

GRANDTEQ INDUSTRIAL STEEL PRODUCTS, INC., ABELARDO GONZALES, RONALD A. DE LEON, NOEL AGUIRRE, FELIX ARPIA, AND NICK EUGENIO, PETITIONERS, VS. ANNALIZA M. ESTRELLA, RESPONDENT.

G.R. No. 192416. March 23, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court assails the Decision[3] and the Resolution[4] of the Court of Appeals (CA), respectively dated November 26, 2009 and May 17, 2010.

The Facts

Petitioner Grandteq Industrial Steel Products, Inc. (Grandteq), a domestic corporation engaged in the sale and distribution of welding electrodes, alloy steels, aluminum and copper alloys,[5] hired respondent Annaliza Estrella (Estrella) on November 15, 2001, as a sales engineer.[6]

Abelardo M. Gonzales (Gonzales), Ronald A. de Leon (De Leon), Noel Aguirre (Aguirre), Felix Arpia (Arpia), and Nick Eugenio (Eugenio) are officers of Grandteq.[7]

Sometime in January 2004, Grandteq and Estrella entered into a Purchase/Assignment of Car Agreement,[8] whereby the former undertook to purchase a car for Estrella, who would in turn refund the purchase price to Grandteq in 100 monthly installments. The agreement likewise stated that the "company shall retain the ownership of the car until the car loan is fully paid." To complement the terms of the agreement, Estrella executed a Promissory Note.[9]

When Estrella defaulted in her payments, Grandteq instructed her on September 15, 2004 to leave the car in the office premises.[10] Estrella failed to abide by the company's directive;[11] hence, on September 18, 2004, Grandteq sent her another memorandum requiring her to explain her "insubordination." [12]

In her reply to the memorandum, Estrella asserted that she had already paid the P50,000.00 downpayment for the vehicle, and that Grandteq had no valid cause to demand its surrender.[13]

Estrella also had claims against the company. On September 17, 2004, she filed a complaint for recovery of sales commissions, allowances, and other benefits before the Labor Arbiter (LA).[14] The complaint alleged that Grandteq refused to release her sales commissions and incentives.[15] She submitted a computation of such claims to the LA on October 21, 2004.[16]

Meanwhile, on September 20, 2004, Estrella filed an application for leave of absence, and subsequently, submitted a medical certificate recommending that she rest for three (3) weeks. Grandteq denied her application; nonetheless, she went on leave of absence effective September 22, 2004 until October 14, 2004.[17]

On October 1, 2004, Estrella tried to withdraw her salary for the period September 15 to 30, 2004 from an Automated Teller Machine. To her dismay, she discovered that her salary was not remitted by Grandteq.[18] Thus, on October 4, 2004, she amended her complaint to include nonpayment of salary. She likewise imputed illegal deduction of expanded withholding tax against Grandteq's officers.[19]

On October 15, 2004, Estrella went to the office of Grandteq to report for work, but the security guard refused her entry, allegedly upon the behest of Grandteq's vice-president, De Leon.[20] Aggrieved, respondent again amended her complaint to include illegal dismissal as one of her causes of action. She also demanded for the payment of moral damages and attorney's fees.[21]

Traversing the complaint, Grandteq averred that Estrella was validly dismissed because she abandoned her job when she did not report for work for three weeks despite the disapproval of her leave application; that she committed insubordination when she failed to obey an official order directing her to return a company vehicle; that she violated the confidence and trust reposed in her by the company when she negotiated in her personal capacity with a client, Philex Mining Corporation, at the time when she was allegedly sick; and that she failed to attend the administrative hearing initiated by the company on October 29, 2004; thus, Grandteq deemed her to have waived her right to be heard. Estrella was furnished with a Notice of Termination[22] on November 12, 2004, indicating that she was being dismissed for gross and habitual neglect of duty and fraud or willful breach of trust. Grandteq denied any outstanding sales commissions or incentives due Estrella.[23]

The LA[24] ruled in favor of Estrella and held that Grandteq had no justifiable cause to terminate her employment. Abandonment could not be inferred from her absence sans any overt act showing that she did not want to work anymore. Besides, she went on sick leave with a prior notice to Grandteq. The immediate filing of a complaint for illegal dismissal also negated a finding of abandonment.

Lastly, the LA decreed that the notice of termination served to Estrella on November 12, 2004 was evidently a mere afterthought to cast a

semblance of validity to her termination. As shown in the notice, as early as September 22, 2004, Grandteq already decided to terminate her services even before she could present her side and refute the charges against her.

Estrella's money claims were granted, but no specific computation was made as to her claim for sales commissions and incentives. The decretal portion of the LA's decision[25] reads:

WHEREFORE, the foregoing considered, judgment is hereby rendered declaring [respondent] Annaliza M. Estrella to have been illegally dismissed. [Petitioners] are ordered to reinstate [respondent] to her former position without loss of seniority rights and other benefits and to her full backwages from the time her compensation was withheld up to the time of her actual reinstatement. Likewise[, petitioner] Grandteq Industrial Steel Products[,] Inc. is ordered to pay the monetary awards pursuant to the computation of the Computation Unit of this Commission forming part of the records of this case, as follows:

Basic Wage

P 6,000.00

Allowance

5,000.00

P11,000.00

Backwages: 9/22/04 - 8/30/06

P11,000 x 23.30 mos.

256,300.00

13[th] Month Pay

½ of P256,300

21,358.33

SILP: P11,000/26 x 5/12 x 23.30.mos.

4,107.37

281,765.71

Moral Damages

10,000.00

Exemplary Damages

10,000.00

20,000.00

301,765.71

Atty.'s Fees

28,176.57

TOTAL

P329,942.28

Other claims are dismissed for lack of merit.

SO ORDERED.[26]

Both parties appealed to the National Labor Relations Commission (NLRC). Grandteq insisted that Estrella's dismissal was based on valid grounds and was implemented with due process.[27]

Estrella, on the other hand, claimed that her unpaid sales commissions, incentives, and salary for the period September 15 to 30, 2004 should be indicated in the dispositive portion of the LA's decision. She further prayed that Grandteq officers Gonzales, De Leon, Aguirre, Arpia, and Eugenio be declared solidarily liable with the company.[28]

The NLRC found that Grandteq had valid grounds to dismiss Estrella since her allegation of illegal termination was not sufficiently substantiated by the security guard's mere refusal to allow her entry into Grandteq's premises. Estrella's act of going on leave without Grandteq's approval constituted gross and habitual neglect of duty. The NLRC decreed that Grandteq merely failed to comply with procedural due process. Hence, the LA's decision was modified as follows:

WHEREFORE, premises considered, the appeals are PARTLY GRANTED and the Decision dated July 31, 2006 is MODIFIED finding that respondents has (sic) valid ground to terminate complainant but for failure to comply with the standards of due process, respondents shall indemnify complainant in the amount of P20,000.00 and ordering that the records of this case be remanded to the office of origin for the disposition of

complainant's money claims. The award of damages and attorney's fees were not raised on appeal, hence, STANDS.

SO ORDERED.[29]

Grandteq sought recourse with the CA through a petition for certiorari. On November 26, 2009, the CA reinstated the LA's Decision and ordered the case remanded to the LA for the resolution of Estrella's claims for commissions and allowances, viz.:

ACCORDINGLY, the assailed June 11, 2008 Resolution is SET ASIDE. The Labor Arbiter's July 31, 2006 Decision is REINSTATED with the directive that it must further hear and decide on petitioner's claims for sales commission, allowances and other benefits, car incentive, S.A. (Salesman Advance) commission, and other incentives" as specified in her second amended complaint.

SO ORDERED.[30]

Petitioners interposed the present recourse when the CA denied[31] their motion for reconsideration.[32] They proffer this sole argument:

THE HONORABLE COURT OF APPEALS HAD DECIDED A QUESTION OF SUBSTANCE IN PATENT DISREGARD OF THE PROVISIONS OF THE LABOR CODE, THE PHILIPPINE CONSTITUTION, THE RULES OF COURT, AND PERTINENT DECISIONS OF THIS HONORABLE SUPREME COURT.[33]

We deny the petition.

The petition hinges on the question of whether the acts imputed to Estrella constitute gross and habitual neglect of duty and loss of trust and confidence so as to provide just cause for her dismissal.

At the outset, we stress that these issues involve questions of fact, the determination of which entails an evaluation of the evidence on record. As a general rule, purely factual questions are not passed upon in petitions for review under Rule 45, for this Court does not try facts but merely relies on

the expert findings of labor tribunals whose statutory function is to determine the facts. In the present case, however, in view of the conflicting factual findings of the LA and the CA on onehand, and the NLRC on the other, the Court is constrained to resolve the factual question at hand.[34]

A judicious review of the records discloses that Grandteq failed to prove that Estrella was justifiably dismissed due to lack of trust and confidence and gross and habitual neglect of duty.

Grandteq attributes loss of trust and confidence to the following acts: (1) insubordination when Estrella disobeyed a company directive ordering her to return a company vehicle; and (2) transacting, in her personal capacity, with a client of Grandteq.

Insubordination, as a just cause for the dismissal of an employee, necessitates the concurrence of at least two requisites: (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.[35] The facts of the case do not show the presence of the second requisite. The failure to return the vehicle and the Purchase/Assignment of Car Agreement, from which Grandteq derives its claim of ownership over the car, had no relation at all to the discharge of respondent's duties as a sales engineer.

There is likewise no basis for a finding of legitimate loss of confidence because Grandteq failed to show that Estrella held a position of trust and confidence. Firm is the rule that loss of confidence as a just cause for

termination of employment is premised on the fact that the employee concerned holds a position of trust and confidence, where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected.[36] The betrayal of this trust is the essence of the offense for which an employee is penalized.[37]

The job description of Estrella dated February 19, 2004, signed by her and by Grandteq's Vice President for Sales, Aguirre, and approved by De Leon, Vice-President for Administration, and Gonzales, President, confirms these findings:

- Should report to office 8:00 a.m. regularly from Monday to Saturday.
- Submit itinerary/report of client visits.
- Will receive allowance of P5,000.00 monthly.
- 100Km radius, excess would be reimburse[d] to the office. (Gasoline Allowance)
- Allowed North visit at least one week/month allocation of P800.00. (This covers board, transportation and meal allowance)
- Failure to report in office will be deducted to (sic) salary.[38]

Grandteq also imputes gross and habitual neglect of duty when Estrella was absent from work for three (3) weeks without an approved application for leave.

Gross negligence connotes want of care in the performance of one's duties, while habitual neglect implies repeated failure to perform one's duties for a period of time, depending on the circumstances. The single or isolated act of negligence does not constitute a just cause for the dismissal of an employee.[39]

We find no gross and habitual neglect in this case, and we quote with approval the following disquisition of the CA:

Grandteq does not dispute receiving Estrella's Medical Certificate and worse, proffers no explanation why it did not act on Estrella's application for sick leave. And even if, arguendo, such absences were established, still, they would merit at best mere suspension from service. The penalty of dismissal would be too harsh, considering that apparently, management had no complaint as regards Estrella's quality of work.

Moreso that it is settled that an employee's excusable and unavoidable absences does (sic) not amount to an abandonment of his employment. Abandonment, as a just and valid ground for termination, means the deliberate, unjustified refusal of an employee to resume his employment. For abandonment to be a valid ground for dismissal, two (2) elements must be proved: the intention of an employee to abandon, coupled with an overt act from which it may be inferred that the employee has no more intention to resume his work. The burden of proof is on the employer to show a clear and deliberate intent on the part of the employee to discontinue employment.

Here, these elements were not established. Estrella's actions after her absences negate an intent to abandon her job. Estrella's application for sick leave, the Medical Certificate she secured, and the letter from her lawyer that she was going on sick leave and more importantly, her going back to the company premises on October 15, 2004 - all indicate her intention to resume work after the lapse of the period of her leave of absence. It would be the height of inequity and injustice to declare Estrella to have abandoned her job on the mere pretext that her sick leave application was not approved. Especially so that prior to her dismissal, she had no record of infraction of company rules for which she could have been sanctioned by either warning, reprimand or suspension. Besides, her filing of an illegal dismissal case clearly contradicts Grandteq's allegation that she abandoned her job.[40]

We must stress anew that, in termination cases, the burden rests upon the employer to show that the dismissal of an employee is for just cause, and failure to do so would mean that the dismissal is not justified.[41] Failure to

discharge that burden would mean that the dismissal is not justified and, therefore, illegal.[42] Grandteq miserably failed to discharge this onus, and Estrella's termination from employment was, thus, illegal.

Anent Estrella's claim for sales commissions and incentives, we agree with the uniform ruling of the NLRC and the CA that the matter needs the further assessment of the LA, thus:

A review of the records shows that Estrella's money claims referred to unpaid sales commissions, allowances and other incentives. And while the Labor Arbiter held:

"As regards the monetary claims, this office is in accord with the complainant that respondents have failed to establish by sufficient with evidence (sic) that complainant is not entitled thereto. This is based on the principle that each party must prove his affirmatives (sic) allegations. On the other hand, complainant has adduced evidence of her entitlement thereto. (Annex `B' is `B-10')."

The court notes, however, that he failed to assess and weigh the parties' arguments on the matter. In fact, the Labor Arbiter's decision did not touch upon or rule on Grandteq's arguments and evidence against Estrella's claims. As a result, the NLRC and this Court have admittedly no basis in affirming his findings.

Verily, the resolution of Estrella's entitlement to her commissions and allowances requires conscientious evaluation and assessment of the evidence adduced by the parties, which is best undertaken by the Labor Arbiter. It thus is just proper that said money claims be remanded to the Labor Arbiter for proper evaluation of the evidence of both parties.[43]

Lastly, we deem it imperative to resolve the question of whether Grandteq's officers, who are co-petitioners herein, are solidarily liable with the company.

There is solidary liability when the obligation expressly so states, when the law so provides, or when the nature of the obligation so requires.[44] In *MAM Realty Development Corporation v. NLRC*,[45] the solidary liability of corporate officers in labor disputes was discussed in this wise:

A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent. True, solidary liabilities may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases:

- When directors and trustees or, in appropriate cases, the officers of a corporation—

(a) vote for or assent to patently unlawful acts of the corporation;

(b) act in bad faith or with gross negligence in directing the corporate affairs;

x x x x

In labor cases, for instance, the Court has held corporate directors and officers solidarily liable with the corporation for the termination of employment of employees done with malice or in bad faith.

From the decisions of the LA, the NLRC, and the CA, there is no indication that Estrella's dismissal was effected with malice or bad faith on the part of Grandteq's officers. Their liability for Estrella's illegal dismissal, the consequential monetary award arising from such dismissal and the other money claims awarded in the LA's decision, as correctly affirmed by the CA, could thus only be joint, not solidary. This pronouncement does not extend to Estrella's claims for commissions, allowances, and incentives, as the same are still subject to the LA's scrutiny.

WHEREFORE, foregoing considered, the petition is hereby DENIED, and the November 26, 2009 Decision and the May 17, 2010 Resolution of the Court of Appeals are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion,[*]Peralta, and Abad, JJ., concur.

*Additional member in lieu of Associate Justice Jose Catral Mendoza per Special Order No. 975 dated March 21, 2011.

[1] Also known as Abelardo Gonzalez in other documents.

[2] Also known as Ronaldo de Leon in other documents.

[3] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Andres B. Reyes, Jr. and Marlene Gonzales-Sison, concurring; rollo, pp. 39-56.

[4] Id. at 57.

[5] Supra note 3, at 40.

[6] Rollo, p. 311

[7] Id. at 13.

[8] Id. at 60-62.

[9] Executed by Estrella on January 26, 2004, but notarized only on September 8, 2004; id. at 63.

[10] Grandteq's instruction for Estrella to leave the car was relayed to the company's security guard, Ramil P. Raga, as specified in the incident report submitted to Grandteq Administration Office; id. at 65.

[11] Ramil P. Raga's incident report; id.

[12] Id. at 67.

[13] Id. at 319-320.

[14] Id. at 66.

[15] Estrella's position paper and affidavit; id. at 300-310.

[16] Id. at 131-135.

[17] Id. at 322-323.

[18] Supra note 15, at 309.

[19] Rollo, p. 70.

[20] Supra note 15, at 310.

[21] Rollo, p. 71.

[22] Id. at 337-338.

[23] As culled from Grandteq's position paper and reply to Estrella's position paper; id. at 324-331, 360-369.

[24] Labor Arbiter Enrique Flores, Jr.

[25] Rollo, pp. 110-118.

[26] Id. at 117-118.

[27] Id. at 136-173.

[28] Id. at 119-135.

[29] Id. at 106.

[30] Supra note 3, at 55.

[31] Supra note 4.

[32] Rollo, pp. 472-480.

[33] Id. at 26.

[34] *Gulf Air v. NLRC*, G.R. No. 159687, April 24, 2009, 586 SCRA 469, 477, citing *School of the Holy Spirit of Quezon City v. Taguiam*, G.R. No. 165565, July 14, 2008, 558 SCRA 223, 229; and *Ballao v. CA*, G.R. No. 162342, October 11, 2006, 504 SCRA 227, 234.

[35] *Gilles v. CA*, G.R. No. 149273, June 5, 2009, 588 SCRA 298, 313.

[36] *Caingat v. NLRC*, 493 Phil. 299, 308 (2005).

[37] Id.

[38] Rollo, p. 262.

[39] *Genuino Ice Company, Inc. v. Magpantay*, G.R. No. 147790, June 27, 2006, 493 SCRA 195, 205-206.

[40] Supra note 3, at 52-53.

[41] *Lima Land, Inc., Leandro Javier, Sylvia Duque, and Premy Ann Beloy v. Marlyn Cuevas*, G.R. No. 169523, June 16, 2010, citing *Philippine Transmarine Carriers, Inc. v. Carilla*, G.R. No. 157975, June 26, 2007, 525 SCRA 586, 594.

[42] *Great Southern Maritime Services Corporation v. Acuña*, G.R. No. 140189, February 28, 2005, 452 SCRA 422, 437.

[43] Supra note 3, at 54-55.

[44] *Querubin L. Alba and Rizalinda D. de Guzman v. Robert L. Yupangco*, G.R. No. 188233, June 29, 2010.

[45] 314 Phil. 838, 844-845 (1995), as cited in *Querubin L. Alba and Rizalinda D. de Guzman v. Robert L. Yupangco*; id.

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