

MANILA PAVILION HOTEL, OWNED AND OPERATED BY ACESITE (PHILS.) HOTEL CORPORATION, PETITIONER, VS. HENRY DELADA, RESPONDENT.

G.R. No. 189947. January 25, 2012

Ponente: SERENO, J.

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SERENO, J.:

Before the Court is a Petition for Review on Certiorari filed under Rule 45 of the Revised Rules of Court, assailing the 27 July 2009 Decision and 12 October 2009 Resolution of the Court of Appeals (CA).[1]

Facts

The present Petition stems from a grievance filed by respondent Henry Delada against petitioner Manila Pavilion Hotel (MPH). Delada was the Union President of the Manila Pavilion Supervisors Association at MPH. He was originally assigned as Head Waiter of Rotisserie, a fine-dining restaurant operated by petitioner. Pursuant to a supervisory personnel reorganization program, MPH reassigned him as Head Waiter of Seasons Coffee Shop, another restaurant operated by petitioner at the same hotel. Respondent declined the inter-outlet transfer and instead asked for a grievance meeting on the matter, pursuant to their Collective Bargaining Agreement (CBA). He also requested his retention as Head Waiter of Rotisserie while the grievance procedure was ongoing.

MPH replied and told respondent to report to his new assignment for the time being, without prejudice to the resolution of the grievance involving the transfer. He adamantly refused to assume his new post at the Seasons Coffee Shop and instead continued to report to his previous assignment at Rotisserie. Thus, MPH sent him several memoranda on various dates, requiring him to explain in writing why he should not be penalized for the following offenses: serious misconduct; willful disobedience of the lawful orders of the employer; gross insubordination; gross and habitual neglect of duties; and willful breach of trust.

Despite the notices from MPH, Delada persistently rebuffed orders for him to report to his new assignment. According to him, since the grievance machinery under their CBA had already been initiated, his transfer must be held in abeyance. Thus, on 9 May 2007, MPH initiated administrative proceedings against him. He attended the hearings together with union representatives.

Meanwhile, the parties failed to reach a settlement during the grievance meeting concerning the validity of MPH's transfer order. Respondent then elevated his grievance to the Peers Resources Development Director. Still, no settlement between the parties was reached. Respondent appealed the matter to the Grievance Committee level. The committee recommended that he proceed to the next level of the grievance procedure, as it was unable to reach a decision on the matter. Consequently, on 20 April 2007, Delada lodged a Complaint before the National Conciliation and Mediation Board. On 25 May 2007, the parties agreed to submit the following issues for voluntary arbitration:

- WHETHER OR NOT THE TRANSFER OF THE UNION PRESIDENT FROM HEAD WAITER AT

ROTISSERIE TO HEAD WAITER AT SEASONS RESTAURANT IS VALID AND JUSTIFIED;

- WHETHER OR NOT THE PREVENTIVE SUSPENSION OF THE COMPLAINANT IS VALID AND JUSTIFIED;

- WHETHER OR NOT THE PREVENTIVE SUSPENSION OF THE COMPLAINANT IS A VALID GROUND TO STRIKE;

- WHETHER OR NOT THE RESPONDENT MAY BE HELD LIABLE FOR MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES; AND

- WHETHER OR NOT THE COMPLAINANT MAY BE HELD LIABLE FOR MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES. [2]

While respondent's Complaint concerning the validity of his transfer was pending before the Panel of Voluntary Arbitrators (PVA), MPH continued with the disciplinary action against him for his refusal to report to his new post at Seasons Coffee Shop. Citing security and safety reasons, petitioner also placed respondent on a 30-day preventive suspension. On 8 June 2007, MPH issued a Decision, which found him guilty of insubordination based on his repeated and willful disobedience of the transfer order. The Decision imposed on Delada the penalty of 90-day suspension. He opposed the Decision, arguing that MPH had lost its authority to proceed with the disciplinary action against him, since the matter had already been included in the voluntary arbitration.

On 14 December 2007, the PVA issued a Decision and ruled that the transfer of Delada was a valid exercise of management prerogative. According to the panel, the transfer order was done in the interest of the efficient and economic operations of MPH, and that there was no malice, bad faith, or improper motive attendant upon the transfer of Delada to Seasons Coffee Shop. They found that the mere fact that he was the Union President did not "put color or ill motive and purpose" to his transfer. On the contrary, the PVA found that the real reason why he refused to obey the transfer order was that he asked for additional monetary benefits as a condition for his transfer. Furthermore, the panel ruled that his transfer from Rotisserie to Seasons Coffee Shop did not prejudice or inconvenience him. Neither did it result in diminution of salaries or demotion in rank. The PVA thus pronounced that Delada had no valid and justifiable reason to refuse or even to delay compliance with the management's directive.

The PVA also ruled that there was no legal and factual basis to support petitioner's imposition of preventive suspension on Delada. According to the panel, the mere assertion of MPH that "it is not far-fetched for Henry Delada to sabotage the food to be prepared and served to the respondent's dining guest and employees because of the hostile relationship then existing" was more imagined than real. It also found that MPH went beyond the 30-day period of preventive suspension prescribed by the Implementing Rules of the Labor Code when petitioner proceeded to impose a separate penalty of 90-day suspension on him. Furthermore, the PVA ruled that MPH lost its authority to continue with the administrative proceedings for insubordination and willful disobedience of the transfer order and to impose the penalty of 90-day suspension on respondent. According to the panel, it acquired exclusive jurisdiction over the issue when the parties submitted the aforementioned issues before it. The panel reasoned that the joint submission to it of the issue on the validity of the transfer order encompassed, by necessary implication, the issue of respondent's insubordination and willful disobedience of the transfer order. Thus, MPH effectively relinquished its power to impose disciplinary action on Delada.[3]

As to the other issues, the panel found that there was no valid justification to conduct any strike or concerted action as a result of Delada's preventive suspension. It also ruled that since the 30-day preventive suspension and the penalty of 90-day suspension was invalid, then MPH was liable to pay back wages and other benefits.

The CA affirmed the Decision of the PVA and denied petitioner's Motion for Reconsideration. Consequently, MPH filed the instant Petition.

Issue

Despite the various issues surrounding the case, MPH limited its appeal to the following:

- Whether MPH retained the authority to continue with the administrative case against Delada for insubordination and willful disobedience of the transfer order.
- Whether MPH is liable to pay back wages.

Discussion

Petitioner argues that it did not lose its authority to discipline Delada notwithstanding the joint submission to the PVA of the issue of the validity of the transfer order. According to petitioner, the specific issue of whether respondent could be held liable for his refusal to assume the new assignment was not raised before the PVA, and that the panel's ruling was limited to the validity of the transfer order. Thus, petitioner maintains that it cannot be deemed to have surrendered its authority to impose the penalty of suspension.

In *Sime Darby Pilipinas, Inc. v. Deputy Administrator Magsalin*,^[4] we ruled that the voluntary arbitrator had plenary jurisdiction and authority to interpret the agreement to arbitrate and to determine the scope of his own authority - subject only, in a proper case, to the certiorari jurisdiction of this Court. In that case, the specific issue presented was "the issue of performance bonus." We then held that the arbitrator had the authority to determine not only the issue of whether or not a performance bonus was to be granted, but also the related question of the amount of bonus, were it to be granted. We then said that there was no indication at all that the parties to the arbitration agreement had regarded "the issue of performance bonus" as a two-tiered issue, only one aspect of which was being submitted to arbitration; thus, we held that the failure of the parties to specifically limit the issues to that which was stated allowed the arbitrator to assume jurisdiction over the related issue.

A more recent case is *Ludo & Luym Corporation v. Saornido*.^[5] In that case, we recognized that voluntary arbitrators are generally expected to decide only those questions expressly delineated by the submission agreement; that, nevertheless, they can assume that they have the necessary power to make a final settlement on the related issues, since arbitration is the final resort for the adjudication of disputes. Thus, we ruled that even if the specific issue brought before the arbitrators merely mentioned the question of "whether an employee was discharged for just cause," they could reasonably assume that their powers extended beyond the determination thereof to include the power to reinstate the employee or to grant back wages. In the same vein, if the specific issue brought before the arbitrators referred to the date of regularization of the employee, law and jurisprudence gave them enough leeway as well as adequate prerogative to determine the entitlement of the employees to higher benefits in accordance with the finding of regularization. Indeed, to require the parties to file another action for payment of those benefits would certainly undermine labor proceedings and contravene the constitutional mandate providing full protection to labor and speedy labor justice.

Consequently, could the PVA herein view that the issue presented before it - the question of the validity of the transfer order - necessarily included the question of respondent Delada's insubordination and willful disobedience of the transfer order?

Pursuant to the doctrines in *Sime Darby Pilipinas* and *Ludo & Luym Corporation*, the PVA was authorized to assume jurisdiction over the related issue of insubordination and willful disobedience of the transfer order. Nevertheless, the doctrine in the aforementioned cases is inapplicable to the present Petition. In those cases, the voluntary arbitrators did in fact assume jurisdiction over the related issues and made rulings on the matter. In the

present case, however, the PVA did not make a ruling on the specific issue of insubordination and willful disobedience of the transfer order. The PVA merely said that its disagreement with the 90-day penalty of suspension stemmed from the fact that the penalty went beyond the 30-day limit for preventive suspension:

But to us, what militates against the validity of Delada's preventive suspension is the fact that it went beyond the 30-day period prescribed by the Implementing Rules of the Labor Code (Section 4, Rules XIV, Book V). The preventive suspension of Delada is supposed to expire on 09 June 2007, but without notifying Delada, the MPH proceeded to impose a separate penalty of 90-days suspension to him which took effect only on 18 June 2007, or way beyond the 30-day rule mandated by the Rules. While the intention of the MPH is to impose the 90-day suspension as a separate penalty against Delada, the former is already proscribed from doing so because as of 05 June 2007, the dispute at hand is now under the exclusive jurisdiction of the panel of arbitrators. In fact, by its own admission, the MPH categorically stated in its Position Paper that as of 25 May 2007, or before the suspension order was issued, MPH and Delada had already formulated and submitted the issues for arbitration. For all legal intents and purposes, therefore, the MPH has now relinquished its authority to suspend Delada because the issue at this juncture is now within the Panel's ambit of jurisdiction. MPH's authority to impose disciplinary action to Delada must now give way to the jurisdiction of this panel of arbitrators to rule on the issues at hand. By necessary implication, this Panel is thus constrained to declare both the preventive suspension and the separate suspension of 90-days meted to Delada to be not valid and justified.[6]

First, it must be pointed out that the basis of the 30-day preventive suspension imposed on Delada was different from that of the 90-day penalty of suspension. The 30-day preventive suspension was imposed by MPH on the assertion that Delada might sabotage hotel operations if preventive suspension would not be imposed on him. On the other hand, the penalty of 90-day suspension was imposed on respondent as a form of disciplinary action. It was the outcome of the administrative proceedings conducted against him. Preventive suspension is a disciplinary measure resorted to by the employer pending investigation of an alleged malfeasance or misfeasance committed by an employee.[7] The employer temporarily bars the employee from working if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.[8] On the other hand, the penalty of suspension refers to the disciplinary action imposed on the employee after an official investigation or administrative hearing is conducted.[9] The employer exercises its right to discipline erring employees pursuant to company rules and regulations.[10] Thus, a finding of validity of the penalty of 90-day suspension will not embrace the issue of the validity of the 30-day preventive suspension. In any event, petitioner no longer assails the ruling of the CA on the illegality of the 30-day preventive suspension.[11]

It can be seen that, unlike in *Sime Darby Pilipinas and Ludo & Luym Corporation*, the PVA herein did not make a definitive ruling on the merits of the validity of the 90-day suspension. The panel only held that MPH lost its jurisdiction to impose disciplinary action on respondent. Accordingly, we rule in this case that MPH did not lose its authority to discipline respondent for his continued refusal to report to his new assignment. In relation to this point, we recall our Decision in *Allied Banking Corporation v. Court of Appeals*. [12]

In *Allied Banking Corporation*, [13] employer Allied Bank reassigned respondent Galanida from its Cebu City branch to its Bacolod and Tagbilaran branches. He refused to follow the transfer order and instead filed a Complaint before the Labor Arbiter for constructive dismissal. While the case was pending, Allied Bank insisted that he report to his new assignment. When he continued to refuse, it directed him to explain in writing why no disciplinary action should be meted out to him. Due to his continued refusal to report to his new assignment, Allied Bank eventually terminated his services. When the issue of whether he could validly refuse to obey the transfer orders was brought before this Court, we ruled thus:

The refusal to obey a valid transfer order constitutes willful disobedience of a lawful order of an employer.

Employees may object to, negotiate and seek redress against employers for rules or orders that they regard as unjust or illegal. However, until and unless these rules or orders are declared illegal or improper by competent authority, the employees ignore or disobey them at their peril. For Galanida's continued refusal to obey Allied Bank's transfer orders, we hold that the bank dismissed Galanida for just cause in accordance with Article 282(a) of the Labor Code. Galanida is thus not entitled to reinstatement or to separation pay. (Emphasis supplied, citations omitted).[14]

It is important to note what the PVA said on Delada's defiance of the transfer order:

In fact, Delada cannot hide under the legal cloak of the grievance machinery of the CBA or the voluntary arbitration proceedings to disobey a valid order of transfer from the management of the hotel. While it is true that Delada's transfer to Seasons is the subject of the grievance machinery in accordance with the provisions of their CBA, Delada is expected to comply first with the said lawful directive while awaiting the results of the decision in the grievance proceedings. This issue falls squarely in the case of *Allied Banking Corporation vs. Court of Appeals* x x x.[15]

Pursuant to *Allied Banking*, unless the order of MPH is rendered invalid, there is a presumption of the validity of that order. Since the PVA eventually ruled that the transfer order was a valid exercise of management prerogative, we hereby reverse the Decision and the Resolution of the CA affirming the Decision of the PVA in this respect. MPH had the authority to continue with the administrative proceedings for insubordination and willful disobedience against Delada and to impose on him the penalty of suspension. As a consequence, petitioner is not liable to pay back wages and other benefits for the period corresponding to the penalty of 90-day suspension.

WHEREFORE, the Petition is GRANTED. The Decision and the Resolution of the Court of Appeals are hereby MODIFIED. We rule that petitioner Manila Pavilion Hotel had the authority to continue with the administrative proceedings for insubordination and willful disobedience against Delada and to impose on him the penalty of suspension. Consequently, petitioner is not liable to pay back wages and other benefits for the period corresponding to the penalty of 90-day suspension.

SO ORDERED.

Carpio, (Chairperson), Perez, Reyes, and Perlas-Bernabe,[*] JJ., concur.

[*] Designated as Acting Member of the Second Division vice Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012.

[1] Both the Decision and the Resolution in CA-G.R. SP No. 101931 were penned by Associate Justice Sixto C. Marella Jr. and concurred in by Associate Justices Rebecca de Guia-Salvador and Japar B. Dimaampao.

[2] Decision of PVA, pp. 1-2; rollo, pp. 66-67.

[3] Decision of PVA, p. 13; rollo p. 78.

[4] *Sime Darby Pilipinas, Inc. v. Deputy Administrator Magsalin*, 259 Phil. 658 (1989).

[5] *Ludo & Luym Corporation v. Saornido*, 443 Phil. 554 (2003).

[6] Decision of PVA, p. 13; rollo, p. 78.

[7] *Gatbonton v. National Labor Relations Commission*, 515 Phil. 387 (2006).

[8] *Id.*

[9] See *Deles v. National Labor Relations Commission*, 384 Phil. 271 (2000).

[10] *Id.*

[11] Petition of MPH, p. 21; rollo, p. 34.

[12] 461 Phil. 517 (2003).

[13] *Id.*

[14] *Id.*

[15] Decision of PVA, p. 11; rollo, p. 76.

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