

MARINA'S CREATION ENTERPRISES AND JERRY B. ALFONSO, PETITIONERS, VS. ROMEO V. ANCHETA, RESPONDENT.

G.R. No. 218333. December 07, 2016

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review on certiorari^[1] assailing the 2 June 2014 Decision^[2] and the 4 March 2015 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 130120.

The Facts

Petitioner Marina's Creation Enterprises (Marina) is engaged in the business of making shoes and bags. In January 2010, Marina hired respondent Romeo V. Ancheta (Ancheta) as a sole attacher in Marina. In March 2011, Ancheta suffered an intra-cranial hemorrhage (stroke) and was placed under home care. On 12 May 2011, Ancheta suffered a second stroke and was confined at St. Victoria Hospital in Marikina City for four days. On 26 May 2011, Ancheta filed a Sickness Notification with the Social Security System (SSS) and was paid sickness benefits in the amount of Eight Thousand One Hundred Pesos (P8,100). The physician who physically examined Ancheta stated that Ancheta would be fit to resume work after ninety (90) days or on 12 August 2011.^[4]

On 13 August 2011, Ancheta reported for work. Marina, however, wanted Ancheta to submit a new medical certificate before he could resume his work in Marina. Ancheta did not comply and was not able to resume his work in Marina. On 8 November 2011, Ancheta filed a complaint with the Labor Arbiter against Marina and its registered owner Jerry B. Alfonso for illegal dismissal and non-payment of separation pay.

In his Position Paper,^[5] Ancheta alleged that after he recovered from his illness he reported for work in Marina but was advised by Marina to just wait for the company's call. When Ancheta went back to Marina, he was told to take more rest. Ancheta claimed that Marina had employed two new workers as his replacement. Ancheta alleged that he was not served a notice for his termination and a subsequent notice for hearing as mandated by the Labor Code. Ancheta claimed he was illegally dismissed by Marina.

In its Position Paper,^[6] Marina claimed that Ancheta was employed on a piece rate basis and was not terminated but instead was refused job assignments due to his failure to submit a medical clearance showing that he was fit to resume his work. Marina claimed that the medical certificate was a precautionary measure imposed by the company to avoid any incident that could happen to Ancheta who already had a pre-existing medical condition. Marina alleged that Ancheta did not present any evidence to prove that he was illegally dismissed.

The Decision of the Labor Arbiter

In a Decision dated 25 July 2012,^[7] the Labor Arbiter dismissed Ancheta's complaint for illegal dismissal and non-payment of separation pay. The Labor Arbiter ruled that Ancheta failed to convincingly prove that he was

illegally dismissed. The Labor Arbiter found no positive or overt act on the part of Marina that would support Ancheta's claim of illegal dismissal.

The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, a decision is hereby rendered dismissing the instant complaint.

SO ORDERED.[8]

The Decision of the National Labor Relations Commission

In a Decision dated 14 January 2013,[9] the National Labor Relations Commission (NLRC) affirmed the ruling of the Labor Arbiter. The NLRC ruled that Ancheta was not able to establish the fact that he was dismissed by Marina.[10] The NLRC held that Ancheta, who was the employee of Marina, had to first establish the fact of his dismissal before the burden could be shifted to Marina, the employer, to prove that his dismissal was legal.

The NLRC held that Marina's requirement of having Ancheta submit another medical certificate before he could resume work was reasonable. The NLRC ruled that Marina cannot be faulted for refusing to admit Ancheta back to work in the absence of a new medical certificate because it was in the mutual interest of Ancheta and Marina that Ancheta would be medically found capable of withstanding the rigors of work.

The dispositive portion of the Decision states:

WHEREFORE, premises considered, judgment is rendered DISMISSING complainant's Appeal for lack of merit. The Decision of Labor Arbiter Romelita N. Rioflorido dated 25 July 2012 is AFFIRMED in toto.

SO ORDERED.[11]

Ancheta filed a motion for reconsideration with the NLRC which was denied on 28 February 2013.[12]

Ancheta filed with the CA a petition for certiorari[13] dated 17 May 2013.

The Decision of the CA

In a Decision dated 2 June 2014,[14] the CA reversed the decision of the NLRC. The CA ruled that Ancheta was illegally dismissed by Marina. The CA held that the fact of Ancheta's dismissal was established through Marina's own admission in its position paper that the company had refused to give Ancheta job assignments due to Ancheta's failure to submit a medical certificate.

The CA ruled that the absence of a medical certificate did not justify Marina's refusal to furnish Ancheta work assignments. The CA considered the certification by Ancheta's examining physician attached to Ancheta's SSS Sickness Notification as proof that Ancheta was fit to resume his work in Marina on 12 August 2011. The CA held that according to the Implementing Rules of the Labor Code, it was Marina and not Ancheta who had the burden of proving that Ancheta's disease could not be cured within a period of at least six months in order to justify Ancheta's dismissal. Finally, the CA ruled since Ancheta was illegally dismissed, Ancheta was entitled to backwages and separation pay from Marina.

The dispositive portion of the Decision states:

WHEREFORE, the petition is GRANTED. The Decision dated January 14, 2013 and Resolution dated February 28, 2013 of the NLRC in NLRC NCR Case No. 11-16716-11/NLRC LAC No. 09-002716-12 are ANNULLED and SET ASIDE. Private respondents Marina's Creation and Jerry Alfonso are hereby ordered to PAY petitioner Romeo Ancheta: (1) full backwages computed from the date of his dismissal up to the finality of this decision; and (2) separation pay equivalent to one month pay for every year of service. For this purpose,

let this case be REMANDED to the Labor Arbiter for the computation of backwages and separation pay in accordance with this Decision.

SO ORDERED.[15]

Marina filed a motion for reconsideration[16] with the CA which was denied on 4 March 2015.[17]

Hence, this petition by Marina.

The Issue

The issue in this case is whether Ancheta was illegally dismissed by Marina.

The Ruling of this Court

We deny the petition.

Article 280 of the Labor Code provides for the two types of regular employees, to wit: (1) employees who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, and (2) employees who have rendered at least one year of service, whether such service is continuous or broken, with respect to the activity in which they are employed. In *De Leon v. National Labor Relations Commission*,^[18] this Court held that the test of determining the regular status of an employee is whether the employee performs work which is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade.^[19] Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of the activity to the business.^[20]

Applying Article 280 of the Labor Code, Ancheta was a regular employee of Marina. Ancheta, who was working in Marina as a sole attacher, was performing work that was usually necessary or desirable in the usual business or trade of Marina which was engaged in the business of making shoes and bags. Moreover, Ancheta had been performing work as a sole attacher in Marina since January 2010 up to March 2011 when he suffered his first stroke. Thus, Ancheta had acquired regular employment status by performing work in Marina for at least one year.

In its petition, Marina argues that the company's action of requiring Ancheta to undergo a medical examination and to submit a medical certificate was a valid exercise of management prerogative. Marina's contention is not correct. Article 279 of the Labor Code provides: "In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this title. x x x." Since Ancheta was a regular employee of Marina, Ancheta's employment can only be terminated by Marina based on just or authorized causes provided in the Labor Code. In its position paper, Marina admitted that the company had refused to give Ancheta work assignments until Ancheta submitted a new medical certificate. It is Marina's position that Ancheta's employment would not continue if Ancheta would not submit a new medical certificate. Marina's action in refusing to accept Ancheta notwithstanding the medical certificate attached to Ancheta's SSS Sickness Notification stating that Ancheta was physically fit to resume his work in Marina on 12 August 2011 amounts to an illegal dismissal of Ancheta. Book VI, Rule I, Section 8 of the Implementing Rules of the Labor Code provides:

Section 8. Disease as a ground for dismissal. - Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer

shall not terminate his employment unless there is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the employee to take a leave. The employer shall reinstate the employee to his former position immediately upon the restoration of his normal health. (Emphasis supplied)

The Implementing Rules of the Labor Code impose upon the employer the duty not to terminate an employee until there is a certification by a competent public health authority that the employee's disease is of such nature or at such a stage that it cannot be cured within a period of six months even with proper medical treatment. In this case, Marina terminated Ancheta from employment without seeking a prior certification from a competent public health authority that Ancheta's disease is of such nature or at such a stage that it cannot be cured within a period of six months even with proper medical treatment. Hence, Ancheta was illegally dismissed by Marina.

Finally, the CA did not err in awarding Ancheta full backwages and separation pay. In *Reyes v. R.P. Guardians Security Agency, Inc.*,^[21] this Court held that an employee who was unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, and to his full backwages, inclusive of allowances and to his other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of actual reinstatement. If reinstatement is not possible, the award of separation pay is proper.^[22] Notably, backwages and separation pay are separate and distinct reliefs available to Ancheta who was illegally dismissed by Marina.

WHEREFORE, we DENY the petition. We AFFIRM the 2 June 2014 Decision and the 4 March 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 130120.

SO ORDERED.

Brion, Del Castillo, Mendoza, and Leonen, JJ., concur.

[1] Rollo, pp. 12-37. Under Rule 45 of the 1997 Rules of Court.

[2] Id. at 40-52. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Stephen C. Cruz and Eduardo B. Peralta, Jr. concurring.

[3] Id. at 53-54.

[4] Id. at 131.

[5] Id. at 109-111.

[6] Id. at 104-108.

[7] Id. at 97-100. Penned by Labor Arbiter Romelita N. Rioflorido.

[8] Id. at 100.

[9] Id. at 89-93. Penned by Commissioner Dolores M. Peralta-Beley, with Presiding Commissioner Leonardo L. Leonida and Commissioner Mercedes R. Posada-Lacap concurring.

[10] Id. at 92.

[11] Id. at 93.

[12] Id. at 94-96.

[13] Id. at 147-160. Under Rule 65 of the Rules of Court.

[14] Id. at 40-52.

[15] Id. at 51

[16] Id. at 55-71.

[17] Id. at 53-54.

[18] 257 Phil. 626 (1989).

[19] Id.

[20] Id.

[21] 708 Phil. 598 (2013).

[22] Id.

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