

ROQUE S. DUTERTE, PETITIONER, VS. KINGSWOOD TRADING CO., INC., FILEMON LIM AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

G.R. NO. 160325. October 04, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

By this petition for review on certiorari, petitioner Roque S. Duterte seeks the review and setting aside of the decision[1] dated June 20, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 71729, as reiterated in its resolution[2] of October 5, 2003, affirming an earlier resolution[3] of the National Labor Relations Commission (NLRC) which ruled that petitioner was not illegally dismissed from employment due to disease under Article 284 of the Labor Code.

The facts:

In September 1993, petitioner was hired as truck/trailer driver by respondent Kingswood Trading Company, Inc. (KTC) of which co-respondent Filemon Lim is the President. Petitioner was on the 6:00 a.m. – 6:00 p.m. shift. He averaged 21 trips per month, getting P700 per trip. When not driving, petitioner was assigned to clean and maintain respondent KTC's equipment and vehicles for which he was paid P125 per day. Regularly, petitioner would be seconded by respondent Filemon Lim to drive for one of KTC's clients, the Philippine National Oil Corporation, but always subject to respondents' convenience.

On November 8, 1998, petitioner had his first heart attack and was confined for two weeks at the Philippine Heart Center (PHC). This was confirmed by respondent KTC which admitted that petitioner was declared on sick leave with corresponding notification.

A month later, petitioner returned to work armed with a medical certificate signed by his attending physician at the PHC, attesting to petitioner's fitness to work. However, said certificate was not honored by the respondents who refused to allow petitioner to work.

In February 1999, petitioner suffered a second heart attack and was again confined at the PHC. Upon release, he stayed home and spent time to recuperate.

In June 1999, petitioner attempted to report back to work but was told to look for another job because he was unfit. Respondents refused to declare petitioner fit to work unless physically examined by the company physician. Respondents' promise to pay petitioner his separation pay turned out to be an empty one. Instead, petitioner was presented, for his signature, a document as proof of his receipt of the amount of P14,375.00 as first installment of his Social Security System (SSS) benefits. Having received no such amount, petitioner refused to affix his signature thereon and instead requested for the necessary documents from respondents to enable him to claim his SSS benefits, but the latter did not heed his request.

On November 11, 1999, petitioner filed against his employer a complaint for illegal dismissal and damages.

In a decision[4] dated September 26, 2000, the labor arbiter found for the petitioner. However, while categorically declaring that petitioner's dismissal was illegal, the labor arbiter, instead of applying Article 279[5] of the Labor Code on illegal dismissals, applied Article 284 on Disease as ground for termination on the rationale that since the respondents admitted that petitioner could not be allowed back to work because of the latter's disease, the case fell within the ambit of Article 284. We quote the fallo of the labor arbiter's decision:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered declaring complainant to have been terminated from employment on the ground that he has been suffering from a disease.

Respondents are hereby directed to pay complainant as follows:

- Separation pay equivalent to one-half (1/2) month salary for every year of service computed at six (6) years of service in the amount of Forty-Two Thousand (P42,000.00) Pesos.
- Holiday pay for three (3) years in the amount of Twenty-One Thousand (P21,000.00) Pesos; and
- Service Incentive Leave pay for three (3) years in the amount of Ten Thousand (P10,000.00) Pesos.

All other claims herein sought are hereby denied for lack of merit and factual basis.

SO ORDERED.

On respondents' appeal, the NLRC, in its Resolution[6] of April 24, 2002, set aside the labor arbiter's decision, ruling that Article 284 of the Labor Code has no application to this case, there being "no illegal dismissal to speak of." The NLRC accordingly dismissed petitioner's complaint for illegal dismissal, thus:

WHEREFORE, the decision appealed from is VACATED and SET ASIDE.[7] A new one is hereby entered DISMISSING the instant case for lack of merit.

Therefrom, petitioner went on certiorari to the CA in CA-G.R. SP No. 71729. In the herein assailed decision dated June 20, 2003, the CA upheld the NLRC Resolution, saying that the Commission committed no grave abuse of discretion in holding that petitioner was not illegally dismissed and could not be granted any relief. With his motion for a reconsideration having been denied by the CA in its resolution of October 5, 2003, petitioner is now with this Court via the present recourse.

We REVERSE.

At bottom, this case involves the simple issue of the legality of one's termination from employment made complicated, however, by over analysis. Simply put, the question at hand pivots on who has the onus of presenting the necessary medical certificate to justify what would otherwise be classified as legal or illegal, as the case may be, dismissal from the service. The following may be another formulation of the issue: For purposes of Article 284 of the Labor Code, would the dismissal of an employee on the ground of disease under the said Article 284 still require the employer to present a certification from a competent public health authority that the disease is of such a nature that it could not be cured within a period of six months even with proper medical treatment? To both the NLRC and the CA, a dismissal on the ground of disease under Article 284 of the Code is illegal only if the employee himself presents the required certification from the proper health authority. Since, as in this case, petitioner failed to produce such certification, his dismissal could not be illegal.

In the precise words of the NLRC which the CA effectively affirmed:

Neither can it be gainsaid that Article 284 of the Labor Code applies in the instant case since the complainant [petitioner] failed to establish that he is suffering from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees nor was he able to prove that his illness

is of such nature or at such stage that it cannot be cured within a period of six months even with proper treatment.[8]

In order for the complainant to be covered by Article 284 of the Labor Code, he must first present a certification by a competent public health authority that his continued employment will result in the aforesaid consequences, but unfortunately for the complainant, we find none in the instant case. For the respondents to require the complainant to submit a medical certificate showing that he is already physically fit as a condition of his continued employment under the prevailing circumstance cannot be considered as neither harsh nor oppressive. xxx

Prescinding from the above, there is no illegal dismissal to speak of. This finding is further strengthened by the fact that no termination letter or formal notice of dismissal was adduced to prove that complainant's services have been terminated. Considering that no illegal dismissal took place, the complainant's claim that his right to due process of law had been violated finds no application to the case at bar. (Emphasis added).

The Court disagrees with the NLRC and CA.

Article 284 of the Labor Code explicitly provides:

Art. 284. DISEASE AS GROUND FOR TERMINATION. -- An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

Corollarily, in order to validly terminate employment on the basis of disease, Book VI, Rule I, Section 8 of the Omnibus Implementing Rules of the Labor Code requires:

Disease as a ground for dismissal. -- Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment unless there is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the employee to take a leave. The employer shall reinstate such employee to his former position immediately upon the restoration of his normal health. (Book VI, Rule 1, Sec. 8 of the Implementing Rules)

In a very real sense, both the NLRC and the appellate court placed on the petitioner the burden of establishing, by a certification of a competent public authority, that his ailment is such that it cannot be cured within a period of six months even with proper medical treatment. And pursuing their logic, petitioner could not claim having been illegally dismissed due to disease, failing, as he did, to present such certification.

To be sure, the NLRC's above posture is, to say the least, without basis in law and jurisprudence. And when the CA affirmed the NLRC, the appellate court in effect placed on the petitioner the onus of proving his entitlement to separation pay and thereby validated herein respondents' act of dismissing him from employment even without proof of existence of a legal ground for dismissal.

The law is unequivocal: the employer, before it can legally dismiss its employee on the ground of disease, must adduce a certification from a competent public authority that the disease of which its employee is suffering is of such nature or at such a stage that it cannot be cured within a period of six months even with proper treatment.

Here, the record does not contain the required certification. And when the respondents asked the petitioner to look for another job because he was unfit to work, such unilateral declaration, even if backed up by the findings of its

company doctors, did not meet the quantum requirement mandated by the law, i.e., there must be a certification by a competent public authority.[9]

For sure, the posture taken by both the NLRC and the CA is inconsistent with this Court's pronouncement in *Tan v. National Labor Relations Commission*,[10] thus:

Consistent with the Labor Code state policy of affording protection to labor and of liberal construction of labor laws in favor of the working class, Sec. 8, Rule 1, Book VI, of the Omnibus Rules Implementing the Labor Code provides – Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment, unless there is a certification by a competent public authority that the disease is of such nature or at such a stage, that it cannot be cured within a period of six (6) months even with proper medical treatment.. There is absolutely nothing on record to show that such a certification was ever obtained by [the employer] much less that one was issued by a competent public authority ...[o]n the contrary, what appears on record is a Medical Certificate dated May 5, 1999 issued by Dr. Lenita C. de Castro certifying to the contrary, i.e., that [the employee] was in fact already fit to return to work. However, [the employer] did not accept the certificate and insisted that [the employee] present one issued by a government physician. For his failure to present such a certificate, [the employee] was penalized with dismissal. Obviously, the condition imposed by [the employer] finds no basis under the law. To reiterate, contrary to [the employer's] insistence that [the employee] first obtain a medical certificate attesting that he was already cured of pulmonary tuberculosis, the abovequoted Sec. 9, Rule 1, Book VI, of the Omnibus Rules is clear that the burden is upon [the employer] not [the employee] to justify the dismissal with a certificate public authority that [the employee's] disease is at such stage or of such nature that it cannot be cured within six (6) months even with proper medical treatment. For [the employer's] blatant failure to present one, we can only rule that [the employee's] dismissal, like that of Garrido, is illegal, invalid and unjustified. (Emphasis and words in brackets supplied.)

In *Triple Eight Integrated Services, Inc. v. NLRC*,[11] the Court explains why the submission of the requisite medical certificate is for the employer's compliance, thus:

The requirement for a medical certificate under Article 284 of the Labor Code cannot be dispensed with; otherwise, it would sanction the unilateral and arbitrary determination by the employer of the gravity or extent of the employee's illness and thus defeat the public policy on the protection of labor.

In thus ruling out an illegal dismissal situation in the instant case, the CA effectively agreed with the NLRC's view that the fact of dismissal must be evidenced by positive and overt acts, citing *Veterans Phil. Scout Security Agency v. NLRC*. [12] Said case, however, is not on all fours with the present one. In *Veterans*, the employer offered the complainant-employee a monthly cash allowance and other benefit pending a new assignment. Therein, the employee was not forthrightly nor constructively dismissed. In fact, the employee in *Veterans* was found to be in bad faith as he filed his complaint for illegal dismissal the day immediately after he accepted the company's offer of employment benefits. Hence, the Court's ruling in *Veterans* that the fact of dismissal must be evidenced by positive and overt acts indicating the intention to dismiss. These considerations do not obtain here. Petitioner was not allowed back to work. Neither did he receive any monetary assistance from his employer, and, worse, respondents refused to give him the necessary documents to enable him to claim his SSS benefits.

Much was made by the NLRC – and the CA – about petitioner's refusal to comply with respondents' order to submit a medical certificate – irresistibly implying that such refusal is what constrained them to refuse to take petitioner back in.

We are not persuaded.

Even assuming, in *gratia argumenti*, that petitioner committed what may be considered an act of insubordination

for refusing to present a medical certificate, such offense, without more, certainly did not warrant the latter's placement in a floating status, a veritable dismissal, and deprived of his only source of livelihood.

We are not unmindful of the connection between the nature of petitioner's disease and his job as a truck/trailer driver. We are also fully aware that petitioner's job places at stake the safety of the public. However, we do not agree with the NLRC that petitioner was validly dismissed because his continued employment was prohibited by the basic legal mandate that reasonable diligence must be exercised to prevent prejudice to the public, which justified respondents in refusing work to petitioner. Petitioner could have been admitted back to work performing other tasks, such as cleaning and maintaining respondent company's machine and transportation assets.

As a final consideration, the Court notes that the NLRC, as sustained by the CA, considered the petitioner as a field worker and, on that basis, denied his claim for benefits under Articles 94[13] to 95[14] of the Labor Code, such as holiday pay and service incentive leave pay. Article 82 of the Code lists personnel who are not entitled to the benefits aforementioned.[15] Among the excluded group are "field personnel," referring to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty. As a general proposition, field personnel are those whose job/service are not or cannot be effectively monitored by the employer or his representative, their workplace being away from the principal office and whose hours and days of work cannot be determined with reasonable certainty. Field personnel are paid specific amount for rendering specific service or performing specific work.

If required to be at specific places at specific times, employees, including drivers, cannot be said to be field personnel despite the fact that they are performing work away from the principal office of the employer. Thus, to determine whether an employee is a field employee, it is also necessary to ascertain if actual hours of work in the field can be determined with reasonable certainty by the employer. In so doing, an inquiry must be made as to whether or not the employee's time and performance are constantly supervised by the employer.[16]

Guided by the foregoing norms, petitioner was definitely a regular employee of respondent company and not its field personnel, as the term is used in the Labor Code. As it were, he was based at the principal office of the respondent company. His actual work hours, i.e., from 6:00 a.m. to 6:00 p.m., were ascertainable with reasonable certainty. He averaged 21 trips per month. And if not driving for the company, he was paid P125.00 per day for cleaning and maintaining KTC's equipment. Not falling under the category of field personnel, petitioner is consequently entitled to both holiday pay and service incentive leave pay, as mandated by Articles 94 and 95 of the Labor Code.

All told, we rule and so hold that petitioner's dismissal did not comply with both the substantive and procedural aspects of due process. Clearly, his dismissal is tainted with invalidity.[17]

WHEREFORE, the assailed decision of the CA in CA-G.R. SP No. 71729 is REVERSED and SET ASIDE. Respondents are declared guilty of illegal dismissal and are ordered to pay petitioner separation pay equivalent to one (1) month pay for every year of service, in lieu of his reinstatement, plus his full backwages from the time his employment was terminated up to the time this Decision becomes final. For this purpose, let this case be REMANDED to the labor arbiter for the computation of petitioner's separation pay, backwages and other monetary awards due him.

Costs against respondents.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Rodrigo V. Cosico and Hakim S. Abdulwahid, concurring; rollo, pp. 35-39.

[2] Id. at 33.

[3] Id. at 46-52.

[4] Id. at 40-45.

[5] Security of Tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[6] Rollo, pp. 46-52.

[7] Id. at 52.

[8] Id. at 51.

[9] Cebu Royal Plant v. Deputy Minister of Labor, G.R. No. L-58639, August 12, 1987, 153 SCRA 38.

[10] G.R. No. 116807, April 14, 1997, 271 SCRA 216.

[11] 59 Phil. 955, 968 (1998).

[12] G.R. Nos. L-78062 and 83927, June 28, 1989, 174 SCRA 347.

[13] ART. 94. RIGHT TO HOLIDAY PAY. – (a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers; xxx

[14] ART. 95. RIGHT TO SERVICE INCENTIVE LEAVE. — (a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

[15] Azucena, Everyone's Labor Code, 2001 ed., p. 57.

[16] Auto BusTransport Systems, Inc. v. Antonio Bautista, G.R. No. 156367, May 16, 2005, 458 SCRA 578.

[17] Sy v. Court of Appeals, G.R. No. 142293, February 27, 2003, 398 SCRA 301, 312.

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