

## THIRD DIVISION

[ G.R. No. 207898, October 19, 2016 ]

**ERROL RAMIREZ, JULITO APAS, RICKY ROSELO AND ESTEBAN MISSION, JR., PETITIONERS, VS. POLYSON INDUSTRIES, INC. AND WILSON S. YU, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

Before the Court is a petition for review on *certiorari* seeking to annul and set aside the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> of the Court of Appeals (CA), dated January 23, 2013 and June 17, 2013, respectively, in CA-G.R. SP No. 125091. The assailed CA Decision affirmed the March 28, 2012 Resolution of the Fourth Division of the National Labor Relations Commission (NLRC), which found that respondent corporation validly dismissed petitioners from their employment, while the CA Resolution denied petitioners' Motion for Reconsideration.

The facts of the case are as follows:

Respondent Polyson Industries, Inc. (*Polyson*) is a duly organized domestic corporation which is primarily engaged in the business of manufacturing plastic bags for supermarkets, department stores and the like.

Petitioners, on the other hand, were employees of Polyson and were officers of Obrero Pilipino (*Obrero*), the union of the employees of Polyson.

The instant case arose from a labor dispute, between herein petitioners and respondent corporation, which was certified by the Secretary of the Department of Labor and Employment (*DOLE*) to the NLRC for compulsory arbitration.

In its Position Paper<sup>[3]</sup> submitted to the NLRC, Polyson alleged that: on April 28, 2011, it received a notice of hearing from the DOLE with respect to the petition for certification election filed by Obrero; on May 31, 2011, Polyson, through counsel and management representative, met with the officers of Obrero, led by the union president, herein petitioner Ramirez; Obrero asked that it be voluntarily recognized by Polyson as the exclusive bargaining agent of the rank-and-file employees of Polyson, but the latter refused and opted for a certification election; furious at such refusal, the Obrero officers threatened the management that the union will show its collective strength in the coming days; on June 7, 2011, Polyson received a rush order from one of its clients for the production of 100,000 pieces of plastic bags; the management of Polyson informed the operators of its Cutting Section that they would be needing workers to work overtime because of the said order; based on the usual practice of the company, those who intend to perform overtime work were expected to sign the "time sheet" indicating their willingness to work after their shift; on June 7, 2011, the supervisors approached the operators but were told that

they would be unable to work overtime because they have other commitments after their shift; the supervisors then requested that the operators set aside their time for the following day to work beyond their regular shift; on June 8, 2011, five (5) operators indicated their desire to work overtime;<sup>[4]</sup> however, after their regular shift, three of the five workers did not work overtime which resulted in the delay in delivery of the client's order and eventually resulted in the cancellation of the said order by reason of such delay;<sup>[5]</sup> when management asked the workers, who initially manifested their desire to work overtime, to indicate in the time sheet the reason for their failure to do so, two of the three workers, namely, Leuland Visca (Visca) and Samuel Tuting (*Tuting*) gave the same reason, to wit: "*Ayaw nila/ng iba na mag-OT [overtime] ako*";<sup>[6]</sup> the management then conducted an investigation and a hearing where Visca affirmed his previous claim that petitioners were the ones who pressured him to desist from rendering overtime work;<sup>[7]</sup> on even date, Tuting executed a written statement claiming that herein petitioners induced or threatened them not to work overtime;<sup>[8]</sup> the management then gave notices to petitioners asking them to explain why no disciplinary action would be taken against them;<sup>[9]</sup> petitioners submitted their respective explanations to the management denying their liability;<sup>[10]</sup> after evaluation, the management informed petitioners that it has decided to terminate petitioners' employment on the ground that they instigated an illegal concerted activity resulting in losses to the company.<sup>[11]</sup>

In their Position Paper,<sup>[12]</sup> petitioners denied the allegations of Polyson contending that they were terminated from their employment not because they induced or threatened their co-employees not to render overtime work but because they established a union which sought to become the exclusive bargaining agent of the rank-and-file employees of Polyson; that their termination was undertaken without affording them substantive and procedural due process; and that Polyson is guilty of unfair labor practice.

Subsequently, on June 29, 2011, Obrero filed a Notice of Strike with the National Conciliation and Mediation Board (*NCMB*) which was predicated on various grounds, among which was the alleged illegal dismissal of herein petitioners.

Thereafter, on July 21, 2011, the DOLE Secretary certified the labor dispute to the NLRC for immediate compulsory arbitration where the parties were required to maintain the *status quo*, in accordance with Article 263(g) of the Labor Code.<sup>[13]</sup>

On December 26, 2011, the NLRC rendered its Decision<sup>[14]</sup> finding petitioners illegally dismissed from their employment and ordering their reinstatement to their former positions without loss of seniority rights and other privileges and benefits as well as to pay petitioners their backwages and attorney's fees. The NLRC ruled that, for failure of Polyson to submit in evidence petitioners' supposed written explanations in answer to the company's Notice to Explain, Polyson failed to discharge its burden of proving that petitioners were indeed terminated for a valid cause and in accordance with due process.

Polyson then filed a Motion for Reconsideration<sup>[15]</sup> submitting, for the consideration of the NLRC, the subject written explanations of petitioners and reiterating their position that petitioners were, indeed, validly dismissed.

On March 28, 2012, the NLRC issued a Resolution<sup>[16]</sup> granting Polyson's Motion for Reconsideration, thereby reversing and setting aside its December 26, 2011 Decision and rendering a new judgment which declared petitioners as validly dismissed. In the said Resolution, the NLRC found that Polyson was able to present sufficient evidence to establish that petitioners' termination from employment was for a valid cause, as they were found guilty of inducing or threatening their co-employees not to render overtime work, and that petitioners' dismissal was in conformity with due process requirements.

Aggrieved by the above Resolution, petitioners filed a special civil action for *certiorari* with the CA assailing the said Resolution and praying for the reinstatement of the December 26, 2011 Decision of the NLRC.<sup>[17]</sup>

In its questioned Decision dated January 23, 2013, the CA denied petitioners' petition for *certiorari* and affirmed the March 28, 2012 Resolution of the NLRC. The CA ruled that petitioners' defense, which is anchored primarily on their denial of the allegations of Polyson, cannot overcome the categorical statements of Polyson's witnesses who identified petitioners as the persons who induced or threatened them not to render overtime work.

Petitioners filed a Motion for Reconsideration,<sup>[18]</sup> but the CA denied it in its Resolution dated June 17, 2013.

Hence, the present petition for review on *certiorari* based on the following grounds:

THE HONORABLE COURT OF APPEALS THIRTEENTH DIVISION,  
COMMITTED GRAVE ABUSE OF DISCRETION IN RENDERING THE HEREIN  
ASSAILED DECISIONS.

THE THIRTEENTH DIVISION OF THE COURT OF APPEALS  
MISAPPRECIATED THE ACTUAL FACTS OF THE INSTANT CASE. THUS, A  
REVIEW IS NECESSARY AND THE ASSAILED DECISIONS VACATED.<sup>[19]</sup>

The basic issue in the instant case is whether petitioners' dismissal from their employment was valid.

Due process under the Labor Code involves two aspects: first is substantive, which refers to the valid and authorized causes of termination of employment under the Labor Code; and second is procedural, which points to the manner of dismissal.<sup>[20]</sup> Thus, to justify fully the dismissal of an employee, the employer must, as a rule, prove that the dismissal was for a just or authorized cause and that the employee was afforded due process prior to dismissal.<sup>[21]</sup> As a complementary principle, the employer has the onus of proving with clear, accurate, consistent, and convincing evidence the validity of the dismissal.<sup>[22]</sup>

Anent the substantive aspect, the question that should be resolved, in the context of the facts involved in and the charges leveled against petitioners in the present case, is whether petitioners are guilty of an illegal act and, if so, whether such act is a

valid ground for their termination from employment.

In its Resolution dated March 28, 2012, the NLRC ruled that "[t]he evidence on record clearly establishes that herein [petitioners] resorted to an illicit activity. The act of inducing and/or threatening workers not to render overtime work, given the circumstances surrounding the instant case, was undoubtedly a calculated effort amounting to 'overtime boycott' or 'work slowdown'. [Petitioners], in their apparent attempt to make a statement as a response to [Polyson's] refusal to voluntarily recognize Obrero Pilipino Polyson Industries Chapter as the sole and exclusive bargaining representative of the rank-and-file employees, unduly caused [Polyson] significant losses in the aggregate amount of Two Hundred Ninety Thousand Pesos (PhP290,000.00)."[23]

The Court finds no cogent reason to depart from the above findings, which were affirmed by the CA. The Court is not duty-bound to delve into the accuracy of the factual findings of the NLRC in the absence of clear showing that these were arbitrary and bereft of any rational basis.[24] In the present case, petitioners failed to convince this Court that the NLRC's findings that they instigated the slowdown on June 8, 2011 are not reinforced by substantial evidence. Verily, said findings have to be maintained and upheld. This Court reiterates, as a reminder to labor leaders, the rule that union officers are duty-bound to guide their members to respect the law.[25] Contrarily, if the officers urge the members to violate the law and defy the duly-constituted authorities, their dismissal from the service is a just penalty or sanction for their unlawful acts.[26]

In any case, a review of the records at hand shows that the evidence presented by Polyson has proven that petitioners are indeed guilty of instigating two employees to abstain from working overtime. In the Cutting Section Overtime Sheet[27] dated June 8, 2011, employees Visca and Tuting indicated that "*ayaw nila/ng iba na mag-OT [overtime] ako*" as the reason why they did not render overtime work despite having earlier manifested their desire to do so. In the Administrative Hearing[28] conducted on June 9, 2011, Visca identified petitioners as the persons who pressured them not to work overtime. In the same manner, Tuting, in his written statement,[29] also pointed to petitioners as the ones who told him not to work overtime.

Petitioners question the credibility of Tuting and Visca's claims contending that these are self-serving and that they were merely used by the management to manufacture evidence against them. However, there is nothing on record to indicate any ulterior motive on the part of Visca and Tuting to fabricate their claim that petitioners were the ones who threatened or induced them not to work overtime. Absent convincing evidence showing any cogent reason why a witness should testify falsely, his testimony may be accorded full faith and credit.[30] Moreover, petitioners' defense consists of mere denials and negative assertions. As between the affirmative assertions of unbiased witnesses and a general denial and negative assertions on the part of petitioners, weight must be accorded to the affirmative assertions.[31]

In addition, the Court finds no error in the findings of the NLRC in its questioned Resolution that, contrary to petitioners' claims, the slowdown was indeed planned,