SECOND DIVISION

[G.R. No. 231859, February 19, 2020]

GERARDO C. ROXAS, PETITIONER, VS. BALIWAG TRANSIT, INC. AND/OR JOSELITO S. TENGCO (OWNER), RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated November 23, 2016 and the Resolution[3] dated April 17, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 145623, which affirmed with modification the Resolutions dated January 8, 2016[4] and February 29, 2016[5] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000013-16, declaring petitioner Gerardo C. Roxas (Roxas) not to have been illegally dismissed, but ordered respondent Baliwag Transit, Inc. (BTI) to pay Roxas nominal damages in the amount of P30,000.00.

The Facts

Roxas was employed as bus driver by BTI since March 24, 1998 and paid on commission basis. In 2012, the bus to which Roxas was assigned was phased out pursuant to Land Transportation Franchising and Regulatory Board (LTFRB) Resolution No. 2013-01.[6] For this reason, he became a reliever for BTI's other remaining buses and his work assignment was reduced from his regular three (3) weeks work duty to only two (2) weeks per month.[7]

Feeling aggrieved by the change in his work duty assignment, Roxas, on June 5, 2014, filed a complaint[8] (*first* complaint) for constructive dismissal, non-payment of holiday pay, holiday premium, service incentive leave (SIL), and 13th month pay, illegal suspension, moral and exemplary damages, and attorney's fees against BTI and its owner Joselito S. Tengco (respondents), before the NLRC National Capital Region (NLRC-NCR), docketed as NLRC RAB NCR Case No. NCR-06-06790-14.

At the scheduled hearing[9] on July 2, 2014, Roxas received a call from one of BTI's conductors informing him of a duty assignment on even date. This prompted him to proceed to BTI's terminal to inform the terminal master, Edwin Ortega, and dispatcher Elmer Cao, of the said hearing and his inability to assume work on said day. However, Roxas was warned of abandonment if he did not ply his route. For this reason, Roxas received on July 15, 2014 a notice[10] to explain his absence, which, in his response letter[11] dated July 21, 2014, pointed out that he did not intend to abandon his work as respondents were well aware of the scheduled hearing at the NLRC. He likewise explained that while he admittedly failed to check the duty assignments and schedule of trips for July 2, 2014, he nonetheless did not also

expect to be given an assignment considering that he had just rendered his two (2) weeks duty and there were three (3) other reliever drivers still on reserve and waiting for their assignment.

Meanwhile, upon follow-up of his *first* complaint, Roxas learned that the same was dismissed on October 15, 2014 due to improper venue.[12] Thus, on February 16, 2015, Roxas, together with a co-worker, filed anew their complaint[13] (*second* complaint) against respondents for illegal constructive dismissal, including non-payment of, among others, 13th month pay and medical benefits, as well as attorney's fees, this time before the Regional Arbitration Board (RAB) III in San Fernando, Pampanga, dock ted as NLRC CASE NO. RAB III-02-22498-15. The *second* complaint was subsequently amended by Roxas claiming constructive dismissal on June 4, 2014.[14]

Roxas claimed that after the *second* complaint was filed, he received a notice[15] from respondents charging him for indiscreet filing of labor cases against the company without basis ("*pagsasampa ng kaso laban sa kompanya sa Labor ng walang dahilan*"). Notwithstanding his clarification that the *second* complaint was the same as the *first* complaint that had been dismissed and that he merely re-filed the same before the appropriate venue at the RAB III,[16] respondents no longer gave him any work assignment.[17] Thus, Roxas averred that the foregoing circumstances showed that he was constructively dismissed.

On the other hand, respondents alleged that Roxas was a disgruntled employee and that his baseless complaints tarnished the reputation and good will of the company. They denied that Roxas was dismissed on June 4, 2014, pointing out that he was still given work assignment after the filing pf the *first* complaint as evidenced by his Assignment Card[18] and that he remained in the roster or list of employees. They argued that Roxas's refusal to submit an explanation for his unfounded complaints, and further calling their investigating officer a liar amounted not only to insubordination bu also tantamount to serious misconduct, as well as abandonment. [19] Further, they denied the claim for 13th month pay, pointing out that Roxas was paid purely on commission basis, while his other money claims were without factual and legal bases.[20]

In reply, Roxas countered that while he was given a work assignment, the same was reduced to only two (2) weeks each month contrary to the existing Collective Bargaining Agreement (CBA)[21] that prescribed a three (3)-week work duty for the employees. Roxas added that respondents treated him with disdain as evidenced by the following events, namely: (*a*) he was given a trip duty on the day his *first* complaint was set for hearing on July 2, 2014; (*b*) he was suspended from work beginning July 3, 2014 up to August 1, 2014 before the notice to explain his absence was issued to him; and (*c*) he was charged for insubordination[22] due to his refusal to submit additional explanation for his alleged indiscriminate filing of labor case against BTI.[23] He likewise denied having abandoned his work, claiming that his repeated absences were due to respondents' oppressive treatment and that he was in fact no longer given any trip duty after filing the *second* complaint.[24] Lastly, Roxas pointed out that the two-week duty per month violated the provisions of BTI's own "*Alituntunin at Patakaran*," particularly, Section 33, Atticle XII thereof,

that required employees to work for not less than 200 days in a span of one year,[25] since the reduced work schedule translated only to 1168 to 182 days of work a year.[26]

For their part, respondents argued, among others, that the scheduled hearing at the NLRC did not require Roxas's presence,[27] and that the reduction in work assignment was in compliance with a government imposed regulation and that the same applied to all drivers and conductors.[28]

On July 21, 2015, Roxas was issued a notice of termination[29] from employment effective the same date grounded on violation of the company's policies, rules and regulations amounting to gross misconduct/gross neglect of duties, as well as indiscriminate filing of cases, insubordination, and absence without official leave (AWOL).

The LA Ruling

In a Decision[30] dated October 30, 2015, the Labor Arbiter (LA) dismissed the complaint with prejudice.[31] The LA ruled that Roxas was not dismissed on June 4, 2014 given his admission that he still received a work assignment even up to the time he filed the *second* complaint. In the same vein, the LA did not also give merit to Roxas's claim of constructive dismissal, holding that there was no proof to show that he was the only one given the two (2)-week work assignment scheme, and that the limitation in the duration of assignment was dictated by a government imposed regulation that effectively superseded the CBA. On the other hand, the LA found sufficient justification to impose the penalty of dismissal against Roxas in view of his repeated and unjustified failure to submit his explanation and report for work. With respect to his money claims, the LA ruled that Roxas was not entitled to 13th month pay since he was paid on commission basis, while the other money claims were denied for lack of factual and legal bases.[32]

Aggrieved, Roxas filed an appeal[33] to the NLRC.

The NLRC Ruling

In a Resolution[34] dated January 8, 2016, the NLRC affirmed *in toto*[35] the LA's decision, finding Roxas not to have been constructively dismissed and that his subsequent dismissal was justified. It held that Roxas was not discriminated against since the reduced work scheme undisputedly applied to all drivers and conductors of BTI, and that the same did not violate the CBA as it was due to a phase out of buses imposed by the government thus, superseding the provisions of the CBA. In the same vein, it held that Roxas's eventual dismissal was justified for his failure to heed the management's directives, which constituted insubordination, and his refusal to work or abandonment, all of which are just causes for termination under Article 297 (formerly Article 282) of the Labor Code.[36]

Roxas's motion for reconsideration[37] was denied in a Resolution[38] dated February 29, 2016, prompting him to file a petition for *certiorari*[39] before the CA, docketed

as CA-G.R. SP No. 145623.

The CA Ruling

In a Decision[40] dated November 23, 2016, the CA denied the petition and found no grave abuse of discretion on the part of the NLRC in holding that there was no constructive dismissal. It ruled that BTI's decision to reduce the work week was a reasonable and valid exercise of management prerogative having been done in compliance with a government issued regulation that applied to all its affected drivers and conductors. It explicated that the CBA provisions relied upon by Roxas mainly referred to rest periods of drivers and conductors, and held that since there was a government imposed restriction on the usage of old buses, it was understandable for BTI to not comply with the existing practice of providing all its drivers and conductors a three (3)-week work assignment. With respect to Roxas's eventual termination on July 21, 2015, the CA ruled that the same was justified, holding that his refusal to submit an explanation despite BTI's repeated directives and calling the legal staff/investigator a liar constitute disobedience and disrespect to his superior. However, while it found substantial ground for dismissal, it observed that the notices issued to Roxas were insufficient as they gave the latter only two (2) days to explain the charges levelled against him with no detailed narration of the facts and circumstances that brought about the charges as well as the specific company rules that were violated, and that no hearings were scheduled to clarify his defenses. For these reasons, the CA awarded Roxas nominal damages in the amount of P30,000.00.[41]

Both parties moved for reconsideration[42] which the CA denied in a Resolution[43] dated April 17, 2017; hence, the instant petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA erred in sustaining the finding that there was no constructive dismissal committed by respondents and that Roxas's subsequent termination from work was valid.

The Court's Ruling

The petition is impressed with merit.

At the outset, Roxas claims that the CA gravely abused its discretion when it affirmed the finding of the labor tribunals that he was not constructively dismissed due to his reduced work assignment Which consequently affected his pay and other benefits. Case law defines "constructive dismissal" as follows:

> **[C]onstructive dismissal** is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits. **It exists 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.** There is involuntary resignation due to the harsh, hostile, and unfavorable

> conditions set by the employer. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his employment/position under the circumstances. [44] (Emphases and underscoring supplied)

In this case, while Roxas's reduced work assignment did effectively result in the diminution of his pay and other benefits, the same did not amount to a clear act of discrimination, insensibility or disdain on the part of BTI so as to force him out of employment. This is because the reason for the said work reduction was due to the phase out of BTI's old buses as imposed by a government regulation, leading BTI to, in the exercise of its management prerogative, adjust the previous work assignments of its employees assigned to the affected buses. As pointed out by the CA, "[t]he reduced [work week] which BTI implemented in 2012 was in relation to the government's directive to remove from the roads, public utility vehicles which are 15 years old and above, for the safety of the riding public. The decision to phase out BTI's old buses was [therefore] not done out of the company's whims and caprices only x x x [but instead,] a means on the part of BTI to cope with the downsizing of their business operation as a consequence of the strict implementation of LTFRB Resolution No. 2013-01."[45] As such, this exercise of BTI's management prerogative appears to have been done in good faith, and hence, should be upheld. In *Moya v. First Solid Rubber Industries, Inc.*:[46]

> [The Court has] recognized the right of the employer to regulate all aspects of employment, such as the freedom to prescribe work assignments, working methods, processes to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers. It is a general principle of labor law to discourage interference with an employer's judgment in the conduct of his business. As already noted, even as the law is solicitous of the welfare of the employees, it also recognizes employer's exercise of management prerogatives. **As long as the company's exercise of judgment is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.** [47] (Emphasis supplied)

In this relation, it must be pointed out that the records fail to show that Roxas was the only employee affected by the reduced work assignment scheme. In fact, as the LA observed, "[t]he assignment was made to apply to all other employees."[48]

Thus, in view of the foregoing, the Court holds that the CA did not gravely abuse its discretion in upholding the labor tribunals' findings that Roxas was not constructively dismissed.

This notwithstanding, records show that during the pendency of the proceedings, Roxas was eventually terminated by respondents premised on the alleged just causes[49] as will be discussed below. This constitutes a separate incident of dismissal, the legality of which the Court is further tasked to resolve.

Article 294 of the Labor Code, as renumbered,[50] provides that an employer may terminate the services of an employee only upon just or authorized causes. The