

SECOND DIVISION

[G.R. No. 172044, February 06, 2013]

**CAVITE APPAREL, INCORPORATED AND ADRIANO TIMOTEO,
PETITIONERS, VS. MICHELLE MARQUEZ, RESPONDENT.**

DECISION

BRION, J.:

We resolve the petition for review on *certiorari*^[1] filed by petitioners Cavite Apparel, Incorporated (*Cavite Apparel*) and Adriano Timoteo to nullify the decision^[2] dated January 23, 2006 and the resolution^[3] dated March 23, 2006 of the Court of Appeals (CA) in C.A.-G.R. SP No. 89819 insofar as it affirmed the disposition^[4] of the National Labor Relations Commission (NLRC) in NLRC CA No. 029726-01. The NLRC set aside the decision^[5] of Labor Arbiter (LA) Cresencio G. Ramos in NLRC NCR Case No. RAB-IV-7-12613-00-C dismissing the complaint for illegal dismissal filed by respondent Michelle Marquez against the petitioners.

The Factual Antecedents

Cavite Apparel is a domestic corporation engaged in the manufacture of garments for export. On August 22, 1994, it hired Michelle as a regular employee in its Finishing Department. Michelle enjoyed, among other benefits, vacation and sick leaves of seven (7) days each per annum. Prior to her dismissal on June 8, 2000, Michelle committed the following infractions (with their corresponding penalties):

- a. First Offense: Absence without leave (AWOL) on December 6, 1999 – written warning
- b. Second Offense: AWOL on January 12, 2000 – stern warning with three (3) days suspension
- c. Third Offense: AWOL on April 27, 2000 – suspension for six (6) days.^[6]

On May 8, 2000, Michelle got sick and did not report for work. When she returned, she submitted a medical certificate. Cavite Apparel, however, denied receipt of the certificate.^[7] Michelle did not report for work on May 15-27, 2000 due to illness. When she reported back to work, she submitted the necessary medical certificates. Nonetheless, Cavite Apparel suspended Michelle for six (6) days (June 1-7, 2000). When Michelle returned on June 8, 2000, Cavite Apparel terminated her employment for habitual absenteeism.

On July 4, 2000, Michelle filed a complaint for illegal dismissal with prayer for reinstatement, backwages and attorney's fees with the NLRC, Regional Arbitration

The LA Ruling

In a decision dated April 28, 2001,^[8] LA Ramos dismissed the complaint. He noted that punctuality and good attendance are required of employees in the company's Finishing Department. For this reason, LA Ramos considered Michelle's four absences without official leave as habitual and constitutive of gross neglect of duty, a just ground for termination of employment. LA Ramos also declared that due process had been observed in Michelle's dismissal, noting that in each of her absences, Cavite Apparel afforded Michelle an opportunity to explain her side and dismissed her only after her fourth absence. LA Ramos concluded that Michelle's dismissal was valid.^[9]

The NLRC Decision

On appeal by Michelle, the NLRC referred the case to Executive LA Vito C. Bose for review, hearing and report.^[10] Adopting LA Bose's report, the NLRC rendered a decision^[11] dated May 7, 2003 reversing LA Ramos' decision. The NLRC noted that for Michelle's first three absences, she had already been penalized ranging from a written warning to six days suspension. These, the NLRC declared, should have precluded Cavite Apparel from using Michelle's past absences as bases to impose on her the penalty of dismissal, considering her six years of service with the company. It likewise considered the penalty of dismissal too severe. The NLRC thus concluded that Michelle had been illegally dismissed and ordered her reinstatement with backwages.^[12] When the NLRC denied Cavite Apparel's motion for reconsideration in a resolution^[13] dated March 30, 2005, Cavite Apparel filed a petition for *certiorari* with the CA to assail the NLRC ruling.

The CA Ruling

Cavite Apparel charged the NLRC with grave abuse of discretion when it set aside the LA's findings and ordered Michelle's reinstatement. It disagreed with the NLRC's opinion that Michelle's past infractions could no longer be used to justify her dismissal since these infractions had already been penalized and the corresponding penalties had been imposed.

The CA found no grave abuse of discretion on the part of the NLRC and accordingly dismissed Cavite Apparel's petition on January 23, 2006.^[14] While it agreed that habitual absenteeism without official leave, in violation of company rules, is sufficient reason to dismiss an employee, it nevertheless did not consider Michelle's four absences as habitual. It especially noted that Michelle submitted a medical certificate for her May 8, 2000 absence, and thus disregarded Cavite Apparel's contrary assertion. The CA explained that Michelle's failure to attach a copy of the medical certificate in her initiatory pleading did not disprove her claim.

The CA agreed with the NLRC that since Cavite Apparel had already penalized Michelle for her three prior absences, to dismiss her for the same infractions and for her May 8, 2000 absence was unjust. Citing jurisprudence, The CA concluded that her dismissal was too harsh, considering her six years of employment with Cavite

Apparel; it was also a disproportionate penalty as her fourth infraction appeared excusable.

In its March 23, 2006 resolution,^[15] the CA denied Cavite Apparel's motion for reconsideration; hence, Cavite Apparel's present recourse.

The Petition

Cavite Apparel imputes grave abuse of discretion against the CA when:

1. it did not find that the NLRC committed grave abuse of discretion in setting aside the decision of the CA;
2. it failed to consider Michelle's four (4) AWOLs over a period of six months, from December 1999 to May 2000, habitual; and
3. it ruled that the series of violations of company rules committed by Michelle were already meted with the corresponding penalties.^[16]

Cavite Apparel argues that it is its prerogative to discipline its employees. It thus maintains that when Michelle, in patent violation of the company's rules of discipline, deliberately, habitually, and without prior authorization and despite warning did not report for work on May 8, 2000, she committed serious misconduct and gross neglect of duty. It submits that dismissal for violation of company rules and regulations is a dismissal for cause as the Court stressed in *Northern Motors, Inc., v. National Labor Union, et al.*^[17]

The Case for the Respondent

Michelle asserts that her dismissal was arbitrary and unreasonable. For one, she had only four absences in her six (6) years of employment with Cavite Apparel. She explains that her absence on May 8, 2000 was justified as she was sick and had sick leave benefits against which Cavite Apparel could have charged her absences. Also, it had already sanctioned her for the three prior infractions. Under the circumstances, the penalty of dismissal for her fourth infraction was very harsh. Finally, as the CA correctly noted, Cavite Apparel terminated her services on the fourth infraction, without affording her prior opportunity to explain.

The Court's Ruling

The case poses for us the issue of whether the CA correctly found no grave abuse of discretion when the NLRC ruled that Cavite Apparel illegally terminated Michelle's employment.

We stress at the outset that, as a rule, the Court does not review questions of fact, but only questions of law in an appeal by *certiorari* under Rule 45 of the Rules of Court.^[18] The Court is not a trier of facts and will not review the factual findings of the lower tribunals as these are generally binding and conclusive.^[19] The rule though is not absolute as the Court may review the facts in labor cases where the

findings of the CA and of the labor tribunals are contradictory.^[20] Given the factual backdrop of this case, we find sufficient basis for a review as the factual findings of the LA, on the one hand, and those of the CA and the NLRC, on the other hand, are conflicting.

After a careful review of the merits of the case, particularly the evidence adduced, we find no reversible error committed by the CA when it found no grave abuse of discretion in the NLRC ruling that Michelle had been illegally dismissed.

Michelle's four absences were not habitual; "totality of infractions" doctrine not applicable

Cavite Apparel argues that Michelle's penchant for incurring unauthorized and unexcused absences despite its warning constituted gross and habitual neglect of duty prejudicial to its business operations. It insists that by going on absence without official leave four times, Michelle disregarded company rules and regulations; if condoned, these violations would render the rules ineffectual and would erode employee discipline.

Cavite Apparel disputes the CA's conclusion that Michelle's four absences without official leave were not habitual since she was able to submit a medical certificate for her May 8, 2000 absence. It asserts that, on the contrary, no evidence exists on record to support this conclusion. It maintains that it was in the exercise of its management prerogative that it dismissed Michelle; thus, it is not barred from dismissing her for her fourth offense, although it may have previously punished her for the first three offenses. Citing the Court's ruling in *Mendoza v. NLRC*,^[21] it contends that the totality of Michelle's infractions justifies her dismissal.

We disagree and accordingly consider the company's position unmeritorious.

Neglect of duty, to be a ground for dismissal under Article 282 of the Labor Code, must be both gross and habitual.^[22] Gross negligence implies want of care in the performance of one's duties. Habitual neglect imparts repeated failure to perform one's duties for a period of time, depending on the circumstances.^[23] Under these standards and the circumstances obtaining in the case, we agree with the CA that Michelle is not guilty of gross and habitual neglect of duties.

Cavite Apparel faults the CA for giving credit to Michelle's argument that she submitted a medical certificate to support her absence on May 8, 2000; there was in fact no such submission, except for her bare allegations. It thus argues that the CA erred in holding that since doubt exists between the evidence presented by the employee and that presented by the employer, the doubt should be resolved in favor of the employee. The principle, it contends, finds no application in this case as Michelle never presented a copy of the medical certificate. It insists that there was no evidence on record supporting Michelle's claim, thereby removing the doubt on her being on absence without official leave for the fourth time, an infraction punishable with dismissal under the company rules and regulations.

Cavite Apparel's position fails to convince us. Based on what we see in the records,