

BILLY M. REALDA, PETITIONER, VS. NEW AGE GRAPHICS, INC. AND JULIAN I. MIRASOL, JR. RESPONDENTS.

G.R. No. 192190. April 25, 2012

Ponente: REYES, J.

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REYES, J.:

The petitioner, who was the former machine operator of respondent New Age Graphics Inc. (Graphics, Inc.), files this petition for review under Rule 45 of the Rules of Court of the Decision[1] dated June 9, 2009 and Resolution[2] dated April 14, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 106928. By way of its June 9, 2009 Decision, the CA reversed and set aside the March 31, 2008 Decision[3] and October 28, 2008 Resolution[4] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 10-002759-07 affirming the August 15, 2007 Decision[5] of Labor Arbiter Danna M. Castillon (LA Castillon), which found the petitioner to be illegally dismissed.

The CA exonerated the petitioner from the charges of destroying Graphics, Inc.'s property and disloyalty to Graphics, Inc. and its objectives. However, the CA ruled that the petitioner's unjustified refusal to render overtime work, unexplained failure to observe prescribed work standards, habitual tardiness and chronic absenteeism despite warning and non-compliance with the directive for him to explain his numerous unauthorized absences constitute sufficient grounds for his termination. Specifically:

On the ground of repeated violations of company's rules and regulations, namely: insubordination, deliberate slowdown of work, habitual tardiness, absence without official leave and inefficiency; We find that public respondent commission, in affirming labor arbiter Castillon, rushed into conclusion that petitioner has failed to convince the commission a quo on what company rules and regulations private respondent had committed. x x x

The foregoing, notwithstanding, we find that private respondent should be dismissed on the ground of willful disobedience of the warning and memoranda issued by petitioner. To be validly dismissed on the ground of willful disobedience requires the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being 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.

Private respondent's continued refusal to acknowledge receipt and to present his defense against the notice of suspension and of dismissal, render him guilty of insubordination or willful disobedience of the reasonable and lawful order of petitioner. These orders were made with [regard] to his duties to the company as a punctual employee and as the sole and exclusive operator of the printing machine provided to him by petitioner. Therefore, the obligation to answer rests upon him who is alleged to have committed infractions against his employer, otherwise he is deemed to have waived his right to be heard and would be made to suffer the consequences of such refusal.

Private respondent is also accused of insubordination for the reason that he stubbornly refused to follow the

orders of his General Manager to show the latter and check on the computer using the CMYK guide, whether the colors he is running in his printing machine are correct. After initially following the said order, and confirming that the first color, cyan, running in the machine was correct, he failed to observe the same procedure on the second color magenta and did not even bother to remedy it after it was pointed out by the Computer Graphic Artist supervising him. Since this was not the first time he was reprimanded for carelessly rushing the work assigned to him, disregarding certain procedures to ensure the quality of the same and thereby resulting in mediocre products which earn the ire of the company's clientele, his stubborn refusal to change shows a clear act of insubordination against private respondent.

x x x

Private respondent has pending work on La Salleño Magazine on May 25-26, 2004, but refused to do overtime in order to finish the same. Aside from this, he has two other works required for him to finish, mainly: PCU-Manila Brochure and Hijas de Maria souvenir program. In procuring absences during the times when workload was heavy, the printing deadlines for the months of April and May were not met and petitioner incurred losses from overtime pay for the other employees who were forced to take on the work left by private respondent and from penalties imposed by clients for every day of delay after the deadlines set for the delivery of the printed materials.

x x x

Furthermore, private respondent's refusal to render overtime work when required upon him, contributed to losses incurred by the petitioner. Public respondent commission has erred in ruling that rendition of the same is not mandatory. Art. 89 of the Labor Code empowers the employer to legally compel his employees to perform overtime work against their will to prevent serious loss or damage, to wit:

x x x x

In the present case, petitioner's business is a printing press whose production schedule is sometimes flexible and varying. It is only reasonable that workers are sometimes asked to render overtime work in order to meet production deadlines.

On or before May 26, 2004, private respondent was asked to render overtime work but he refused to do so despite the "rush" orders of customers and petitioner's need to meet its deadlines set by the former. In fact, he reneged on his promise to do the same, after being issued an Overtime Slip Form by Mylene Altovar, and instead went out with another individual, as attested by his wife after calling the company to inform it of such absence. He knew that he was going to be unavailable for work on the following day, but instead of trying to finish his work before that date by rendering overtime, due to the "rush" in meeting the deadlines, he opted to forego with the same, and thereby rejecting the order of petitioner.

x x x

Petitioner further alleges habitual tardiness on the part of private respondent for which he received a warning notice in April and May 2004. For the month of January and February 2004 alone, he reported late for work 23 times and on May 2004, just prior to his suspension, he was yet again late for 6 times. The Daily Time Records of private respondent contained the entries which [were] personally written by him. x x x

Finally, on petitioner's allegation on private respondent's absences without official leave, We hold that the latter's actions were indeed unjustified. Despite the warning issued to private respondent by petitioner on his AWOLs during the month of April and May, and instead of reporting to the company to deny or to refute the basis for recommendation of dismissal, he absented himself from Jun. 15 to Jul. 15, 2004, which prompted to (sic) the termination of his employment. The ruling of the labor arbiter that since the final recommendation of petitioner was "dismissal for cause", private respondent cannot be faulted for his failure to report for work on Jun. 15 does not hold water. What was given to private respondent on Jun. 15, 2004 was indeed in the form of

a notice of dismissal. However, it was only recommended that he be dismissed from his employment and is still given the opportunity to present his defense to deny or refute the said recommendation of company.[6] x x x (Citations omitted)

Nonetheless, while the CA recognized the existence of just causes for petitioner's dismissal, it found the petitioner entitled to nominal damages in the amount of P5,000.00 due to Graphics, Inc.'s failure to observe the procedural requirements of due process.

Private respondent was not accorded due process when petitioner issued and served to the former the written notice of dismissal dated Jun. 15, 2004. A careful perusal of the records will show that the notice issued by the employer gives the employee only twenty-four (24) hours to answer and put up his defenses against the accusations laid upon him by the company, in contravention with the rule of a "reasonable" period as construed in *King of Kings Transport v. Mamac*. Moreover, the scheduled hearing in front of Leticia D. Lago was on the same date at 1:00 p.m., which left private respondent with no recourse to secure the services of a counsel, much less prepare a good rebuttal against the alleged evidences for the valid dismissal of the former.

x x x x

x x x Considering that petitioner has made efforts in the past to afford private respondent the opportunity to be able to defend himself, but the latter, instead of availing such remedy, rejected the same; We have taken this into consideration, and impose [P]5,000.00 as the penalty for the employer's failure to comply with the due process requirement.[7] (Citations omitted)

This Court finds no cogent reason to reverse the assailed issuances of the CA.

First, the petitioner's arbitrary defiance to Graphics, Inc.'s order for him to render overtime work constitutes willful disobedience. Taking this in conjunction with his inclination to absent himself and to report late for work despite being previously penalized, the CA correctly ruled that the petitioner is indeed utterly defiant of the lawful orders and the reasonable work standards prescribed by his employer.

This particular issue is far from being novel as this Court had the opportunity in *R.B. Michael Press v. Galit*[8] to categorically state that an employer has the right to require the performance of overtime service in any of the situations contemplated under Article 89 of the Labor Code and an employee's non-compliance is willful disobedience. Thus:

For willful disobedience to be a valid cause for dismissal, these two elements must concur: (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.

In the present case, there is no question that petitioners' order for respondent to render overtime service to meet a production deadline complies with the second requisite. Art. 89 of the Labor Code empowers the employer to legally compel his employees to perform overtime work against their will to prevent serious loss or damage:

Art. 89. EMERGENCY OVERTIME WORK

Any employee may be required by the employer to perform overtime work in any of the following cases:

x x x x

(c) When there is urgent work to be performed on machines, installations, or equipment, in order to avoid serious loss or damage to the employer or some other cause of similar nature;

x x x

In the present case, petitioners' business is a printing press whose production schedule is sometimes flexible and varying. It is only reasonable that workers are sometimes asked to render overtime work in order to meet production deadlines.

x x x

The issue now is, whether respondent's refusal or failure to render overtime work was willful; that is, whether such refusal or failure was characterized by a wrongful and perverse attitude. In *Lakpue Drug Inc. v. Belga*, willfulness was described as "characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination." The fact that respondent refused to provide overtime work despite his knowledge that there is a production deadline that needs to be met, and that without him, the offset machine operator, no further printing can be had, shows his wrongful and perverse mental attitude; thus, there is willfulness.

Respondent's excuse that he was not feeling well that day is unbelievable and obviously an afterthought. He failed to present any evidence other than his own assertion that he was sick. Also, if it was true that he was then not feeling well, he would have taken the day off, or had gone home earlier, on the contrary, he stayed and continued to work all day, and even tried to go to work the next day, thus belying his excuse, which is, at most, a self-serving statement.

After a re-examination of the facts, we rule that respondent unjustifiably refused to render overtime work despite a valid order to do so. The totality of his offenses against petitioner R.B. Michael Press shows that he was a difficult employee. His refusal to render overtime work was the final straw that broke the camel's back, and, with his gross and habitual tardiness and absences, would merit dismissal from service.[9] (Citations omitted)

Noticeably, this case and *R.B. Michael Press* share a parallelism. Similar to the dismissed employee in the above-quoted case, the petitioner exhibited willful disobedience to a reasonable order from his employer and this Court does not find any reason why petitioner should be accorded a different treatment.

Second, the petitioner's failure to observe Graphics, Inc.'s work standards constitutes inefficiency that is a valid cause for dismissal. Failure to observe prescribed standards of work, or to fulfill reasonable work assignments due to inefficiency may constitute just cause for dismissal. Such inefficiency is understood to mean failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results. As the operator of Graphics, Inc.'s printer, he is mandated to check whether the colors that would be printed are in accordance with the client's specifications and for him to do so, he must consult the General Manager and the color guide used by Graphics, Inc. before making a full run. Unfortunately, he failed to observe this simple procedure and proceeded to print without making sure that the colors were at par with the client's demands. This resulted to delays in the delivery of output, client dissatisfaction, and additional costs on Graphics, Inc.'s part.

Security of tenure is indeed constitutionally guaranteed. However, this should not be indiscriminately invoked to deprive an employer of its management prerogatives and right to shield itself from incompetence, inefficiency and disobedience displayed by its employees. The procedure laid down by Graphics, Inc. which the petitioner was bound to observe does not appear to be unreasonable or unnecessarily difficult. On the contrary, it is necessary and relevant to the achievement of Graphics, Inc.'s objectives. The petitioner's non-compliance is therefore hard to comprehend.

While a penalty in the form of suspension had already been imposed on the petitioner for his habitual tardiness and repeated absenteeism, the principle of "totality of infractions" sanctions the act of Graphics, Inc. of

considering such previous infractions in decreeing dismissal as the proper penalty for his tardiness and unauthorized absences incurred afterwards, in addition to his refusal to render overtime work and conform to the prescribed work standards. In *Merin v. National Labor Relations Commission*,^[10] this Court expounded on the principle of totality of infractions as follows:

The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty[.] Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests.^[11] (Citations omitted)

This Court cannot condone the petitioner's attempt to belittle his habitual tardiness and absenteeism as these are manifestation of lack of initiative, diligence and discipline that are adverse to Graphics, Inc.'s interest. In *Challenge Socks Corporation v. Court of Appeals*,^[12] this Court said that it reflects an indifferent attitude to and lack of motivation in work. It is inimical to the general productivity and business of the employer. This is especially true when it occurred frequently and repeatedly within an extensive period of time and despite several warnings.

This Court cannot likewise agree to the petitioner's attempt to brush aside his refusal to render overtime work as inconsequential when Graphics, Inc.'s order for him to do so is justified by Graphics, Inc.'s contractual commitments to its clients. Such an order is legal under Article 89 of the Labor Code and the petitioner's unexplained refusal to obey is insubordination that merits dismissal from service.

The petitioner harped on the improper motivations of Graphics, Inc. in ordering his dismissal, primary of which was the complaint he filed before the Department of Labor and Employment that eventually led to the finding of violations of laws on labor standards and tax regulations. However, the petitioner fails to convince that he is not the incorrigible employee portrayed by the evidence presented by the respondents. The petitioner does not deny that he had been habitually tardy and absent and continued being so even after he had been warned and thereafter suspended. Neither does he deny that he refused to render overtime work and that Graphics, Inc. had a legally acceptable reason for requiring him to do so. The petitioner can only argue that his refusal is not tantamount to willful disobedience, which of course, is disagreeable. In fact, the petitioner's refusal despite knowledge that his regular presence at work and extended hours thereat on some occasions were necessary for Graphics, Inc. to meet its obligations to its clients does not only suggest willfulness on his part but even bad faith. On the other hand, the petitioner only proffers a general denial of the claim that Graphics, Inc. earned the ire of its clients due to the defective output resulting from the petitioner's failure to comply with the prescribed work standards.

Even assuming as true the petitioner's claim that such complaint gave rise to ill-feelings on Graphics, Inc.'s part, he cannot reasonably and validly suggest that the respondents have stripped themselves of the right to dismiss him for his deliberate disobedience and lack of discipline in regularly and punctually reporting for work.

Undoubtedly, Graphics, Inc. complied with the substantive requirements of due process in effecting employee dismissal. However, the same cannot be said insofar as the procedural requirements are concerned. In *King of Kings Transport, Inc. v. Mamac*,^[13] this Court laid down the manner by which the procedural due requirements

of due process can be satisfied:

To clarify, the following should be considered in terminating the services of employees:

(1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[14]

As correctly observed by the CA, Graphics, Inc. failed to afford the petitioner with a reasonable opportunity to be heard and defend itself. An administrative hearing set on the same day that the petitioner received the memorandum and the twenty-four (24) – hour period for him to submit a written explanation are far from being reasonable.

Furthermore, there is no indication that Graphics, Inc. issued a second notice, informing the petitioner of his dismissal. The respondents admit that Graphics, Inc. decided to terminate the petitioner's employment after he ceased reporting for work from the time he received the memorandum requiring him to explain and subsequent to his failure to submit a written explanation. However, there is nothing on record showing that Graphics, Inc. placed its decision to dismiss in writing and that a copy thereof was sent to the petitioner.

Notably, the respondents do not question the findings of the CA. The respondents chose not to convince this Court otherwise by not filing an appeal, which reasonably suggests that Graphics, Inc.'s failure to comply with the procedural requirements of due process is admitted.

Nonetheless, while the CA finding that the petitioner is entitled to nominal damages as his right to procedural due process was not respected despite the presence of just causes for his dismissal is affirmed, this Court finds the CA to have erred in fixing the amount that the Company is liable to pay. The CA should have taken cognizance of the numerous cases decided by this Court where the amount of nominal damages was fixed at P30,000.00 if the dismissal was for a just cause. One of such cases is *Agabon v. National Labor Relations Commission*,^[15] on which the CA relied in the Assailed Decision and was reiterated in *Genuino v. National Relations Commission*^[16] as follows:

In view of Citibank's failure to observe due process, however, nominal damages are in order but the amount is

hereby raised to PhP 30,000 pursuant to *Agabon v. NLRC*. The NLRC's order for payroll reinstatement is set aside.

In *Agabon*, we explained:

The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at [P]30,000.00. We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules.

Thus, the award of PhP 5,000 to Genuino as indemnity for non-observance of due process under the CA's March 31, 2000 Resolution in CA-G.R. SP No. 51532 is increased to PhP 30,000.[17]

WHEREFORE, premises considered, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 106928 is AFFIRMED with MODIFICATION in that respondent New Age Graphics, Inc. is hereby ordered to pay petitioner Billy M. Realda nominal damages in the amount of Thirty Thousand Pesos (P30,000.00).

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Sereno, JJ., concur.

[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario, concurring; rollo, pp. 34-64.

[2] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Mario L. Guariña III and Ricardo R. Rosario, concurring; *id.* at 66.

[3] *Id.* at 78-85.

[4] *Id.* at 86-89.

[5] *Id.* at 67-77.

[6] *Id.* at 50-56

[7] *Id.* at 58-61.

[8] G.R. No. 153510, February 13, 2008, 545 SCRA 23.

[9] *Id.* at 33-35.

[10] G.R. No. 171790, October 17, 2008, 569 SCRA 576.

[11] *Id.* at 581-582.

[12] G.R. No. 165268, November 8, 2005, 474 SCRA 356.

[13] G.R. No. 166208, June 29, 2007, 526 SCRA 116.

[14] *Id.* at 125-126.

[15] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[16] G.R. Nos. 142732-33, December 4, 2007, 539 SCRA 342.

[17] Id. at 362-363, citing *Agabon v. NLRC*, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 617.

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