

PHILIPPINE RURAL RECONSTRUCTION MOVEMENT (PRRM), PETITIONER, VS. VIRGILIO E. PULGAR, RESPONDENT.

G.R. No. 169227. July 05, 2010

Ponente: BRION, J.

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BRION, J.:

Before us is the petition for review on certiorari[1] filed by the Philippine Rural Reconstruction Movement (PRRM) to assail the Court of Appeals' (CA) decision, dated May 25, 2005,[2] and its resolution, dated August 5, 2005,[3] in CA-G.R. SP No. 62036. The appellate court set aside the National Labor Relations Commission's (NLRC) January 28, 2000 decision, and held that PRRM illegally dismissed respondent Virgilio Pulgar (Pulgar) from employment.

BACKGROUND FACTS

PRRM is a non-stock, non-profit, non-governmental organization. Pulgar was the manager of PRRM's branch office - the Tayabas Bay Field Office (TBFO) - in Quezon Province. When Pulgar was reassigned to PRRM's central office, PRRM, through Goyena Solis (Solis), conducted an investigation into alleged financial anomalies committed at the TBFO.

In her investigation report, Solis stated that part of the funds allotted to the TBFO was missing or not properly accounted for. The report also stated that some of the receipts that the TBFO submitted to liquidate the organization's financial transactions were fictitious and manufactured.[4]

The PRRM management sent Pulgar a copy of the report, together with a memorandum, asking him to explain these findings.[5]

In a letter dated February 24, 1997, Pulgar admitted that TBFO's reported expenses did not reflect its actual expenses. He explained that as field manager, he presumed he had the discretion to determine when and how the funds would be used, as long as the use was devoted to the implementation of TBFO projects. Thus, there were instances when he used the funds intended for one project to sustain the activities of other projects. Pulgar further admitted that some of the receipts he submitted to liquidate TBFO's expenses were not genuine; he claimed that he had to produce fake receipts to comply with the central office's requirements and deadlines, otherwise the release of TBFO's subsequent funds would be delayed. Pulgar also disclosed that he had, on his own initiative, opened a separate bank account at the Capitol Bank[6] for TBFO's savings; the account had a remaining balance of P206,958.50. Lastly, Pulgar manifested his willingness to attend a meeting with the senior officers, scheduled on February 28, 1997, to further explain his side.[7]

On March 4, 1997, Pulgar met with PRRM representatives to discuss the findings of the investigation report. During the meeting, Pulgar furnished these representatives with a photocopy of a savings account passbook with Account Number 1103508 under Pulgar's name at the Cooperative Bank of Quezon. The passbook showed that the account had a balance of P207,693.10. According to Pulgar, this balance represented the TBFO savings he

mentioned in his response. At this point, two versions of the story develop.

PRRM maintains that while the investigation was ongoing, Pulgar went on leave on March 3-10, March 20-25, and April 1-15, 1997. After the lapse of his last leave on April 15, 1997, Pulgar no longer reported to work, leading PRRM to believe that Pulgar had abandoned his work to evade any liability arising from the investigation. PRRM was therefore surprised to learn that Pulgar had filed an illegal dismissal case on April 3, 1997.

Pulgar tells another tale. According to him, on March 17, 1997, he submitted a letter to PRRM to complain that he was not given the right to confront and question Solis,[8] but his letter went unanswered. Thereafter, on March 31, 1997, he was not allowed to enter the premises of the organization. Pulgar also alleges that PRRM's representatives removed his personal properties and records from his office, placed them in boxes and kept them in storage.

Believing he was constructively dismissed by PRRM's actions, Pulgar filed a complaint against PRRM on April 3, 1997 for illegal dismissal, illegal suspension, and nonpayment of service incentive leave pay and 13th month pay. Pulgar also asked for actual damages, moral damages, and attorney's fees. At the mandatory conferences before Labor Arbiter Pablo Espiritu, Jr. (Labor Arbiter), Pulgar dropped the illegal suspension charge, as well as his claim for payment of service incentive leave with pay.[9]

On March 31, 1999, the Labor Arbiter found in his decision[10] that Pulgar had been illegally dismissed and ordered PRRM to pay Pulgar P319,387.50 as full backwages. However, the Labor Arbiter chose not to award Pulgar moral or exemplary damages after finding that PRRM had legitimate grounds to investigate Pulgar. Due to the strained relations between PRRM and Pulgar, the Labor Arbiter opted to award Pulgar separation pay instead of ordering his reinstatement.

On appeal, the NLRC reversed the Labor Arbiter in its January 28, 2000 decision and dismissed Pulgar's complaint,[11] giving more weight to PRRM's allegation that Pulgar abandoned his work. This prompted Pulgar to bring the matter to the CA via a petition for review on certiorari (should be petition for certiorari) under Rule 65 of the 1997 Rules on Civil Procedure.[12]

On May 25, 2005, the CA rendered the assailed decision,[13] granting Pulgar's petition and reinstating the Labor Arbiter's decision. The appellate court noted that PRRM never rebutted Pulgar's contentions that he had been prevented from entering the premises and that his personal effects were taken from his office and placed in storage. The CA further observed that PRRM presented no evidence to prove that Pulgar abandoned his job. Reasoning that filing an illegal dismissal complaint is inconsistent with the charge of abandonment, the appellate court concluded that Pulgar had been illegally dismissed.

In the present petition, filed after the appellate court denied PRRM's Motion for Reconsideration, PRRM raises the issue of whether Pulgar was illegally dismissed from employment.

PRRM posits that it did not dismiss Pulgar from employment. Rather, Pulgar chose not to return to work, after his leave of absence, to evade any criminal liability that might arise from the ongoing investigation PRRM was conducting regarding the alleged financial anomalies Pulgar committed when he was the field manager of the TBFO. PRRM opines that Pulgar filed the present illegal dismissal case as a diversionary tactic to avoid having to submit himself to PRRM's ongoing investigation. Lastly, PRRM asks this Court to order Pulgar to return the PRRM funds still in his custody amounting to P207,693.10.

On the other hand, Pulgar claims that this Court should respect the Labor Arbiter's factual finding that he was illegally dismissed since the Labor Arbiter had the opportunity to observe the actuations, behavior and demeanor of the parties. Pulgar further alleges that PRRM can no longer claim the PRRM funds in his possession since the

Labor Arbiter had already ruled that PRRM failed to raise the award of these funds as a relief in its Position Paper. Since PRRM never appealed this part of the Labor Arbiter's decision, it is now bound by these findings.

THE COURT'S RULING

We grant the petition.

Procedural issue

Under the Rules of Court and settled doctrine, a petition for review on certiorari under Rule 45 of the Rules of Court is limited to questions of law. As a rule, the findings of fact of the CA are final and conclusive, and this Court will not review them on appeal.[14] This rule, however, is not absolute and admits of several exceptions.[15]

To resolve the issue of whether PRRM is guilty of illegal dismissal, we necessarily have to determine the veracity of the parties' allegations, a function we are ordinarily barred from performing when deciding a Rule 45 petition. However, due to the conflicting factual findings of the NLRC and the CA, as well as the presence of some relevant facts that, had they been considered by the CA, would have justified a different conclusion, we find the review of the evidence on record compelling and proper.

The illegal dismissal issue

In concluding that Pulgar was constructively dismissed from employment, the CA relied on two main factors: (a) Pulgar's claim that he was barred from entering the premises on March 31, 1997; and (b) the fact that Pulgar immediately filed a complaint for illegal dismissal against PRRM. At first glance, the CA's decision appears correct. But the facts are not as simple as they appear to be.

Primarily, we underscore the fact that when Pulgar filed an illegal dismissal complaint on April 3, 1997, he was still on leave from the organization. In other words, from PRRM's standpoint, Pulgar was still its employee when he filed the illegal dismissal case against the organization.

Pulgar claims that he was forced to file an illegal dismissal complaint against PRRM while he was on leave because he was not allowed to enter the office premises on March 31, 1997. But aside from making this allegation, Pulgar failed to provide any other details on how he was prevented from entering the premises. Was he physically prevented from entering the premises by a security guard? Did the senior officers of PRRM refuse to let him into the office when he reported to work? We are left to guess the particulars of how PRRM prevented Pulgar from entering the premises, leaving us to doubt the veracity of this allegation.

To bolster his contention that he was constructively dismissed, Pulgar asserts that his personal things were taken from his office, placed in boxes and put in storage. To support this allegation, he attached three photographs.[16] But the only thing seen in these photographs is a storage room with sealed boxes on the floor. Taken at face value, there is nothing in the photographs that proves that the boxes in the storage room even contain Pulgar's personal things. Absent such proof, we cannot use these pictures to prove that Pulgar was constructively dismissed from employment.

We further note that at the time PRRM was conducting an investigation into the alleged anomalies committed in the liquidation and use of PRRM funds at the TBFO during Pulgar's management, Pulgar went on a number of leaves, specifically on March 3-10, 1997, then on March 20-25, 1997, and finally on April 1-15, 1997. The timing and frequency of these leaves, while not indicative of Pulgar's intention to sever his employment, at the very least, imply Pulgar's active efforts to evade the organization's ongoing investigation.

Significantly, while Pulgar claims he was constructively dismissed when he was barred from the premises on March 31, 1997, he still filed his application for leave for April 1-15, 1997. The fact alone that Pulgar was able to return to the office to file his application for leave for April 1-15, 1997 raises doubt as to his purported ban from the premises. More importantly, if Pulgar truly believed that he had already been constructively dismissed on March 31, 1997, reason dictates that he would no longer bother to apply for a leave of absence from PRRM for April 1-15, 1997. The fact that he did belies his contention that he believed he had already been constructively dismissed on March 31, 1997.

Also worth mentioning is the fact that Pulgar continued to receive his salary from PRRM even after March 31, 1997, or the date of his alleged constructive dismissal. In fact, Pulgar received his salary up until April 15, 1997, when his vacation and sick leaves had been consumed.

These circumstances, taken together, lead us to conclude that PRRM did not terminate Pulgar's employment. On the contrary, what appears from the evidence is that it was Pulgar himself who terminated his employment with PRRM when he filed an illegal dismissal complaint against the organization while he was on leave.

The key to understanding Pulgar's motive in severing his employment with PRRM lies in Pulgar's letter dated February 24, 1997, written in response to the investigation report that implicated him in these financial anomalies. He wrote:

Noticing that even at the Central Office, project funds allotted for one field office or branch were used to sustain the operation of other on-going activities of another field office/branch or even of the Central Office, I presumed that the same is also applicable in the field office. That is, as field manager, it was to my discretion as to where and how the fund should be used so long as its utilization concerns the implementation of the project. With this in mind, I made some major decisions at the field office which I believe could be of great help make the operations smooth sailing.

For instance, there were cases when funds for the FSP were used to finance the operations of the Community-based Mangrove and Community based Reforestation projects and other side activities (e.g. Rapid Site Assessment, election campaign) in order to accomplish the project/activity on time. Likewise, cost savings measures were undertaken so that funds could be made available to the office when the immediate need for the fund arises particularly during situations when the release from the Central Office were delayed. And since the implementing guidelines from the CO was silent on the maintenance of another account for savings made by the field office, I took the initiative to open a separate account for the field office's savings. By doing this, possible disruption of work at the field and the delay in the salary of the staff were prevented.

As for the inconsistencies of the liquidation documents submitted, this was necessary in order to comply with the requirements and deadlines set by the Central Office, otherwise, the release for the succeeding quarter or period in questions will be put on hold. Given the situation and with the continuity of the field office's operation still in mind, I was forced to adjust the documents submitted just to meet the deadlines and avoid disruption of work. However, never had I intentionally done this with malicious intent of, as Ms. Solis puts it, using the fund for personal gain. As I will explain later, funds were used to finance activities that were related to the operations of the field office and whatever savings were made remains in safekeeping for possible use of the office's operation. x x x

With regard to the case of the AECI project, its account has been required to be closed and cash advances liquidated (with accompanying Official Receipts) by November 1996 or exactly by the end of its six months of implementation. This being the case, and with the slight delay met in the implementation of the project, adjustment in the documents became a necessary evil in order to comply with the requirements of the CO.[17] [Emphasis supplied.]

In the same letter, Pulgar manifested that the TBFO had savings in the amount of P206,958.50, which he

deposited with Capitol Bank under Account No. 2-042-00188-9.[18] At the meeting with PRRM senior officers on March 4, 1997, Pulgar also admitted that the TBFO's savings in the amount of P207,693.10 were actually deposited with the Cooperative Bank of Quezon in an account under his name.

From Pulgar's own admissions, we consider the following facts to be established:

First, Pulgar took funds intended for one activity or project and applied them to other activities/projects.

Second, Pulgar took the savings from the TBFO and placed them in a bank account under his own name. To date, Pulgar has not turned over these funds to the PRRM.

Third, Pulgar submitted manufactured and fake receipts to PRRM to liquidate TBFO's expenses.

Noticeably, from Pulgar's disclosures alone, a prima facie case for estafa can already be made out against Pulgar. With the danger of criminal prosecution hanging over his head, Pulgar's abrupt decision to terminate his employment with PRRM becomes easily understandable.

While we recognize the rule that in illegal dismissal cases, the employer bears the burden of proving that the termination was for a valid or authorized cause, in the present case, however, the facts and the evidence do not establish a prima facie case that the employee was dismissed from employment. Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. Logically, if there is no dismissal, then there can be no question as to its legality or illegality.[19] Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.[20]

As we said in *Machica v. Roosevelt Services Center, Inc.*: [21]

The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. It must be stressed that the evidence to prove this fact must be clear, positive and convincing. The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners. [22] [Emphasis supplied.]

Although under normal circumstances, an employee's act of filing an illegal dismissal complaint against his employer is inconsistent with abandonment; in the present case, we simply cannot use that one act to conclude that Pulgar did not terminate his employment with PRRM, and in the process ignore the clear, substantial evidence presented by PRRM that proves otherwise. Our ruling on this point in *Leopard Integrated Services, Inc. v. Macalinao* is very relevant. We said: [23]

The fact that respondent filed a complaint for illegal dismissal, as noted by the CA, is not by itself sufficient indicator that respondent had no intention of deserting his employment since the totality of respondent's antecedent acts palpably display the contrary. In *Abad v. Roselle Cinema*, the Court ruled that:

The filing of a complaint for illegal dismissal should be taken into account together with the surrounding circumstances of a certain case. In *Arc-Men Food Industries Inc. v. NLRC*, the Court ruled that the substantial evidence proffered by the employer that it had not, in the first place, terminated the employee, should not simply be ignored on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not really been dismissed. "This is clearly a non-sequitur reasoning that can never validly take the place of the evidence of both the employer and the employee." [24] [Emphasis supplied.]

While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its rights which are entitled to respect and enforcement in the interest of simple fair play. Out of its concern

for those with less privileges in life, the Supreme Court has inclined, more often than not, toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine.[25]

PRRM'S monetary claim is belatedly raised

Examining the records of the case, it appears that Pulgar has not yet returned the money he took from the TBFO and deposited in his name to PRRM.

We have previously ruled on the Labor Arbiter's jurisdiction to rule on all money claims, including those of the employer, arising out of the employer-employee relationship.[26] Unfortunately for PRRM, it never raised as an issue the money allegedly still in Pulgar's custody in the proceedings before the Labor Arbiter, or even before the NLRC. As the Labor Arbiter held:

One final note. The Labor Code allows for claims made by employers against employees arising from employer-employee relations. In this case, the records show that Pulgar holds the amount of P207,693.10 as alleged "savings" as manager of TBFO. PRRM attached Annex 11, which is a savings passbook of Pulgar with Cooperative Bank of Quezon Province, the existence of which was not denied by Pulgar before this Arbitration Branch. There is nothing on record which would show that this amount has been returned to PRRM. x x x However, a perusal of PRRM's pleadings would reveal that the latter does not raise as a relief an award for the return of the P207,693.10. [A]s it were, we cannot act on the same in view of PRRM's failure (for reasons known only to it) to pray for such award. [Emphasis supplied.][27]

As a factual matter, this issue should have been raised at the earliest opportunity before the Labor Arbiter, to allow both parties to present their evidence. The rule is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be considered by a reviewing court as they cannot be raised for the first time on appeal[28] because this would be offensive to the basic rules of fair play, justice and due process.[29]

WHEREFORE, premises considered, we GRANT the petition. The May 25, 2005 Decision and the August 5, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 62036 are REVERSED and SET ASIDE. The January 28, 2000 Decision of the National Labor Relations Commission in NLRC NCR CA No. 019914-99 is REINSTATED.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, [*]Abad, and Villarama, Jr., JJ. concur.

[*] Designated additional Member of the Third Division, in view of the retirement of former Chief Justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

[1] Under Rule 45 of the RULES OF COURT; rollo, pp. 9-45.

[2] Penned by Associate Justice Salvador Valdez, Jr., with the concurrence of Associate Justices Mariano del Castillo (now a member of this Court) and Magdangal de Leon; id. at 46-53.

[3] Id. at 54-55.

[4] Dated February 13, 1997; id. at 165-174.

[5] Dated February 20, 1997; id. at 175.

[6] Account Number 2-042-00188-9.

[7] Rollo, pp. 176-182.

[8] Id. at 118.

[9] Per the Labor Arbiter's decision; id. at 67.

[10] Id. at 66-76.

[11] Id. at 56-63.

[12] Id. at 77-98.

[13] Supra note 2.

[14] Amigo v. Teves, 96 Phil. 252 (1954).

[15] (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misappreciation of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) when the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record. Campos v. Pastrana, et al., G.R. No. 175994, December 8, 2009.

[16] Rollo, p. 117.

[17] Id. at 177-178.

[18] Id. at 182.

[19] Ledesma, Jr. v. NLRC, G.R. No. 174585, October 19, 2007, 537 SCRA 358.

[20] Go v. Court of Appeals, G.R. No. 158922, May 28, 2004, 430 SCRA 358.

[21] G.R. No. 168664, May 4, 2006, 489 SCRA 534.

[22] Id. at 544-545.

[23] G.R. No. 159808, September 30, 2008, 567 SCRA 192.

[24] Id. at 201-202.

[25] Enriquez v. Bank of Philippine Islands, G.R. No. 172812, February 12, 2008, 544 SCRA 590, citing Sosito v. Aguinaldo Development Corporation, 156 SCRA 392 (1987).

[26] See Bañez v. Valdevilla, 387 Phil. 601 (2000).

[27] Rollo, p. 75.

[28] Tay Chun Suy v. Court of Appeals, G.R. No. 93640, January 7, 1994, 229 SCRA 151; Santos v. Intermediate Appellate Court, 229 Phil. 588 (1986); Berin v. Court of Appeals, G.R. No. 57490, February 27, 1991, 194 SCRA 508 (1991).

[29] Cruz v. Court of Appeals, G.R. No. 108738, June 17, 1994, 233 SCRA 301; National Power Corporation v. Gutierrez, G.R. No. 60077, January 18, 1991, 193 SCRA 1.x

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