

SECOND DIVISION

[G.R. No. 212096, October 14, 2015]

**NIGHTOWL WATCHMAN & SECURITY AGENCY, INC.,
PETITIONER, VS. NESTOR LUMAHAN, RESPONDENT.**

DECISION

BRION, J.:*

We resolve the petition for review on certiorari under Rule 45 of the Rules of Court^[1] filed by Nightowl Watchman & Security Agency, Inc. (Nightowl) from the September 18, 2013 decision^[2] and the April 4, 2014 resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 117982.

The Factual Antecedents

Sometime in December 1996, Nightowl hired Nestor P. Lumahan (*Lumahan*) as a security guard. Lumahan's last assignment was at the Steelworld Manufacturing Corporation (*Steelworld*).

Designated as Acting Chairperson, per Special Order No. 2222 dated September 29, 2015. Designated as Acting Member in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 2223 dated September 29, 2015.

On **January 9, 2000**, Lumahan filed before the labor arbiter a complaint for illegal dismissal; underpayment of wages; nonpayment of overtime pay, premium pay for holiday and rest day, holiday pay, and service incentive leave; separation pay; damages and attorney's fees against Nightowl and/or Engr. Raymundo Lopez.

On **March 10, 2000**, he filed an amended complaint to include nonpayment of 13th month pay and illegal suspension. He also corrected his date of employment and the date of his dismissal from May 1999 to June 9, 1999.

Lumahan admitted in his pleadings that he did not report for work from May 16, 1999 to June 8, 1999, but claimed in defense that he had to go to Iloilo to attend to his dying grandfather. He alleged that when he asked for permission to go on leave, Nightowl refused to give its consent. Steelworld, however, gave him permission to leave for Iloilo. When he reported back to work on June 9, 1999, Nightowl did not allow him to return to duty:

Nightowl, on the other hand, claimed that on April 22, 1999, Lumahan left his post at Steelworld and failed to report back to work since then. It argued that it never dismissed Lumahan and that he only resurfaced when he filed **the present complaint**.

The Labor Arbiters' Ruling

On **April 15, 2002**, Labor Arbiter Pablo C. Espiritu, Jr. (*LA Espiritu*) **dismissed the complaint** for illegal dismissal, separation pay, and damages, but ordered Nightowl and/or Engr. Raymundo Lopez to jointly and solidarity pay Lumahan wage differentials, 13th month pay differentials, service incentive leave, holiday pay, premium pay for holiday and rest day differentials, and overtime pay in the total amount of P 224,928.26 plus 10% attorney's fees.^[4]

He ruled that Lumahan had **not** been dismissed to begin with; hence, he could not claim that he was illegally dismissed. He justified his ruling on the following: (1) **the security report** of SG Dominador Calibo stating that Lumahan abandoned his post, and that Nightowl appointed a replacement on April 22, 1999; and (2) the lack of evidence to support Lumahan's allegations.

Nevertheless, *LA Espiritu* ruled that Lumahan was entitled to his money claims because Nightowl failed to rebut them.

Both parties timely filed their appeal before the National Labor Relations Commission (*NLRC*).

On September 20, 2002, the NLRC remanded the case to the labor arbiter because it believed that there were factual matters that needed to be considered further.

On **December 15, 2004**, Labor Arbiter Gaudencio P. Demaisip, Jr. (*LA Demaisip*) declared, among others, that Lumahan had been illegally dismissed, and ordered Nightowl to pay backwages and separation pay in lieu of reinstatement.^[5] *LA Demaisip* dismissed Lumahan's other money claims for lack of merit.

LA Demaisip presumed from the payroll slips submitted by Nightowl that Lumahan worked from April 16, 1999 to April 30, 1999; to him, these slips showed that Lumahan was paid for his services covering such period. On the other hand, he was not convinced that Lumahan absented himself from May 1, 1999 to May 15, 1999 because Nightowl did not present the payroll slips for this period.

Finally, *LA Demaisip* held that no abandonment of work took place because Nightowl failed to establish Lumahan's intention to abandon his work. Nightowl appealed the December 15, 2004 *LA Demaisip* decision to the NLRC.^[6]

The NLRC Decision

On **August 31, 2010**, the NLRC granted Nightowl's appeal; set aside and reversed the December 15, 2004 *LA Demaisip* decision; **dismissed the complaint for illegal dismissal**; deleted the award of backwages and separation pay in lieu of reinstatement; and affirmed the dismissal of the money claims.^[7]

The NLRC found that there was no evidence showing that Lumahan had been dismissed, and held that what actually happened was an "informal voluntary termination of employment" on his end. It noted that Lumahan failed to sign the payroll slip for the period covering April 16, 1999 to April 30, 1999, thereby surmising that he only worked until April 22, 1999. It appreciated Lumahan's inconsistent claims on the date of his dismissal in favor of the theory that an actual

dismissal did not take place. Finally, it maintained that Lumahan indicated his intention to sever his employment when he persisted in leaving for Iloilo despite Nightowl's refusal to give its permission.

On November 17, 2010, the NLRC denied Lumahan's motion for reconsideration.^[8] Lumahan elevated the case to the CA via a petition for certiorari.

The CA Decision

In its **September 18, 2013 Decision**, the CA granted Lumahan's certiorari petition^[9] after finding grave abuse of discretion in the NLRC's August 31, 2010 Decision.

The CA ruled that Nightowl failed to discharge its burden of proving that Lumahan unjustly refused to return to work. *The fact that Lumahan did not receive any notice whatsoever sufficiently shows that Nightowl had no valid cause to terminate Lumahan's employment;* hence, Lumahan was illegally dismissed.

The CA gave more weight to the findings of LA Demaisip, reasoning that the NLRC is generally bound by the factual findings of labor arbiters who are in a better position to observe the demeanor and deportment of the witnesses.

The CA, consequently, awarded backwages reckoned from the time Lumahan was illegally dismissed on June 9, 1999, and ordered the payment of separation pay *in lieu* of reinstatement.

On **April 04, 2014**, the CA denied Nightowl's motion for reconsideration; hence, the present petition.

The Petition

Nightowl filed the present petition on the following grounds:

1. The CA erred in reversing the August 31, 2010 decision of the NLRC because Lumahan had not been actually dismissed; and
2. The CA erred in ruling that the findings of LA Demaisip must be given greater weight than that of the NLRC because findings of the labor arbiters were conflicting and because LA Demaisip's findings were not supported by substantial evidence.

Nightowl contends that the issue of whether Lumahan was illegally dismissed could not be addressed without first establishing the fact that he was dismissed. Other than the bare allegation that Lumahan was not allowed to report back to work, Nightowl argues that there was no clear and convincing evidence showing that Lumahan had really been dismissed.

As a result, it was not bound to prove the existence of abandonment or the legality of a dismissal that was not clearly established.

Nightowl questions the CA's reliance on the general rule that the NLRC is bound by the findings of the labor arbiter because the present case merited the NLRC's own

evaluation of facts. Nightowl asserts that this case is an exception to the general rule because: (1) there were conflicting findings of different labor arbiters; and (2) LA Demaisip's findings were not supported by substantial evidence.

The Respondent's Position

Lumahan pointed out that Nightowl failed to attach as annexes the certified true copies of the parties' position papers, replies, rejoinders, and appeal memorandums filed before the NLRC, as well as the petition for certiorari, comment, and memorandum filed with the CA. Moreover, Nightowl failed to implead the CA as public respondent. Thus, he argued that Nightowl's petition for review on certiorari is fatally defective and should be dismissed outright.

Lumahan also points out that Nightowl's allegations in its petition are all rehash of its arguments in its motion for reconsideration before the CA.

On the merits, Lumahan emphasizes and reiterates that Nightowl failed to send him a report-to-work notice. He maintains that this oversight caused him to be constructively, if not actually, dismissed.

The Court's Ruling

We resolve to partly **GRANT** the petition.

I. The Threshold Objections

Nightowl's petition is not procedurally defective and does not warrant an outright dismissal.

Section 4, Rule 45 of the Rules of Court provides: "[t]he petition shall x x x be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court *a quo* and the requisite number of plain copies thereof, and such material portions of the records as would support the petition; and x x x."^[10] [omissions supplied]

Thus, a petition for review on certiorari does not require the attachment of all the pleadings the parties filed before the lower tribunals.

Only the judgment or final order must be attached, plus supporting material records.

Additionally, Section 4, Rule 45 states: "[t]he petition shall x x x state the full name of the appealing party as the petitioner and the adverse party, as respondent, **without impleading the lower courts or judges thereof either as petitioners or respondents** x x x."^[11] (emphasis and omissions supplied)

In other words, a petition for review on certiorari under Rule 45, unlike a petition for certiorari under Rule 65, does not require that the court *a quo* be impleaded. This distinction proceeds from the nature of these proceedings: a Rule 45 petition involves *an appeal* from the ruling *a quo*; a Rule 65 petition is an *original special*

civil action that must implead the lower tribunal alleged to have acted in excess of its jurisdiction.

From the foregoing, Lumahan cannot rely on Section 5, Rule 45 of the Rules of Court and insist on an outright dismissal of the petition. We find that Nightowl duly complied with the requirements for filing a petition for review on certiorari.

II. The Substantive Issues

Parameters of the Court's Rule 45 review of the CA 's Rule 65 decision in labor cases.

In reviewing the legal correctness of the CA decision in a labor case (pursuant to Rule 65 of the Rules of Court), we examine the CA decision in the context of the remedy the CA addressed - the petition is a determination of the presence or the absence or presence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision is intrinsically correct on its merits. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the challenged NLRC decision.

Under this approach, the question that we ask is: *Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?*^[12]

Underlying this jurisdictional limitation is the general jurisdictional limitation of a Rule 45 petition that restricts the Court's inquiry to questions of law - where the doubt or controversy concerns the correct application of law or jurisprudence to a given set of facts. We do not review questions of facts (*i.e.*, where the doubt or controversy concerns the truth or falsity of facts) unless necessary to determine the correctness of the CA finding that the NLRC did or did not commit grave abuse of discretion.

In resolving the present petition, therefore, we are bound by Rule 45's general factual-bars-rule, and the intrinsic limitations of the ruling under review - made based on an extraordinary remedy aimed solely at correcting errors of jurisdiction or grave abuse of discretion.

As presented by the petitioner, the issue before us involves mixed questions of fact and law, with the real issue being one of fact - whether Lumahan was dismissed from service. As a question of fact, we generally cannot address this issue.

By way of exception, the Court can address factual issues - and in the process review the factual findings of the labor tribunals and the evidence -to determine whether, as essentially ruled by the CA, the NLRC committed grave abuse of discretion by grossly misreading the facts and misappreciating the evidence.

The CA erred in finding grave abuse of discretion in the NLRC's factual conclusion that Lumahan was not dismissed from work.

In every employee dismissal case, the employer bears the burden of proving the