

FEDERICO M. LEDESMA, JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC-SECOND DIVISION) HONS. RAUL T. AQUINO, VICTORIANO R. CALAYCAY AND ANGELITA A. GACUTAN ARE THE...*G.R. No. 174585. October 19, 2007*

Ponente: CHICO-NAZARIO, J.

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This a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court, filed by petitioner Federico Ledesma, Jr., seeking to reverse and set aside the Decision,[1] dated 28 May 2005, and the Resolution,[2] dated 7 September 2006, of the Court of Appeals in CA-G.R. SP No. 79724. The appellate court, in its assailed Decision and Resolution, affirmed the Decision dated 15 April 2003, and Resolution dated 9 June 2003, of the National Labor Relations Commission (NLRC), dismissing petitioner's complaint for illegal dismissal and ordering the private respondent Philippine National Training Institute (PNTI) to reinstate petitioner to his former position without loss of seniority rights.

The factual and procedural antecedents of the instant petition are as follows:

On 4 December 1998, petitioner was employed as a bus/service driver by the private respondent on probationary basis, as evidenced by his appointment.[3] As such, he was required to report at private respondent's training site in Dasmariñas, Cavite, under the direct supervision of its site administrator, Pablo Manolo de Leon (de Leon).[4]

On 11 November 2000, petitioner filed a complaint against de Leon for allegedly abusing his authority as site administrator by using the private respondent's vehicles and other facilities for personal ends. In the same complaint, petitioner also accused de Leon of immoral conduct allegedly carried out within the private respondent's premises. A copy of the complaint was duly received by private respondent's Chief Accountant, Nita Azarcon (Azarcon).[5]

On 27 November 2000, de Leon filed a written report against the petitioner addressed to private respondent's Vice-President for Administration, Ricky Ty (Ty), citing his suspected drug use.

In view of de Leon's report, private respondent's Human Resource Manager, Trina Cueva (HR Manager Cueva), on 29 November 2000, served a copy of a Notice to petitioner requiring him to explain within 24 hours why no disciplinary action should be imposed on him for allegedly violating Section 14, Article IV of the private respondent's Code of Conduct.[6]

On 3 December 2000, petitioner filed a complaint for illegal dismissal against private respondent before the Labor Arbiter.

In his Position Paper,[7] petitioner averred that in view of the complaint he filed against de Leon for his abusive conduct as site administrator, the latter retaliated by falsely accusing petitioner as a drug user. VP for

Administration Ty, however, instead of verifying the veracity of de Leon's report, readily believed his allegations and together with HR Manager Cueva, verbally dismissed petitioner from service on 29 November 2000.

Petitioner alleged that he was asked to report at private respondent's main office in España, Manila, on 29 November 2000. There, petitioner was served by HR Manager Cueva a copy of the Notice to Explain together with the copy of de Leon's report citing his suspected drug use. After he was made to receive the copies of the said notice and report, HR Manager Cueva went inside the office of VP for Administration Ty. After a while, HR Manager Cueva came out of the office with VP for Administration Ty. To petitioner's surprise, HR Manager Cueva took back the earlier Notice to Explain given to him and flatly declared that there was no more need for the petitioner to explain since his drug test result revealed that he was positive for drugs. When petitioner, however, asked for a copy of the said drug test result, HR Manager Cueva told him that it was with the company's president, but she would also later claim that the drug test result was already with the proper authorities at Camp Crame.[8]

Petitioner was then asked by HR Manager Cueva to sign a resignation letter and also remarked that whether or not petitioner would resign willingly, he was no longer considered an employee of private respondent. All these events transpired in the presence of VP for Administration Ty, who even convinced petitioner to just voluntarily resign with the assurance that he would still be given separation pay. Petitioner did not yet sign the resignation letter replying that he needed time to think over the offers. When petitioner went back to private respondent's training site in Dasmariñas, Cavite, to get his bicycle, he was no longer allowed by the guard to enter the premises.[9]

On the following day, petitioner immediately went to St. Dominic Medical Center for a drug test and he was found negative for any drug substance. With his drug result on hand, petitioner went back to private respondent's main office in Manila to talk to VP for Administration Ty and HR Manager Cueva and to show to them his drug test result. Petitioner then told VP for Administration Ty and HR Manager Cueva that since his drug test proved that he was not guilty of the drug use charge against him, he decided to continue to work for the private respondent.[10]

On 2 December 2000, petitioner reported for work but he was no longer allowed to enter the training site for he was allegedly banned therefrom according to the guard on duty. This incident prompted the petitioner to file the complaint for illegal dismissal against the private respondent before the Labor Arbiter.

For its part, private respondent countered that petitioner was never dismissed from employment but merely served a Notice to Explain why no disciplinary action should be filed against him in view of his superior's report that he was suspected of using illegal drugs. Instead of filing an answer to the said notice, however, petitioner prematurely lodged a complaint for illegal dismissal against private respondent before the Labor Arbiter.[11]

Private respondent likewise denied petitioner's allegations that it banned the latter from entering private respondent's premises. Rather, it was petitioner who failed or refused to report to work after he was made to explain his alleged drug use. Indeed, on 3 December 2000, petitioner was able to claim at the training site his salary for the period of 16-30 November 2000, as evidenced by a copy of the pay voucher bearing petitioner's signature. Petitioner's accusation that he was no longer allowed to enter the training site was further belied by the fact that he was able to claim his 13th month pay thereat on 9 December 2000, supported by a copy of the pay voucher signed by petitioner.[12]

On 26 July 2002, the Labor Arbiter rendered a Decision,[13] in favor of the petitioner declaring illegal his separation from employment. The Labor Arbiter, however, did not order petitioner's reinstatement for the same was no longer practical, and only directed private respondent to pay petitioner backwages. The dispositive portion

of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, the dismissal of the [petitioner] is herein declared to be illegal. [Private respondent] is directed to pay the complainant backwages and separation pay in the total amount of One Hundred Eighty Four Thousand Eight Hundred Sixty One Pesos and Fifty Three Centavos (P184, 861.53).[14]

Both parties questioned the Labor Arbiter's Decision before the NLRC. Petitioner assailed the portion of the Labor Arbiter's Decision denying his prayer for reinstatement, and arguing that the doctrine of strained relations is applied only to confidential employees and his position as a driver was not covered by such prohibition.[15] On the other hand, private respondent controverted the Labor Arbiter's finding that petitioner was illegally dismissed from employment, and insisted that petitioner was never dismissed from his job but failed to report to work after he was asked to explain regarding his suspected drug use.[16]

On 15 April 2003, the NLRC granted the appeal raised by both parties and reversed the Labor Arbiter's Decision.[17] The NLRC declared that petitioner failed to establish the fact of dismissal for his claim that he was banned from entering the training site was rendered impossible by the fact that he was able to subsequently claim his salary and 13th month pay. Petitioner's claim for reinstatement was, however, granted by the NLRC. The decretal part of the NLRC Decision reads:

WHEREFORE, premises considered, the decision under review is, hereby REVERSED and SET ASIDE, and another entered, DISMISSING the complaint for lack of merit.

[Petitioner] is however, ordered REINSTATED to his former position without loss of seniority rights, but WITHOUT BACKWAGES.[18]

The Motion for Reconsideration filed by petitioner was likewise denied by the NLRC in its Resolution dated 29 August 2003.[19]

The Court of Appeals dismissed petitioner's Petition for Certiorari under Rule 65 of the Revised Rules of Court, and affirmed the NLRC Decision giving more credence to private respondent's stance that petitioner was not dismissed from employment, as it is more in accord with the evidence on record and the attendant circumstances of the instant case.[20] Similarly ill-fated was petitioner's Motion for Reconsideration, which was denied by the Court of Appeals in its Resolution issued on 7 September 2006. [21]

Hence, this instant Petition for Review on Certiorari[22] under Rule 45 of the Revised Rules of Court, filed by petitioner assailing the foregoing Court of Appeals Decision and Resolution on the following grounds:

I.

WHETHER, THE HON. COURT OF APPEALS COMMITTED A MISAPPREHENSION OF FACTS, AND THE ASSAILED DECISION IS NOT SUPPORTED BY THE EVIDENCE ON RECORD. PETITIONER'S DISMISSAL WAS ESTABLISHED BY THE UNCONTRADICTED EVIDENCES ON RECORD, WHICH WERE MISAPPRECIATED BY PUBLIC RESPONDENT NLRC, AND HAD THESE BEEN CONSIDERED THE INEVITABLE CONCLUSION WOULD BE THE AFFIRMATION OF THE LABOR ARBITER'S DECISION FINDING ILLEGAL DISMISSAL

II.

WHETHER, THE HON. COURT OF APPEALS SUBVERTED DUE PROCESS OF LAW WHEN IT DID NOT CONSIDER THE EVIDENCE ON RECORD SHOWING THAT THERE WAS NO JUST CAUSE FOR DISMISSAL AS PETITIONER IS NOT A DRUG USER AND THERE IS NO EVIDENCE TO SUPPORT THIS GROUND FOR DISMISSAL.

III.

WHETHER, THE HON. COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN NOT FINDING THAT RESPONDENTS SUBVERTED PETITIONER'S RIGHT TO DUE PROCESS OF THE LAW.[23]

Before we delve into the merits of this case, it is best to stress that the issues raised by petitioner in this instant petition are factual in nature which is not within the office of a Petition for Review.[24] The *raison d'être* for this rule is that, this Court is not a trier of facts and does not routinely undertake the re-examination of the evidence presented by the contending parties for the factual findings of the labor officials who have acquired expertise in their own fields are accorded not only respect but even finality, and are binding upon this Court.[25]

However, when the findings of the Labor Arbiter contradict those of the NLRC, departure from the general rule is warranted, and this Court must of necessity make an infinitesimal scrutiny and examine the records all over again including the evidence presented by the opposing parties to determine which findings should be preferred as more conformable with evidentiary facts.[26]

The primordial issue in the petition at bar is whether the petitioner was illegally dismissed from employment.

The Labor Arbiter found that the petitioner was illegally dismissed from employment warranting the payment of his backwages. The NLRC and the Court of Appeals found otherwise.

In reversing the Labor Arbiter's Decision, the NLRC underscored the settled evidentiary rule that before the burden of proof shifts to the employer to prove the validity of the employee's dismissal, the employee must first sufficiently establish that he was indeed dismissed from employment. The petitioner, in the present case, failed to establish the fact of his dismissal. The NLRC did not give credence to petitioner's allegation that he was banned by the private respondent from entering the workplace, opining that had it been true that petitioner was no longer allowed to enter the training site when he reported for work thereat on 2 December 2000, it is quite a wonder he was able to do so the very next day, on 3 December 2000, to claim his salary.[27]

The Court of Appeals validated the above conclusion reached by the NLRC and further rationated that petitioner's positive allegations that he was dismissed from service was negated by substantial evidence to the contrary. Petitioner's averments of what transpired inside private respondent's main office on 29 November 2000, when he was allegedly already dismissed from service, and his claim that he was effectively banned from private respondent's premises are belied by the fact that he was able to claim his salary for the period of 16-30 November 2000 at private respondent's training site.

Petitioner, therefore, is now before this Court assailing the Decisions handed down by the NLRC and the Court of Appeals, and insisting that he was illegally dismissed from his employment. Petitioner argues that his receipt of his earned salary for the period of 16-30 November 2000, and his 13th month pay, is neither inconsistent with nor a negation of his allegation of illegal dismissal. Petitioner maintains that he received his salary and benefit only from the guardhouse, for he was already banned from the work premises.

We are not persuaded.

Well-entrenched is the principle that in order to establish a case before judicial and quasi-administrative bodies, it is necessary that allegations must be supported by substantial evidence.[28] Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[29]

In the present case, there is hardly any evidence on record so as to meet the quantum of evidence required, i.e.,

substantial evidence. Petitioner's claim of illegal dismissal is supported by no other than his own bare, uncorroborated and, thus, self-serving allegations, which are also incoherent, inconsistent and contradictory.

Petitioner himself narrated that when his presence was requested on 29 November 2000 at the private respondent's main office where he was served with the Notice to Explain his superior's report on his suspected drug use, VP for Administration Ty offered him separation pay if he will just voluntarily resign from employment. While we do not condone such an offer, neither can we construe that petitioner was dismissed at that instance. Petitioner was only being given the option to either resign and receive his separation pay or not to resign but face the possible disciplinary charges against him. The final decision, therefore, whether to voluntarily resign or to continue working still, ultimately rests with the petitioner. In fact, by petitioner's own admission, he requested from VP for Administration Ty more time to think over the offer.

Moreover, the petitioner alleged that he was not allowed to enter the training site by the guard on duty who told him that he was already banned from the premises. Subsequently, however, petitioner admitted in his Supplemental Affidavit that he was able to return to the said site on 3 December 2000, to claim his 16-30 November 2000 salary, and again on 9 December 2000, to receive his 13th month pay. The fact alone that he was able to return to the training site to claim his salary and benefits raises doubt as to his purported ban from the premises.

Finally, petitioner's stance that he was dismissed by private respondent was further weakened with the presentation of private respondent's payroll bearing petitioner's name proving that petitioner remained as private respondent's employee up to December 2000. Again, petitioner's assertion that the payroll was merely fabricated for the purpose of supporting private respondent's case before the NLRC cannot be given credence. Entries in the payroll, being entries in the course of business, enjoy the presumption of regularity under Rule 130, Section 43 of the Rules of Court. It is therefore incumbent upon the petitioner to adduce clear and convincing evidence in support of his claim of fabrication and to overcome such presumption of regularity.^[30] Unfortunately, petitioner again failed in such endeavor.

On these scores, there is a dearth of evidence to establish the fact of petitioner's dismissal. We have scrupulously examined the records and we found no evidence presented by petitioner, other than his own contentions that he was indeed dismissed by private respondent.

While this Court is not unmindful of the rule that in cases of illegal dismissal, the employer bears the burden of proof to prove that the termination was for a valid or authorized cause in the case at bar, however, the facts and the evidence did not establish a prima facie case that the petitioner was dismissed from employment.^[31] Before the private respondent must bear the burden of proving that the dismissal was legal, petitioner 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 the legality or illegality thereof.

In *Machica v. Roosevelt Services Center, Inc.*,^[32] we had underscored that the burden of proving the allegations rest upon the party alleging, to wit:

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.^[33]

In *Rufina Patis Factory v. Alusitain*,^[34] this Court took the occasion to emphasize:

It is a basic rule in evidence, however, that the burden of proof is on the part of the party who makes the allegations – *ei incumbit probatio, qui dicit, non qui negat*. If he claims a right granted by law, he must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weakness of that of his opponent.[35]

It is true that the Constitution affords full protection to labor, and that in light of this Constitutional mandate, we must be vigilant in striking down any attempt of the management to exploit or oppress the working class. However, it does not mean that we are bound to uphold the working class in every labor dispute brought before this Court for our resolution.

The law in protecting the rights of the employees, authorizes neither oppression nor self-destruction of the employer. It should be made clear that when the law tilts the scales of justice in favor of labor, it is in recognition of the inherent economic inequality between labor and management. The intent is to balance the scales of justice; to put the two parties on relatively equal positions. There may be cases where the circumstances warrant favoring labor over the interests of management but never should the scale be so tilted if the result is an injustice to the employer. *Justitia nemini neganda est* -- justice is to be denied to none.[36]

WHEREFORE, premises considered, the instant Petition is DENIED. The Court of Appeals Decision dated 28 May 2005 and its Resolution dated 7 September 2006 in CA-G.R. SP No. 79724 are hereby AFFIRMED. Costs against the petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Corona, and Nachura, JJ., concur.

[1] Penned by Associate Justice Ruben T. Reyes (now a member of this Court) with Associate Justices Josefina Guevarra-Salonga and Fernanda Lampas-Peralta , concurring. Rollo, pp. 38-50.

[2] Rollo, pp. 52-53.

[3] Id. at 82.

[4] Id.

[5] Id. at 85-86.

[6] Id. at 107.

[7] Id. at 71-81.

[8] Id.

[9] Id.

[10] Id.

[11] Id. at 91-105.

[12] Id.

[13] Id. at 65-70.

[14] Id.

[15] Id. at 144-160.

[16] Id. at 160-172.

[17] Id. at 54-64.

[18] Id. at 63.

[19] Id. at 42.

[20] Id. at 38-50.

[21] Id. at 52-53.

[22] Id. at 12-36.

[23] Id. at 236-237.

[24] Limketkai Sons Milling, Inc. v. Llamera, G.R. No. 152514, 12 July 2005, 463 SCRA 254, 260.

[25] Dusit Hotel Nikko v. National Union of Workers in Hotel, Restaurant and Allied Industries (NUWHRAIN), Dusit Hotel Nikko Chapter, G.R. No. 160391, 9 August 2005, 466 SCRA 374, 387-388; The Philippine American Life and General Insurance Co. v. Gramaje, G.R. No. 156963, 11 November 2004, 442 SCRA 274, 283.

[26] Sta. Catalina College v. National Labor Relations Commission, 461 Phil. 720, 730 (2003).

[27] Rollo, pp. 118-119.

[28] Philippine Air Line v. Court of Appeals, G.R. No. 159556, 26 May 2005, 459 SCRA 236, 251.

[29] Government Service Insurance System v. Court of Appeals, 357 Phil. 511, 531 (1998).

[30] Id. at 529.

[31] Schering Employees Labor Union (SELU) v. Schering Plough Corporation, G.R. No. 142506, 17 February 2005, 451 SCRA 689, 695.

[32] G.R. No. 168664, 4 May 2006, 389 SCRA 534.

[33] Id. at 544-545.

[34] G.R. No. 146202, 14 July 2004, 434 SCRA 418.

[35] Id. at 428.

[36] JPL Marketing Promotions v. Court of Appeals, G.R. No. 151966, 8 July 2005, 463 SCRA 136, 149-150.

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