568 Phil. 585

SECOND DIVISION

[G.R. No. 153510, February 13, 2008]

R.B. MICHAEL PRESS and ANNALENE REYES ESCOBIA, Petitioners, vs. NICASIO C. GALIT, Respondent.

D E C I S I O N

VELASCO JR., J.:

The Case

Year in, year out, a copious number of illegal dismissal cases reach the Court of Appeals (CA) and eventually end up with this Court. This petition for review under Rule 45 registered by petitioners R.B. Michael Press and Annalene Reyes Escobia against their former machine operator, respondent Nicasio C. Galit, is among them. It assails the November 14, 2001 Decision of the CA in CA-G.R. SP No. 62959, finding the dismissal of respondent illegal. Likewise challenged is the May 7, 2002 Resolution denying reconsideration.

The Facts

On May 1, 1997, respondent was employed by petitioner R.B. Michael Press as an offset machine operator, whose work schedule was from 8:00 a.m. to 5:00 p.m., Mondays to Saturdays, and he was paid PhP 230 a day. During his employment, Galit was tardy for a total of 190 times, totaling to 6,117 minutes, and was absent without leave for a total of nine and a half days.

On February 22, 1999, respondent was ordered to render overtime service in order to comply with a job order deadline, but he refused to do so. The following day, February 23, 1999, respondent reported for work but petitioner Escobia told him not to work, and to return later in the afternoon for a hearing. When he returned, a copy of an Office Memorandum was served on him, as follows:

> To : Mr. Nicasio Galit
>
> From : ANNALENE REYES-ESCOBIA
>
> Re : WARNING FOR DISMISSAL; NOTICE OF HEARING
>
> This warning for dismissal is being issued for the following offenses:
>
> (1) habitual and excessive tardiness
>
> (2) committing acts of discourtesy, disrespect in addressing superiors

(3) failure to work overtime after having been instructed to do so

(4) Insubordination - willfully disobeying, defying or disregarding company authority

The offenses you've committed are just causes for termination of employment as provided by the Labor Code. You were given verbal warnings before, but there had been no improvement on your conduct.

Further investigation of this matter is required, therefore, you are summoned to a hearing at 4:00 p.m. today. The hearing wills determine your employment status with this company.

(SGD) ANNALENE REYES-ESCOBIA

Manager[1]

On February 24, 1999, respondent was terminated from employment. The employer, through petitioner Escobia, gave him his two-day salary and a termination letter, which reads:

February 24, 1999

Dear Mr. Nicasio Galit,

I am sorry to inform you that your employment with this company has been terminated effective today, February 24, 1999. This decision was not made without a thorough and complete investigation.

You were given an office memo dated February 23, 1999 warning you of a possible dismissal. You were given a chance to defend yourself on a hearing that was held in the afternoon of the said date.

During the hearing, Mrs. Rebecca Velasquez and Mr. Dennis Reyes, were present in their capacity as Production Manager and Supervisor, respectively.

Your admission to your offenses against the company and the testimonies from Mrs. Velasquez and Mr. Reyes justified your dismissal from this company,

Please contact Ms. Marly Buita to discuss 13th-Month Pay disbursements.

Cordially,

(SGD) Mrs. Annalene Reyes-Escobia[2]

Respondent subsequently filed a complaint for illegal dismissal and money claims before the National Labor Relations Commission (NLRC) Regional Arbitration Branch No. IV, which was docketed as NLRC Case No. RAB IV-2-10806-99-C. On October 29, 1999, the labor arbiter rendered a Decision,

> WHEREFORE, premises considered, there being a finding that complainant was illegally dismissed, respondent RB MICHAEL PRESS/Annalene Reyes-Escobia is hereby ordered to reinstate complainant to his former position without loss of seniority rights and other benefits, and be paid his full backwages computed from the time he was illegally dismissed up to the time of his actual reimbursement.
>
> All other claims are DISMISSED for lack of evidence.
>
> SO ORDERED.[3]

On January 3, 2000, petitioners elevated the case to the NLRC and their appeal was docketed as NLRC NCR CA No. 022433-00. In the April 28, 2000 Decision, the NLRC dismissed the appeal for lack of merit.

Not satisfied with the ruling of the NLRC, petitioners filed a Petition for Certiorari with the CA. On November 14, 2001, the CA rendered its judgment affirming with modification the NLRC's Decision, thus:

> **WHEREFORE**, the petition is **DISMISSED** for lack of merit. The Decision of public respondent is accordingly modified in that the basis of the computation of the backwages, 13th month pay and incentive pay should be respondent's daily wage of P230.00; however, backwages should be computed from February 22, 1999 up to the finality of this decision, plus the 13th month and service incentive leave pay.[4]

The CA found that it was not the tardiness and absences committed by respondent, but his refusal to render overtime work on February 22, 1999 which caused the termination of his employment. It ruled that the time frame in which respondent was afforded procedural due process is dubitable; he could not have been afforded ample opportunity to explain his side and to adduce evidence on his behalf. It further ruled that the basis for computing his backwages should be his daily salary at the time of his dismissal which was PhP 230, and that his backwages should be computed from the time of his dismissal up to the finality of the CA's decision.

On December 3, 2001, petitioners asked for reconsideration[5] but was denied in the CA's May 7, 2002 Resolution.

Persistent, petitioners instituted the instant petition raising numerous issues which can be summarized, as follows: first, whether there was just cause to terminate the employment of respondent, and whether due process was observed in the dismissal process; and second, whether respondent is entitled to backwages and other benefits despite his refusal to be reinstated.

The Court's Ruling

It is well settled that findings of fact of quasi-judicial agencies, like the NLRC, are accorded not only respect but even finality if the findings are supported by substantial evidence. This is especially so when such findings of the labor arbiter were affirmed by the CA.[6] However, this is not an iron-clad rule. Though the findings of fact by the labor arbiter may have been affirmed and adopted by the NLRC and the CA as in this case, it cannot divest the Court of its authority to review

the findings of fact of the lower courts or quasi-judicial agencies when it sees that justice has not been served, more so when the lower courts or quasi-judicial agencies' findings are contrary to the evidence on record or fail to appreciate relevant and substantial evidence presented before it.[7]

Petitioners aver that Galit was dismissed due to the following offenses: (1) habitual and excessive tardiness; (2) commission of discourteous acts and disrespectful conduct when addressing superiors; (3) failure to render overtime work despite instruction to do so; and (4) insubordination, that is, willful disobedience of, defiance to, or disregard of company authority.[8] The foregoing charges may be condensed into: (1) tardiness constituting neglect of duty; (2) serious misconduct; and (3) insubordination or willful disobedience.

Respondent's tardiness cannot be considered condoned by petitioners

Habitual tardiness is a form of neglect of duty. Lack of initiative, diligence, and discipline to come to work on time everyday exhibit the employee's deportment towards work. Habitual and excessive tardiness is inimical to the general productivity and business of the employer. This is especially true when the tardiness and/or absenteeism occurred frequently and repeatedly within an extensive period of time.

In resolving the issue on tardiness, the labor arbiter ruled that petitioners cannot use respondent's habitual tardiness and unauthorized absences to justify his dismissal since they had already deducted the corresponding amounts from his salary. Furthermore, the labor arbiter explained that since respondent was not subjected to any admonition or penalty for tardiness, petitioners then had condoned the offense or that the infraction is not serious enough to merit any penalty. The CA then supported the labor arbiter's ruling by ratiocinating that petitioners cannot draw on respondent's habitual tardiness in order to dismiss him since there is no evidence which shows that he had been warned or reprimanded for his excessive and habitual tardiness.

We find the ruling incorrect.

The mere fact that the numerous infractions of respondent have not been immediately subjected to sanctions cannot be interpreted as condonation of the offenses or waiver of the company to enforce company rules. A waiver is a voluntary and intentional relinquishment or abandonment of a known legal right or privilege.[9] It has been ruled that "a waiver to be valid and effective must be couched in clear and unequivocal terms which leave no doubt as to the intention of a party to give up a right or benefit which legally pertains to him."[10] Hence, the management prerogative to discipline employees and impose punishment is a legal right which cannot, as a general rule, be impliedly waived.

In *Cando v. NLRC*,[11] the employee did not report for work for almost five months when he was charged for absenteeism. The employee claimed that such absences due to his handling of union matters were condoned. The Court held that the employee did not adduce proof to show condonation coupled with the fact that the company eventually instituted the administrative complaint relating to his company violations.

Thus it is incumbent upon the employee to adduce substantial evidence to demonstrate condonation or waiver on the part of management to forego the exercise of its right to impose sanctions for breach of company rules.

In the case at bar, respondent did not adduce any evidence to show waiver or condonation on the part of petitioners. Thus the finding of the CA that petitioners cannot use the previous absences and tardiness because respondent was not subjected to any penalty is bereft of legal basis. In the case of *Filipio v. The Honorable Minister Blas F. Ople*,[12] the Court, quoting then Labor Minister Ople, ruled that past infractions for which the employee has suffered the corresponding penalty for each violation cannot be used as a justification for the employee's dismissal for that would penalize him twice for the same offense. At most, it was explained, "these collective infractions could be used as supporting justification to a subsequent similar offense." In contrast, the petitioners in the case at bar did not impose any punishment for the numerous absences and tardiness of respondent. Thus, said infractions can be used collectively by petitioners as a ground for dismissal.

The CA however reasoned out that for respondent's absences, deductions from his salary were made and hence to allow petitioners to use said absences as ground for dismissal would amount to "double jeopardy."

This postulation is incorrect.

Respondent is admittedly a daily wage earner and hence is paid based on such arrangement. For said daily paid workers, the principle of "a day's pay for a day's work" is squarely applicable. Hence it cannot be construed in any wise that such nonpayment of the daily wage on the days he was absent constitutes a penalty.

Insubordination or willful disobedience

While the CA is correct that the charge of serious misconduct was not substantiated, the charge of insubordination however is meritorious.

For willful disobedience to be a valid cause for dismissal, these two elements must concur: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.[13]

In the present case, there is no question that petitioners' order for respondent to render overtime service to meet a production deadline complies with the second requisite. Art. 89 of the Labor Code empowers the employer to legally compel his employees to perform overtime work against their will to prevent serious loss or damage:

Art. 89. EMERGENCY OVERTIME WORK

> Any employee may be required by the employer to perform overtime work in any of the following cases: