

## EIGHTH DIVISION

[ CA-G.R. SP No. 121668, March 10, 2015 ]

**JAYSON A. AGUIMBAG AND CHITO M. BONGALOTA,  
PETITIONERS, VS. HON. NATIONAL LABOR RELATIONS  
COMMISSION, ALC-FORTUNE CORPORATION AND EDWARD  
CABANGON, RESPONDENTS.**

### D E C I S I O N

**LANTION, J.A.C., J.:**

Before Us is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the Rules of Court assailing the Decision<sup>[2]</sup> dated 13 April 2011 and Resolution<sup>3</sup> dated 27 June 2011 both rendered by the National Labor Relations Commission (NLRC) in NLRC LAC No. 11-002992-10 [NLRC NCR Case No. 04-05154-10], the dispositive portions of which read:

**Decision dated 13 April 2011**

"**WHEREFORE**, the complainants' appeal is **DISMISSED** for lack of merit. The decision of the Labor Arbiter dated September 22, 2010 stands affirmed.

**SO ORDERED."**

**Resolution dated 27 June 2011**

"**WHEREFORE**, premises considered, complainants' Motion for Reconsideration is **DENIED** for lack of merit.

**SO ORDERED."**

### THE FACTS

This case emanated from the *Amended Complaint*<sup>[4]</sup> for unfair labor practice, constructive illegal dismissal, non-payment of overtime pay and separation pay, illegal suspension and damages filed by petitioners Jayson A. Aguimbag (**Aguimbag**) and Chito M. Bongalonta (**Bongalonta**), (collectively referred to as **petitioners**) against private respondents ALC-Fortune Corporation (**ALC**) and Edward Cabangon, its president (collectively referred to as **respondents**) before the NLRC.

In their Position Paper,<sup>[5]</sup> petitioners averred that they were initially employed as Audit Assistant by ALC on 30 November 2005 and 16 June 2006, respectively. Petitioners narration of the incidents which led to the filing of their *Amended Complaint* is as follows:

At the commencement of their employments, respondents' agents informed petitioners that employees in ALC were prohibited from forming and joining employee's union.<sup>[6]</sup>

During the course of their employment with ALC, petitioners enrolled in law school for the enrichment of their professional careers. However, it became apparent that the "middle management team" of ALC was not in favor of their schooling when on various occasions, petitioners were outright asked by the "middle management team" to choose between their jobs or their schooling. Despite this, however, petitioners persevered and persisted with their job and schooling.<sup>[7]</sup>

On 23 July 2007, petitioner Aguimbag was promoted from being an Audit Assistant of the Audit Department to the position of Senior Accounting Staff of the Finance Department.<sup>[8]</sup>

Early in March 2010, petitioners discovered that the compressed work schedule instilled by the respondents lacked the proper approval of the Department of Labor and Employment (DOLE) as required by DOLE Advisory No. 022 dated 02 December 2004. Thereafter, petitioners proceeded to make investigations on the validity of the compressed work schedule. On 16 March 2010, petitioners requested some documents from the Human Resources Department of ALC. However, the Human Resources Department headed by Ms. Teresita C. Eugenio insisted that there must be a written request from petitioners before any document could be released. She was "visibly upset" as she knew that the said compressed work schedule would result in payment of overtime pay to employees.<sup>[9]</sup>

On 17 March 2010, Audit Manager Mr. Ronnie Aguilar told petitioners that instead of pursuing whatever discovery they have over the company, they might as well resign.<sup>[10]</sup>

On 20 March 2010, petitioner Aguimbag was demoted to Audit Assistant from being a Senior Accountant Staff.<sup>[11]</sup>

On 26 March 2010, petitioners filed a request for assistance for preventive conciliation/mediation with the NLRC which was docketed as NLRC Reference No. NCR CM-03-10129-10 and set for conference on 12 April 2010 with the sole grievance of nonpayment of overtime pay.<sup>[12]</sup>

On 29 March 2010, petitioner Aguimbag was personally served by respondents a copy of a *Notice of Infraction with Preventive Suspension* dated 29 March 2010 and was ordered to immediately leave the premises of ALC. The following day, petitioner Bongalonta was similarly served a copy of a *Notice of Infraction with Preventive Suspension* dated 30 March 2010 and was likewise ordered to leave the premises of ALC. In the *Notices*, petitioners were directed to submit within forty-eight (48) hours from receipt thereof written explanation on why they should not be disciplined or dismissed for serious misconduct, insubordination and performing acts inimical to employer's interest. Petitioners were also informed that they were placed under preventive suspension for a maximum period of thirty (30) days pending investigation of the said infractions leveled against them.<sup>[13]</sup>

Thereafter, petitioners received a *Notice of Administrative Hearing* informing them of an administrative hearing on 12 April 2012 regarding their infractions and noting that they failed to submit the required written explanation. Eventually, petitioners submitted their written explanation on the infractions and the scheduled administrative hearing was conducted.<sup>[14]</sup>

On 13 April 2010, petitioners amended their previous complaint for nonpayment of overtime pay before the NLRC to include, among others, constructive illegal dismissal, illegal suspension. On 29 April 2010, Complainants received the Notice of Termination dated 28 April 2010.<sup>[15]</sup>

For their part, respondents, in their Position Paper,<sup>[16]</sup> alleged that petitioners were validly dismissed from employment since they were duly notified of the charges against them and hearings were conducted. They alleged that they were terminated from employment for gross misconduct, inefficiency, gross and repeated negligence, hurling of insulting words to superior officers, tardiness, loitering during office hours and absenting from work without leave, which they committed in this wise:

"1. On March 16-17, 2010, they [petitioners] insulted and provoked their Audit Supervisor, Ms. Raquel Austria, after they were told to refrain from loitering and chatting during office hours and wait for the break time to do personal stuff but instead of heeding her advice they retorted insulting words such as *"Wala kang pakialam sa personal na ginagawa namin, masyado kang pakialamera, hindi ikaw ang pina-uusapan naming? Sip-sip ka kasi sa management, Sita ka ng sita, ang yabang-yabang mo"*;

2. On March 18, 2010, they caused a commotion in the office of the central HRD by confronting Ms. Susan Zifra, saying: *"Eh puta ayaw lang ata ako issuehan ng certificate ng manager mo eh? Kailangan ko lang naman sa HSBC application ko. Eh kung ganyan ganyan lang eh bastusan na to"*;

3. On March 24, 2010, complainants interposed another issue against the HRD by saying that *"At saka pansin ko kami lang lagi dinidisciplinary action n'yo dapat kung dinidisciplinary action nyo kami mga rank and file dapat pati supervisor din."* *"Di nyo ginagawa trabaho nyo"* and further boasted that *"[I]aw student ako alam nyo yan, alam ko yang mga ganyang style di ko palalampasin yan"*;

4. Non-submission of accomplishment report for the period March 16-19, 2010 as required but instead complainant Bongalanta rudely answered that *"wala akong isusubmit sa iyo, wala akong nagawa, konti nga lang ang ipinasok ko eh"*;

5. On March 25, 2010, between 9:00 to 9:30 am, complainants went again to the HRD office arrogantly shouting and demanding for an outright copies of the company policies on the compressed workweek, separation pay and other company benefits stubbornly saying: *"Ayaw nyo lang kami bigyan kasi may tinatago kayo. Alam namin mga illegal na ginagawa nyo dito, isa yung compressed work week ninyo bawal yan"*

even with the presence of the visitors where and other employees were shocked of complainants outburst;

6. Also on March 25, 2010 between 10:00 a.m. to 10:20 a.m., they made a scenario of again arrogantly asking for a copy of Aguimbag's former performance evaluation made by his former supervisor Mr. Alwyn Valenzuela. When they were told that they were already given a copy of the documents being requested, they arrogantly answered that "*Eh nakalimutan namin nakasulat dun hindi na namin matandaan kung ano nakasulat dun.*" Instead of making a written request for the documents they needed, they said "*Nakakatawa ang HRD walang kopya ng manual at evaluation sheet. Pagsisihan nyo ito, magkita na lang tayo sa labor.*";

7. From March 16, 2010 up to March 25, 2010, complainant Aguimbag loitered around during working hours on several occasions, and was caught sleeping on duty last March 23, 2010 between 1 pm to 2 pm; and

8. Absence without official leave last March 26, 2010."<sup>[17]</sup>

After an exchange of pleadings between the parties, the Labor Arbiter<sup>[18]</sup> rendered the Decision<sup>[19]</sup> dated 22 September 2010 in favor of respondents disposing the case in this wise:

**"WHEREFORE,** premises considered, judgment is hereby rendered DISMISSING the complaint for lack of merit.

**SO ORDERED."**

On appeal by petitioners, the NLRC, in the herein assailed Decision dated 13 April 2011, affirmed the Decision of the Labor Arbiter. The NLRC found that petitioners were validly dismissed for serious misconduct by respondents. The NLRC observed that petitioners were furnished with written notices apprising of the specific charges against them and they were given the opportunity to explain and defend themselves. The NLRC also found that petitioners' preventive suspension did not mean that their "guilt was prejudged" by respondents as the same was merely intended as a measure of protection of the company's property pending the outcome of the investigation. Finally, the NLRC ruled that petitioner failed to substantiate their claim for unpaid overtime pay.<sup>[20]</sup>

Aggrieved, petitioners filed a *Motion for Reconsideration*<sup>[21]</sup> of the Decision dated 13 April 2011 which the NLRC denied in the assailed Resolution dated 27 June 2011.

Hence, this petition.

## **ISSUES**

### **I.**

**WHETHER THE RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT IGNORED AND DISREGARDED PRIVATE RESPONDENT'S VIOLATION OF DOLE ADVISORY NO. 02-04 REGULATING THE**

## **COMPRESSED WORK WEEK SCHEME.**

### **II.**

**WHETHER THE RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OR EXCESS OF JURISDICTION WHEN IT IGNORED AND DISREGARDED PETITIONERS' CLAIM OF UNFAIR LABOR PRACTICE.**

### **III.**

**WHETHER THE RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OR EXCESS OF JURISDICTION IN HOLDING THAT PETITIONERS WERE NOT CONSTRUCTIVELY DISMISSED.**<sup>[22]</sup>

### **OUR RULING**

In the instant Petition for *Certiorari*, the essential issue for Our resolution is whether or not the NLRC gravely abused its discretion in issuing the assailed Decision and Resolution.

Petitioners impute grave abuse of discretion on the NLRC when it ruled that they were validly dismissed by respondents from employment. They insist that they were constructively dismissed from employment and contend that they are entitled for payment of overtime pay for failure of respondents to comply with the requirements provided under DOLE Advisory No. 02-04 or the Implementation of Compressed Workweek (**CWW**) Schemes. They aver that the NLRC abused its discretion when it failed to find that respondents committed unfair labor practice even when respondents, through HR Department Manager Teresita Eugenio, prohibited employees from joining or organizing labor union.<sup>[23]</sup>

*Petitioners' contentions fail to persuade.*

The term "grave abuse of discretion" means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.<sup>[24]</sup>

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and the conclusions reached thereby are not supported by substantial evidence. This requirement is clearly expressed in Section 5, Rule 133 of the Rules of Court which provides that "[i]n cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."<sup>[25]</sup>

*Guided by the aforesaid considerations, We find that the NLRC correctly ruled in favor of respondents.*