

MALAYAN EMPLOYEES ASSOCIATION-FFW AND RODOLFO MANGALINO, PETITIONERS, VS. MALAYAN INSURANCE COMPANY, INC., RESPONDENT.

G.R. No. 181357. February 02, 2010

Ponente: BRION, J.

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BRION, J.:

The petitioner Malayan Employees Association-FFW (union) asks us in this petition for certiorari,[1] to set aside the June 26, 2007 decision[2] and the November 29, 2007 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 80691, ruling that the suspension imposed by the respondent Malayan Insurance Company, Inc. (company) on union member Rodolfo Mangalino (Mangalino) is valid. Mangalino was suspended for taking a union leave without the prior authority of his department head and despite a previous disapproval of the requested leave.

BACKGROUND FACTS

The union is the exclusive bargaining agent of the rank-and-file employees of the company. A provision in the union's collective bargaining agreement (CBA) with the company allows union officials to avail of union leaves with pay for a total of "ninety-man" days per year for the purpose of attending grievance meetings, Labor-Management Committee meetings, annual National Labor Management Conferences, labor education programs and seminars, and other union activities.

The company issued a rule in November 2002 requiring not only the prior notice that the CBA expressly requires, but prior approval by the department head before the union and its members can avail of union leaves. The rule was placed into effect in November 2002 without any objection from the union until a union officer, Mangalino, filed union leave applications in January and February, 2004. His department head disapproved the applications because the department was undermanned at that time.

Despite the disapproval, Mangalino proceeded to take the union leave. He said he believed in good faith that he had complied with the existing company practice and with the procedure set forth in the CBA. The company responded by suspending him for one week and, thereafter, for a month, for his second offense in February 2004.

The union raised the suspensions as a grievance issue and went through all the grievance processes, including the referral of the matter to the company's president, Yvonne Yuchengco. After all internal remedies failed, the union went to the National Conciliation and Mediation Board for preventive mediation. When this recourse also failed, the parties submitted the dispute to voluntary arbitration[4] on the following issues:

- whether or not Mangalino's suspensions were valid; and
- whether or not Mangalino should be paid backwages for the duration of the suspensions.

The Voluntary Arbitrators decided the submitted dispute on November 26, 2004,[5] ruling as follows:

WHEREFORE, in view of the foregoing, this Honorable Office adjudged the suspension of Mr. Rodolfo Mangalino's on first availment of union leave invalid while the second suspension valid but illicit in terms of penalty of thirty (30) days suspension. We consider the honesty of the same as mitigating circumstances, for the Chairman of this panel of Arbitrators attested that complainant attended labor matter in the Office of Voluntary Arbitrator last January 19, 2004 and February 5, 2004. However, it is good to note the wisdom of Justice Narvasa in the aforecited Supreme Court Ruling of obey first before you complain.

In view thereof, this Honorable Office reduced the suspension from thirty seven (37) days to ten (10) days only. Henceforth, the Complainant is entitled to twenty seven (27) days backwages.

Proof of payment of backwages should be submitted to the chairman of this Panel of Arbitrators within ten (10) days from receipt hereof.

Parties are hereby enjoined to comply in this Award as provided in the submission Agreement.

SO ORDERED.

Notably, the decision was not unanimous. Voluntary Arbitrator dela Fuente submitted the following dissent:[6]

The act of any employee that can only be interpreted to be an open and utter display of arrogance and unconcern for the welfare of his Company thru the use of what he pretends to believe to be an unbridled political right cannot be allowed to pass without sanction lest the employer desires anarchy and chaos to reign in its midst.

Hence, having failed to comply with the requirements for availment of union leaves and for going on such leave despite the express disapproval of his superior, Mr. Mangalino's two suspensions are valid and he is not entitled to any backwages for the duration of his suspensions.

The company appealed the decision to the CA on May 12, 2005 through a petition for review under Rule 43 of the Rules of Court (Rules). In a decision promulgated on June 26, 2007, the CA granted the company's petition and upheld the validity of Mangalino's suspension on the basis of the company's prerogative to prescribe reasonable rules to regulate the use of union leaves.[7]

The union moved for the reconsideration of the CA decision and received the CA's denial (through its resolution of November 29, 2007) on December 8, 2007.[8]

THE PETITION

The union seeks relief from this Court against the CA decision through its Rule 65 petition for certiorari filed on February 6, 2008.[9] It alleged that the CA committed grave abuse of discretion when, despite the clear terms of the CBA grant of union leaves, it disregarded the evidence on record and recognized that the company's use of its management prerogative as justification was proper.

In our Resolution of March 5, 2008, we resolved to treat the Rule 65 petition as a petition for review on certiorari under Rule 45 of the Rules, and required the respondent company to comment.[10] After comment, we required the union to file its reply.[11] Thereafter, the parties submitted their respective memoranda.[12]

In its comment, the company raised both procedural and substantive objections.

It questioned the petition's compliance with the Rules, particularly the use of a petition for certiorari under Rule 65 to question the CA decision, when the appropriate remedy is a petition for review on certiorari under Rule 45. The company also asserted that the union violated Section 2, Rule 45 when it failed to attach the material portions of the record as would support its petition, such as the company's pleadings and the entirety of the company's

evidence. More importantly, it posited that the petition is barred by time limitation and has lapsed to finality as it was filed sixty-two (62) days after the union's receipt of the CA decision.

On the substantive aspect, the company mainly contended that the regulation of the use of union leaves is within the company's management prerogative, and the company was simply exercising its management prerogative when it required its employees to first obtain the approval of either the department head or the human resource manager before making use of any union leave. Thus, Mangalino committed acts of insubordination when he insisted on going on leave despite the disapproval of his leave applications.

In its reply and subsequent memorandum, the union presented its justification for the technical deficiencies the company cited (quoted below), and maintained as well that the use of management prerogative was improper because the CBA grant of the union leave benefit did not require prior company approval as a condition; any change in the CBA grant requires union conformity. The union posited as well that any unilateral change in the CBA terms violates Article 255 of the Labor Code, which guarantees the right of employees to participate in the company's policy and decision-making processes on matters directly affecting their interests. It argued against the company position that it had not objected to the company rule and is now in estoppel.

THE COURT'S RULING

We deny the petition for lack of merit.

The company position that the union should have filed an appeal under Rule 45 of the Rules and not a petition for certiorari is correct. Section 1, Rule 45 of the Rules states that:

SECTION 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. [Emphasis supplied.]

Complementing this Rule is Section 1, Rule 65 which provides that a special civil action for certiorari under Rule 65 lies only when "there is no appeal, nor plain, speedy and adequate remedy in the ordinary course of law." From this Rule proceeds the established jurisprudential ruling that a petition for certiorari cannot be allowed when a party fails to appeal a judgment despite the availability of that remedy, as certiorari is not a substitute for a lost appeal.[13]

In our Resolution of March 5, 2008, we opted to liberally apply the rules and to treat the petition as a petition for review on certiorari under Rule 45 in order to have a total view of the merits of the petition in light of the importance of a ruling on the presented issues. The union - which did not present any justification at the outset for the petition's deficiencies, particularly for the late filing - had this to say:

9) In a resolution dated 05 March 2008, this Honorable Court resolved to treat the petition in the above-captioned case as a petition for review on certiorari under Rule 45 of the Rules of Civil Procedure. All along the petitioner thought that the filing of the petition for certiorari under Rule 65 is appropriate considering that the ground raised is grave abuse of discretion by the Honorable Court of Appeals for reversing the decision of the majority decision of the Panel of Voluntary Arbitration in arbitrary and whimsical manner.

10) For having treated this petition under Rule 45 of the Rules of Civil Procedure, petitioner humbly admits that delay was incurred in the filing thereof, such delay was caused by several factors beyond control such as the transfer of handling legal assistant to another office and the undersigned had to reassign the case for the preparation of the petition. Furthermore, the undersigned counsel, other than being the Chief of FFW LEGAL

CENTER is also the Vice President of the Federation of Free Workers (FFW), who has to attend similar and urgent pressing problems of local affiliates arising from the effects of contracting out and closure of companies.

11) Considering the issue to be resolved requires only two CBA provisions - (1) the recognition of management prerogative (Section 1, Article III of the CBA), and union leave (Section 3, Article XV of the CBA) to guide the Honorable Court reached (sic) a decision, petitioner honestly thought that the other pleadings referred to by respondent are not relevant.

With this kind and tenor of justification, we appear to have acted with extreme liberality in recognizing the petition as a Rule 45 petition and in giving it due course. We cannot extend the same liberality, however, with respect to the union's violation of the established rules on timelines in the filing of petitions, which violations the company has kept alive by its continuing objection. While we can be liberal in considering the mode of review of lower court decisions (and even in the contents of the petition which the company insists are deficient), we cannot do the same with respect to the time requirements that govern the finality of these decisions. A final judgment can no longer be disturbed under the combined application of the principles of immutability of final judgments^[14] and *res judicata*,^[15] subject only to very exceptional circumstances not at all present in this case.^[16]

Under Rule 45, a petition for review on certiorari should be filed within 15 days from notice of judgment, extendible in meritorious cases for a total of another 30 days.^[17] Given that a Rule 45 petition is appropriate in the present case, the period of 60 days after notice of judgment is way past the deadline allowed, so that the CA decision had lapsed to finality by the time the petition with us was filed. This reason alone - even without considering the company's other technical objection based on the union's failure to attach relevant documents in support of the petition - amply supports the denial of the petition.

The lack of merit of the petition likewise precludes us from resolving it in the union's favor. In short, we see no reversible error in the CA's ruling.

While it is true that the union and its members have been granted union leave privileges under the CBA, the grant cannot be considered separately from the other provisions of the CBA, particularly the provision on management prerogatives where the CBA reserved for the company the full and complete authority in managing and running its business.^[18] We see nothing in the wordings of the union leave provision that removes from the company the right to prescribe reasonable rules and regulations to govern the manner of availing of union leaves, particularly the prerogative to require prior approval. Precisely, prior notice is expressly required under the CBA so that the company can appropriately respond to the request for leave. In this sense, the rule requiring prior approval only made express what is implied in the terms of the CBA.

In any event, any doubt in resolving any interpretative conflict is settled by subsequent developments in the course of the parties' implementation of the CBA, specifically, by the establishment of the company regulation in November 2002 requiring prior approval before the union leave can be used. The union accepted this regulation without objection since its promulgation (or more than a year before the present dispute arose), and the rule on its face is not unreasonable, oppressive, nor violative of CBA terms. Ample evidence exists in the records indicating the union's acquiescence to the rule.^[19] Notably, no letter from the union complaining about the unilateral change in policy or any request for a meeting to discuss this policy appears on record. The union and its members have willingly applied for approval as the rule requires.^[20] Even Mangalino himself, in the past, had filed applications for union leave with his department manager, and willingly complied with the disapproval without protest of any kind.^[21] Thus, when Mangalino asserted his right to take a leave without prior approval, the requirement for prior approval was already in place and established, and could no longer be removed except with the company's consent or by negotiation and express agreement in future CBAs.

The "prior approval" policy fully supported the validity of the suspensions the company imposed on Mangalino. We point out additionally that as an employee, Mangalino had the clear obligation to comply with the management disapproval of his requested leave while at the same time registering his objection to the company regulation and action. That he still went on leave, in open disregard of his superior's orders, rendered Mangalino open to the charge of insubordination, separately from his absence without official leave.[22] This charge, of course, can no longer prosper even if laid today, given the lapse of time that has since transpired.

In light of the petition's procedural infirmities, particularly its late filing that rendered the CA decision final, and the petition's lack of substantive merit, denial of the petition necessarily follows.

WHEREFORE, premises considered, we DENY the petition for lack of merit. Costs against the petitioners.

SO ORDERED.

Carpio (Chairperson), Corona[*], Velasco, Jr.[**], and Perez, JJ., concur.

[*] Designated additional Member of the Second Division vice Associate Justice Mariano C. Del Castillo, per Raffle dated January 25, 2010.

[**] Designated additional Member of the Second Division vice Associate Justice Roberto A. Abad, per Special Order No. 820 dated January 25, 2010.

[1] Under Rule 65 of the Revised Rules of Civil Procedure; rollo, pp. 3-22.

[2] Penned by Associate Justice Arcangelita Romilla-Lontok, with the concurrence of Associate Justice Mariano Del Castillo (now a member of this Court) and Associate Justice Romeo Barza; id. at 26-32.

[3] Id. at 39.

[4] The Voluntary Arbitrators are Herminigildo Javen, Atty. Marcial de la Fuente and Allan Montano.

[5] Rollo, pp. 179-191.

[6] Id. at 192-201.

[7] Id. at 26-32.

[8] Id. at 39.

[9] Id. at 3-20.

[10] Id. at 40.

[11] Id. at 280.

[12] Id. at 291-341.

[13] *Bernardo v. Court of Appeals*, 341 Phil. 413 (1997); see also *Macawiag v. Balindog*, G.R. No. 159210, September 20, 2006, 502 SCRA 454, 465-66.

[14] See *Coca-Cola Bottlers Philippines, Inc., Sales Force Union-PTGWO-BAL AIS v. Coca-Cola Bottlers, Philippines, Inc.*, G.R. No. 155651, July 28, 2005, 464 SCRA 507.

[15] See *Allied Banking Corporation v. Court of Appeals*, G.R. No. 108089, January 10, 1994, 229 SCRA 252.

[16] The immutability doctrine admits several exceptions, like: (1) the correction of clerical errors; (2) the so-called nunc pro tunc entries that cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. (Temic Semiconductors, Inc. Employees Union [TSIEU-FFW] v. Federation of Free Workers [FFW], G.R. No. 160993, May 20, 2008, 554 SCRA 122.)

[17] Rule 45, Section 2 of the Rules of Court states:

Section 2. Time for filing; extension. - The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

[18] Article III, Section 1 of the CBA provides:

The Union hereby recognizes that the Company shall have full and exclusive direction and control of the management of the Company and direction of its employees xxx and the right to make and enforce Company rules to carry out the functions of management.

[19] Rollo, pp. 118-136.

[20] Id. at 118-126.

[21] Id. at 127-129, 132-134.

[22] See GTE Directories Corporation v. Sanchez, 274 Phil. 738 (1991) which held:

To sanction disregard or disobedience by employees of a rule or order laid down by management, on the pleaded theory that the rule or order is unreasonable, illegal, or otherwise irregular for one reason or another, would be disastrous to the discipline and order that it is in the interest of both the employer and his employees to preserve and maintain in the working establishment and without which no meaningful operation and progress is possible. Deliberate disregard or disobedience of rules, defiance of management authority cannot be countenanced. This is not to say that the employees have no remedy against rules or orders they regard as unjust or illegal. They may object thereto, ask to negotiate thereon, bring proceedings for redress against the employer before the Ministry of Labor. But until and unless the rules or orders are declared to be illegal or improper by competent authority, the employees ignore or disobey them at their peril. It is impermissible to reverse the process: suspend enforcement of the orders or rules until their legality or propriety shall have been subject of negotiation, conciliation, or arbitration. [Emphasis supplied.]

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