623 Phil. 511

THIRD DIVISION

[G.R. No. 163872, December 21, 2009]

RTG CONSTRUCTION, INC. AND/OR ROLITO GO/RUSSET CONSTRUCTION AND DEVELOPMENT CORPORATION, PETITIONERS, VS. ROBERTO FACTO, RESPONDENT.

D E C I S I O N

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] and Resolution[2] of the Court of Appeals (CA) dated August 21, 2003 and June 3, 2004, respectively, in CA-G.R. SP No. 73789.

The factual and procedural antecedents of the case are as follows:

Petitioner RTG Construction, Inc. is a domestic corporation engaged in the construction business. Petitioner Rolito Go is its principal stockholder.

In March 1982, private respondent Roberto Facto was employed by RTG Construction as helper mechanic. In 1985, he was promoted to the position of junior mechanic. In the course of Facto's employment, RTG Construction changed its corporate name to Russet Construction and Development Corporation.

During Facto's employment, more particularly between April 1997 and May 1998, he was suspended on four occasions because of various infractions ranging from absenteeism to creating disturbance in the workplace. Separate memoranda were issued on different dates apprising him of such suspensions.[3]

On June 7, 2000, Facto was again suspended on the ground that he went to work under the influence of alcohol. Pertinent portions of the Memorandum which was issued to Facto on the same date by reason of such offense read as follows:

> Last Saturday June 03, 2000 – you reported to work obviously under the influence of intoxicating liquor. As per report of your immediate supervisor, you have some arguments and confrontation with regards to the assigned works to you. To avoid prolonged arguments, you were advised by your supervisor to go back home and return to work when you are on your normal condition, but you refused to do so. Your supervisor instructed our company guard to escort you out of the company premises. Under Article No. 6 of our company's rules and regulations "Any employee under the influence of liquor will not be permitted to work. The mere fact that you have violated the above-mentioned rules and regulations, you are hereby suspended for fourteen (14) working days without pay and will take effect tomorrow June 08 to June 24, 2000.
>
> Repetition of same offense may cause your dismissal from the service.
>
> Strict compliance is hereby enjoined.
>
> (Sgd.)
> **ELSA A. GO**
> Officer-in-Charge[4]

On August 10, 2000, Facto again received a Memorandum of even date, this time informing him that he was terminated from his employment effective that same day. The Memorandum reads, thus:

> **MEMORANDUM**
>
> | | | |
> |---|---|---|
> | DATE | : | August 10, 2000 |
> | TO | : | **Mr. ROBERTO FACTO**
Jr. Mechanic |
> | FROM | : | THE MANAGEMENT |
> | SUBJECT | : | "TERMINATION" |
>
> ---
>
> This is in view of the memorandum issued to you last June 07, 2000, wherein you were given a final warning stating that repetition of same offense committed by you will cause your dismissal from service.
>
> It seems that you had intentionally ignored said final warning and had committed the same offense again yesterday August 09, 2000. Therefore, the management has decided to terminate your services effective today, August 10, 2000.
>
> (Sgd.)
> ELSA A. GO
> Officer-in-Charge[5]

On August 24, 2000, Facto files a Complaint[6] for illegal dismissal against RTG Construction and Go. The Complaint was later amended to implead Russet Construction.

Facto alleged in his Position Paper[7] that his termination was illegal, as the same was not based on just or authorized cause. He also alleged that he was denied his right to due process because he was not given the chance to explain his side.

Herein petitioners filed their Position Paper[8] contending that Facto's dismissal was not illegal. Petitioners claimed that since 1994, Facto had continuously committed violations of company rules, and that his termination from employment was due to this series of

infractions.

Facto filed his Reply[9] asserting, among others, that the allegations of petitioners were all fabrications concocted by his supervisor who was mad at him.

The case was then submitted for decision.

On May 31, 2001, the Labor Arbiter handling the case rendered a Decision in favor of Facto, the dispositive portion of which reads as follows:

> WHEREFORE, consistent with the foregoing tenor, judgment is hereby rendered finding the dismissal of complainant from employment illegal. Respondents RTG Construction, Inc., Russet Construction and Development Corporation and/or Rolito Go are ordered to pay complainant jointly and severally the amount of P128,227.69 representing his backwages and separation pay in lieu of reinstatement.
>
> Respondents are further ordered to pay the sum of P7,682.50 as and by way of complainant's service incentive leave pay and proportionate 13th month pay for the year 2000, and an equivalent amount of P13,591.01 as complainant's ten percent (10%) attorney's fees based on the total judgment award of P135,910.19.
>
> SO ORDERED.[10]

Aggrieved, petitioners filed an appeal with the National Labor Relations Commission (NLRC).

On February 21, 2002, the NLRC promulgated a Resolution[11] dismissing petitioners' appeal and affirming the Labor Arbiter's Decision *in toto*.

Petitioners filed a Motion for Reconsideration, but the NLRC denied it in an Order[12] dated July 30, 2002.

Petitioners then filed a special civil action for *certiorari* with the CA assailing the February 21, 2002 Resolution and July 30, 2002 Order of the NLRC.[13]

On August 21, 2003, the CA rendered judgment, disposing as follows:

> WHEREFORE, premises considered, the decision of the Labor Arbiter dated 31 May 2001 is MODIFIED in that: (1) the dismissal of private respondent is LEGAL; (2) backwages, 13th month pay and service incentive leave pay are hereby awarded; plus (3) five (5%) percent of the total amount awarded herein, as and for attorney's fees.
>
> For computing the amounts due, this case is REMANDED to the Labor Arbiter, who is directed to act with dispatch.
>
> SO ORDERED.[14]

Unsatisfied with the CA Decision, petitioners filed a Motion for Reconsideration, but the CA denied it in its Resolution[15] dated June 3, 2004.

Hence, the instant petition raising the following assignment of errors:

1. THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE NLRC DID NOT ABUSE ITS DISCRETION AND THAT PETITIONERS FAILED TO ADDUCE CONVINCING EVIDENCE IN SUPPORT THEREOF;
2. THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE FACTS AND FINDINGS OF THE NLRC ARE ALL IN ACCORDANCE WITH THE EVIDENCE; and
3. THE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN AFFIRMING *IN TOTO* THE APPEALED DECISION OF THE NLRC DESPITE THE PRESENCE OF PALPABLE AND PATENT ERRORS THEREIN.[16]

Petitioners submit that the errors raised are interrelated; thus, these are jointly discussed.

Petitioners' main contention is that the CA erred in finding that they were guilty of violating respondent's right to due process. They argue that the series of memoranda issued to Facto clearly satisfies the requirements of fairness and due process.

The Court is not persuaded.

Procedural due process in the dismissal of employees requires notice and hearing.[17] The employer must furnish the employee two written notices before termination may be effected.[18] The first notice apprises the employee of the particular acts or omissions for which his dismissal is sought, while the second notice informs the employee of the employer's decision to dismiss him.[19] The requirement of a hearing, on the other hand, is complied with as long as there is an opportunity to be heard; an actual hearing need not necessarily be conducted.[20]

In the present case, while petitioners complied with the second notice, apprising Facto of petitioner's decision to terminate him from his employment, the records are bereft of any evidence to prove that there was compliance with the first notice as well as with the requirement of a hearing.

Undoubtedly, the various memoranda issued to Facto between April 1997 and May 1998 did not satisfy the requirement of first notice, as these referred to different offenses and only served to inform him of his suspension. Neither did the Memorandum dated June 7, 2000 serve as the first notice contemplated under the law. The acts being referred to therein were committed on June 3, 2000, on the bases of which Facto was suspended. On the other hand, the Memorandum dated August 10, 2000, informing Facto of his dismissal, referred to a different act or violation that was allegedly committed only a day earlier or on August 9, 2000. Thus, Facto was never given the first notice, required by law, of the particular act or omission upon which his dismissal was based.

Moreover, petitioner failed to afford Facto his right to be heard in connection with the aforementioned charge. Section 2(d), Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code states that: