FIRST DIVISION

[G.R. No. 240882, September 16, 2020]

WILFREDO T. MARIANO, PETITIONER, VS. G.V. FLORIDA TRANSPORT AND/OR VIRGILIO FLORIDA, JR., RESPONDENTS.

D E C I S I O N

LOPEZ, J.:

This resolves the Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated October 26, 2017 and Resolution[3] dated July 12, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 146334 which affirmed the Decision[4] dated January 28, 2016 and Resolution[5] dated March 30, 2016 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000385-16(4) finding the dismissal of Wilfredo T. Mariano valid.

ANTECEDENTS

The controversy stemmed from a Complaint[6] for illegal dismissal, non-payment of wages for two round trips and 13th month, refund of cash bond, damages and attorney's fees filed by Mariano and Francisco C. Arellano against G.V. Florida Transport and its owner, Virgilio Florida, Jr. Only Mariano filed the instant petition before this Court.

In his position paper, Mariano alleged that he was a bus driver for Florida Transport since August 5, 2005, receiving P3,400.00 *per* round trip plus commission, and plying the routes of Gonzaga, Cagayan to Metro Manila and *vice versa*.[7] On May 31, 2015, Mariano was preparing to leave the main station at Sampaloc, Manila when a representative from the head office of Florida Transport instructed him to alight from his assigned bus. Mariano was not allowed to continue the supposed trip to Gonzaga, Cagayan. The next day, Mariano reported for work but he was advised not to come to work in the meantime. He was told that the company will just send him an e-mail as to when he will be given a bus assignment.

On December 11, 2015, Labor Arbiter (LA) Ma. Lourdes R. Baricaua ruled that Mariano's allegations were deemed admitted because respondents failed to file their position paper relative to him.[8] The LA ordered respondents to pay Mariano his money claims in the total amount of P267,486.67, as follows:

Separation pay [P252.00 x 30 days = P7,560.00 x 20 years]	P151,200.00
Backwages [P7,560.00 x 7.63 months]	57,682.00
Proportionate 13th month pay [P57,682.80 / 12]	4,806.90

Unpaid wages – 2 round trips [P3,400.00 x 2]	6,800.00
13th month pay – 3 recent years [P7,560.00 x 3]	22,680.00
Attorney's fees [10% of total awards]	24,316.97[9]

In their appeal to the NLRC, respondents averred that they filed their position paper with respect to the claim of Mariano.[10] They prepared separate position papers for Mariano and Arellano, placed the two position papers in one sealed envelope, and mailed the envelope to the Office of the LA under Registry Receipt No. 3253. It was then impossible for the LA to receive only the position paper pertaining to Arellano.

On January 28, 2016, the NLRC admitted respondents' position paper. The NLRC ruled that respondents adequately explained the reason for the belated submission of evidence and that the pieces of documentary evidence attached to the position paper were material to establish respondents' cause.[11] The NLRC found that Mariano was involved in several reckless driving incidents that constitute misconduct – a just cause for dismissal. However, for failure to prove the dates when Mariano actually reported for work, the NLRC limited the award to proportionate 13th month pay, *viz*.:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1. REVERSING the Decision of Labor Arbiter Baric[a]ua with respect to complainant/appellee Wilfredo Mariano as this Office finds him to have been validly dismissed;
>
> x x x x
>
> 3. ORDERING the payment of proportionate 13th month pay for Mariano in the amount of P3,150.00 x x x.
>
> SO ORDERED.[12]

Failing to secure reconsideration,[13] Mariano appealed to the CA.

On October 26, 2017, the CA dismissed the petition for lack of merit.[14] The CA ruled that respondents amply explained the circumstances leading to the submission of the position paper and evidence on their appeal to the NLRC. There was a valid ground to dismiss Mariano and the respondents complied with the two-notice requirement under the Labor Code. Mariano sought reconsideration but was denied on July 12, 2018.[15]

Hence, this petition.

Mariano argues that respondents failed to justify the belated submission of their position paper with respect to him. More, he was not furnished with a copy of the position paper. Mariano insists that he was not given the first notice to explain as required by law, there was no hearing or conference to afford him an opportunity to present evidence to support his claim, and he did not receive the notice of termination. Finally, respondents failed to substantiate his alleged cumulative infractions of company rules for reckless driving that warranted his dismissal.

In their Comment,[16] respondents counter that the NLRC, as affirmed by the CA, properly admitted their position paper. Further, the procedural and substantive requirements of due process were complied with. Meanwhile, Mariano reiterated in his Reply[17] that there was no legal ground to dismiss him and he was not afforded due process.

RULING

The petition is partly meritorious.

First off, labor tribunals, such as the NLRC, are not precluded from receiving evidence submitted on appeal as technical rules are not binding in cases submitted before them.[18] There is, however, a caveat to this policy. The delay in the submission of evidence should be adequately explained, the evidence adduced must be undeniably material to the cause of a party, and the subject evidence should sufficiently prove the allegations sought to be established.[19]

In the present case, we do not agree with the NLRC and the CA that respondents sufficiently justified the belated submission of their position paper as regards Mariano. Under Section 12,[20] Rule 12 of the Rules of Court, when the existence of a pleading filed by registered mail is at issue, proof of such filing consists of: (1) the registry receipt issued by the mailing office; **and** (2) an affidavit of the person mailing the pleading containing a full statement of the date, place, and manner of service. Here, respondents submitted Registry Receipt No. 3252[21] issued on September 14, 2015 but not the affidavit of the person who mailed the pleading. The affidavit could have explained that two position papers were filed by registered mail by depositing them in one sealed envelope and mailing the same to the Office of the LA. As the party to whom the burden of proof to show that the position paper pertaining to Mariano was mailed and received by the addressee lay, respondents could have presented the affidavit of its messenger to satisfy the requirements of the Rules of Court.[22] Respondents did not offer any explanation.

Additionally, respondents failed to comply with the requirements of proper proof of service under Section 13,[23] Rule 13 of the Rules of Court. Respondents only attached Registry Receipt No. 3252[24] without the affidavit of the person mailing. We note that Mariano consistently raised in his Motion for Reconsideration[25] to the NLRC and in his appeal to the CA the non-service of position paper to him thus violating his right to file a reply.[26] Unfortunately, the NLRC and the CA did not rule on the matter. We stress that if the service is done by registered mail, proof of service shall consist of the affidavit of the person effecting the mailing and the registry receipt, both of which must be appended to the paper being served.[27] Absent one or the other, or worse both, there is no proof of service.[28] In *Valley Golf and Country Club, Inc. v. Dr. Reyes*,[29] we emphasized that registry receipt *per se* does not constitute proof of receipt. Undoubtedly, Registry Receipt No. 3252 is not conclusive proof that respondents served a copy of their position paper to Mariano, nor is it conclusive proof that Mariano received its copy of the position paper. Respondents should have submitted an affidavit proving that they mailed the position paper together with the registry receipt issued by the post office. Thereafter, they should have immediately filed the registry return card. They did not.

The procedural flaws notwithstanding, especially considering that this is a labor case, the ends of substantial justice would be better served by relaxing the application of technical rules of procedure.[30] Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. This Court reiterates that where the ends of substantial justice would be better served, the application of technical rules of procedure may be relaxed.[31]

We now proceed to discuss the merits of the case.

Dismissal from employment has two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and second, the legality of the manner of dismissal, which constitutes procedural due process.[32] The burden of proof rests upon the employer to show that the disciplinary action was made for lawful cause or that the termination of employment was valid. In administrative and quasi-judicial proceedings, the quantum of evidence required is substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Thus, unsubstantiated suspicions, accusations, and conclusions of the employer do not provide legal justification for dismissing the employee.

As to the substantive aspect, respondents terminated Mariano's employment on the ground of serious misconduct. For serious misconduct to be a just cause for dismissal, the concurrence of the following elements is required: (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.[33]

Here, respondents presented sufficient evidence to prove that Mariano committed numerous infractions of company rules and regulations since he started working with Florida Transport. The infractions can be traced as far back as 2002[34] up to the time he was rehired in 2008[35] when he admitted to hitting a concrete mixer truck in Baliuag, Bulacan. In the year 2009,[36] the side mirror of Mariano's assigned bus was destroyed while he was trying to overtake another bus; and in 2013,[37] he had an altercation with an inspector of Florida Transport for which he was meted a penalty of suspension. The last infraction was in March 2015 when he figured in a vehicular accident that caused injuries to his passengers.[38] The repeated and numerous infractions committed by Mariano in driving the passenger bus assigned to him cannot be considered minor. The Court is entitled to take judicial notice of the gross negligence and the appalling disregard of the physical safety and property of others so commonly exhibited today by the drivers of passenger buses.[39] Taking into account the nature of Mariano's job, the infractions are too numerous to be ignored or treated lightly and may already be subsumed as serious misconduct.[40] Accordingly, this Court holds that Mariano was validly dismissed from employment on the ground of serious misconduct.

Be that as it may, respondents did not comply with the procedural requirements of due process as laid down in *King of Kings Transport, Inc. v. Mamac*,[41] *viz*.:

> To clarify, the following should be considered in terminating the services of employees:

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[42] (Emphasis in the original; citations omitted.)

Respondents failed to afford Mariano the first written notice containing the specific causes or grounds for termination against him. Admittedly, Mariano submitted a lengthy explanation letter[43] dated June 3, 2015 explaining his side on the incident that transpired two months back. We stress, however, that the burden of proving compliance with the notice requirement falls on the employer. The notice to the employee should embody the particular acts or omissions constituting the grounds for which the dismissal is sought, and that an employee may be dismissed only if the grounds cited in the pre-dismissal notice were the ones cited for the termination of employment.[44] Thus, it was erroneous for the CA to "safely infer" that respondents duly notified Mariano and apprised him of the particular act for which his dismissal was sought just because Mariano submitted an explanation letter.[45] In *Loadstar Shipping Co., Inc. v. Mesano*,[46] we held that the employee's written explanation did not excuse the fact that there was a complete absence of the first notice. We sanctioned the employer for disregarding the due process requirements.