

## SECOND DIVISION

[ G.R. No. 180302, February 05, 2010 ]

**JIMMY ARENO, JR., PETITIONER, VS. SKYCABLE PCC-BAGUIO,  
RESPONDENT.**

### DECISION

**DEL CASTILLO, J.:**

Disciplinary action against an erring employee is a management prerogative which, generally, is not subject to judicial interference. However, this policy can be justified only if the disciplinary action is dictated by legitimate business reasons and is not oppressive, as in this case.

This petition for review on *certiorari*<sup>[1]</sup> assails the Decision<sup>[2]</sup> dated May 28, 2007 and the Resolution<sup>[3]</sup> dated October 16, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 94485, which affirmed the February 28, 2006 Decision<sup>[4]</sup> of the National Labor Relations Commission (NLRC) upholding the legality of petitioner Jimmy Areno Jr.'s suspension and subsequent termination from employment.

#### ***Factual Antecedents***

On January 17, 1995, petitioner was employed as a cable technician by respondent Skycable PCC-Baguio. On January 17, 2002, an accounting clerk of respondent, Hyacinth Soriano (Soriano), sent to the human resource manager a letter-complaint<sup>[5]</sup> against petitioner alleging that on two separate occasions, the latter spread false rumors about her (the first in the middle of 2001 and the second on December 22, 2001). On January 27, 2002, she was again insulted by petitioner when the latter approached her and said that she was seen going out with Aldrin Estrada, their field service supervisor, at Central Park, Baguio City. During that incident, petitioner uttered, "*Ikaw lang ang nakakaalam ng totoo*" with malicious intent and in a provocative manner. Soriano averred that petitioner's unscrupulous behavior constituted serious and grave offense in violation of the company's Code of Discipline.

On the same day, respondent issued a Memorandum<sup>[6]</sup> requiring petitioner to submit an explanation within 76 hours from notice thereof. Petitioner submitted his written explanation<sup>[7]</sup> dated January 23, 2002 denying all the allegations in Soriano's letter-complaint and further denying having uttered the statement imputed on him, explaining thus:

2. That on the 7<sup>th</sup> of January, 2002 at SkyCable office, I greeted her 'HELLO, HYA'. I thought she didn't hear me greet her so I continued saying 'NAKITA NAMIN KAYO AH...SA CENTRAL PARK.' With that she

answered, 'KASAMA KO SI EMMAN.' Then I added, 'BA'T NANDOON YUNG 114?' Then she reacted 'TSISMOSO KA KASI!' In that instance, I didn't intend to insult her as she was saying because I never really implied anything with my statement nor delivered it with malicious intent. So I ended by saying, 'BA'T DI MO SABIHIN YUNG PROBLEMA MO SA AKIN? IKAW LANG ANG NAKAKAALAM NIYAN E!' In this statement, I was asking her to tell me frankly the reasons why she's mad at me. I want to stress that I never delivered the statement in a provocative manner.<sup>[8]</sup>

An administrative investigation was accordingly conducted on January 31, 2002. In a Memo<sup>[9]</sup> dated February 6, 2002, the investigating committee found petitioner guilty of having made malicious statements against Soriano during the January 7, 2002 conversation, which is categorized as an offense under the Company Code of Discipline. Consequently, petitioner was suspended for three days without pay effective February 13-15, 2002. The Memo was allegedly served on February 7, 2002 but petitioner refused to sign it.

Notwithstanding the suspension order, however, petitioner still reported for work on February 13, 2002. By reason thereof, respondent sent petitioner a letter denominated as 1<sup>st</sup> Notice of Termination<sup>[10]</sup> requiring him to explain in writing why he should not be terminated for insubordination. On February 18, 2002, petitioner inquired from respondent whether he is already dismissed or merely suspended since he was refused entry into the company premises on February 14, 2002.<sup>[11]</sup> Respondent replied that petitioner was merely suspended and gave him additional time to tender his written explanation to the 1<sup>st</sup> Notice of Termination.

On March 2, 2002, petitioner again wrote to respondent, this time requesting for further investigation on his alleged act of spreading rumors against Soriano in order for him to confront his accuser and present his witnesses with the assistance of counsel. Respondent denied the request reiterating that there has been substantial compliance with due process and that a reinvestigation is moot because the suspension was already served.

Anent the new charge of insubordination, petitioner submitted to respondent his written explanation<sup>[12]</sup> averring that he still reported for work on the first day of his suspension because the accusation of Soriano is baseless and her testimony is hearsay. Besides, according to petitioner, he did not defy any order related to his duties, no representative of the management prevented him from working and that reporting to work without being paid for the service he rendered on that day did not in any way affect the company's productivity.

On March 15, 2002, an investigation on the insubordination case was conducted which was attended by the parties and their respective counsels. Through a Final Notice of Termination dated April 1, 2002,<sup>[13]</sup> petitioner was dismissed from service on the ground of insubordination or willful disobedience in complying with the suspension order.

### ***Proceedings before the Labor Arbiter***

On April 5, 2002, petitioner filed a complaint<sup>[14]</sup> before the Arbitration Branch of the NLRC against respondent assailing the legality of his suspension and eventual dismissal. He claimed that his suspension and dismissal were effected without any basis, and that he was denied his right to due process.

On July 31, 2003, the Labor Arbiter rendered a Decision<sup>[15]</sup> dismissing petitioner's complaint for lack of merit. The Labor Arbiter ruled that the act of petitioner in spreading rumors or intriguing against the honor of a co-employee was persistent and characterized by willful and wrongful intents. It thus held that the order suspending petitioner is a legitimate exercise of management prerogative and that the deliberate refusal of petitioner to comply therewith constitutes willful disobedience.

### ***Proceedings before the NLRC***

Petitioner appealed to the NLRC, which, in a Decision<sup>[16]</sup> dated July 22, 2005 found his suspension and dismissal illegal. It held that the testimonies given during the January 31, 2002 administrative investigation and used as basis for petitioner's suspension are hearsay. The NLRC likewise held that petitioner was deprived of his basic right to due process when he was not allowed to confront his accuser despite his repeated requests.

Respondent moved for reconsideration.<sup>[17]</sup> Petitioner, for his part, filed a Motion for Partial Reconsideration<sup>[18]</sup> with respect to the limited award of backwages and to claim payment of attorney's fees and damages as well.

The NLRC, in its February 28, 2006 Decision,<sup>[19]</sup> reconsidered its earlier Decision and reinstated the Labor Arbiter's Decision dismissing the complaint. In reversing itself, the NLRC opined that as shown by the transcripts of the investigation conducted on January 31, 2002, the testimony of Soriano was not, after all, hearsay. The NLRC also considered the Memorandum dated December 10, 2001 which placed petitioner under deactivation for three months due to an offense he earlier committed. While under said deactivation period, the commission of any further infraction warrants the imposition of the penalty of suspension. Finally, the NLRC struck down petitioner's claim that he has no knowledge of the suspension order since this was never raised before the Labor Arbiter but only on appeal.

### ***Proceedings before the Court of Appeals***

Aggrieved, petitioner filed with the CA a petition for *certiorari*.<sup>[20]</sup> On May 28, 2007, the CA affirmed the findings of the NLRC, ruling that the suspension of petitioner was not predicated on hearsay evidence; that petitioner was not deprived of due process both at the company level and during the proceedings held before the NLRC; and that petitioner's failure to comply with respondent's suspension order, despite notice thereof, is a case of willful disobedience of a lawful order which is a valid ground for dismissal.

Petitioner moved for reconsideration.<sup>[21]</sup> Before acting thereon, the CA required respondent to file its comment.<sup>[22]</sup> Although 19 days late, the CA admitted respondent's comment<sup>[23]</sup> in the interest of justice.<sup>[24]</sup>

On October 16, 2007, the CA resolved petitioner's Motion for Reconsideration as follows:

Finding no cogent reason with which to modify, much less reverse Our assailed Decision dated May 28, 2007, petitioner's Motion for Reconsideration filed on June 18, 2007 is hereby **DENIED**.

**SO ORDERED.**<sup>[25]</sup>

### **Issues**

Hence, the present petition with the following assignment of errors:

#### **I.**

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE WHIMSICAL AND CAPRICIOUS DECISION OF THE NLRC WHICH REVERSED ITS ORIGINAL DECISION FINDING THAT WITNESS HYACINTH SORIANO'S TESTIMONY IS NOT HEARSAY AFTER ALL:

A. . BY MEANS OF SELECTIVE CITATION ON A PORTION ON PAGE TWO OF THE FIVE-PAGE UNSWORN TESTIMONY OF HYACINTH SORIANO THAT HER TESTIMONY IS NOT HEARSAY AFTER ALL WHEN IN ITS ENTIRETY THE TESTIMONIES ARE DOUBLE-TRIPLE-HEARSAY AS FOUND [BY] THE RESPONDENT NLRC IN ITS ORIGINAL DECISION, ASIDE FROM THE FACT THAT IN THAT JANUARY 31, 2002 HEARING WITNESS HYACINTH SORIANO DID NOT TESTIFY UNDER OATH AND THE ENTIRE PROCEEDINGS OF THE MINUTES WAS NOT SIGNED BY THE 3-MEMBER INVESTIGATION COMMITTEE, HENCE THE BASIS OF THE PETITIONER'S SUSPENSION WHICH PUBLIC RESPONDENTS FOUND TO BE A LEGAL ORDER IS NOTHING BUT A SCRAP OF PAPER.

B. BY SIMPLY STATING THAT PETITIONER WAS NOT DENIED DUE PROCESS BECAUSE HE WAS FURNISHED COPY OF THE TERMINATION NOTICE STATING THE GROUNDS THERETO ALTHOUGH IN THE PLANT LEVEL INVESTIGATION/HEARING ON JANUARY 31, 2002, PETITIONER WAS EXCLUDED OR HIS PRESENCE WAS NOT ALLOWED DURING THE GUIDED/COUCHED INTERROGATIONS FOR THE TESTIMONIES OF WITNESS HYACINTH SORIANO AND AFTER WITNESS SORIANO'S GUIDED/COUCHED TESTIMONIES ENDED, THE PANEL OF INVESTIGATORS SUBSEQUENTLY TOOK THE TESTIMONIES OF THE PETITIONER, ONE AFTER THE OTHER. IN SHORT, DESPITE HIS REPEATED DEMANDS FROM THE PRIVATE RESPONDENT MANAGEMENT THAT HE BE ALLOWED TO CONFRONT HIS ACCUSER HYACINTH SORIANO, PETITIONER WAS NOT ALLOWED TO CONFRONT HIS ACCUSER.

## II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO CONSIDER THE UNCONTROVERTED FACT THAT THE SO-CALLED THREE-DAY SUSPENSION WAS ANCHORED ON A SCRAP OF PAPER BECAUSE IT WAS NOT SIGNED AND ISSUED BY A COMPANY OFFICIAL OF THE PRIVATE RESPONDENT AUTHORIZED TO EFFECT ANY DISMISSAL OR SUSPENSION ORDER, THUS PETITIONER DID NOT VIOLATE ANY LAWFUL ORDER.

## III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE WHIMSICAL AND CAPRICIOUS SECOND DECISION OF THE RESPONDENT NLRC WHICH REVERSED ITS ORIGINAL DECISION ON THE ALLEGED GROUND:

1. A. THAT THE PETITIONER KNEW OF HIS SUSPENSION WHEN HE REPORTED FOR DUTY ON FEBRUARY 13, 2002 AS DECREED IN THE UNSIGNED SO-CALLED SUSPENSION ORDER ALLEGEDLY CONSTITUTING INSUBORDINATION WHEN THE FACTS DISCLOSE THAT PETITIONER DECLINED TO RECEIVE IT PERSONALLY AND HE ASKED THAT IT BE SENT TO HIM THROUGH REGISTERED MAIL AND THIS FACT IS ADMITTED BY PRIVATE RESPONDENT, THUS PUBLIC RESPONDENTS' FINDINGS AND CONCLUSION ARE NOT ONLY CONTRARY TO THE ADMISSION OF BOTH PARTIES BUT BASED ON CONJECTURES AND SURMISES.
2. THAT AS FOUND BY THE COURT OF APPEALS IT IS ONLY ON APPEAL THAT PETITIONER INTERPOSES THE ARGUMENT THAT HE COULD NOT HAVE KNOWN ABOUT HIS SUSPENSION THUS HE COULD NOT VIOLATE AN ORDER WHICH HE HAD NOT KNOWN IN THE FIRST PLACE, IS NOT IN ACCORD WITH THE APPLICABLE JURISPRUDENCE, MOREOVER, UPON SCRUTINY IT WAS NOT SIGNED BY A COMPANY OFFICIAL AUTHORIZED TO EFFECT DISMISSAL OR SUSPENSION ORDER. THUS THE COURT OF APPEALS SERIOUSLY ERRED IN ITS FINDING ON THIS MATTER.

## IV.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN ADMITTING THE PRIVATE RESPONDENT'S COMMENT DESPITE x x x NON-COMPLIANCE WITH THE COURT OF APPEALS' ORDER TO FILE COMMENT [DISREGARDING] THE STRICT OBSERVANCE OF THE RULES WHICH IS MANDATORY. FURTHERMORE, WHETHER OR NOT THE COURT OF APPEALS [VIOLATED] THE MANDATE OF SECTION 14, ARTICLE VIII OF THE CONSTITUTION IN ITS DENIAL OF PETITIONER'S MOTION FOR RECONSIDERATION WITHOUT STATING THE LEGAL BASIS THEREFOR.