JONATHAN I. SANG-AN, PETITIONER, VS. EQUATOR KNIGHTS DETECTIVE AND SECURITY AGENCY, INC., RESPONDENT.

G.R. No. 173189. February 13, 2013

Ponente: BRION, J.

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BRION, J.:

Before the Court is the petition for review on certiorari[1] filed by petitioner Jonathan I. Sang-an assailing the decision[2] dated September 29, 2005 and the resolution[3] dated May 29, 2006 of the Court of Appeals (CA) in CA-G.R. SP. No. 86677. The CA set aside the decision[4] dated December 15, 2003 of the National Labor Relations Commission (NLRC) and reinstated the decision[5] dated July 30, 2001 of Labor Arbiter Geoffrey P. Villahermosa (LA).

The Facts

Jonathan was the Assistant Operation Manager of respondent Equator Knights Detective and Security Agency, Inc. (Equator). He was tasked, among others, with the duty of assisting in the operations of the security services; he was also in charge of safekeeping Equator's firearms.

On April 21, 2001, Equator discovered that two firearms were missing from its inventory. The investigation revealed that it was Jonathan who might have been responsible for the loss.[6] On April 24, 2001, Jonathan was temporarily suspended from work pending further investigation.

On May 8, 2001, while Jonathan was under suspension, a security guard from Equator was apprehended by policemen for violating the Commission on Elections' gun ban rule. The security guard stated in his affidavit[7] that the unlicensed firearm had been issued to him by Jonathan.

On May 24, 2001, Jonathan filed with the NLRC a complaint for illegal suspension with prayer for reinstatement.[8] In his position paper, however, he treated his case as one for illegal dismissal and alleged that he had been denied due process when he was dismissed.[9] Equator, on the other hand, argued that Jonathan's dismissal was not illegal but was instead for a just cause under Article 282 of the Labor Code.[10]

On July 30, 2001, the LA rendered a decision[11] dismissing the complaint. It declared that no illegal dismissal took place as Jonathan's services were terminated pursuant to a just cause. The LA found that Jonathan was dismissed due to the two infractions he committed:

> The basis for the termination of the complainant was first, when he was suspended when he issued a firearm [to] a security guard and then replaced it with another one, then took the respondent[']s firearm with him and since then both firearms were lost. x x x.
>
> x x x x
>
> His second offense which resulted in his being terminated was when he issued an unlicensed firearm to a Security Guard stationed in one of the business establishment[s] in Bais City which is a client of the

respondents.

x x x x

WHEREFORE, in the light of the foregoing, judgment is hereby rendered DISMISSING this case for lack of legal and factual basis.[12]

Jonathan appealed the LA's decision to the NLRC, contending that no charge had been laid against him; there was no hearing or investigation of any kind; and he was not given any chance or opportunity to defend himself.

The NLRC sustained the findings of the LA that there had been just cause for his dismissal. However, it found that Jonathan had been denied his right to due process when he was dismissed. It held that Equator's letter informing him of his temporary suspension until further notice did not satisfy the requirements of due process for a valid dismissal. Thus, the NLRC modified the LA's decision and ordered Equator to pay Jonathan backwages from April 24, 2001 until the date of the NLRC's decision. Equator moved for reconsideration but the NLRC denied the motion, prompting the filing of a petition for certiorari under Rule 65 of the Rules of Court with the CA. Equator argued that the NLRC committed grave abuse of discretion when it found that Jonathan had been denied procedural due process.

The CA reversed the decision of the NLRC, finding that Equator substantially complied with the procedural requirements of due process. It found that the letter given to Jonathan did not mean that he had been dismissed; rather, he was only suspended – the very reason for the case for illegal suspension Jonathan filed before the LA.

The CA found that Jonathan filed his complaint for illegal suspension on May 2, 2001. During the pendency of the illegal suspension case before the LA, Jonathan committed another offense on May 8, 2001 when he issued the unlicensed firearm to Equator's security guard. The CA found that Equator's June 7, 2001 position paper brought Jonathan's second offense before the LA for resolution; thus, Jonathan was not denied due process. The CA reinstated the LA's decision dismissing Jonathan's complaint. Jonathan filed a motion for reconsideration which the CA denied. He thereafter filed the present petition.

The Parties' Arguments

Jonathan contends that when Equator filed a petition for certiorari under Rule 65 of the Rules of Court alleging grave abuse of discretion by the NLRC, it failed to post a cash or surety bond as required by Article 223 of the Labor Code. Without complying with this condition, the petition for certiorari should have been dismissed outright. Also, Jonathan contends that the CA's findings of fact are contrary to the findings of fact by the NLRC. Since the findings of fact of quasi-judicial agencies are accorded respect and finality, he argues that the NLRC's decision must be sustained.

Equator, on the other hand, submits that the rule on posting of cash or surety bond as required by Article 223 of the Labor Code is not applicable in a petition for certiorari under Rule 65 of the Rules of Court. It also submits that both the LA and the NLRC concur in finding just cause for the dismissal of Jonathan; hence, Jonathan's subsequent dismissal is valid.

The Issues

Given the parties' arguments, the case poses the following issues for the Court's resolution:

- whether the posting of a cash or surety bond is required for the filing of a petition for certiorari under Rule 65 of the Rules of Court with the CA; and

- whether Jonathan was validly dismissed.

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The Court's Ruling

We find the petition partially meritorious.

A cash/surety bond is not needed in a
Petition for Certiorari under Rule 65

The requirement of a cash or surety bond as provided under Article 223 of the Labor Code only applies to appeals from the orders of the LA to the NLRC. It does not apply to special civil actions such as a petition for certiorari under Rule 65 of the Rules of Court. In fact, nowhere under Rule 65 does it state that a bond is required for the filing of the petition.

A petition for certiorari is an original and independent action and is not part of the proceedings that resulted in the judgment or order assailed before the CA. It deals with the issue of jurisdiction, and may be directed against an interlocutory order of the lower court or tribunal prior to an appeal from the judgment, or to a final judgment where there is no appeal or any plain, speedy or adequate remedy provided by law or by the rules.

Jonathan filed a complaint for
illegal dismissal

Contrary to the findings of the CA, Jonathan was not merely suspended but was dismissed from the service. While Jonathan initially filed an action for illegal suspension, the position papers both parties filed treated the case as one for illegal dismissal. Jonathan alleged in his position paper that "the [r]espondent illegally SUSPENDED (DISMISSED) the x x x complainant[,]" and claimed that his dismissal lacked the required due process.[13] Similarly, Equator's position paper states that after the commission of the second offense on May 8, 2001, "[management] made up a decision to dismiss [Jonathan]."[14] Even the LA treated the case before him as "a case for illegal dismissal[.]"[15] In Equator's memorandum to this Court, it admitted that Jonathan was dismissed.[16]

We also find that Jonathan did not file his complaint for illegal suspension on May 2, 2001. The records of the case disclose that the receiving date stamped on the complaint is May 24, 2001. The date relied upon by the CA, May 2, 2001, was the date when the complaint was subscribed and sworn to before a notary public.[17] Due to the second offense committed by Jonathan on May 8, 2001, Equator decided to dismiss him. Therefore, when the LA tried the case, Jonathan had already been dismissed.

Equator failed to comply with
procedural due process

In order to validly dismiss an employee, it is fundamental that the employer observe both substantive and procedural due process – the termination of employment must be based on a just or authorized cause and the dismissal can only be effected, after due notice and hearing.[18]

This Court finds that Equator complied with the substantive requirements of due process when Jonathan committed the two offenses.

Article 282(A) of the Labor Code provides that an employee may be dismissed on the ground of serious misconduct or willful disobedience of the lawful orders of his employer or representative in connection with his work. Misconduct is improper or wrongful conduct; 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 of judgment. The misconduct, to be serious within the meaning of the Labor Code, must be of such grave and aggravated character and not merely trivial or unimportant. It is also important that the misconduct be in

connection with the employee's work to constitute just cause for his separation.[19]

By losing two firearms and issuing an unlicensed firearm, Jonathan committed serious misconduct. He did not merely violate a company policy; he violated the law itself (Presidential Decree No. 1866 or Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes),[20] and placed Equator and its employees at risk of being made legally liable. Thus, Equator had a valid reason that warranted Jonathan's dismissal from employment as Assistant Operation Manager.

The Court, however, finds that Equator failed to observe the proper procedure in terminating Jonathan's services. Section 2, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code provides that:

> Section 2. Standard of due process: requirements of notice. – In all cases of termination of employment, the following standards of due process shall be substantially observed.
>
> I. For termination of employment based on just causes as defined in Article 282 of the Labor Code:
>
> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
>
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him; and
>
> (c) A written notice [of] termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.[21]

Jurisprudence has expounded on the guarantee of due process, requiring the employer to furnish the employee with two written notices before termination of employment can be effected: a first written notice that informs the employee of the particular acts or omissions for which his or her dismissal is sought, and a second written notice which informs the employee of the employer's decision to dismiss him. In considering whether the charge in the first notice is sufficient to warrant dismissal under the second notice, the employer must afford the employee ample opportunity to be heard.

A review of the records shows that Jonathan was not furnished with any written notice that informed him of the acts he committed justifying his dismissal from employment. The notice of suspension given to Jonathan only pertained to the first offense, i.e., the loss of Equator's firearms under Jonathan's watch. With respect to his second offense (i.e., the issuance of an unlicensed firearm to Equator's security guard – that became the basis for his dismissal), Jonathan was never given any notice that allowed him to air his side and to avail of the guaranteed opportunity to be heard. That Equator brought the second offense before the LA does not serve as notice because by then, Jonathan had already been dismissed.

In order to validly dismiss an employee, the observance of both substantive and procedural due process by the employer is a condition sine qua non. Procedural due process requires that the employee be given a notice of the charge against him, an ample opportunity to be heard, and a notice of termination.[22]

Since Jonathan had been dismissed in violation of his right to procedural due process but for a just cause, Equator should pay him nominal damages of P30,000.00, in accordance with Agabon v. NLRC.[23] The decision of the NLRC, although final, was brought to the CA on a petition for certiorari and was eventually nullified for grave abuse of discretion. When the CA ruled on the case, this Court had abandoned the ruling in Serrano v. NLRC[24] in favor of the Agabon ruling.

WHEREFORE, we hereby PARTIALLY GRANT the petition. The decision dated September 29, 2005 and the resolution dated May 29, 2006 of the Court of Appeals in CA-G.R. SP. No. 86677 are AFFIRMED with MODIFICATION. The employer, Equator Knights Detective and Security Agency, Inc., had sufficient basis to terminate the employment of Jonathan I. Sang-an whose dismissal is thus declared to be substantively valid. However, he was denied his right to procedural due process for lack of the required notice of dismissal. Consequently, Equator Knights Detective and Security Agency, Inc. is ordered to pay petitioner Jonathan I. Sang-an P30,000.00 as nominal damages for its non-compliance with procedural due process.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Perez, and Perlas-Bernabe, JJ., concur.

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[1] Under Rule 45 of the Rules of Court; rollo, pp. 9-19.

[2] Penned by Associate Justice Pampio A. Abarintos, and concurred in by Associate Justices Vicente L. Yap and Enrico A. Lanzanas; id. at 124-130.

[3] Id. at 139-140.

[4] Penned by Commissioner Edgardo M. Enerlan, and concurred in by Commissioner Oscar S. Uy and Presiding Commissioner Gerardo C. Nograles; id. at 62-66.

[5] Id. at 41-45.

[6] Id. at 38.

[7] Id. at 125.

[8] Id. at 23.

[9] Id. at 24-30.

[10] Id. at 35-37.

[11] Supra note 5.

[12] Id. at 44-45.

[13] Id. at 25.

[14] Id. at 36.

[15] Id. at 41.

[16] Id. at 163.

[17] Id. at 23.

[18] See Bughaw, Jr. v. Treasure Island Industrial Corporation, G.R. No. 173151, March 28, 2008, 550 SCRA 307, 316-318, citing Articles 282 and 283 of the Labor Code; and Challenge Socks Corporation v. Court of Appeals, G.R. No. 165268, November 8, 2005, 474 SCRA 356, 363-364.

[19] Philippine Long Distance Company v. The Late Romeo F. Bolso, G.R. No. 159701, August 17, 2007, 530 SCRA 550, 560.

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[20] Section 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms of Ammunition. - The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearm, part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

[21] Aliling v. Feliciano, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 209.

[22] New Puerto Commercial v. Lopez, G.R. No. 169999, July 26, 2010, 625 SCRA 422, 423.

[23] 485 Phil. 248 (2004).

[24] 380 Phil. 416 (2000).

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