

THIRD DIVISION

[G.R. No. 164052, October 17, 2008]

**ANONAS CONSTRUCTION AND INDUSTRIAL SUPPLY
CORPORATION, AND ELISEO F. LIBUNAO, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION AND LARRY
NAFUAR, RESPONDENTS.**

DECISION

NACHURA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision of the Court of Appeals (CA) dated June 11, 2004 in CA-G.R. SP No. 76139.

The instant petition is an offshoot of an illegal dismissal case filed by respondent Larry Nafuar (Nafuar) against petitioners. On March 4, 2002, the Labor Arbiter (LA) rendered a Decision^[1] that Nafuar was illegally dismissed by petitioners and was consequently awarded some of his monetary claims. The dispositive portion of the LA's decision reads:

WHEREFORE, judgment is hereby rendered finding the dismissal of the complainant from his employment to be illegal and concomitantly, Respondents are jointly and solidarily liable to pay Complainant the following:

P 101,848.76	- representing backwages
26,061.36	- representing separation pay
2,505.90	- representing holiday pay
P 130,313.60	TOTAL
= = = = =	
=	

Other claims are dismissed for lack of merit.

SO ORDERED.^[2]

On appeal, the National Labor Relations Commission (NLRC) affirmed *in toto* the decision of the LA in a Resolution^[3] dated December 27, 2002. Petitioners did not file a motion for reconsideration of the decision of the NLRC. Instead, they filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA. On June 11, 2004, the CA rendered a Decision^[4] dismissing the petition and affirming the resolution of the NLRC.

Hence, this petition.

The Facts

Anonas Construction and Industrial Supply Corporation is a domestic juridical entity engaged in the construction business and headed by Eliseo F. Libunao.^[5]

In April 1994, petitioner company engaged the services of respondent Nafuar who started as delivery man until the company assigned him additional tasks in collecting payments, selling, checking and dispatching industrial materials to its clientele.^[6]

On November 24, 2000, respondent Nafuar failed to report for duty without informing the company of the reason therefor. The next day, management through petitioner Libunao, warned him that absence without leave shall be penalized by three (3) days suspension.^[7]

On January 2, 2001, private respondent did not report for work again. Thus, on January 3, 2001, the company wrote a memorandum to respondent Nafuar informing him of his three (3)-day suspension due to his absence without leave on the previous day.^[8]

On January 6, 2001, the company issued another memorandum this time requiring private respondent to explain in writing within 48 hours why he refused to explain his earlier failure to report for work and why he refused to acknowledge receipt of the memorandum dated January 3, 2001, among others.^[9] In a phone call to his employer on the same day, he inquired whether he could "still report to office but the office told him that his employment was already terminated."^[10]

On March 4, 2002, the LA rendered a Decision declaring respondent Nafuar's dismissal illegal and consequently awarded him backwages, separation pay and holiday pay.^[11]

Petitioners appealed the ruling before the NLRC which sustained the LA. Thereafter, the petitioners went to the CA on a petition for *certiorari* under Rule 65.

As mentioned above, on June 11, 2004, the CA rendered a Decision^[12] the dispositive portion of which reads:

WHEREFORE, premises considered, the petition is hereby DISMISSED and the assailed resolution dated 27 December 2002 is AFFIRMED.^[13]

In the main, the CA said that *certiorari* under Rule 65 is confined to issues of jurisdiction or grave abuse of discretion and does not include a correction or evaluation of the evidence, particularly when there is no conflict in the factual findings of the labor tribunals. It cited with approval the NLRC's pronouncement that there could have been no abandonment because by filing a complaint for illegal dismissal, the employee could not be said to have abandoned his work. Further, the appellate court found no adequate proof of willful disobedience by the employee, and noted that there was lack of compliance by the petitioners with the requirements of due process. Finally, the CA stressed that petitioners failed to file a motion for reconsideration from the NLRC decision which is a condition *sine qua non* for a petition for *certiorari*.

Aggrieved, petitioners now come before this Court assigning the following errors:

- I. THE COURT OF APPEALS GRAVELY ERRED WHEN IT AFFIRMED THE FINDINGS OF ILLEGAL DISMISSAL DESPITE CLEAR SHOWING THAT THE BASIS THEREOF IS HIGHLY SPECULATIVE AND CONJECTURAL.
- II. THE COURT OF APPEALS GRAVELY ERRED WHEN IT AFFIRMED THE FINDINGS OF THE NLRC INTRUDING ON THE LEGITIMATE EXERCISE OF AUTHORITY OF THE MANAGEMENT TO DISCIPLINE ITS EMPLOYEES.^[14]

The Issue

The bottom line issue we are called upon to resolve is whether respondent Nafuar was illegally dismissed from employment.

The Ruling of the Court

Petitioners insist that the CA gravely erred when it relied on the NLRC findings which were sourced from alleged misapprehension of facts. Basically, petitioners' argument rests on the proposition that respondent Nafuar was not dismissed, but merely suspended, at the time he instituted his complaint for illegal dismissal on January 10, 2001. Thus, petitioners posit that the LA had no authority to take cognizance of a complaint for a non-existent dismissal. Accordingly, petitioners conclude that the LA and the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when they assumed jurisdiction over Nafuar's complaint.

Corollarily, petitioners maintain that the CA, by upholding the NLRC's ruling, encroached on the exercise of the company's authority to discipline its employees.

The argument does not persuade.

I

The "Statement of Facts" in the very petition filed before this Court quotes the factual narration made by the CA, as follows:

In a phone call to his employer, [respondent] inquired whether he could still report for work but the company adamantly imposed the two (2)-day suspension against him. **Petitioner company usually suspends its employees due to insubordination and charge them with abandonment.**^[15]

By adopting the CA's narrative as their own account of the factual antecedents of the case, the petitioners effectively admitted that the suspension of the respondent was simply a precursor of an intended dismissal, ostensibly on the ground of abandonment. Furthermore, respondents were not able to refute the factual finding of the LA, as affirmed by the CA, that petitioner company refused Nafuar's request to return to work after his suspension.

The CA committed no reversible error in upholding the resolution of the NLRC which

affirmed *in toto* the decision of the LA. Factual findings of labor administrative officials that are supported by substantial evidence are accorded great respect and finality, absent a showing that they arbitrarily disregarded or misapprehended evidence of such nature as to compel a contrary conclusion if properly appreciated. [16] The Supreme Court does not review supposed errors in the decisions of quasi-judicial agencies which raise factual issues because this Court is essentially not a trier of facts. [17]

As correctly explained by the CA, judicial review of decisions of the NLRC *via* petition for *certiorari* under Rule 65, as a general rule, is confined only to issues of lack or excess of jurisdiction and grave abuse of discretion on the part of the NLRC. The CA does not assess and weigh the sufficiency of evidence upon which the LA and the NLRC based their conclusions. The issue is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction, or with grave abuse of discretion in rendering the resolution, except if the findings of the NLRC are not supported by substantial evidence. [18]

At this point, it is proper to reiterate that for the dismissal of an employee to be valid, it must be for a just cause [19] or an authorized cause [20] and the requirements of due process [21] must necessarily be observed. [22] The illegality of the act of dismissal constitutes discharge without just or authorized cause, while the illegality in the manner of dismissal is dismissal without due process. [23]

Petitioners allege insubordination, grave misconduct and abandonment as bases for Nafuar's termination. However, as uniformly found by the LA, the NLRC and the CA, they failed to substantiate their allegations with sufficient evidence. On top of this, it appears that respondent Nafuar was terminated without the benefit of due process.

It is also worth mentioning that suspension is not the same as termination. Suspension is a disciplinary measure that is imposed for violation by the employee of a reasonable rule of conduct prescribed by the employer and made known to the employee. However, just like termination, suspension must be based on a valid or just cause, and the employee must be apprised of his alleged violation and given an opportunity to explain his side. And where the employee denies the charge, **the burden of proving that there is a valid ground for suspension, as in termination, rests on the employer.** [24]

On this point, the Court notes with approval the ratiocination made by the LA, as follows:

While it is true that on record, there are memos dated January 3, 2001 and January 6, 2001 (marked as Annexes "B" and "C," [Petitioners'] Position Paper), there is no proof that the said memos were received by [Nafuar]. There is no notation on the aforesaid memos that [Nafuar] refused to sign. It was signed by one Ramiro Luntayao. This is not enough evidence to show proof that said memoranda were really known and received by [Nafuar].

[Petitioners] should have presented proof by submitting an affidavit executed by Ramiro Luntayao stating that he gave the memos to [Nafuar] and the latter refused to sign the same. Sad to say, no such