

ERECTOR ADVERTISING SIGN GROUP, INC. AND ARCH. JIMMY C. AMOROTO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, RESPONDENT.

G.R. No. 167218. July 02, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner Erector Advertising Sign Group, Inc. assails the February 16, 2005 Decision[1] of the Court of Appeals in CA-G.R. SP No. 80027. The challenged Decision affirmed the February 28, 2003 Resolution[2] of the National Labor Relations Commission in NLRC NCR CA No. 028711-01. In turn, the said Decision reversed and set aside the March 30, 2001 Decision[3] of the Labor Arbiter, which dismissed for lack of merit the complaint for illegal dismissal filed by respondent Expedito Cloma.

The basic facts follow.

Petitioner Erector Advertising Sign Group, Inc. is a domestic corporation engaged in the business of constructing billboards and advertising signs. Sometime in the middle of 1996, petitioner engaged the services of Expedito Cloma (Cloma) as company driver and the latter had served as such until his dismissal from service in May 2000.[4]

In his Complaint[5] filed with the National Labor Relations Commission (NLRC), Cloma alleged that he was illegally suspended and then dismissed from his employment without due process of law. He likewise claimed his unpaid monetary benefits such as overtime pay, premium pay for worked rest days, service incentive leave pay and 13[th] month pay, as well as moral, exemplary and actual damages and attorneys fees.

It is conceded by petitioner that Cloma has been suspended several times from work due to frequent tardiness and absenteeism, but the instant case appears to be likewise the result of documented instances of absenteeism without prior notice to and approval from his superior, and of misbehavior. The former happened between May 12 and May 15, 2000 when Cloma supposedly failed to report for work without prior notice and prior leave approval[6] which thus effectively prevented the other workers from being transported to the job site as there was no other driver available; whereas the latter incident happened on May 11, 2000 when allegedly, Cloma, without authority, suddenly barged into the premises of the Outright Division and, without being provoked, threatened the employees with bodily harm if they did not stop from doing their work.[7] This second incident was supposedly narrated fully in a letter dated May 13, 2000 addressed to the personnel manager and signed by one Victor Morales and Ruben Que.[8]

As a result of these incidents, petitioner served on Cloma two (2) Suspension Orders dated May 15, 2000 and May 17, 2000, both signed by Nelson Clavacio (Clavacio), personnel and production manager of petitioner company, and approved by Architect Jimmy C. Amoroto (Amoroto), president and chief executive officer. For easy reference, the suspension orders are reproduced as follows:

May 15, 2000

Para kay: MR. EXPEDITO CLOMA

Company Driver

Paksa: SUSPENSION ORDER

Dahil sa iyong pagliban mula pa nuong Mayo 12 hanggang Mayo 15, 2000 na wala man lang pasabi o paalam, ikaw ay binibigyan ng tatlong araw na suspensyon na magsisimula ngayon Mayo 15 hanggang Mayo 17, 2000. Ito ay bilang paggawad ng batas at disiplina sa ating sarili at sa iba upang huwag ng pamarisan pa.

Malinaw na nakasaad sa Company Rules and Regulations SECTION 1, PARAGRAPH 4: "Ang pagliban ng walang paalam na sunod-sunod ay may kalakip na kaparusahan. Dalawang araw na absent ay katumbas ng tatlong araw na suspension.[9]

May 17, 2000

Para kay: MR. EXPEDITO CLOMA

Company Driver

Paksa: SUSPENSION ORDER

Ikaw ay ginagawaran ng isang linggong Suspensyon mula bukas, Mayo 18, 2000 hanggang Mayo 24, 2000. Ito ay dahil sa [sumusunod] na dahilan:

1. Ang pagpigil sa mga trabahador ni Ms. Anne Dongel na taga-Outright Division na magtrabaho nuong Mayo 11, 2000 at pananakot sa mga trabahador ni Ms. Anne Dongel samantalang iba naman ang kanilang Division. (SECTION 2 PARAGRAPH 2/PANANAKOT "ISANG LINGGONG SUSPENSYON)

Ang iyong suspension ay epektibo kaagad bukas at makakabalik ka lamang sa Mayo 25, 2000. Ang parusang nabanggit ay para sa pagpapairal ng disiplina sa atin at sa ating mga kapwa manggagawa.[10]

When Cloma reported back for work on May 25, 2000, he was taken by surprise when the security guard on duty prevented him from entering the company's premises and, instead, handed him a termination letter dated May 20, 2000, signed and approved by Clavacio and Amoroto.[11] The letter states:

May 20, 2000

Para kay: MR. EXPEDITO CLOMA

Company Driver

Paksa: Notice of Termination

Ginoong Expedito Cloma:

Malungkot naming ibinabalita sa iyo na napagpasyahan ng Pamunuang ito na tanggalin ka na sa iyong serbisyo bilang "Company Driver." Ito ay dahil sa mga sumusunod na kadahilanan:

- Ang pagliban ng dalawang araw na wala man lang pasabi o paalam.
- Ang pananakot sa kapwa manggagawa o trabahador na nagresulta sa pagkauwi ng mga trabahador ng Outright Division.
- Ang pagpigil sa operasyon ng ibang Department sa pamamalakad ni Ms. Anne Dongel.
- Maraming pagkakataon na "late" na naging dahilan ng pagsabotahe ng operasyon ng mga Production Crews.

Mula sa mga dahilan na nabanggit, ito ay sapat na dahilan upang tanggalin ka sa iyong posisyon, nagpapakita lamang na hindi mo nagampanan ng maayos ang iyong trabaho katulad ng inaasahan sa iyo ng Pamunuang ito.[12]

Ridden with angst and anxiety, Cloma walked away and filed the instant complaint for illegal dismissal.

Following the submission of position papers and other documentary exhibits by both parties, the Labor Arbiter, after evidentiary evaluation, issued its March 30, 2001 Decision dismissing Cloma's complaint for lack of merit.[13] In so ruling, the Labor Arbiter put much weight on the evidence presented by petitioner company bearing on Cloma's frequent tardiness and unauthorized absences, as well as the several incidents of misbehavior and misconduct in which Cloma figured as the protagonist. It went on to say that while the onus of proving the existence of the cause for termination and the observance of due process lie on the employer, petitioner company was actually able to establish the validity of Cloma's dismissal by its evidence.[14] It also noted that while the company, by memorandum/notice, had directed Cloma to submit his explanation on his alleged infractions, the latter nevertheless did not comply with the directive and instead ignored the same. In this connection, the Labor Arbiter declared that a plea of denial of procedural due process would not lie when he who had been given an opportunity to be heard had chosen not to avail of such opportunity.[15]

Aggrieved, Cloma appealed to the NLRC.[16] On February 28, 2003, the NLRC issued its Resolution[17] reversing and setting aside the Labor Arbiter's decision.

The NLRC pointed out that not only was Cloma dismissed without due process but also, that he was dismissed without just cause. The NLRC based its finding on the termination letter served by petitioner on Cloma such that with respect to the first ground of termination, i.e., Ang pagliban ng dalawang araw na wala man lang pasabi o paalam, the letter did not state the dates when these two absences had been incurred; that in relation to the second and third grounds, i.e., Ang pananakot sa kapwa manggagawa x x x and Ang pagpigil sa operasyon ng ibang Department x x x, petitioner did not profess having conducted investigation on these matters that would have afforded Cloma the opportunity to confront his witnesses and that Cloma had already been sanctioned for this offense under the May 17, 2000 suspension order; and that as to the last ground, i.e., Maraming pagkakataon na late x x x, the NLRC noted that the best proof on this allegation would have been Cloma's corresponding daily time record but which, however, petitioner failed to make of record at the hearing of the case.[18] Hence, finding that Cloma was dismissed without just cause and without due process, the NLRC ordered petitioner to pay full backwages, allowances and other benefits, as well as separation pay in lieu of reinstatement.[19] The appeal was disposed of as follows:

WHEREFORE, premises considered, Complainant's appeal is GRANTED. The Labor Arbiter's decision in the above-entitled case is hereby REVERSED and SET ASIDE. A new one is entered declaring that Complainant's dismissal from employment is illegal. Respondents are hereby ordered to jointly as (sic) severally pay Complainant the amount of P271,673.08 as backwages and separation pay, plus ten percent (10%) of his total monetary award as attorney's fees.

SO ORDERED.[20]

Petitioner's motion for reconsideration was denied,[21] and forthwith it elevated the case to the Court of Appeals on petition for certiorari.[22]

On February 16, 2005, the Court of Appeals rendered the assailed Decision[23] adopting the findings and conclusions of the NLRC as follows:

WHEREFORE, the instant petition is DENIED. The resolution of the National Labor Relations Commission dated 28 February 2003 reversing the decision of the Labor Arbiter dated 30 March 2001 in NLRC CASE No.

00-05-02887-2000 is hereby AFFIRMED.

SO ORDERED.

Hence, this petition, which raises the sole issue of whether Cloma was dismissed with just cause and with due process of law.

Petitioner insists that the just cause for Cloma's termination abounds in the records, alluding to several infractions and violations of company rules and regulations for which he has been suspended many times from work. In addition, it likewise enumerates a number of Cloma's other acts of misbehavior such as reporting for work under the influence of alcohol, picking fights with co-workers and others which the management merely let pass but which, nevertheless, could constitute valid grounds for dismissal. Yet significantly, petitioner admits that it is Cloma's repeated infractions which gave the company the motivation to finally terminate his services.[24]

Also, petitioner maintains that it observed due process in deciding to dismiss Cloma from service. It claims that the decision to let go of Cloma was the result of a thorough consideration of the totality of the many infractions he has committed, as well as of his general behavior toward his work. It reasons that ample time, prior to May 20, 2000, has been afforded Cloma so that he could explain why he should not be dismissed, but he nevertheless failed to comply despite the fact that he was residing only a few houses away from the company.[25]

Commenting on the petition, Cloma maintains that petitioner's evidence is insubstantial to support the theory that the dismissal has complied with due process and is with just cause. He stresses that the evidence presented by petitioner hardly supports the grounds relied on for his termination and that, more importantly, petitioner did not comply with the two-notice rule required by law to validate an employee's dismissal from service, that is, a written notice stating the cause for termination and a written notice of the intention to terminate employment stating clearly the reason therefor.[26]

We find no merit in the petition.

The validity of an employee's dismissal from service hinges on the satisfaction of the two substantive requirements for a lawful termination. These are, first, whether the employee was accorded due process the basic components of which are the opportunity to be heard and to defend himself. This is the procedural aspect. And second, whether the dismissal is for any of the causes provided in the Labor Code of the Philippines. This constitutes the substantive aspect.[27]

With respect to due process requirement, the employer is bound to furnish the employee concerned with two (2) written notices before termination of employment can be legally effected. One is the notice apprising the employee of the particular acts or omissions for which his dismissal is sought and this may loosely be considered as the proper charge. The other is the notice informing the employee of the management's decision to sever his employment. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge, thereby giving him ample opportunity to be heard and defend himself with the assistance of his representative should he so desire. The requirement of notice, it has been stressed, is not a mere technicality but a requirement of due process to which every employee is entitled.[28]

In this case, we find that Cloma's dismissal from service did not comply with this basic precept.

We recall that the notice of termination served by petitioner on Cloma cites three reasons why the management has arrived at the decision to dismiss him from service: first, his absence from work for two (2) days without prior notice and approval; second, his act of barging into the premises of the Outright Division and threatening the members of the said division with bodily harm if they did not stop doing their work; and third, his frequent tardiness in reporting for work.

Certainly, nowhere in the records does it appear that Cloma attempted to deny these allegations, yet it is equally certain that the records do not contain any suggestion that petitioner, with respect to these three grounds with which Cloma is charged, has tried to notify the latter of the said charges. Indeed, we find that petitioner has not complied with the basic requirement of serving a pre-dismissal notice on Cloma. What is clear from the records is that the only notice that was given to Cloma prior to his termination is the May 20, 2000 notice of termination informing him that his employment in the company has been severed for the causes mentioned.

Be that as it may, petitioner insists that Cloma has been sufficiently informed of the acts constituting the grounds for his termination and that with respect thereto, ample opportunity was thereafter given to him to be heard thereon, only that he did not choose to avail of that opportunity. Petitioner seems to be referring to the May 15 and May 17, 2000 Suspension Orders which it previously served on Cloma. These orders, however, hardly constitute the first notice required by law prior to termination. Here is why: a fleeting glance at these two orders readily reveals that the alleged offenses mentioned therein were not to be used as grounds for termination, but rather merely for suspension. The wording of the orders conveys the idea that as a result of his shortcomings, Cloma was going to be meted the penalty of suspension in accordance with the provisions of the company's rules and regulations, but not that he might be dismissed from service upon the same grounds. There is not an allusion in the said orders that petitioner was giving Cloma sufficient opportunity to submit his defenses or explanation. Instead, what it implies is that the management has already decided, for causes stated therein, to suspend Cloma from work in the company, and nothing more.

Moreover, the May 15, 2000 Order, in particular, could not have constituted the first notice relative to the charge that Cloma has incurred unauthorized absences for two days as stated in the notice of termination. This, inasmuch as the order refers to a four (4)-day absence supposedly incurred between May 12, 2000 and May 15, 2000 for which Cloma has actually been sanctioned with suspension. In this regard, it suffices to say that even assuming that the May 15, 2000 order could validly take the place of the first notice, still, Cloma's dismissal cannot be validly effected, because an employee may be dismissed only if the grounds mentioned in the pre-dismissal notice were the ones cited for the termination of employment.[29] The same is true with the third ground of termination, i.e., that Cloma has frequently been late in reporting for work. Observably, aside from the fact that Cloma, with respect to this ground, has not been furnished a pre-dismissal notice, the notice of termination does not state the inclusive dates on which Cloma actually reported late for his work.

Moreover, we agree with the Court of Appeals that not only did petitioner fail to comply with the procedural due process requirements in terminating Cloma's employment, but also that petitioner has not overcome the quantum of substantial evidence needed to establish the existence of just causes for dismissal in this case.

With respect to the charges of frequent tardiness and incurring an unauthorized two-day leave of absence, it is plain in the records that the same have not been sufficiently proved by petitioner. For one, petitioner could not identify the dates when Cloma incurred the alleged tardiness in reporting for work. Add to that the fact that Cloma's daily time records, which would have been the best evidence on the matter, have not been made of record when they are actually within petitioner's power to produce and submit at the trial. The same applies to the charge of unauthorized absences.

Finally, anent the charge that Cloma had terrorized the staff of the Outright Division and incited a work stoppage, it is clear, from the May 17, 2000 suspension order, that he has already been penalized with suspension for this offense and, hence, this act may no longer be added to support the imposition of the ultimate penalty of dismissal from service nor may it be used as an independent ground to that end.[30]

All told, we find that no error has been committed by the Court of Appeals in ruling that Cloma's dismissal from

service was both without just cause and without due process of law.

WHEREFORE, the petition is DENIED. The February 16, 2005 Decision of the Court of Appeals in CA-G.R. SP No. 80027, affirming the February 28, 2003 Resolution of the National Labor Relations Commission in NLRC NCR CA No. 028711-01, is hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Santiago Javier Ranada, with Associate Justices Marina L. Buzon and Mario L. Guarina III, concurring; rollo, pp. 45-51.

[2] Signed by Commissioner Victoriano R. Calaycay, with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, concurring; id. at 32-44.

[3] Signed by Labor Arbiter Ermita T. Abrasaldo-Cuyuca; id. at 32-44.

[4] CA rollo, pp. 100, 108, 167.

[5] Docketed as NLRC NCR Case No. 00-05-02887-2000; id. at 18.

[6] Records, p. 41; CA rollo, pp. 24, 29, 37.

[7] Id. at 42; Id. at 25, 30, 37.

[8] Records, pp. 42-43.

[9] Id. at 41.

[10] Id. at 44.

[11] Id. at 45.

[12] Id.

[13] Records, p. 72. The Labor Arbiter disposed of the complaint as follows:

WHEREFORE, judgment is hereby rendered dismissing the complaint for lack of merit.

SO ORDERED.

[14] Records, pp. 69-71.

[15] Id. at 72.

[16] Id. at 118-127.

[17] Id. at 129-140.

[18] Id. at 137.

[19] Id. at 137-139.

[20] Id. at 139.

[21] Id. at 163.

[22] CA rollo, pp. 2-16.

[23] Id. at 166-172.

[24] Id. at 12.

[25] Rollo, p. 19.

[26] Id. at 57-58.

[27] Pepsi Cola Distributors of the Philippines, Inc. v. National Labor Relations Commission, G.R. No. 106831, May 6, 1997, 272 SCRA 267, 274-275; New Ever Marketing, Inc. v. Court of Appeals, G.R. No. 140555, July 14, 2005, 463 SCRA 284, 294-295.

[28] Mendoza v. National Labor Relations Commission, 350 Phil. 486, 496-497, (1998); Pastor Austria v. National Labor Relations Commission, 371 Phil. 340, 357 (1999); Amadeo Fishing Corporation v. Nierra, G.R. No. 163099, October 4, 2005, 472 SCRA 13, 33; New Ever Marketing, Inc. v. Court of Appeals, supra note 28.

[29] Glaxo Wellcome Philippines, Inc. v. Nagkakaisang Empleyado ng Wellcome-DFA (NEW-DFA), G.R. No. 149349, March 11, 2005, 453 SCRA 256, 274, citing Kwikway Engineering Works v. National Labor Relations Commission, 195 SCRA 526 (1991), BPI Credit Corporation v. National Labor Relations Commission, 234 SCRA 441, (1994) and Gold City Integrated Port Services, Inc. v. National Labor Relations Commission, 189 SCRA 811, (1990).

[30] Pepsi Cola Distributors of the Philippines, Inc. v. National Labor Relations Commission, supra note 27, at 278.

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