

GLEN D. MESINA, PETITIONER, VS. S&T LEISURE WORLDWIDE, INC. AND REGINALD M. PAGKATIPUNAN, RESPONDENTS.*G.R. No. 252399. February 08, 2021*

Ponente: PERLAS-BERNABE, J.

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For the Court's resolution are the Decision[1] dated October 25, 2019 and the Resolution[2] dated March 13, 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 153772, which affirmed in toto the Decision[3] dated August 15, 2017 and the Resolution[4] dated October 20, 2017 of the National Labor Relations Commission (NLRC), dismissing petitioner Glen D. Mesina's (petitioner) complaint for illegal dismissal.

The Facts

The case stemmed from a complaint[5] for illegal dismissal filed by petitioner against respondents S&T Leisure Worldwide, Inc. (STLWI), a company engaged in developing, constructing, and operating amusement parks in the Philippines, and Supervisor, Reginald M. Pagkatipunan (Pagkatipunan; collectively, respondents), before the NLRC, docketed as NLRC Case No. RAB-IV-1-00185-16-C.

Petitioner worked as Overall Technician in the operation of the company's leisurely rides at Sky Ranch, located in Tagaytay City. On November 4, 2015, petitioner claimed that he was performing his job when the General Manager, Rhym Altavas (Altavas), called his attention regarding the trash saying, "Ano ba ito Glen, basurahan? Ipagtatapon ko itong mga ito." This was followed by another comment of Altavas saying, "Lintik ka Glen, ano tinitinginting mo dyan? Alisin mo yang mga yan," and continued to berate him at the top of his voice. Unable to contain himself, petitioner retorted "Kung mag-uutos kayo, yung maayos naman." Altavas then shouted back "Bastos ka talaga, pipicturan ko a[t] ipapadala ko kay Mr. Steve." At that time, the BDO Insurance Auditors were with Altavas and witnessed everything. As it turned out, the garbage that Altavas was referring to were the safety head gear and jacket used by the staff, as well as welding machines and tools.

For their part, respondents countered that petitioner was tasked to maintain and upkeep the amusement park so as to ensure the safety of park-goers. Petitioner was also the representative of respondents in the Sky Ranch to address the immediate concerns of its main client, SM Family Entertainment Center, Inc. (SMFECI), the owner of the aforementioned park. In addition, respondents averred that on November 4, 2015, the officials of SMFECI, as well as BDO Insurance Auditors, visited the Sky Ranch and noticed unnecessary things inside the giant Ferris Wheel (Sky Eye) control panel booth. The operations manager called the attention of petitioner but this did not sit well with the latter to the extent that he reacted in a discourteous manner. Because of the disrespectful and rude behavior displayed by petitioner, an official of SMFECI called Pagkatipunan's attention regarding petitioner's work ethics and practices.

Thus, on November 5, 2015, petitioner received a Memorandum[6] for improper conduct or attitude displayed to a superior and officials of the client-operator and was required to submit a written explanation. In his letter,[7] petitioner admitted that he had raised his voice and that he was disrespectful. He also admitted that he was

complacent that there would be no inspection and that it was the reason why the panel booth was full of things. Respondents pointed out that such conduct runs counter to petitioner's work standards for safety, which was his basic duty and responsibility.

Notwithstanding the pendency of his charge for improper conduct or attitude to his superiors, petitioner got involved in a similar incident wherein an argument and confrontation ensued when SMFECI officials brought corporate sales agents to take a ride on the giant Ferris Wheel. Petitioner was called to facilitate the ride but the latter refused, reasoning that he was still working on something. Consequently, petitioner was again given a notice to explain in writing why he should not be disciplinary sanctioned for his serious misconduct, which he complied with. Finding petitioner's explanations to be unsatisfactory, and considering further that a second similar incident occurred even before a decision was rendered for his first infraction, he was issued a notice of termination[8] dated January 19, 2016 due to serious misconduct.

The LA Ruling

In a Decision[9] dated January 19, 2017, the Labor Arbiter (LA) declared petitioner to have been illegally dismissed and ordered STLWI to pay petitioner the amount of P257,845.63 as separation pay with full backwages and his proportionate 13th month pay in the amount of P893.33.[10] The LA held that petitioner's termination grounded on misconduct was not serious to warrant his dismissal, holding that the supposed offensive and disrespectful conduct displayed by the latter was not willful in character nor made with wrongful intent, and noting that he was merely provoked by the arrogance of Altavas. The LA added that the "basura or garbage" Altavas was referring to were the safety head gear and jacket used by the staff, and that the welding machines and tools in the booth were temporarily placed therein since petitioner was not yet finished with his work. Accordingly, it held that petitioner is entitled to his full backwages and separation pay in lieu of reinstatement due to strained relations, as well as his proportionate 13th month pay. Meanwhile, respondent Pagkatipunan was absolved from liability since he was merely impleaded in his official capacity.

Aggrieved, respondents appealed the case to the NLRC.

The NLRC Ruling

In a Decision[11] dated August 15, 2017, the NLRC reversed and set aside the LA's decision,[12] holding that petitioner was guilty of serious misconduct and willful disobedience which the LA failed to consider in view of the totality of the facts narrated by the parties. It pointed out that petitioner's acts of talking back to his superior and responding in a discourteous manner, as well as the negative impression upon the SMFECI officials and BDO Insurance Auditors, amounted to serious misconduct within the terms of Article 296 of the Labor Code. Moreover, petitioner's explanation that the audit that day was unexpected was not a sufficient justification. Considering that respondent is engaged in the business of amusement park, compliance with and maintenance of safety standards, as well as vigilance at all times, are of utmost importance. It further ruled that there was due process in terminating petitioner as he was issued notices of the charges against him and a letter informing him of his termination from work. As such, petitioner's complaint was ordered dismissed and the monetary awards deleted for lack of merit.[13]

Petitioner's motion for reconsideration was denied in a Resolution[14] dated October 20, 2017. Hence, petitioner elevated the matter via a petition for certiorari asserting that he was illegally dismissed.

The CA Ruling

In a Decision[15] dated October 25, 2019, the CA denied the petition and affirmed in toto the NLRC's decision. It found no grave abuse of discretion on the part of the NLRC in holding that petitioner's discourtesy amounted to serious misconduct and that his attitude in the presence of SMFECI officials and BDO Insurance Auditors was

unacceptable. It pointed out that his improper behavior stemmed from the fact that his attention was called upon when SMFECI officials and BDO Insurance Auditors noticed unnecessary things inside the Sky Eye's control panel booth which are under his direct supervision and authority. Further, the CA observed that since petitioner was already aware of the ongoing inspection and operations of the park, he should have tempered his language and remained polite to his superiors.[16]

Petitioner's motion for reconsideration was denied in a Resolution[17] dated March 13, 2020. Hence, the instant petition.

Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in upholding the NLRC's finding that petitioner was validly dismissed and in deleting his monetary award.

The Court's Ruling

The petition is partly meritorious.

Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for certiorari was presented to the CA. Hence, the Court has to examine the CA Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC Decision.[18]

Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[19]

In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare, and accordingly, dismiss the petition.[20]

Under Article 297 (a) of the Labor Code, serious misconduct by the employee justifies his or her termination from employment by his or her employer.

Misconduct is defined as an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. To constitute a valid cause for the dismissal within the text and meaning of Article 297 of the Labor Code, the employee's conduct must be serious, i.e., of such grave and aggravated character and not merely trivial or unimportant.[21]

Additionally, the misconduct must be related to the performance of the employee's duties showing him to be unfit to continue working for the employer. Further, and equally important and required, the act or conduct must have been performed with wrongful intent.[22] Thus, for misconduct or improper behavior to be a just cause for dismissal, the following elements must concur: (a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.[23]

In the case at bar, the charge of serious misconduct is duly substantiated by the evidence on record. Petitioner was in-charge of the maintenance and upkeep of the amusement park at all times to ensure the safety of park-goers. His admitted display of disrespect towards his superior stemmed from the fact that his attention was called upon when SMFECI officials and BDO Insurance Auditors noticed unnecessary things inside the Sky Eye's control panel booth which are under his direct supervision and authority. Worse, his perverse attitude continued to display a few days after when an argument and confrontation ensued again, this time, with SMFECI officials, who had brought to Sky Ranch corporate sales agents to take a ride on the giant Ferris Wheel. Moreover, his refusal to facilitate the ride on the pretext that he was still doing something else, which could have been temporarily set aside, more so, given that he was the overall technician in the operation of the amusement park, smacks of outright disrespect in clear violation of the company's policy that an employee should at all times respect and observe due deference to customers and officials. Furthermore, his wrongful intent is shown by his lack of respect in talking back to his superior. Even if petitioner was only reacting to the supposed bad behavior of his superior, it is still not a valid defense to display a discourteous and improper behavior, especially at a time when there was an ongoing inspection being conducted by respondents' main client and BDO Insurance Auditors. As eloquently held in *Sterling Paper Products Enterprises, Inc. v. KMM-Katipunan*,^[24] the rules of civility in the workplace must be maintained:

An aggrieved employee who wants to unburden himself of his disappointments and frustrations in his job or relations with his immediate superior would normally approach said superior directly or otherwise ask some other officer possibly to mediate and discuss the problem with the end in view of settling their differences without causing ferocious conflicts. No matter how the employee dislikes his employer professionally, and even if he is in a confrontational disposition, he cannot afford to be disrespectful and dare to talk with an unguarded tongue and/or win with a baleful pen.^[25] (Emphasis supplied)

Time and again, the Court has put emphasis on the right of the employer to exercise its management prerogative in dealing with its affairs including the right to dismiss its erring employees as a measure of protection. An employer cannot be compelled to retain employees who are guilty of acts inimical to its interests. Besides, it is a general principle of labor law to discourage interference with an employer's judgment in the conduct of its business,^[26] as in this case.

In fine, having sufficiently established a just ground to terminate petitioner and there being a clear showing that respondents complied with the two-notice rule, the CA cannot be faulted in finding no grave abuse of discretion on the part of the NLRC in declaring the dismissal legal.

Nevertheless, with respect to the monetary awards, the Court finds that the proportionate 13th month pay granted to petitioner should not have been deleted. An employee who has resigned, or whose services were terminated at any time before the payment of the 13th month pay, is entitled to said monetary benefit in proportion to the length of time he worked during the year, reckoned from the time he started working during the calendar year up to the time of his resignation or termination from service.^[27] Considering that petitioner was terminated only on January 19, 2016, and there is no showing that he was paid his proportionate 13th month pay pursuant to Presidential Decree No. 851,^[28] he is entitled to the said benefit. In this regard, a legal interest at the rate of six percent (6%) shall be imposed on the said monetary award from the date of finality of this Decision until full payment.^[29]

WHEREFORE, premises considered, the petition is PARTLY GRANTED. The assailed Decision dated October 25, 2019 and the Resolution dated March 13, 2020 of the Court of Appeals in CA-G.R. SP No. 153772 is AFFIRMED with MODIFICATION ordering respondent S&T Leisure Worldwide, Inc. to pay petitioner Glen D. Mesina his proportionate 13th month pay in the amount of P893.33, with legal interest of six percent (6%) to be

imposed from the date of finality of this decision until full payment.

SO ORDERED.

Gesmundo, Lazaro-Javier, M. Lopez, and Rosario, JJ., concur.

[1] Rollo, pp. 73-85. Penned by Associate Justice Marie Christine Azcarraga- Jacob with Associate Justices Jane Aurora C. Lantion and Gabriel T. Robeniol, concurring.

[2] Id. at 87-91.

[3] Id. at 93-102. Penned by Commissioner Romeo L. Go with Presiding Commissioner Gerardo C. Nograles and Commissioner Gina F. Cenit-Escoto, concurring.

[4] Id. at 104-105.

[5] Id. at 116.

[6] Id. at 149.

[7] Id. at 152-153.

[8] Id. at 213.

[9] Id. at 108-115. Penned by Labor Arbiter Danna M. Castillon.

[10] P893.00 in the dispositive portion.

[11] Rollo, pp. 93-102.

[12] Id. at 102.

[13] See id. at 98-102.

[14] Id. at 104-105.

[15] Id. at 73-85.

[16] See id. at 80-84.

[17] Id. at 87-91.

[18] Coca-Cola Femsa Philippines v. Macapagal, G.R. No. 232669, July 29, 2019.

[19] Ting Trucking v. Makilan, 787 Phil. 651, 660-661 (2016).

[20] Kho, Sr. v. Magbanua, G.R. No. 237246, July 29, 2019.

[21] See Dela Rosa v. ABS-CBN Corporation, G.R. No. 242875, August 28, 2019.

[22] Universal Robina Sugar Milling Corporation v. Ablay, 783 Phil. 512, 521 (2016).

[23] Cebu People's Multi-Purpose Cooperative v. Carbonilla, Jr., 779 Phil. 563, 581 (2016).

[24] 815 Phil. 425 (2017).

[25] Id. at 438.

[26] See *Iso, Jr. v. Salcon Power Corporation*, G.R. No. 219059, February 12, 2020.

[27] See *Mariano v. G.V. Florida Transport*, G.R. No. 240882, September 16, 2020.

[28] Entitled, “REQUIRING ALL EMPLOYERS TO PAY THEIR EMPLOYEES A 13TH-MONTH PAY.”

[29] *Nacar v. Gallery Frames*, 716 Phil. 267, 279-281 (2013).

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