

NISSAN MOTORS PHILS., INC., PETITIONER, VS. VICTORINO ANGELO, RESPONDENT.

G.R. No. 164181. September 14, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

This is to resolve the Petition for Review[1] dated July 10, 2004 of petitioner Nissan Motors Phils., Inc. (Nissan) assailing the Decision[2] dated March 24, 2004 of the Court of Appeals (CA) and the latter's Resolution[3] dated June 9, 2004.

The records contain the following antecedent facts:

Respondent Victorino Angelo was employed by Nissan on March 11, 1989 as one of its payroll staff. On April 7 to 17, 2000, respondent was on sick leave, thus, he was not able to prepare the payroll for the said period. Again, on April 27 and 28, 2000, respondent was on an approved vacation leave which again resulted in the non-preparation of the payroll for that particular period.

On May 8, 2000, respondent received a Memorandum[4] from the petitioner containing the following:

This is to inform you that the Company is considering your dismissal from employment on the grounds of serious misconduct, willful disobedience and gross neglect of duties.

It appears that on April 10, 2000, Monday, which was the supposed cut-off date for payroll purposes for the April 15 payroll, you went home early without finishing your work and requested for a referral letter from the company clinic to E. Delos Santos Hospital claiming that you are not feeling well.

On April 11, Tuesday, you did not report for work, without any notice to the company or to any of your immediate superior section head, department head and division head. A phone call was made to your home, but the company could not make any contact.

On April 12, Wednesday, you reported for work but went home early claiming that you were again not feeling well. You were reminded of the coming payday on Friday, April 14, and you said you will be able to finish it on time and that you will just continue/finish your work the following day.

On April 13, Thursday, you again did not report for work without any notice to the company just like what you did last Tuesday. Your immediate superior, sensing that you did not finish your task, tried to contact you but to no avail, as you were residing in Novaliches and your home phone was not in order. So we decided to open your computer thru the help of our IT people to access the payroll program.

On April 14, Friday (payday), we were still doing the payroll thru IT because we could not contact you. Later in the day, the Company decided to release the payroll of employees the following day as we already ran out of time and the Company just based the net pay of the employees on their March 15 payroll. Naturally, the amount released to the employees were not accurate as some got more than (sic), while some got less than what they were supposed to receive.

Consequently, many employees got angry, as the Company paid on a Saturday, (in practice we do not release salary on a Saturday as it is always done in advance, i.e., Friday) and majority got lesser amount than what they were supposed to receive. In addition, the employees were not given their payslip where they can base the net pay they received.

When you reported for work on Tuesday, April 18, we had a meeting and you were advised to transfer your payroll task to your immediate superior, which you agreed. The time table agreement was 2 payroll period, meaning April 30 and May 15 payroll.

Still on April 18, Tuesday, you filed an application for vacation leave due to your son's graduation on April 27 and 28. Because it is again payroll time, we advised that your leave will be approved on the condition that you will ensure that the payroll is finished on time and [you] will make a proper turn over to your immediate superior before your leave. You agreed and your leave was approved.

On April 24, Monday, you were reminded you should start on your payroll task because you will be on leave starting April 27, Thursday, you said yes.

On April 25, Tuesday, you were again reminded on finishing the payroll and the turn over again and you said yes.

On April 26, Wednesday, you were again reminded on the same matter and, in fact, Mr. AA del Rosario reminded you also on the matter about 5:30 p.m. And you promised him that the task will be finished by tomorrow (sic) and will just leave the diskette in your open drawer. You were left in the office until 6:00 p.m.

On April 27, Thursday, you were already on leave and your superior, Mr. M. Panela, found out that the diskette only contained the amount and name of employees, but not the account number. Likewise, the deductions from salaries was not finished, the salaries of contractuales, apprentices were also not finished. Since the bank only reads account numbers of employees, we experienced delay in the payroll processing. You even promised to call the office i.e., M Panela to give additional instructions not later than 12:00 noon on the same day, but you did not do so. In fact, the direct phone line of Mr. AA del Rosario was given to you by your officemate so you can call the office directly and not thru long distance.

On April 28, Friday, after exhaustive joint efforts done by Welfare Management Section and IT Division, we were able to finally release the payroll thru the bank, but many employees got lower amount than what they have expected, as in fact at least 43 employees out of 360 got salaries below P1,000.00, among them about 10 people got no salary primarily due to wrong deduction and computation done by you. Again, many people got angry to the management's inefficient handling of their payroll.

On May 2, Tuesday, you did not report for work, again you said you are not feeling well, but the information to us came very late at about noon time.

On May 3, Wednesday, you reported for work, and was instructed to finish the payslips for the payroll periods April 15 and April 30. You said yes, and you promised not to go home on that day without finishing the payslips. Later, you decided on your own to just compute the payslip on a monthly basis instead of the usual semi-monthly basis as is the customary thing to do. As a result thereof, an error in the tax withholding happened and again resulted in another confusion and anger among employees, as in fact for two (2) consecutive days, May 3 and May 4, the plant workers refused to render overtime.

As a consequence of all these, the manufacturing employees, numbering about 350 people or about 65% of [Nissan's total population], since April 16, have started to decline rendering overtime work, saying after their 15 days of work they received only less than P200 while some even received only P80.

The manufacturing operation was hampered completely in the month of April and the first week of May because of these several incidents. In sum, the company has suffered massive loss of opportunity to sell

because of failure to produce in the production area due to non-availability of workers rendering overtime, high absenteeism rate among plant direct workers primarily due to the payroll problem. It came at a time when NMPI sales [are] just starting to pick up due to the introduction of the new model Sentra Exalta. The loss is simply too overwhelming.

Accordingly, you are hereby given a period of three (3) days from receipt hereof to submit your written answer.

In the meantime, you are hereby placed on preventive suspension effective immediately.

A hearing will be conducted by Mr. AA del Rosario, on May 13, 2000 at 9:00 a.m. at the Company's conference room (Fairlady).

Respondent filed a Complaint[5] for illegal suspension with the Department of Labor and Employment (DOLE) on May 12, 2000.

Petitioner conducted an investigation on May 13, 2000, and concluded that respondent's explanation was untrue and insufficient. Thus, on June 13, 2000, petitioner issued a Notice of Termination.[6]

Respondent amended his previous complaint against petitioner on June 22, 2000, to include the charge of illegal dismissal.[7] On September 29, 2000, the Labor Arbiter rendered a Decision[8] dismissing respondent's complaint for lack of merit. Undaunted, respondent brought the case to the National Labor Relations Commission (NLRC), which eventually rendered a Resolution[9] dated February 14, 2002 dismissing the appeal and affirming the Labor Arbiter's Decision. Respondent's motion for reconsideration of the NLRC resolution was subsequently denied on May 13, 2002.[10]

Aggrieved, respondent filed a petition for certiorari[11] under Rule 65 of the Rules of Court with the CA and the latter granted the same petition in its Decision dated March 24, 2004, the dispositive portion of which reads:

WHEREFORE, the petition is GRANTED. The assailed resolutions dated February 14, 2002 and May 13, 2002 are REVERSED and SET ASIDE. The petitioner is hereby reinstated and the private respondents are ordered to pay him backwages from the time of his illegal dismissal.

SO ORDERED.

Unsatisfied with the decision of the CA, Nissan filed a motion for reconsideration, which was denied by the same court in a Resolution dated June 9, 2004.

Thus, the present petition, to which the petitioner cites the following grounds:

A

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW WHEN IT OVERTURNED THE FACTUAL FINDINGS OF BOTH THE LABOR ARBITER AND THE NLRC WHICH ARE BASED ON SUBSTANTIAL EVIDENCE.

B

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW WHEN IT DISREGARDED PRIVATE RESPONDENT'S SERIOUS MISCONDUCT AND INSUBORDINATION, AND DECIDED THE CASE ONLY ON THE CHARGE OF GROSS AND HABITUAL NEGLIGENCE.

C

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN IGNORING PRIVATE

RESPONDENT'S MISCONDUCT WHICH, IF EVER IT DOES NOT JUSTIFY DISMISSAL BECAUSE OF HIS 11-YEAR SERVICE NONETHELESS LIMITS THE AWARD OF BACKWAGES.[12]

The petition is meritorious.

Petitioner argues that the factual findings of the Labor Arbiter and the NLRC should have been accorded respect by the CA as they are based on substantial evidence. However, factual findings of administrative agencies are not infallible and will be set aside if they fail the test of arbitrariness.[13] In the present case, the findings of the CA differ from those of the Labor Arbiter and the NLRC. The Court, in the exercise of its equity jurisdiction, may look into the records of the case and re-examine the questioned findings.[14]

The Labor Code provides that an employer may terminate the services of an employee for a just cause.[15] Petitioner, the employer in the present case, dismissed respondent based on allegations of serious misconduct, willful disobedience and gross neglect.

One of the just causes enumerated in the Labor Code is serious misconduct. Misconduct is improper or wrong conduct.[16] It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.[17] Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation.[18] Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.[19]

Going through the records, this Court found evidence to support the allegation of serious misconduct or insubordination. Petitioner claims that the language used by respondent in his Letter-Explanation is akin to a manifest refusal to cooperate with company officers, and resorted to conduct which smacks of outright disrespect and willful defiance of authority or insubordination. The misconduct to be serious within the meaning of the Labor Code must be of such a grave and aggravated character and not merely trivial or unimportant.[20] The Letter-Explanation[21] partly reads:

Again, it's not negligence on my part and I'm not alone to be blamed. It's negligence on your part [Perla Go] and A.A. Del Rosario kasi, noong pang April 1999 ay alam ninyo na hindi ako ang dapat may responsibilidad ng payroll kundi ang Section Head eh bakit hindi ninyo pinahawak sa Section Head noon pa. Pati kaming dalawa sa payroll, kasama ko si Thelma. Tinanggal nyo si Thelma. Hindi nyo ba naisip na kailangan dalawa ang tao sa payroll para pag absent ang isa ay may gagawa. Dapat noon nyo pa naisip iyan. Ang tagal kong gumawa ng trabahong hindi ko naman dapat ginagawa.

This Court finds the above to be grossly discourteous in content and tenor. The most appropriate thing he could have done was simply to state his facts without resorting to such strong language. Past decisions of this Court have been one in ruling that accusatory and inflammatory language used by an employee to the employer or superior can be a ground for dismissal or termination.[22]

Another just cause cited by the petitioner is willful disobedience. One of the fundamental duties of an employee is to obey all reasonable rules, orders and instructions of the employer. Disobedience, to be a just cause for termination, must be willful or intentional, willfulness being characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination. A willful or intentional disobedience of such rule, order or instruction justifies dismissal only where such rule, order or instruction is (1) reasonable and lawful, (2) sufficiently known to the employee, and (3) connected with the duties which the employee has been engaged to discharge.[23] This allegation of willful disobedience can still be adduced and proven from the same Letter-Explanation cited earlier.

Petitioner also dismissed respondent because of gross or habitual negligence. Neglect of duty, to be a ground for dismissal, must be both gross and habitual.[24] In finding that petitioner was able to adduce evidence that would justify its dismissal of respondent, the NLRC correctly ruled that the latter's failure to turn over his functions to someone capable of performing the vital tasks which he could not effectively perform or undertake because of his heart ailment or condition constitutes gross neglect. It stated that:

x x x Be it mentioned and emphasized that complainant cannot be faulted for his absences incurred on 10, 11, 13, 14, 17, 27 and 28 of April 2000 as he went on official leave on said dates. Except for the last two dates mentioned (27 and 28 April 2000), health problem compelled complainant to be on sick leave of absence on the foregoing dates. It is not the complainant's liking, in other words, to be afflicted with any form of heart ailment which actually caused him to incur such leave of absences. Complainant's pellucid fault, however, lies on his failure to effect the "much-needed" turn over of functions to someone capable of performing the vital task(s) which he could not effectively perform or undertake because of his heart ailment or condition. Indeed, the trouble(s) "felt" by management and the employees concerned on the payday of 15 April 2000 may seem justified under the circumstances as complainant indeed has gotten ill and in fact went on sick leave of absence prior to said payday. The same, however, certainly does not hold true as to the trouble(s) and chaos felt and which occurred on the payday of 30 April 2000 as diligence and prudence logically and equitably required complainant to have effected the necessary turn over of his functions to someone capable of taking over his assigned task(s) even perhaps on a merely temporary basis. The preparation of payroll, especially that of a big business entity such as herein respondent company, certainly involves serious, diligent, and meticulous attention of the employee tasked of performing such function and a company definitely could not let either negligence or absence of the employee concerned get in the way of the performance of the undertaking of such, otherwise, serious repercussion(s) would be the logical and unavoidable consequences; such is what befell the respondents. Be it mentioned at this juncture that under the circumstances herein then prevailing, it would seem just logical and in keeping with the natural "reflexes," so to speak, of a business entity, to require an incapable employee tasked to perform a vital function, to effect the necessary turn over of functions of such employee to someone capable. Be it further emphasized, however, that even assuming that no formal directive was given by the company to the employee concerned for the turn over of the latter's functions, said employee should have taken the initiative of so doing considering the importance of the task(s) he is performing. Hence, failure to do so would clearly be tantamount to serious neglect of duty, a valid ground in terminating employment relations.[25]

Gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. On the other hand, fraud and willful neglect of duties imply bad faith on the part of the employee in failing to perform his job to the detriment of the employer and the latter's business.[26]

It must be emphasized at this point that the onus probandi to prove the lawfulness of the dismissal rests with the employer. In termination cases, the burden of proof rests upon the employer to show that the dismissal is for just and valid cause. Failure to do so would necessarily mean that the dismissal was not justified and, therefore, was illegal.[27] In this case, both the Labor Arbiter and the NLRC were not amiss in finding that the dismissal of respondent was legal or for a just cause based on substantial evidence presented by petitioner. Substantial evidence, which is the quantum of proof required in labor cases, is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[28]

However, although the dismissal was legal, respondent is still entitled to a separation pay as a measure of financial assistance, considering his length of service and his poor physical condition which was one of the reasons he filed a leave of absence. As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282[29] of the Labor Code is not entitled to separation pay.[30] Although by way of exception, the grant of separation pay or some other financial assistance may be allowed to an employee

dismissed for just causes on the basis of equity.[31] This concept has been thoroughly discussed in *Solidbank Corporation v. NLRC*,[32] thus:

The reason that the law does not statutorily grant separation pay or financial assistance in instances of termination due to a just cause is precisely because the cause for termination is due to the acts of the employee. In such instances, however, this Court, inspired by compassionate and social justice, has in the past awarded financial assistance to dismissed employees when circumstances warranted such an award.

In *Central Philippines Bandag Retreaders, Inc. v. Diasnes*,[33] this Court discussed the parameters of awarding separation pay to dismissed employees as a measure of financial assistance, viz:

To reiterate our ruling in *Toyota*, labor adjudicatory officials and the CA must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; gross and habitual neglect of duty; fraud or willful breach of trust; or commission of a crime against the person of the employer or his immediate family - grounds under Art. 282 of the Labor Code that sanction dismissals of employees. They must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautious in awarding financial assistance to the undeserving and those who are unworthy of the liberality of the law.[34]

Thus, in *Philippine Commercial International Bank v. Abad*,[35] this Court, having considered the circumstances present therein and as a measure of social justice, awarded separation pay to a dismissed employee for a just cause under Article 282. The same concession was given by this Court in *Aparente, Sr. v. National Labor Relations Commission*[36] and *Tanala v. National Labor Relations Commission*. [37]

WHEREFORE, the Petition for Review dated July 10, 2004 of petitioner Nissan Motors Phils., Inc. is hereby GRANTED. Consequently, the Decision dated March 24, 2004 of the Court of Appeals and the latter's Resolution dated June 9, 2004 are hereby REVERSED AND SET ASIDE and the Decision dated September 29, 2000 of the Labor Arbiter and its Resolution dated February 14, 2002 are hereby REINSTATED with the MODIFICATION that petitioner shall award respondent his separation pay, the computation of which shall be based on the prevailing pertinent laws on the matter.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Mendoza, and Sereno,[*] JJ., concur.

[*]] Designated as an additional member, per Special Order No. 1028 dated June 21, 2011.

[1] Rollo, pp. 3-220.

[2] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Jose L. Sabio, Jr. and Hakim S. Abdulwahid, concurring; rollo, pp. 28-36.

[3] Id. at 54.

[4] Rollo, pp. 98-101. (Emphasis supplied.)

[5] Records, p. 1.

[6] Id. at 37.

[7] Id. at 7.

[8] Id. at 108-118.

[9] Id. at 153-161.

[10] Id. at 192-193.

[11] CA rollo, pp. 2-148.

[12] Rollo, pp. 12-13.

[13] Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals, 494 Phil. 697, 716 (2005), citing Philippine Airlines, Inc. v. National Labor Relations Commission, 344 Phil. 860, 873 (1997), citing Zarate, Jr. v. Olegario, 331 Phil. 278 (1996).

[14] Id.

[15] Article 282 of the Labor Code provides:

Art. 282. 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.

[16] Philippine Long Distance Telephone Company v. Bolso, G.R. No. 159701, August 17, 2007, 530 SCRA 550, 559-560.

[17] Id. at 560.

[18] Id., citing Dept. of Labor Manual, Sec. 4343.01, cited in C.A. AZUCENA, The Labor Code with Comments and Cases, Volume Two, (Fifth Edition, 2004) p. 604.

[19] Marival Trading, Inc. v. National Labor Relations Commission, G.R. No. 169600, June 26, 2007, 525 SCRA 708, 727, citing Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission, 387 Phil. 250, 261 (2000).

[20] Philippine Long Distance Telephone Company v. Bolso, supra note 16, at 560.

[21] Records, pp. 58-59.

[22] See St. Mary's College v. National Labor Relations Commission, 260 Phil. 63, 67 (1990); Garcia v. Manila Times, G.R. No. 99390, July 5, 1991, 224 SCRA 399, 403; Asian Design and Manufacturing Corp. v. Department of Labor and Employment, 226 Phil. 20, 23 (1986).

[23] Escobin v. National Labor Relations Commission, 351 Phil. 973, 995 (1998), citing Mañebo v. National Labor Relations Commission, G.R. No. 107721, January 10, 1994, 229 SCRA 240, 249-250; Stolt-Nielsen Marine Services (Phils.), Inc. vs. National Labor Relations Commission, 328 Phil. 161, 167 (1996); AHS/Philippines, Inc.

v. Court of Appeals, 327 Phil. 129, 139 (1996).

[24] *Genuino Ice Company, Inc. v. Magpantay*, G.R. No. 147790, June 27, 2006, 493 SCRA 195, 205, citing *National Sugar Refineries Corporation v. National Labor Relations Commission*, 350 Phil. 119, 127 (1998).

[25] *Rollo*, pp. 148-149.

[26] *Genuino Ice Company, Inc. v. Magpantay*, supra note 24, at 206, citing *JGB & Associates v. National Labor Relations Commission*, 324 Phil. 747, 754 (1996); *Chua v. National Labor Relations Commission*, 493 Phil. 399, 408 (2005).

[27] *National Labor Relations Commission v. Salgarino*, G.R. No. 164376, July 31, 2006, 497 SCRA 361, 383, citing *Royal Crown Internationale v. National Labor Relations Commission*, G.R. No. 78085, October 16, 1989, 178 SCRA 569, 578.

[28] RULES OF COURT, Rule 133, Sec. 5.

[29] ART. 282. 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.

[30] Section 7, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code provides:

Sec. 7. Termination of employment by employer. – The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective bargaining agreement with the employer or voluntary employer policy or practice.

[31] *Solidbank Corporation v. National Labor Relations Commission*, G.R. No. 165951, March 30, 2010, 617 SCRA 161, 175, citing *Philippine Commercial International Bank v. Abad*, 492 Phil. 657, 663-664 (2005).

[32] *Id.* at 175-176. (Emphasis supplied).

[33] G.R. No. 163607, July 14, 2008, 558 SCRA 194.

[34] *Id.* at 207.

[35] *Supra* note 31.

[36] 387 Phil. 96 (2000).

[37] 322 Phil. 343 (1996).

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