

SECOND DIVISION

[CA-G.R. SP NO. 136008, February 25, 2015]

MANUEL M. PANISA, JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION & RAMOSCO LOGISTICS, INC. AND/OR MARY GRACE AVELLANO. RESPONDENTS.

DECISION

GONZALES-SISON, M., J.:

Before Us is a Petition for Review on Certiorari under Rule 65 of the 1997 Rules of Civil Procedure, seeking to nullify and set aside the Decision^[1] and Resolution^[2] in NLRC LAC No. 08-002284-13, both promulgated by herein public respondent National Labor Relations Commission (NLRC) on February 27, 2014 and April 14, 2014, respectively. The NLRC dismissed the Complaint^[3] for illegal dismissal and payment of wages and other benefits filed by herein petitioner Manuel Panisa, Jr. The facts as culled from the Records are as follows:

Sometime in October 2011, Manuel M. Panisa, Jr. (Panisa) was hired as a salesman by herein private respondent Ramosco Logistics, Inc., (Ramosco Logistics), a juridical entity duly formed and organized under the laws of the Philippines, engaged in the business of providing its clients and customers with solutions to their logistics problems.^[4] As a salesman, Panisa was tasked to distribute the products of San Miguel Corporation (San Miguel), a client of Ramosco Logistics, to different Mercury Drug outlets as well as to withdraw the merchandise already delivered but returned or rejected for certain reasons.^[5] Panisa's schedule of work was from Monday to Saturday from 8:00 in the morning until 5:00 in the afternoon,^[6] for which Panisa received a daily salary of four hundred and fifty-four pesos (P454.00).^[7]

Meanwhile, during the last week of September 2012, the Channel Manager of San Miguel conducted an audit and monthly operations review wherein all sales agents were asked about the products and the performance of the corporation. When probed, Panisa was unable to answer questions regarding the amount of sales as well as the quantity of the lost goods.^[8] His evasiveness prompted San Miguel to report the matter to Ramosco Logistics, who in turn conducted a more thorough investigation on the matter.^[9] Consequently, a Memorandum^[10] dated October 10, 2012 was issued to Panisa, placing him under preventive suspension for thirty days beginning from October 10, 2012 to November 14, 2012. In response to the said Memorandum, Panisa submitted a handwritten explanation relating why he was not able to answer the questions posed by the San Miguel auditor, and likewise asked to be forgiven and to be granted a second chance.^[11]

In the course of the investigation, Ramosco Logistics discovered that Panisa visited the Mercury Drug Cainta Branch on August 27, 2012, and the Mercury Drug Nepa Q-Mart on August 29, 2012, where he withdrew merchandise from both stores, as

reflected in the security guard logbooks.^[12] Ramosco Logistics likewise learned that Panisa also withdrew goods from Mercury Drug Broadway and Broadway Centrum. Worse, while under suspension, he was found to have visited Mercury Drug Ever Gotesco Branch on October 12, 2012.^[13] In all his aforementioned visits, he failed to render an accounting of all the withdrawn merchandise, or return the same items to the warehouse. The unaccounted merchandise belonged to San Miguel and the other clients of Ramosco Logistics.^[14]

Subsequently, Panisa failed to return to work on the last day of his preventive suspension on November 14, 2012, or in the days thereafter.^[15] Pursuant thereto, Ramosco Logistics sent him a third Memorandum dated November 29, 2012, giving him a last chance to explain. Similar to all the other Memoranda and Notices sent by Ramosco Logistics to him, the third Memorandum likewise remained unheeded. As of November 29, 2012, Ramosco Logistics had discovered that the missing merchandise amounted to thirty-one thousand five hundred ninety-six pesos and fifty-four centavos (P31,596.54).^[16]

On December 5, 2012, Panisa filed a Complaint^[17] for illegal dismissal (constructive), underpayment of salary/wages, non-payment of holiday pay, 13th month pay, separation pay, ECOLA, illegal deduction, illegal suspension, moral and exemplary damages and attorney's fees.

The Ruling of the Labor Arbiter:

On June 28, 2013, the Labor Arbiter dismissed Panisa's Complaint. The Labor Arbiter held that as a salesman, Panisa occupied a position of trust and confidence as he had the duty of delivering and pulling out goods belonging to Ramosco Logistics' clients.^[18] Accordingly, his failure to render an accurate accounting or inventory of the exact figures of the lost merchandise, implies a gross irregularity, which constitutes a gross misconduct that serves as a valid ground for termination.^[19] Furthermore, Panisa's act of pulling out various merchandise from the Mercury Drug outlets he serviced without rendering an accounting thereof, constitutes dishonesty.^[20] However, the Labor Arbiter noted that Ramosco Logistics had not yet terminated Panisa's employment at the time the latter filed the Complaint for Illegal Dismissal.^[21] Finally, the Labor Arbiter found that Panisa was entitled to his thirteenth month pay equivalent to nine thousand and one pesos and sixty-three centavos (P9,001.63) and his unpaid salary from October 1 to 9, 2012 amounting to four thousand six hundred fifty-two pesos (P4,652.00), yet ordered the same amounts as subject to legal compensation against the sum of P31,596.54, which Panisa owed to Ramosco Logistics.^[22]

Aggrieved by the Decision of the Labor Arbiter, on July 29, 2013, Panisa filed a Memorandum of Appeal with Notice of Appeal²³ before the NLRC.

The NLRC's Ruling:

Finding that the Decision rendered by the Labor Arbiter was supported by substantial evidence and due to Panisa's failure to controvert the charges leveled against him, the NLRC affirmed the earlier ruling of the Labor Arbiter. Furthermore,

the NLRC observed that Panisa even apologized for his misdeeds, which act laid to rest

any doubts on his culpability.^[24]

On March 13, 2014, Panisa filed a Motion for Reconsideration,^[25] which was denied in the NLRC's Resolution^[26] dated April 14, 2014.

Undeterred, on June 27, 2014, Panisa filed the instant Petition for Certiorari,^[27] seeking for the nullification of the assailed Decision and Resolution issued by the NLRC on the following grounds, to wit:

I. THAT THE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT THERE WAS NO ILLEGAL SUSPENSION AND DISMISSAL;

II. THAT THE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT PETITIONER IS NOT ENTITLED TO ALL HIS MONETARY CLAIMS.^[28]

Upon a careful consideration of the arguments raised by both parties and a meticulous scrutiny of the laws and jurisprudence involved, **We find the instant petition partly impressed with merit.**

Indeed, our laws endeavor to breathe life to the constitutional policy on social justice and on the protection of labor. However, this does not mean that every labor dispute will be decided in favor of the workers. The law also recognizes that management has rights which are also entitled to respect and enforcement in the interest of fair play.^[29] In this regard, management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations.^[30] Disciplinary action against an errant employee is a management prerogative which,

generally, is not subject to judicial interference, as long as the disciplinary action is dictated by legitimate business reasons and is not oppressive.^[31]

Pitted against each other in the case at bar, is Panisa's cry of constructive dismissal, versus Ramosco Logistics' firm stand that no such illegal dismissal took place.

Constructive dismissal exists where there is cessation of work, because continued employment is rendered impossible, unreasonable or unlikely.^[32] It is regarded as a "dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, and may exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment."^[33]

Guided by the foregoing definition, We find that Panisa was not constructively dismissed. Panisa utterly failed to show any act of discrimination, insensibility or disdain committed by Ramosco Logistics against him that would have left him with no alternative but to forego his employment. Likewise, there was no evidence indicating that he was barred from work or prevented from reporting, aside from his bare and unsubstantiated allegation that the HR Manager told him not to report for work.

Neither was the preventive suspension imposed upon Panisa tantamount to constructive dismissal.

The various Memoranda/Notices sent to Panisa are bereft of any words implying an actual or constructive dismissal. The phraseology and content of the Memoranda evince a clear-cut notice of suspension pending investigation, rather than a notice of

termination. Juxtaposed against the clear and unequivocal wordings and intent of the notice of suspension that Panisa signed, his claim that he was verbally dismissed from the service, falters.

Moreover, the continued presence of Panisa pending the investigation posed a serious threat to the properties of Ramosco Logistics and its clients. Being a salesman who was charged with the distribution and recall of the various merchandise of Ramosco's clients, Panisa's daily work exposed him to voluminous financial transactions involving the clients' goods. The Supreme Court acknowledged in numerous cases that salesmen are considered to occupy positions of trust and confidence, and therefore affirmed an employer's right to take the proper disciplinary action against the employee, upon a breach of the employer's confidence.^[34]

Significantly, the Implementing Rules and Regulations of the Labor Code provides that "the employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or his co-workers."^[35] Evidently, preventive suspension may be legally imposed against an employee whose alleged violation is the subject of an investigation in order to prevent him from causing harm or injury to the company as well as to his fellow employees.^[36] However, the right to place an employee under preventive suspension, albeit necessary, should not last longer than thirty (30) days, "and the employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker."^[37]

Undoubtedly, the aforementioned rules require that the employer must act on the suspended worker's status of employment within the 30-day period and conclude the investigation either by absolving the employee of the charges, meting out the corresponding penalty, or ultimately dismissing the errant employee. Conversely, if the suspension exceeds the 30-day period without any corresponding action on the part of the employer, the employer must reinstate the employee or extend the period of suspension, and in the latter case, pay the employee's wages and benefits