded to the container van intended for shipment to Cebu. Results of the investigation showed that complainant was the only Forklift Operator assigned at the loading area during that time. Hence, in view of the unsatisfactory explanation of complainant regarding the incident, a Notice of Investigation was issued by Redsystems to further investigate the incident and to give complainant another chance to explain his side. A copy of the notice of Investigation is hereto attached as Annex '5'.

During the Administrative Investigation/Hearing, complainant was not able to explain why the goods which were put on hold with a very large and visible 'HOLD' tag were loaded on the container van intended for shipment to Cebu under his watch, he being the only the Forklift Operator present and assigned at the loading area during the time of the incident. A copy of the Minutes of the Administrative Investigation/Hearing is hereto attached as

Annex '6'.

Redsystems, after evaluating the case and all evidence submitted, concluded that complainant disregarded or deviated from established control and other policies and procedures when he loaded on the container van intended for shipment to Cebu, goods which were expressly and explicitly put on hold by the quality assurance of Redsystems through a very large and visible 'HOLD' tag, which incident exposed Redsystems to damage in the amount of more than Php25,000.00. The amount of four (4) pallets or 200 cases of Sprite 1.5L that were put on hold but loaded for shipment amounted to more than Php25,000.00.

Thus, based on the evaluation of the facts and the conclusions after the Administrative Hearing, Redsystems imposed the penalty of termination or dismissal of complainant pursuant to Section 3, Rule 5, Article IV of the Redsystems' Code of Conduct in relation to the Table of Corrective Actions.

Redsystems issued the Notice of Dismissal which was duly served on complainant, informing him that his employment is terminated. A copy of the Notice of Dismissal is hereto attached as Annex '7'."[6]

A complaint having been filed by private respondent against petitioner, and with said complaint assigned to Labor Arbiter Bisana, said Arbiter disposed said case, viz.:

“WHEREFORE, premises considered, the complaint is hereby DISMISSED for lack of merit.

SO ORDERED.”[7]

Aggrieved, private respondent appealed[8] on February 25, 2013 said decision to the NLRC.

On May 21, 2013, the NLRC[9] rendered its Decision disposing the case, as follows:

“WHEREFORE, the herein Appeal is GRANTED and the Decision of the Labor Arbiter dated 04 December 2012 is REVERSED and SET ASIDE and a new one is entered as follows:

1. Declaring complainant Nonilon B. Batain to have been illegally dismissed;
2. Ordering respondent The Redsystems Company[,] Inc., through its responsible officers, to immediately reinstate

complainant Batain to his former position without loss of seniority rights and other privileges;

3. Ordering respondent The Redsystems Company[,] Inc., through its responsible officers, to pay complainant Batain, his one-month salary due to his suspension from work for the period November 3 to December 2011 and his full backwages computed from the date he was illegally dismissed on 21 December 2011 until the finality of this decision; and

4. Ordering the respondent company, through its responsible officers, to pay complainant Batain his attorney's fees equivalent to ten percent (10%) of the total monetary award.

SO ORDERED.”[10] (emphasis supplied)

On June 14, 2013, the petitioner moved for the reconsideration[11] of the NLRC's Decision dated May 21, 2013. However, the same was dismissed by the NLRC in its assailed July 15, 2013 Resolution.[12]

Hence, this petition.

Issues

On September 24, 2013, the petitioner filed the instant petition for certiorari[13] raising as issue for Our resolution the question of:

“WHETHER OR NOT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN GRANTING THE APPEAL OF PRIVATE RESPONDENT, IN REVERSING THE DECISION OF THE LABOR ARBITER, AND IN FINDING THAT PETITIONER ILLEGALLY DISMISSED PRIVATE RESPONDENT AND THAT PRIVATE RESPONDENT IS ENTITLED TO REINSTATEMENT, BACKWAGES, AND ATTORNEY'S FEES, CONSIDERING THAT SUBSTANTIAL EVIDENCE PRESENTED PROVED OTHERWISE.”[14]

Our Ruling

Grave abuse of discretion is defined as a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility. Such abuse must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[15]

Here, the NLRC explained why it had to reverse the appealed decision of the Labor Arbiter, viz.:

“We find the appeal meritorious.

In numerous cases, the Supreme Court has sustained the right of employers to exercise their management prerogatives to discipline their employees and to impose appropriate penalties pursuant to company rules and regulations. In this case, however, respondents failed to present substantial evidence to justify the dismissal of complainant owing to a) respondents' failure to submit the copy of load diagram and manifest which would establish the direct culpability of complainant; b) incompleteness in the scope of investigation; and c) factual inconsistency.

On the load diagram and pallet details, respondents alleged that complainant was only assigned to load 192 cases of Sprite 1.5L intended for Cebu under Shipment No. 3436171, there was no record which shows that the 200 cases or 4 pallets of 1.5L Sprite which were marked on hold were placed in the loading area on the same date and time that complainant reported for work and which could have been inadvertently released by him on the container van. The submission of the load diagram and manifest are very significant in monitoring or identifying the actual perpetrator of the offense. It is worth emphasizing that in the Minutes of the Investigation conducted on November 2, 2011, the Presiding Officer, Donny Quintos, pleaded to complainant to help respondents in identifying the person who was responsible in the erroneous shipment of the questioned goods, thus: 'Wala ka bang masasabi, sa shift mo mangyari yon, yung napunta sa Cebu, ikaw o yung partner mo kaya tulungan mo kami'. Thus, from all indications, we can deduce that the charge levelled against complainant was based mainly on guesswork. There was no concrete evidence pointing to him as the one who perpetrated the act of loading the 'hold goods' to the container van.

As regards the scope of the investigation, it was unfortunate that the panel did not include the supervisors, stock houseman, checkers and other forklift operators considering that their testimonies or explanations would be very material to corroborate or debunk the statements issued by the complainant on the matter. If the investigation has included the subject personnel, it would not only establish the culpability of complainant, if any, but it would have also unearthed some operational loopholes and, perhaps, would have recommended strategies on how the systems' operations can be further improved to avoid similar incident in the future. On the other hand, the sworn certification issued by supervisors Reybert Laxina, Sonny Ronulo and Arnold Mina is not indicative of complainant's direct involvement of the goods shipped to Cebu for it failed to state that he was the only forklift operator when the incident happened. Likewise, the Commission note that at the time of the suspension/dismissal of complainant, the subject sworn certification was not yet in existence to support the infraction or violation of complainant. The same was executed and submitted only on 17 July 2012, i.e., after the filing of the complaint on 16 March 2012. Thus, it could be considered as an afterthought.

Further, there was also inconsistency of the respondents' claim regarding the alleged assignment of complainant. In their position paper, they alleged that he was the only available forklift operator assigned in the loading area while in their Rejoinder they claimed that he was designated for CONVAN where the alleged erroneous shipment took place. Thus, we can conclude that respondents have no clear basis in holding that complainant was the person responsible in the release of the questioned goods.

As regards the testimony of Mr. Leo Gacus, forklift operator, who stated that he saw complainant loaded the Sprite 1.5L, the same is less credible since the investigation did not include the complainant who could have the opportunity to meet said witness and to refute his testimony. Likewise, the minutes of the investigation were not certified under oath by the person who prepared the same.

On these scores, the charge of complainant for violation of respondents' Code of Conduct is nothing but mere conjecture or surmises. Under the circumstances, we are fully convinced that complainant-appellant was illegally dismissed from the service which would entitle him to twin reliefs as provided under Article 279 of the Labor Code, i.e. reinstatement and payment of backwages from the time of his illegal dismissal on 21 December 2011 until the finality of the Decision. He is also entitled for the refund of his salary during the period that he was suspended from work covering the period November 3 to December 2, 2011.

For having been constrained to hire a legal counsel to protect his interest, we award attorney's fees in an amount equivalent to ten percent (10%) of the total monetary award.”[16]

We quoted lengthily the rationalization of the NLRC in support of its conclusion that private respondent was illegally dismissed to drive home the point that the said ruling is not whimsical nor capricious. For indeed, a dismissal that is “based mainly on guesswork” can hardly be valid.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Lantion, and Antonio-Valenzuela, JJ., concur.

[1] Rollo, pp. 3-19.

[2] Ibid., pp. 160-170.

[3] Ibid., pp. 187-188.

[4] Rollo, p. 169.

[5] Ibid., pp. 187-188.

[6] Rollo, pp. 124-127.

[7] Ibid., p. 128.

[8] Ibid., pp. 129-143.

[9] Fourth Division.

[10] Rollo, p. 169.

[11] Ibid., pp. 172-182.

[12] Note 3, *supra*.

[13] Note 1, *supra*.

[14] Rollo, P. 9.

[15] *Gilberto Cantoria vs. COMELEC, et al.*, 444 SCRA 538, 543 (2004).

[16] Rollo, pp. 166-169.

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