

LORES REALTY ENTERPRISES, INC., LORENZO Y. SUMULONG III, PETITIONERS, VS. VIRGINIA E. PACIA, RESPONDENT.

G.R. No. 171189. March 09, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by petitioners Lores Realty Enterprises, Inc. (LREI) and Lorenzo Y. Sumulong III (Sumulong) seeking to reverse and set aside the November 25, 2005 Decision[1] of the Court of Appeals (CA), in CA-G.R. SP No. 59975, which affirmed the Decision[2] of the National Labor Relations Commission (NLRC), in NLRC NCR CA No. 019221-99 (RAB-IV-10-10492-98-RI).

The Facts

In 1982, respondent Virginia E. Pacia (Pacia) was hired by LREI. At the time of her dismissal, she was the assistant manager and officer-in-charge of LREI's Accounting Department under the Finance Administrative Division.

On October 28, 1998, LREI's acting general manager, petitioner Sumulong, through Ms. Julie Ontal, directed Pacia to prepare Check Voucher No. 16477 worth P150,000.00 as partial payment for LREI's outstanding obligation to the Bank of the Philippine Islands-Family Bank (BPI-FB). Pacia did not immediately comply with the instruction. After two repeated directives, Pacia eventually prepared Check No. 0000737526 in the amount of P150,000.00. Later, Sumulong again directed Pacia to prepare Check Voucher No. 16478 in the amount of P175,000.00 to settle the balance of LREI's outstanding indebtedness with BPI-FB. Pacia once again was slow in obeying the order. Due to the insistence of Sumulong, however, Pacia eventually prepared Check No. 0000737527 in the amount of P175,000.00.

To explain her refusal to immediately follow the directive, Pacia reasoned out that the funds in LREI's account were not sufficient to cover the amounts to be indicated in the checks.

The next day, October 29, 1998, Sumulong issued a memorandum[3] ordering Pacia to explain in writing why she refused to follow a clear and lawful directive.

On the same day, Pacia replied in writing and explained that her initial refusal to prepare the checks was due to the unavailability of funds to cover the amounts and that she only wanted to protect LREI from liability under the Bouncing Checks Law.[4]

On November 6, 1998, Pacia received a notice of termination[5] stating, among others, that she was being dismissed because of her willful disobedience and their loss of trust and confidence in her.

Pacia then filed a Complaint for Unfair Labor Practice due to Harassment, Constructive Dismissal, Moral and Exemplary Damages[6] against LREI and Sumulong. Subsequently, Pacia filed an Amended Complaint[7] to

include the charges of illegal dismissal and non-payment of salaries.

On March 11, 1999, the Labor Arbiter (LA) rendered a decision[8] finding that the dismissal of Pacia was for a just and valid cause but ordering payment of what was due her. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

- Ordering respondent corporation to pay complainant her:

a. unpaid salary P12,550.00

b. proportionate 13[th] month pay 20,916.66

Total P33,466.66

- Dismissing the complaint for constructive/illegal dismissal, unfair labor practice, and claim for payment of damages and attorney's fees for lack of merit.

SO ORDERED.

On appeal, the NLRC in its March 31, 2000 Decision[9] reversed the LA's Decision and found LREI and Sumulong guilty of illegal dismissal. Pertinent portions of the NLRC decision including the decretal portion read:

A careful perusal of the records reveal[s] that complainant's actuation herein cannot in any manner be construed as an act of insubordination. Neither can we classify it as an example of wilful disobedience by the employee of the lawful order of her employer in connection with her work.

Records show that Check No. 0000737527 in the amount of P175,000.000 bounced as shown by the Return Checks Advice issued by the BPI family Bank on 3 November 1998.

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The above evidence clearly reveal[s] that there were no sufficient funds to cover the check which the acting Manager directed complainant to prepare. However, complainant nevertheless prepared Check Nos. 737527 and 737526 on 28 October 1998 and also corrected Check Vouchers Nos. 16477 and 16478 on 28 October 1998.

We take note and give due merit to complainant's explanation in her reluctance to issue checks against insufficient funds which was to protect the company and its signatories from liabilities resulting from issuance of bounced checks. Complainant's initial refusal was good intentioned. Respondents also insist that complainant refused to follow a lawful directive of her superior officer to make some corrections on the vouchers. However, we cannot see how an order to prepare a check at the time when there was no sufficient fund to cover the same can be classified as a lawful directive of the acting Manager.

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Considering that complainant was illegally dismissed, the law provides that her reinstatement with payment of full backwages would be in order. However, mindful of the animosity and strained relations between parties emanating from this litigation we declare that in lieu of reinstatement, separation pay may be given to complainant, at the rate of one (1) month pay for every year of service.

WHEREFORE, the Decision dated 11 March 1999 is MODIFIED. Respondent Lores Realty Ent., Inc. is held liable for illegally dismissing complainant and is directed to pay her, in addition to her unpaid salary and proportionate 13[th] month pay for the year 1998, the following:

1. Backwages

(6 November 1998 to 15 March 2000)

Basic Pay P25,100.00 x 16.3 mos. = P409,130.00
13[th] Month Pay P409,130.00 / 12 = 34,094.17
P443,224.17

2. Separation Pay (one month for every year of service)
(18 years)
P25,100 x 18 = P451,800.00

P895,024.17
vvvvvvvvvv

The other findings are AFFIRMED.

SO ORDERED.[10]

Dissatisfied, LREI and Sumulong elevated the case to the CA by way of a petition for certiorari under Rule 65 of the Rules of Court asserting grave abuse of discretion on the part of the NLRC in reversing the LA's finding that Pacia was guilty of wilful disobedience of a lawful order of her employer in connection with her work.

On November 25, 2005, the CA found no merit in the petition and dismissed it.[11] Thus:

WHEREFORE, the petition is DISMISSED. Public respondent's Decision dated 31 March 2000 and the Resolution dated 15 May 2000 in NLRC-RAB IV-10-10492-98-RI, CA NO. 019221-99, are AFFIRMED.

SO ORDERED.

The CA held that LREI and Sumulong failed to establish with substantial evidence that the dismissal of Pacia was for a just cause. It found that Pacia's initial reluctance to obey the orders of her superiors was for a good reason - to shield the company from liability in the event that the checks would be dishonored for insufficiency of funds.

Hence, the petition.

THE ISSUES

- WHETHER OR NOT THE INSTANT PETITION FOR REVIEW RAISES QUESTIONS OF LAW.
- WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE RULING OF THE NLRC THAT THE ESTABLISHED FACTS JUSTIFY RESPONDENT'S TERMINATION FROM EMPLOYMENT.
- WHETHER OR NOT THE AWARD OF BACKWAGES MUST BE COMPUTED FROM THE TIME OF DISMISSAL UNTIL FINALITY OF THE DECISION ESTABLISHING HER ILLEGAL DISMISSAL.[12]

In essence, the main issue to be resolved is whether Pacia's dismissal was justified under the circumstances.

The Court finds no merit in the petition.

At the outset, it must be emphasized that the issues raised in this petition are questions of fact which are not proper subjects of an appeal by certiorari. Well-settled is the rule that under Rule 45 of the Rules of Court, only questions of law may be raised before this Court.[13] A disharmony between the factual findings of the LA and the NLRC, however, opens the door to a review by this Court. Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness. Moreover, when the findings of the NLRC contradict those of the LA, this Court, in the exercise of its equity jurisdiction, may look into the records of the case and re-examine the questioned findings.[14]

LREI and Sumulong argue that Pacia's refusal to obey the directives of Sumulong was a "manifest intent not to perform the function she was engaged to discharge." [15] They are of the position that Pacia's claim of "good intentions" in refusing to prepare the checks was a mere afterthought. They stress that the instruction to prepare a check despite the absence of sufficient funds to cover the same was, nevertheless, a lawful order.

On the other hand, Pacia counters that her initial reluctance to prepare the checks, which she knew were not sufficiently funded, cannot "be characterized as `wrongful or perverse attitude.'" [16] In her view, the directive to prepare the checks at the time it was not sufficiently funded was not a lawful order contemplated in Article 282 of the Labor Code. It was an unlawful directive because it asked for the preparation of a check despite the fact that the account had no sufficient funds to cover the same. She further explained that she did not comply with the directive in order to protect Sumulong and LREI from any liability in the event that the checks would be dishonored upon presentment for payment for insufficiency of funds.

Article 282 of the Labor Code enumerates the just causes for which an employer may terminate the services of an employee, to wit:

ARTICLE 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. [Emphasis supplied]

The offense of willful disobedience requires the concurrence of two (2) requisites: (1) the employee's assailed conduct must have been willful, that is characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge. [17]

Let it be noted at this point that the Court finds nothing unlawful in the directive of Sumulong to prepare checks in payment of LREI's obligations. The availability or unavailability of sufficient funds to cover the check is immaterial in the physical preparation of the checks.

Pacia's initial reluctance to prepare the checks, however, which was seemingly an act of disrespect and defiance, was for honest and well intentioned reasons. Protecting LREI and Sumulong from liability under the Bouncing Checks Law [18] was foremost in her mind. It was not wrongful or willful. Neither can it be considered an obstinate defiance of company authority. The Court takes into consideration that Pacia, despite her initial reluctance, eventually did prepare the checks on the same day she was tasked to do it.

The Court also finds it difficult to subscribe to LREI and Sumulong's contention that the reason for Pacia's initial reluctance to prepare the checks was a mere afterthought considering that "check no. 0000737527 under one of the check vouchers she reluctantly prepared, bounced when it was deposited." [19] Pacia's apprehension was justified when the check was dishonored. This clearly affirms her assertion that she was just being cautious and circumspect for the company's sake. Thus, her actuation should not be construed as improper conduct.

In finding for Pacia, the Court is guided by the time-honored principle that if doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. The rule in controversies between a laborer and his master distinctly states that doubts reasonably arising from the evidence, or in the interpretation of agreements and writing, should be resolved in the former's favor.[20]

WHEREFORE, the petition is DENIED.

SO ORDERED.

Carpio, (Chairperson), Velasco, Jr.,[*] Peralta, and Abad, JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 933 dated January 24, 2011.

[1] Rollo, pp. 32-42. Penned by Associate Justice Monina Arevalo-Zenarosa concurred in by Associate Justice Andres B. Reyes (now Presiding Justice of the Court of Appeals) and Associate Justice Rosmari D. Carandang.

[2] Id. at 52-59. Penned by Presiding Commissioner Lourdes C. Javier with Commissioner Ireneo B. Bernardo and Commissioner Tito E. Genilo, concurring.

[3] Id. at 74.

[4] Batas Pamabansa Blg. 22.

[5] Rollo p. 75.

[6] Id. at 49.

[7] Id. at 50.

[8] Id. at 60-65.

[9] Id. at 52-59.

[10] Citations omitted.

[11] Rollo, pp. 32-42.

[12] Id. at 159.

[13] Gabunas, Sr. v. Scanmar Maritime Services Inc., G.R. No. 188637, December 15, 2010.

[14] Diamond Motors Corporation v. Court of Appeals, 462 Phil. 452, 458 (2003).

[15] Rollo, p. 170.

[16] Id. at 145.

[17] Asian Terminals, Inc. v. Marbella, G.R. No. 149074, August 10, 2006, 498 SCRA 389, 395, citing Basconv. Court of Appeals, 466 Phil. 719, 730 (2004), citing Dimabaya v. National Labor Relations Commission, 363 Phil. 279, 284 (1999).

[18] Supra note 4.

[19] Rollo, p. 41 and 56.

[20] E.G. & I Corporation v. Sato, G.R. No. 182070, February 16, 2011.

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