

ROQUE B. BENITEZ AND SANTA FE LABOR UNION-FEDERATION OF FREE WORKERS, PETITIONERS, VS. SANTA FE MOVING AND RELOCATION SERVICES/VEDIT KURANGIL, RESPONDENTS.

G.R. No. 208163. April 20, 2015

Ponente: BRION, J.

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BRION, J.:

We resolve the present petition for review on certiorari[1] which seeks to annul the November 7, 2012 decision[2] and July 10, 2013 resolution[3] of the Court of Appeals in CA-G.R. SP No. 126213.

The Antecedents

On February 8, 2011, petitioners Roque V. Benitez (Benitez) and Santa Fe Labor Union (union) filed a complaint for unfair labor practice and illegal dismissal, with money claims,[4] against respondents Santa Fe Moving and Relocation Services (company) and its Managing Director, Vedit Kurangil (Kurangil), an Australian citizen. The company is engaged in providing relocation and moving services, including visa, immigration and real estate services. Benitez (the union's Vice-President at the time), was its former packing and moving operator (crew leader) since June 2001.[5]

Benitez alleged that on December 20, 2010, the company served him a memorandum[6] advising him not to report for work effective immediately, thereby terminating his employment, supposedly on grounds of serious misconduct or willful disobedience. He allegedly uttered abusive words against Kurangil during the company's Christmas Party on December 18, 2010. He bewailed that he was not given the opportunity to defend himself.

Benitez claimed that during the party, he noticed that the raffle committee members were putting back the names of those who were already drawn, giving them more chances of winning. He appealed to the committee to put a stop to what they were doing, but they replied they would not "in the spirit of Christmas." He denied having verbally abused Kurangil. He presented the affidavits of co-employees Jhun Bulan, Romualdo Elib, Carlos Morata and Raul Ramirez,[7] attesting that Benitez, who was with them at one table, did not commit the offense which led to his dismissal.

Benitez argued that his dismissal constituted an unfair labor practice as he was a union officer and that it was undertaken to derail the conclusion of a collective bargaining agreement with the company. He further argued that the penalty of dismissal is disproportionate to his alleged offense, considering that it was committed during a casual gathering and had no connection to his work.

The company and Kurangil denied liability. They maintained that the company has developed a world-renowned reputation for unsurpassed customer service and quality in its line of business. They averred that during the Christmas Party on December 18, 2010, Benitez berated and maligned Kurangil by throwing foul and offensive words at him, such as "putang ina mo ka VK, gago ka!" Benitez's tirade, they added, included the company and its officers. Moreover, the incident happened in front of the company's employees, their families, as well as company

clients and guests.

The company confirmed Benitez's claim that the incident involved the conduct of the Christmas raffle. However, they differed on what triggered his unruly behavior. It alleged that while the raffle was going on, Benitez climbed up the stage and questioned the management's decision to allow contractual employees to join the raffle. This resulted in only 80% of the employees winning raffle prizes. Benitez then started hurling invectives and foul language while still on stage, mostly directed at Kurangil.

The company further alleged that even when Benitez stormed out of the stage, he kept on berating Kurangil, such that people he passed by overheard him cursing Kurangil and the company and that he even attempted to throw a beer bottle at Kurangil, but he was restrained by other employees.

The respondents presented in evidence the affidavits of Kurangil,[8] Reynaldo Delavin (Delavin),[9] a company driver, and Diana Claros Urmeneta[10] (Urmeneta),[11] a guest at the party. Their statements were corroborated by the depositions[12] of company employees Jim Robert Afos (Afos) and Marciano Atienza, Jr. (Atienza). The two disputed the statements[13] of Bulan, Elib, Morata and Ramirez — witnesses for Benitez — that they were seated together with Benitez at one table and that he caused no disturbance during the Christmas Party. Afos and Atienza stated that they were the ones who were seated with Benitez, not Bulan, Elib, Morata and Ramirez who were at a separate table with another group of employees.

Afos and Atienza added that Benitez's tirade started when the raffle for the grand prize was being conducted. All of a sudden, Benitez, who had not yet won a prize at that time, stood up and proceeded to the stage, fuming mad and complaining about the conduct of the raffle.[14]

The company required Benitez to explain in writing why he should not be disciplined for serious misconduct and willful disobedience of its lawful orders in connection with the incident. Benitez failed to comply and neither did he show remorse for what he did.

In view of Benitez's failure to explain his side, the company issued a memorandum[15] dated December 20, 2010 to Benitez (signed by Kurangil), terminating his employment effective on the same day, for clear violation of "Santa Fe Policy and Procedure under Conduct and Behavior as well as Labor Code of the Philippines under Art. 282 - Serious misconduct or willful disobedience by the employee of the lawful orders of his employer x x x."

The Compulsory Arbitration Rulings

In her decision[16] of September 14, 2011, Labor Arbiter Fatima Jambaro-Franco (LA Franco) dismissed the complaint for lack of merit. LA Franco found that Benitez, who was holding a position of trust and confidence as packing and moving operator, committed a serious misconduct at the company's Christmas Party on December 18, 2010 by "hurling obscene, insulting or offensive language against a superior,"[17] thereby losing the trust and confidence of his employer.

Benitez and the union appealed, reiterating that his dismissal is illegal. Moreover, they claimed, he was denied due process as he was not given the opportunity to explain his side.

The National Labor Relations Commission (NLRC) dismissed the appeal, likewise for lack of merit, in its decision[18] of March 15, 2012. It sustained LA Franco's finding that Benitez was validly dismissed for serious misconduct. However, it noted "that the respondents failed to comply with the two-notice requirement as mandated by the Labor Code in validly dismissing an employee." [19] Accordingly, it affirmed LA Franco's ruling with modification by awarding Benitez nominal damages of P50,000.00 for the violation of his right to procedural due process.

Benitez and the union moved for reconsideration, to no avail. The NLRC denied the motion,[20] prompting them to file a petition for certiorari[21] with the CA.

The CA Decision

In its decision[22] under review, the CA found no grave abuse of discretion in the NLRC's affirmation of LA Franco's ruling that Benitez was validly dismissed. It stressed that "the findings of the NLRC which adopted those of the Labor Arbiter were in accord with the evidence on record." [23] It dismissed the petition and denied Benitez's subsequent motion for reconsideration.

The Petition

Benitez and the union now ask the Court to reverse his dismissal and order his reinstatement with full backwages, grant his money claims, award him moral and exemplary damages, attorney's fees, as well as litigation expenses. They submit in the main that the CA committed grave and palpable error in misappreciating the facts and applicable jurisprudence in this case, especially the *Samson v. NLRC*[24] ruling.

They contend that contrary to the appellate court's opinion, Benitez was not liable for serious misconduct. They insist that Benitez did not malign Kurangil, during the Christmas Party and that if he indeed became unruly on that day, the company guards should have restrained him and made a report about it, but there was no such intervention from the guards.

At any rate, they argue, Benitez should not have been dismissed for the serious misconduct he allegedly committed since it was not in connection with his work as moving and relocation operator. Moreover, for misconduct to be serious, it must be of such a grave and aggravated character and not merely trivial and unimportant as the Court declared in *Samson* which, they claim, has factual similarities with the present case.

The Respondents' Case

In their Comment (on the Petition),[25] the respondents pray that the petition be dismissed and the assailed CA rulings modified through a deletion of the award of nominal damages to Benitez and the reinstatement of LA Franco's September 14, 2011 decision. In the alternative, they ask that the nominal damages award be tempered.

They argue that the petitioners have not made out a case showing that there are special and compelling reasons requiring the exercise by this Court of its discretionary power of judicial review. They submit that the petition virtually raises the same arguments that had already been duly resolved, based on evidence supporting Benitez's dismissal for cause. Thus, the petition should be rejected outright for it raises only questions of facts and not of law.

The Court's Ruling

The procedural question

Are the questions raised by the petitioners factual in nature, or are they of law? The respondents contend that they are questions of fact and are therefore not allowed in a petition for review on certiorari under Rule 45, Section 1 of the Rules of Court. Thus, they ask for an outright dismissal of the petition as the Court is not a trier of facts.[26]

The respondents' arguments failed to persuade us. The labor arbiter, the NLRC and the CA uniformly ruled that there is substantial evidence to warrant Benitez's dismissal for serious misconduct. Although up to this stage of the proceedings Benitez insists that he did not commit a serious misconduct, he argues lengthily that the penalty

of dismissal is not commensurate to the offense as defined by law.

As we see matters, the question before us is what the law is on the offense Benitez committed based on the facts of the case, which we find to be clearly a question of law.[27] It does not involve the probative value of the evidence adduced, which is a question of fact.[28] We thus find no procedural infirmity in the petition.

The substantive aspect of the case

Serious misconduct is a just cause for termination of employment under the law.[29] Article 282 of the Labor Code provides: "An employer may terminate an employment for any of the following causes: (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work, x x x."

Benitez and his union stand firm on their position that he was not liable for serious misconduct on account of his display of unruly behavior during the company's Christmas Party on December 18, 2010 for reasons earlier discussed. On the other hand, the respondents maintain that he committed a serious misconduct that warranted his dismissal.

We find the petition unmeritorious.

Despite his denial, there is substantial evidence that Benitez maligned the company's managing director and the company itself during their Christmas Party on December 18, 2010. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[30]

Benitez presented the affidavits[31] of four company employees — Bulan, Elib, Morata and Ramirez — who stated under oath that Benitez was seated with them at one table and that he did not cause any disturbance during the party. The testimony of these four employees were belied by their co-employees Afos and Atienza who executed a joint affidavit,[32] stating that Benitez was seated with them at a different table and that they witnessed him going to the stage where he lost his temper and verbally abused Kurangil in connection with the conduct of the Christmas raffle.

Delavin,[33] a company employee and guest Urmeneta[34] corroborated Kurangil's statement[35] regarding Benitez's outburst on the stage, particularly the invectives he threw at him "Putang ina mo ka VK, gago ka." Urmeneta, for instance, deposed that when Benitez left the stage angrily and walked past her and others sitting at the table, she heard him say "Putang-ina mo ka VK, gago ka.[36]

Benitez further contends that the company guards could have noticed the incident and therefore could have stepped in to maintain order, but nothing of this sort took place as there was even no report from the guards regarding the incident.

Again, we find this argument unpersuasive. There was no need for the guards to intervene because Benitez was restrained by people near the stage and who escorted him outside the premises where the party was going on as attested to by Kurangil himself,[37] as well as by Afos and Atienza.[38]

Under the circumstances, we believe that Benitez's tirade against Kurangil, the company and other company officers indeed happened. Significantly, the Christmas Party was attended not only by company officers and employees and their families, but also by company clients and guests. With such a big audience in front of him, we cannot imagine how Benitez could get away with his claim that he did not malign and disrespect Kurangil and the others.

The petitioners assert that even if Benitez committed the offense for which he was charged, it was not a serious

misconduct that would warrant his dismissal under the law. They cite *Samson v. NLRC*[39] as authority for their submission that "misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation.[40]

They further cite the following excerpt in the *Samson* case:

x x x x x x x x

1. On or about 17 December 1993, during the Sales and Marketing Christmas gathering, you made utterances of obscene, insulting, and offensive words, referring to or directed against SPC's Management Committee, in the presence of several co-employees.
2. On that same occasion, and again in the presence of several co-employees, you uttered obscene, insulting and offensive words, and made malicious and lewd gestures, all of which referred to or were directed against Mr. Eпитacio D. Titong, Jr., President and General Manager of SPC.
3. Also on that occasion, you repeated your malicious utterances and threatened to disrupt or otherwise create violence during SPC's forthcoming National Sales Conference, and enjoined your co- employees not to prepare for the said conference.
4. Subsequently, on or about 3 January 1994, you repeated your threats to some co-employees, advising them to watch out for some disruptive actions to happen during the National Sales Conference. (Emphasis ours.)

x x x x x x x x

The petitioners submit that the C A misappreciated the facts of *Samson* and the present case when it ruled that "[In the case of *Samson v. NLRC*] x x x the alleged offensive words were not uttered by petitioner in the presence of respondent company's president and general manager. In contrast, petitioner was with Mr. Kurangil when he uttered the foul words in the presence of the employees, their families and guests."[41]

We disagree. The CA committed no reversible error in not applying the *Samson* ruling in this case. *Samson's* outburst occurred during an informal Christmas gathering of company sales officials and staff and his maligned superior was not present during the gathering.

On the other hand, Benitez went up the stage and confronted his superior with a verbal abuse. Also, the petitioners cited *Samson* selectively and concealed its real thrust, thus:

The instant case should be distinguished from the previous cases where we held that the use of insulting and offensive language constituted gross misconduct justifying an employee's dismissal. In *De la Cruz vs. NLRC*, the dismissed employee shouted "saying ang pagka-professional mo!" and "putang ina mo" at the company physician when the latter refused to give him a referral slip. In *Autobus Workers' Union (AWU) v. NLRC*, the dismissed employee called his supervisor "gago ka" and taunted the latter by saying "bakit anong gusto mo tang ina mo." In these cases, the dismissed employees personally subjected their respective superiors to the foregoing verbal abuses. The utter lack of respect for their superiors was patent. In contrast, when petitioner was heard to have uttered the alleged offensive words against respondent company's president and general manager, the latter was not around. (Emphases and underscoring ours.)[42]

Further, it appears that in *Samson*, the company was ambivalent for a while on what to do with *Samson's* offense as it took several weeks after the last incident on January 3, 1994 before it asked him to explain. Moreover, the company official maligned merely admonished *Samson* during a meeting on January 4, 1994.

In contrast, the company acted swiftly and decisively in *Benitez's* case, obviously and understandably, because of the gravity and high visibility of his offense, which not only constituted a frontal verbal, and nearly physical (the attempted beer bottle throwing), assault against Kurangil. Needless to say, *Benitez's* outburst also caused grave

embarrassment for the audience who witnessed the incident, including company officials whom he likewise maligned, as well as company clients and guests.

Under the foregoing circumstances, we are convinced - as the Labor Arbiter, the NLRC and the CA had been - that Benitez's offense constituted a serious misconduct as defined by law. His display of insolent and disrespectful behavior, in utter disregard of the time and place of its occurrence, had very much to do with his work. He set a bad example as a union officer and as a crew leader of a vital division of the company. His actuations during the company's Christmas Party on December 18, 2010, to our mind, could have had negative repercussions for his employer had he been allowed to stay on the job. His standing before those clients who witnessed the incident and those who would hear of it would surely be diminished, to the detriment of the company.

Finally, we agree with the NLRC ruling that the company failed to observe the two-notice requirement in employee dismissals as Benitez was dismissed on the same day that the memorandum was served on him. The verbal directive for him to explain why he should not be dismissed, assuming that there was indeed such a directive, clearly was not in compliance with the law. Nonetheless, considering the gravity of Benitez's offense, we deem it reasonable to award him P30,000.00 in nominal damages for violation of his right to procedural due process.

WHEREFORE, premises considered, the petition is DISMISSED for lack of merit. The assailed decision and resolution of the Court of Appeals are AFFIRMED, with modification. The award of nominal damages to Benitez is reduced from P50,000.00 to P30,000.00. The complaint is DISMISSED.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Mendoza, and Leonen, JJ., concur.

[1] Rollo, pp. 3-31; filed pursuant to Rule 45 of the Rules of Court.

[2] Id. at 336-345; penned by Associate Justice Eduardo B. Peralta, Jr., and concurred in by Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion.

[3] Id. at 387-388.

[4] Id. at 561-562.

[5] Id. at 90-91; Benitez's Sinumpaang Salasay, par.

[6] Id. at 451.

[7] Id. at 534-537.

[8] Id. at 445-446.

[9] Id. at 447-448.

[10] "Diana Urmenita-Basso" as cited by the Labor Arbiter and the NLRC.

[11] Rollo, pp. 449-450.

[12] Id. at 570-571.

[13] Supra note 7.

[14] Supra note 12, par. 7.

- [15] Supra note 6.
- [16] Rollo, pp. 573-587.
- [17] Id. at 584; LA Franco's decision, p. 12, last paragraph.
- [18] Id. at 666-673; penned by Commissioner Numeriano D. Villena, with Commissioners Angelo Ang Palaña and Herminio V. Suelo, concurring.
- [19] Id. at 672; NLRC Decision, p. 7, par. 3.
- [20] Id. at 709-711; Resolution dated May 25, 2012
- [21] Id. at 713-734.
- [22] Supra note 2.
- [23] Id. at 10, par. 1.
- [24] 386 Phil. 669 (2000).
- [25] Rollo, pp. 397-441; filed December 12, 2013.
- [26] Lanuza v. Munoz, 473 Phil. 616, 627 (2004).
- [27] Cucueco v. Court of Appeals, 484 Phil. 254, 264 (2004).
- [28] Id.
- [29] C. A. Azucena, Jr., The Labor Code, with Comments and Cases, Vol. II, Sixth Edition. 2007, p. 282.
- [30] Montemayor v. Bundalian, 453 Phil. 158, 167 (2003).
- [31] Supra note 7.
- [32] Supra note 13.
- [33] Supra note 9.
- [34] Supra note 10.
- [35] Supra note 8.
- [36] Supra note 10, par. 5.
- [37] Supra note 8, par. 8.
- [38] Supra note 13, par. 8.
- [39] Supra note 31.
- [40] Supra note Id. at 682.
- [41] Supra note 1, p. 17, last paragraph.
- [42] Supra note 24, at 683-684; citations omitted.

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