

FIRST DIVISION

[G.R. No. 229013, July 15, 2020]

**INTERCONTINENTAL BROADCASTING PETITIONER,
CORPORATION, VS. ANGELINO B. GUERRERO, RESPONDENT.**

DECISION

LAZARO-JAVIER, J.:

The Case

This petition seeks to set aside the following dispositions of the Court of Appeals in CA-G.R. SP No. 136709:

1. Decision^[1] dated July 19, 2016 finding respondent to have been illegally dismissed by petitioner; and
2. Resolution^[2] dated November 24, 2016 denying petitioner's motion for reconsideration.

The Facts

On September 10, 1986, petitioner Intercontinental Broadcasting Corporation (IBC 13) hired respondent Angelino B. Guerrero as Technician in its Technical Operation Center (TOC).^[3] His duties, among others, included monitoring the TOC equipment adjustment to attain the standard broadcast signal quality, sending audio/video signal to the transmitter, and reporting to the TOC Supervisor any malfunction of the equipment under their control.^[4]

In 2009, IBC 13's switcher equipment for logos superimposition developed technical problems. To remedy the situation, the management transferred this task (superimposition of logos) to the TOC. It became an additional, nay, temporary task of the TOC personnel on top of their primary tasks. TOC Supervisor Arthur Guda and the Engineering Department agreed that should there be a conflict between the regular functions of the TOC personnel and their additional task, their regular TOC functions shall prevail.^[5]

On July 10, 2012, Guda issued a memorandum to respondent directing him to explain why he should not be reprimanded for negligence of duty in the following instances: (1) on July 1, 2012, at 10:58:46 p.m., the icons of IBC, AKTV, and SPG logo were seen on-air during the commercial gap of Cooltura; (2) the same incident happened on July 4, 2012 while respondent was seen sleeping on duty; and (3) on July 8, 2012, the icons were not superimposed during Gap 14 of the Wimbledon program while respondent was again seen sleeping on duty.^[6]

In his Reply^[7] dated July 11, 2012, respondent invoked his "right to remain silent, as provided by law."

After nine (9) months, or on April 15, 2013, a Formal Charge was served on respondent for: (1) gross negligence of duty and/or gross misconduct committed on April 16, 2012 and on various days of July 2012 where he did the opposite of what was required of him during commercial breaks (either he wrongly superimposed logos or wrongly omitted it altogether);^[8] (2) sleeping while on duty; (3) insubordination; (4) failure to report for work and tampering his Daily Time Record (DTR) on November 11, 2012; and (5) reporting late for work on November 12, 2012 resulting in late network sign-on.^[9]

On April 29, 2013, respondent submitted his Affidavit in response to the charges against him.^[10] He explained that the switchers, not the TOC personnel, had skills in the task of logos superimposition. Although the task was temporarily assigned to the TOC personnel on top of their regular tasks, he still did his best to perform all these tasks. He was, however, not provided with the sequence guide and commercial cue sheets to enable him to determine when to superimpose logos and when not to superimpose them.^[11]

At any rate, if he truly committed lapses in performing this new task, the same should have been reflected on the switcher's logbook and the Daily Discrepancy Report. But these records did not reflect anything against him except one (1) count of erroneous logos superimposition. He was made aware of his so-called lapses for the first time only when the Formal Charge was served on him.^[12]

Respondent denied tampering his DTR on November 11, 2012. His original work schedule for that day was from 10 o'clock in the morning to 6 o'clock in the evening. He was not informed of any change in his work shift hours. But when he punched in at 10 o'clock in the morning on November 11, 2012, he got informed only then that his work shift hours had been changed by management to 6 o'clock in the morning until 2 o'clock in the afternoon. He also learned that his co-employee Leo Baterna already took over his new "6 to 2" shift. As he learned of these changes only on the very same day they were supposed to take effect, he decided to just go on leave on that day. He no longer punched out and informed the guard on duty he was going on leave. The next day, on November 12, 2012, he reported late for work.^[13] He denied all the other charges against him.

After clarificatory hearings, IBC 13's Administrative Committee (ADCOM) issued a Formal Report on August 2, 2013 recommending respondent's termination from employment on the following grounds, viz.:^[14]

- 1) gross negligence and gross misconduct for his lapses in accomplishing the additional tasks of superimposition and no superimposition of logos;
- 2) gross negligence and gross misconduct for reporting late on November 11 and 12, 2012;
- 3) breach of confidence for sleeping while on duty;

- 4) tampering with his DTR which falls within the offense of falsification of company records and reporting false information under Section 6 of IBC's procedures, and is analogous to the just causes to terminate an employee under Article 282 of the Labor Code.^[15]

Petitioner approved the ADCOM's recommendation and terminated respondent's employment.

Respondent thus sued for illegal dismissal, unpaid wages, damages, and attorney's fees.^[16] He argued that petitioner failed to substantiate its claim that he was grossly negligent or that he committed gross misconduct in the performance of his duties.^[17] Too, his termination due to his alleged lapses was unwarranted, if not too harsh a penalty considering his dedicated service for twenty-seven (27) years.

On the other hand, petitioner maintained that respondent's dismissal was valid based on the findings contained in the ADCOM's Formal Report.

The Ruling of the Labor Arbiter

By Decision^[18] dated December 6, 2013, Labor Arbiter Remedios L.P. Marcos dismissed the complaint. She adopted the Formal Report of petitioner's ADCOM finding respondent guilty of gross negligence and/or gross misconduct for his supposed repeated mistakes in superimposing logos during commercial gaps. The labor arbiter noted that even on this ground alone, respondent's dismissal was already justified. As it was though, there was another ground which warranted respondent's dismissal, *i.e.*, tampering his DTR. As for the other charges, the labor arbiter found them inconsequential considering that the maximum penalty therefor was only suspension.^[19]

The Ruling of the NLRC

On respondent's appeal, the NLRC affirmed under Decision^[20] dated April 16, 2014. Respondent's motion for reconsideration was denied under Resolution^[21] dated June 10, 2014.

The Ruling of the Court of Appeals

Undaunted, respondent further sought affirmative relief from the Court of Appeals which under its assailed Decision^[22] dated July 19, 2016, nullified the NLRC's dispositions. It found that there was no substantial evidence to prove that respondent was validly dismissed from employment.^[23]

The Court of Appeals noted that petitioner failed to show such pattern of negligence indicating that respondent was incapable of performing his responsibilities.^[24] As for

serious misconduct, there was no clear showing either that respondent acted with bad faith or malice in the performance of his assigned tasks.^[25] The Court of Appeals also emphasized that notwithstanding respondent's lapses in April and July 2012, petitioner still allowed him to continue performing the additional task of superimposing logos for several months more until he got formally charged on April 29, 2013. The fact that petitioner did not impose any sanction on respondent for any infraction or offense simply goes to show that petitioner did not consider respondent's lapses, if at all, equivalent to gross negligence or gross misconduct.

On respondent's failure to sign in on time on November 11 and 12, 2012, he admitted he was late on November 12, 2012. He, however, had a valid justification for failing to sign in on time the day before, November 11, 2012: petitioner did not priorly inform him of the change in his work shift hours.^[26]

On the alleged tampering of respondent's DTR, petitioner pointed out that respondent erased his time-in on November 11, 2012. Respondent denied this. In any event, had respondent himself erased his initial time entry, it was only to correctly reflect the fact that he did not render service on November 11, 2012. Surely, there is no tampering to speak of when an entry in one's DTR was erased to reflect the truth that the employee did not report for work on that particular day.^[27]

Lastly, on petitioner's statement that respondent breached the confidence reposed upon him as an IBC 13 employee when he failed to superimpose an icon on July 4, 2012 (because he was allegedly sleeping while on duty), the same was a bare allegation devoid of any probative value.^[28]

In sum, the Court of Appeals found that even if respondent's lapses and infractions were taken as a whole, the same still did not fall under the just causes of termination provided under Art. 282 (now Art. 297) of the Labor Code.^[29] Given the facts and circumstances proven, and in consideration of respondent's twenty-seven (27) years of service, a suspension of six (6) months was sufficient and commensurate penalty for respondent's infractions.

Having been illegally dismissed, respondent was thus entitled to full backwages (not including the period of his six-month suspension) and reinstatement. For failure to prove bad faith on the part of petitioner, respondent was not entitled to moral damages. But since respondent was forced to litigate to protect his interest, he was awarded attorney's fees equivalent to ten percent (10%) of the total monetary award. The Court of Appeals ruled:

WHEREFORE, the instant Petition is **GRANTED**. The Decision dated April 16, 2014 and Resolution dated June 10, 2014 issued by public respondent National Labor Relations Commission in NLRC LAC Case No. 01-000416- 14 (NLRC NCR Case No. 08-11880-13) are hereby **REVERSED** and **SET ASIDE**.

Private respondent Intercontinental Broadcasting Corporation is hereby ordered to reinstate Angelino B. Guerrero without loss of seniority rights and to pay backwages from the time of his dismissal up to the time he is reinstated, less the period of suspension of six (6) months, plus 10% attorney's fees.

SO ORDERED.^[30]

Petitioner's motion for reconsideration was denied under Resolution^[31] dated November 24, 2016.

The Present Petition

Petitioner now invokes the Court's discretionary appellate jurisdiction to review and set aside the assailed dispositions of the Court of Appeals. Petitioner asserts that respondent's infractions constituted just causes for termination under Art. 282 (now Art. 297) of the Labor Code. In in this regard, petitioner essentially echoes the findings of the labor arbiter and the NLRC.^[32]

Respondent ripostes that petitioner failed to substantiate its claim that he was grossly negligent or that he committed gross misconduct in the performance of his duties. His termination was not justified considering that his primary function was that of a TOC Technician and not the task of superimposing logos, relative to which he was charged with gross negligence and gross misconduct.^[33]

Issue

Did the Court of Appeals commit reversible error in finding respondent to have been illegally dismissed from employment?

Ruling

In termination cases, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause. Failure to do so would necessarily mean that the dismissal was illegal. For this purpose, the employer must present substantial evidence to prove the legality of the employee's dismissal.^[34] Substantial evidence is defined as "such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."^[35] Here, we concur in the Court of Appeals' finding that petitioner failed to establish by substantial evidence that respondent was validly dismissed.

Article 297 (formerly 282) of the Labor Code enumerates the just causes for termination, viz.:

Art. 297. Termination by employer. — An employee may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the