

R.B. MICHAEL PRESS and ANNALENE REYES ESCOBIA, Petitioners, vs. NICASIO C. GALIT, Respondent.

G.R. No. 153510. February 13, 2008

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

Year in, year out, a copious number of illegal dismissal cases reach the Court of Appeals (CA) and eventually end up with this Court. This petition for review under Rule 45 registered by petitioners R.B. Michael Press and Annalene Reyes Escobia against their former machine operator, respondent Nicasio C. Galit, is among them. It assails the November 14, 2001 Decision of the CA in CA-G.R. SP No. 62959, finding the dismissal of respondent illegal. Likewise challenged is the May 7, 2002 Resolution denying reconsideration.

The Facts

On May 1, 1997, respondent was employed by petitioner R.B. Michael Press as an offset machine operator, whose work schedule was from 8:00 a.m. to 5:00 p.m., Mondays to Saturdays, and he was paid PhP 230 a day. During his employment, Galit was tardy for a total of 190 times, totaling to 6,117 minutes, and was absent without leave for a total of nine and a half days.

On February 22, 1999, respondent was ordered to render overtime service in order to comply with a job order deadline, but he refused to do so. The following day, February 23, 1999, respondent reported for work but petitioner Escobia told him not to work, and to return later in the afternoon for a hearing. When he returned, a copy of an Office Memorandum was served on him, as follows:

To : Mr. Nicasio Galit

From : ANNALENE REYES-ESCOBIA

Re : WARNING FOR DISMISSAL; NOTICE OF HEARING

This warning for dismissal is being issued for the following offenses:

(1) habitual and excessive tardiness

(2) committing acts of discourtesy, disrespect in addressing superiors

(3) failure to work overtime after having been instructed to do so

(4) Insubordination - willfully disobeying, defying or disregarding company authority

The offenses you've committed are just causes for termination of employment as provided by the Labor Code. You were given verbal warnings before, but there had been no improvement on your conduct.

Further investigation of this matter is required, therefore, you are summoned to a hearing at 4:00 p.m. today. The hearing will determine your employment status with this company.

(SGD) ANNALENE REYES-ESCOBIA

Manager[1]

On February 24, 1999, respondent was terminated from employment. The employer, through petitioner Escobia, gave him his two-day salary and a termination letter, which reads:

February 24, 1999

Dear Mr. Nicasio Galit,

I am sorry to inform you that your employment with this company has been terminated effective today, February 24, 1999. This decision was not made without a thorough and complete investigation.

You were given an office memo dated February 23, 1999 warning you of a possible dismissal. You were given a chance to defend yourself on a hearing that was held in the afternoon of the said date.

During the hearing, Mrs. Rebecca Velasquez and Mr. Dennis Reyes, were present in their capacity as Production Manager and Supervisor, respectively.

Your admission to your offenses against the company and the testimonies from Mrs. Velasquez and Mr. Reyes justified your dismissal from this company,

Please contact Ms. Marly Buita to discuss 13th-Month Pay disbursements.

Cordially,

(SGD) Mrs. Annalene Reyes-Escobia[2]

Respondent subsequently filed a complaint for illegal dismissal and money claims before the National Labor Relations Commission (NLRC) Regional Arbitration Branch No. IV, which was docketed as NLRC Case No. RAB IV-2-10806-99-C. On October 29, 1999, the labor arbiter rendered a Decision,

WHEREFORE, premises considered, there being a finding that complainant was illegally dismissed, respondent RB MICHAEL PRESS/Annalene Reyes-Escobia is hereby ordered to reinstate complainant to his former position without loss of seniority rights and other benefits, and be paid his full backwages computed from the time he was illegally dismissed up to the time of his actual reimbursement.

All other claims are DISMISSED for lack of evidence.

SO ORDERED.[3]

On January 3, 2000, petitioners elevated the case to the NLRC and their appeal was docketed as NLRC NCR CA No. 022433-00. In the April 28, 2000 Decision, the NLRC dismissed the appeal for lack of merit.

Not satisfied with the ruling of the NLRC, petitioners filed a Petition for Certiorari with the CA. On November 14, 2001, the CA rendered its judgment affirming with modification the NLRC's Decision, thus:

WHEREFORE, the petition is DISMISSED for lack of merit. The Decision of public respondent is accordingly modified in that the basis of the computation of the backwages, 13[th] month pay and incentive pay should be respondent's daily wage of P230.00; however, backwages should be computed from February 22, 1999 up to the finality of this decision, plus the 13[th] month and service incentive leave pay.[4]

The CA found that it was not the tardiness and absences committed by respondent, but his refusal to render

overtime work on February 22, 1999 which caused the termination of his employment. It ruled that the time frame in which respondent was afforded procedural due process is dubitable; he could not have been afforded ample opportunity to explain his side and to adduce evidence on his behalf. It further ruled that the basis for computing his backwages should be his daily salary at the time of his dismissal which was PhP 230, and that his backwages should be computed from the time of his dismissal up to the finality of the CA's decision.

On December 3, 2001, petitioners asked for reconsideration^[5] but was denied in the CA's May 7, 2002 Resolution.

Persistent, petitioners instituted the instant petition raising numerous issues which can be summarized, as follows: first, whether there was just cause to terminate the employment of respondent, and whether due process was observed in the dismissal process; and second, whether respondent is entitled to backwages and other benefits despite his refusal to be reinstated.

The Court's Ruling

It is well settled that findings of fact of quasi-judicial agencies, like the NLRC, are accorded not only respect but even finality if the findings are supported by substantial evidence. This is especially so when such findings of the labor arbiter were affirmed by the CA.^[6] However, this is not an iron-clad rule. Though the findings of fact by the labor arbiter may have been affirmed and adopted by the NLRC and the CA as in this case, it cannot divest the Court of its authority to review the findings of fact of the lower courts or quasi-judicial agencies when it sees that justice has not been served, more so when the lower courts or quasi-judicial agencies' findings are contrary to the evidence on record or fail to appreciate relevant and substantial evidence presented before it.^[7]

Petitioners aver that Galit was dismissed due to the following offenses: (1) habitual and excessive tardiness; (2) commission of discourteous acts and disrespectful conduct when addressing superiors; (3) failure to render overtime work despite instruction to do so; and (4) insubordination, that is, willful disobedience of, defiance to, or disregard of company authority.^[8] The foregoing charges may be condensed into: (1) tardiness constituting neglect of duty; (2) serious misconduct; and (3) insubordination or willful disobedience.

Respondent's tardiness cannot be considered condoned by petitioners

Habitual tardiness is a form of neglect of duty. Lack of initiative, diligence, and discipline to come to work on time everyday exhibit the employee's deportment towards work. Habitual and excessive tardiness is inimical to the general productivity and business of the employer. This is especially true when the tardiness and/or absenteeism occurred frequently and repeatedly within an extensive period of time.

In resolving the issue on tardiness, the labor arbiter ruled that petitioners cannot use respondent's habitual tardiness and unauthorized absences to justify his dismissal since they had already deducted the corresponding amounts from his salary. Furthermore, the labor arbiter explained that since respondent was not subjected to any admonition or penalty for tardiness, petitioners then had condoned the offense or that the infraction is not serious enough to merit any penalty. The CA then supported the labor arbiter's ruling by ratiocinating that petitioners cannot draw on respondent's habitual tardiness in order to dismiss him since there is no evidence which shows that he had been warned or reprimanded for his excessive and habitual tardiness.

We find the ruling incorrect.

The mere fact that the numerous infractions of respondent have not been immediately subjected to sanctions cannot be interpreted as condonation of the offenses or waiver of the company to enforce company rules. A waiver is a voluntary and intentional relinquishment or abandonment of a known legal right or privilege.^[9] It has

been ruled that “a waiver to be valid and effective must be couched in clear and unequivocal terms which leave no doubt as to the intention of a party to give up a right or benefit which legally pertains to him.”[10] Hence, the management prerogative to discipline employees and impose punishment is a legal right which cannot, as a general rule, be impliedly waived.

In *Cando v. NLRC*,[11] the employee did not report for work for almost five months when he was charged for absenteeism. The employee claimed that such absences due to his handling of union matters were condoned. The Court held that the employee did not adduce proof to show condonation coupled with the fact that the company eventually instituted the administrative complaint relating to his company violations.

Thus it is incumbent upon the employee to adduce substantial evidence to demonstrate condonation or waiver on the part of management to forego the exercise of its right to impose sanctions for breach of company rules.

In the case at bar, respondent did not adduce any evidence to show waiver or condonation on the part of petitioners. Thus the finding of the CA that petitioners cannot use the previous absences and tardiness because respondent was not subjected to any penalty is bereft of legal basis. In the case of *Filipio v. The Honorable Minister Blas F. Ople*,[12] the Court, quoting then Labor Minister Ople, ruled that past infractions for which the employee has suffered the corresponding penalty for each violation cannot be used as a justification for the employee’s dismissal for that would penalize him twice for the same offense. At most, it was explained, “these collective infractions could be used as supporting justification to a subsequent similar offense.” In contrast, the petitioners in the case at bar did not impose any punishment for the numerous absences and tardiness of respondent. Thus, said infractions can be used collectively by petitioners as a ground for dismissal.

The CA however reasoned out that for respondent’s absences, deductions from his salary were made and hence to allow petitioners to use said absences as ground for dismissal would amount to “double jeopardy.”

This postulation is incorrect.

Respondent is admittedly a daily wage earner and hence is paid based on such arrangement. For said daily paid workers, the principle of “a day’s pay for a day’s work” is squarely applicable. Hence it cannot be construed in any wise that such nonpayment of the daily wage on the days he was absent constitutes a penalty.

Insubordination or willful disobedience

While the CA is correct that the charge of serious misconduct was not substantiated, the charge of insubordination however is meritorious.

For willful disobedience to be a valid cause for dismissal, these two elements must concur: (1) the employee’s assailed conduct must have been willful, that is, 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.[13]

In the present case, there is no question that petitioners’ order for respondent to render overtime service to meet a production deadline complies with the second requisite. Art. 89 of the Labor Code empowers the employer to legally compel his employees to perform overtime work against their will to prevent serious loss or damage:

Art. 89. EMERGENCY OVERTIME WORK

Any employee may be required by the employer to perform overtime work in any of the following cases:

x x x x

(c) When there is urgent work to be performed on machines, installations, or equipment, in order to avoid

serious loss or damage to the employer or some other cause of similar nature;

x x x x

In the present case, petitioners' business is a printing press whose production schedule is sometimes flexible and varying. It is only reasonable that workers are sometimes asked to render overtime work in order to meet production deadlines.

Dennis Reyes, in his Affidavit dated May 3, 1999, stated that in the morning of February 22, 1999, he approached and asked respondent to render overtime work so as to meet a production deadline on a printing job order, but respondent refused to do so for no apparent reason. Respondent, on the other hand, claims that the reason why he refused to render overtime work was because he was not feeling well that day.

The issue now is, whether respondent's refusal or failure to render overtime work was willful; that is, whether such refusal or failure was characterized by a wrongful and perverse attitude. In *Lakpue Drug Inc. v. Belga*, willfulness was described as "characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination."^[14] The fact that respondent refused to provide overtime work despite his knowledge that there is a production deadline that needs to be met, and that without him, the offset machine operator, no further printing can be had, shows his wrongful and perverse mental attitude; thus, there is willfulness.

Respondent's excuse that he was not feeling well that day is unbelievable and obviously an afterthought. He failed to present any evidence other than his own assertion that he was sick. Also, if it was true that he was then not feeling well, he would have taken the day off, or had gone home earlier, on the contrary, he stayed and continued to work all day, and even tried to go to work the next day, thus belying his excuse, which is, at most, a self-serving statement.

After a re-examination of the facts, we rule that respondent unjustifiably refused to render overtime work despite a valid order to do so. The totality of his offenses against petitioner R.B. Michael Press shows that he was a difficult employee. His refusal to render overtime work was the final straw that broke the camel's back, and, with his gross and habitual tardiness and absences, would merit dismissal from service.

Due process: twin notice and hearing requirement

On the issue of due process, petitioners claim that they had afforded respondent due process. Petitioners maintain that they had observed due process when they gave respondent two notices and that they had even scheduled a hearing where he could have had explained his side and defended himself.

We are not persuaded.

We held in *Agabon v. NLRC*:

Procedurally, (1) if the dismissal is based on a just cause under Article 282, the employer must give the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment: a notice specifying the grounds for which dismissal is sought a hearing or an opportunity to be heard and after hearing or opportunity to be heard, a notice of the decision to dismiss; and (2) if the dismissal is based on authorized causes under Articles 283 and 284, the employer must give the employee and the Department of Labor and Employment written notices 30 days prior to the effectivity of his separation.^[15]

Under the twin notice requirement, the employees must be given two (2) notices before his employment could be terminated: (1) a first notice to apprise the employees of their fault, and (2) a second notice to communicate to the

employees that their employment is being terminated. Not to be taken lightly of course is the hearing or opportunity for the employee to defend himself personally or by counsel of his choice.

In *King of Kings Transport v. Mamac*,^[16] we had the occasion to further elucidate on the procedure relating to the twin notice and hearing requirement, thus:

(1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.

In addition, if the continued employment poses a serious and imminent threat to the life or property of the employers or of other employees like theft or physical injuries, and there is a need for preventive suspension,^[17] the employers can immediately suspend the erring employees for a period of not more than 30 days. Notwithstanding the suspension, the employers are tasked to comply with the twin notice requirement under the law. The preventive suspension cannot replace the required notices.^[18] Thus, there is still a need to comply with the twin notice requirement and the requisite hearing or conference to ensure that the employees are afforded due process even though they may have been caught in flagrante or when the evidence of the commission of the offense is strong.

On the surface, it would seem that petitioners observed due process (twin notice and hearing requirement): On February 23, 1999 petitioner notified respondent of the hearing to be conducted later that day. On the same day before the hearing, respondent was furnished a copy of an office memorandum which contained a list of his offenses, and a notice of a scheduled hearing in the afternoon of the same day. The next day, February 24, 1999, he was notified that his employment with petitioner R.B. Michael Press had been terminated.

A scrutiny of the disciplinary process undertaken by petitioners leads us to conclude that they only paid lip service to the due process requirements.

The undue haste in effecting respondent's termination shows that the termination process was a mere simulation—the required notices were given, a hearing was even scheduled and held, but respondent was not really given a real opportunity to defend himself; and it seems that petitioners had already decided to dismiss respondent

from service, even before the first notice had been given.

Anent the written notice of charges and hearing, it is plain to see that there was merely a general description of the claimed offenses of respondent. The hearing was immediately set in the afternoon of February 23, 1999—the day respondent received the first notice. Therefore, he was not given any opportunity at all to consult a union official or lawyer, and, worse, to prepare for his defense.

Regarding the February 23, 1999 afternoon hearing, it can be inferred that respondent, without any lawyer or friend to counsel him, was not given any chance at all to adduce evidence in his defense. At most, he was asked if he did not agree to render overtime work on February 22, 1999 and if he was late for work for 197 days. He was never given any real opportunity to justify his inability to perform work on those days. This is the only explanation why petitioners assert that respondent admitted all the charges.

In the February 24, 1999 notice of dismissal, petitioners simply justified respondent's dismissal by citing his admission of the offenses charged. It did not specify the details surrounding the offenses and the specific company rule or Labor Code provision upon which the dismissal was grounded.

In view of the infirmities in the proceedings, we conclude that termination of respondent was railroad in serious breach of his right to due process. And as a consequence of the violation of his statutory right to due process and following *Agabon*, petitioners are liable jointly and solidarily to pay nominal damages to the respondent in the amount of PhP 30,000.[19]

WHEREFORE, premises considered, the November 14, 2001 CA Decision in CA-G.R. SP No. 62959, the April 28, 2000 Decision of the NLRC in NLRC NCR CA No. 022433-00, and the October 29, 1999 Decision of the Labor Arbiter in NLRC Case No. RAB IV-2-10806-99-C are hereby REVERSED and SET ASIDE. The Court declares respondent's dismissal from employment VALID and LEGAL. Petitioners are, however, ordered jointly and solidarily to pay respondent nominal damages in the amount of PhP 30,000 for violation of respondent's right to due process.

No costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Tinga, JJ., concur.

[1] Rollo, p. 71.

[2] *Id.* at 72.

[3] *Id.* at 59-60.

[4] *Id.* at 47. The Decision was penned by Associate Justice Eugenio S. Labitoria, and concurred in by Associate Justices Teodoro P. Regino and Rebecca de Guia-Salvador.

[5] CA rollo, pp. 130-132.

[6] *Nautica Canning Corp. et al. v. Roberto C. Yumul*, G.R. No. 164588, October 19, 2005, 473 SCRA 415, 423-424; *Agabon v. National Labor Relations Commission*, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 604.

[7] See *Basilisa Dungaran v. Arleni Koschnicke*, G.R. No. 161048, August 31, 2005, 468 SCRA 676, 685; *Larena v. Mapili*, G.R. No. 146341, August 7, 2003, 408 SCRA 484, 488-489.

- [8] Rollo, p. 71.
- [9] *Castro v. Del Rosario, et al.*, No. L-17915, January 31, 1967, 19 SCRA 196, 203.
- [10] *Thomson v. Court of Appeals*, G.R. No. 116631, October 28, 1998, 298 SCRA 280, 293-294.
- [11] G.R. No. 91344, September 14, 1990, 189 SCRA 666, 671.
- [12] G.R. No. 72129, February 7, 1990, 182 SCRA 1, 3-4.
- [13] *Micro Sales Operation Network v. NLRC*, G.R. No. 155279, October 11, 2005, 472 SCRA 328, 335-336.
- [14] G.R. No. 166379, October 20, 2005, 473 SCRA 617, 624.
- [15] G.R. No. 158693, November 17, 2004, 442 SCRA 573, 608.
- [16] G.R. No. 166208, June 29, 2007, 526 SCRA 116, 125-126.
- [17] RULES IMPLEMENTING THE LABOR CODE, as amended by D.O. 09, June 21, 1997, Book V, Rule XXIII, Secs. 8 & 9.
- [18] *Tanala v. National Labor Relations Commission*, G.R. No. 116588, January 24, 1996, 252 SCRA 314, 321.
- [19] *Supra* note 15.

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