

## THIRD DIVISION

[ G.R. No. 227070, March 09, 2020 ]

**ADAMSON UNIVERSITY FACULTY AND EMPLOYEES UNION,  
REPRESENTED BY ITS PRESIDENT, AND ORESTES DELOS REYES,  
PETITIONERS, VS. ADAMSON UNIVERSITY, RESPONDENT.**

### DECISION

**LEONEN, J.:**

The use of expletives as a casual expression of surprise or exasperation is not serious misconduct per se that warrants an employee's dismissal. However, the employee's subsequent acts showing willful and wrongful intent may be considered in determining whether there is a just cause for their employment termination.

This Court resolves the Petition<sup>[1]</sup> assailing the Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> of the Court of Appeals, which affirmed the Panel of Voluntary Arbitrators' Decision<sup>[4]</sup> finding that Orestes Delos Reyes (Delos Reyes) was validly dismissed from employment.

Delos Reyes was a university professor and the assistant chairperson of the Social Sciences Department of Adamson University (Adamson).<sup>[5]</sup> He was also the president of the Adamson University Faculty and Employees Union (the Union), a duly registered labor union and the sole and exclusive bargaining agent of Adamson's faculty and non-academic personnel.<sup>[6]</sup>

On September 5, 2014, Adamson received an administrative complaint against Delos Reyes. Josephine Esplago (Josephine) had apparently sued him on behalf of her daughter, 17-year-old Paula Mae Perlas (Paula Mae), a third year psychology student at Adamson. Josephine claimed that Delos Reyes violated the University Code of Conduct and Republic Act No. 7610 for abusing her child, a minor.<sup>[7]</sup>

By Josephine's account, Paula Mae encountered Delos Reyes as the professor was about to enter the faculty room of the Department of Foreign Languages. Paula Mae was holding the doorknob on her way out of the office, while Delos Reyes held the doorknob on the other side. When Paula Mae stepped aside, Delos Reyes allegedly exclaimed the words "*anak ng puta*" and walked on without any remorse. This caused emotional trauma to Paula Mae.<sup>[8]</sup>

On September 11, 2014, the president of Adamson created an Ad Hoc Investigating and Hearing Committee (Ad Hoc Committee) to hear the case and later submit its findings and recommendations to the Vice President for Academic Affairs for decision-making.<sup>[9]</sup>

On September 12, 2014, the Ad Hoc Committee issued a show cause memorandum

to Delos Reyes, asking him to explain within five days why he should not be charged with gross misconduct and unprofessional behavior.<sup>[10]</sup>

When Delos Reyes had initially not filed an answer, he was granted a three-day extension.<sup>[11]</sup> By then, he submitted a written explanation using the Union's letterhead and signing as its president, denying the accusations against him. Delos Reyes "also filed a counter-complaint against Paula Mae for maligning and tarnishing his established reputation in the university."<sup>[12]</sup>

The two cases were consolidated, and the hearing was held on October 7, 2014. Delos Reyes was represented by counsel.<sup>[13]</sup>

On October 24, 2014, Delos Reyes was issued a Notice of Dismissal.<sup>[14]</sup> He sought reconsideration, but this was denied.<sup>[15]</sup> On October 30, 2014, Adamson put out a paid advertisement on the Philippine Daily Inquirer's newspaper and website, which Delos Reyes claimed tarnished his reputation by announcing his dismissal.<sup>[16]</sup>

Delos Reyes filed a Notice of Strike before the National Conciliation and Mediation Board, but the parties eventually agreed to refer the matter to voluntary arbitration.<sup>[17]</sup>

After evaluating the evidence, the Panel of Voluntary Arbitrators ruled that Delos Reyes was validly dismissed in its May 12, 2015 Decision.<sup>[18]</sup> It noted that as a teacher of a Catholic educational institution and the Union's president, Delos Reyes had been "expected to exhibit conduct worthy of emulation"<sup>[19]</sup> but failed to do so. It deemed his use of the words "*anak ng puta*" without the slightest provocation as a grave depravity, especially when directed at a minor student.<sup>[20]</sup> It also weighed against him other previously filed complaints that showed his unprofessional behavior.<sup>[21]</sup>

The dispositive portion of the Decision read:

WHEREFORE, premises considered, judgment is hereby rendered  
DECLARING that the dismissal of individual complainant Orestes Delos  
Reyes is valid and DISMISSING the instant complaint for lack of merit.

SO ORDERED.<sup>[22]</sup>

Delos Reyes filed a Petition for Review, but this was denied.<sup>[23]</sup> In its April 28, 2016 Decision,<sup>[24]</sup> the Court of Appeals preliminarily found that Delos Reyes was "amply accorded his right to procedural due process."<sup>[25]</sup> It went onto find him guilty of gross misconduct after considering Paula Mae's minority and her family's circumstances.<sup>[26]</sup> It also found his defenses of alibi and denial unsubstantiated and weak against Paula Mae's positive and categorical testimony.<sup>[27]</sup>

The Court of Appeals further ruled that Adamson was not liable for unfair labor

practice since Delos Reyes's dismissal did not threaten the Union's existence. According to it, his headship in the Union did not make him immune from suit or excuse him from liability for gross misconduct and unprofessional behavior.<sup>[28]</sup>

After the Court of Appeals had denied his Motion for Reconsideration in its August 17, 2016 Resolution,<sup>[29]</sup> Delos Reyes filed this Rule 45 Petition<sup>[30]</sup> against Adamson.

Petitioner claims that respondent treated his case with such disparity from cases involving other employees. He alleges that respondent has chosen not to dismiss other employees despite findings of sexual harassment or theft of class records.<sup>[31]</sup> He insists that the complaint against him was hastily acted upon without the parties being able to talk and clarify the matter.<sup>[32]</sup> Moreover, he argues that the Ad Hoc Committee was biased against him,<sup>[33]</sup> recalling how it tackled unrelated complaints that he was not afforded any opportunity to refute.<sup>[34]</sup> He further points out that unlike hearings for other employees, his was attended by the university counsel who assisted the Ad Hoc Committee.<sup>[35]</sup> He also claims that the Ad Hoc Committee acted as Paula Mae's counsel, providing her with pieces of evidence and leading her to change her version of where the incident took place.<sup>[36]</sup>

As to the actual incident, petitioner denies that he "unjustifiably, angrily" yelled "*anak ng puta*" at Paula Mae.<sup>[37]</sup> He points out inconsistencies in her testimony, arguing that he was in his classroom, and not where Paula Mae had claimed, when the incident happened. In any case, he insists that he had no motive to malign Paula Mae, who was never his student, and whom he did not know before this incident.<sup>[38]</sup>

Petitioner also contends that "*anak ng puta*" per se is neither defamatory nor constitutive of gross misconduct and unprofessional behavior. He argues that there was no proof that he had perverse or corrupt motivations in violating the school policy.<sup>[39]</sup>

Should he be found guilty, petitioner asserts that dismissal was too harsh a penalty for the alleged infraction, especially since it would have been his first offense after 20 years of service.<sup>[40]</sup> He attests that he was well loved by his students and that he had been professional throughout his stint, mindful of others' feelings.<sup>[41]</sup>

Petitioner further contends that his dismissal constitutes unfair labor practice as it was done on account of his union activities, which involved taking a stand against the school's K-12 policies. He claims that respondent saw the complaint as an opportunity to get rid of him for being critical of the school's actions. He also asserts that the dismissal was done at the time the Union was mourning the death of its secretary.<sup>[42]</sup>

In its Comment,<sup>[43]</sup> respondent argues that petitioner raises questions of fact not proper in a Rule 45 petition.<sup>[44]</sup> It also points out that he is bound by the Panel of Voluntary Arbitrators' Decision under the parties' Collective Bargaining Agreement, which provided that during arbitration, the Panel's decision shall be final and cannot be appealed.<sup>[45]</sup>

Moreover, respondent argues that petitioner impleads the Union in this case—even without being authorized to do so—just to intimidate Paula Mae and her mother. It points out that the Verification attached to the Petition only shows him as the petitioner. It also asserts that the controversy has no connection with the Union's activities or right to self-organize, as respondent and the Union still have a good relationship and have entered into a new Collective Bargaining Agreement.<sup>[46]</sup>

Maintaining that petitioner was accorded due process, respondent asserts that he was given an opportunity to be heard through his written explanation, memorandum, and an administrative hearing.<sup>[47]</sup>

As to the incident itself, respondent insists on petitioner's guilt for gross misconduct and unprofessional behavior.<sup>[48]</sup> It notes that Paula Mae was emotionally traumatized even weeks after the incident, as she was sensitive to words such as "*anak ng puta*," having been raised by a single mother and not being exposed to swearwords.<sup>[49]</sup> It contends that as a professor of a Catholic school, petitioner was expected to protect the students' interests and welfare.<sup>[50]</sup> It also notes that petitioner did not say "*anak ng puta*" jokingly, but in a harsh and angry manner.<sup>[51]</sup> Petitioner could not have said it in surprise either, respondent points out, because it was unlikely that he did not notice Paula Mae through the door's glass window.<sup>[52]</sup>

Respondent likewise argues that petitioner cannot deny the incident itself.<sup>[53]</sup> According to it, Paula Mae was not shown to have been motivated by ill will, and the minor inconsistencies in her testimony had already been clarified in the hearing.<sup>[54]</sup> Her testimony was also corroborated by three (3) students who witnessed the incident and talked to Paula Mae.<sup>[55]</sup> Against this, respondent posits that petitioner's alibi cannot prevail especially since his classroom was in the same building, a mere floor and a five-minute walk from the incident scene.<sup>[56]</sup>

Respondent points out that petitioner refused to apologize to Paula Mae; instead, he filed a complaint against her to ensure that she would withdraw her case.<sup>[57]</sup> It notes that he would do this every time a complaint is filed against him, causing the other party to withdraw or just amicably settle the matter.<sup>[58]</sup>

According to respondent, Paula Mae's case was among the many complaints that show petitioner's abrasive personality and propensity to repeat the same transgressions.<sup>[59]</sup> His unjust refusal to sign the receiving copy of the documents being served on him only adds to his unprofessional behavior, respondent notes.<sup>[60]</sup> It argues that employers may validly consider previous records, especially if offenses are similar in nature,<sup>[61]</sup> and can let go of an employee whose service is inimical to its interests.<sup>[62]</sup>

Respondent also argues that the length of petitioner's service does not mitigate his liability, but actually demands a greater responsibility to comply with workplace rules.<sup>[63]</sup> It asserts that petitioner's previous merits are immaterial and do not disprove the incident or negate his liability.<sup>[64]</sup>

Respondent contends that it is not guilty of unfair labor practice, since the dismissal

was not related to the Union's activities, its right to self-organize, or its existence; rather, it was solely due to petitioner's personal actions. Prior to the incident, respondent submits, it even extended him a cash advance of P200,000.00, showing their previously good relations.<sup>[65]</sup> In any case, respondent maintains that the Union president is not immune from suit or liability for gross misconduct or unprofessional behavior.<sup>[66]</sup>

Finally, as to the news of petitioner's dismissal being published, respondent states that this was done to protect its reputation against petitioner's untruthful public statements that he was dismissed for his views on the K-12 program. Respondent attests that it only sought to clarify that the cause of his dismissal was his misconduct.<sup>[67]</sup>

In his Reply,<sup>[68]</sup> petitioner explains that as the Union's president, he is sometimes in collision with the school management, especially when promoting the rights and welfare of association members and, occasionally, students.<sup>[69]</sup> He also points out that the cash advance of P200,000.00 is not an extraordinary accommodation, as it is given to all qualified employees.<sup>[70]</sup>

The issues for this Court's resolution are:

First, whether or not petitioner Orestes Delos Reyes was validly dismissed from employment; and

Second, whether or not his dismissal constitutes unfair labor practice.

This Court affirms the Court of Appeals' ruling.

We will no longer review the lower tribunals' factual findings. In a Rule 45 petition, this Court only considers questions of law. It is not our function to re-analyze evidence. In *Fuji Television Network, Inc. v. Espiritu*:<sup>[71]</sup>

When a decision of the Court of Appeals under a Rule 65 petition is brought to this court by way of a petition for review under Rule 45, only questions of law may be decided upon. As held in *Meralco Industrial v. National Labor Relations Commission*:

This Court is not a trier of facts. Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts. Besides, factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of appeals, are conclusive upon the parties and binding on this Court.