

SPECIAL TWELFTH DIVISION

[CA-G.R. SP No. 123872, May 28, 2014]

ALEX S. CRUZ, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND PEPSI COLA PRODUCTS PHILIPPINES, INC., RESPONDENTS.

D E C I S I O N

PAREDES, J.:

THE CASE

This is a Petition^[1] for Certiorari under Rule 65 of the Rules of Court assailing the Decision^[2] dated December 20, 2010, of the National Labor Relations Commission (NLRC), First Division, in NLRC NCR LAC No. 09-002039-10, which reversed and set aside the findings of the Labor Arbiter, and dismissed the complaint for lack of merit; and the Resolution^[3] dated January 16, 2012, which denied the motion for reconsideration.

THE ANTECEDENTS

On September 29, 2008, petitioner Alex Cruz (*petitioner, for brevity*) filed a Complaint^[4] for illegal suspension, illegal dismissal, non-payment of seven (7) days salary, and holiday pay; praying for reinstatement with damages against Pepsi Cola Products Philippines, Inc. (*Pepsi Cola*), Mr. Robert Rosuman, Alvin Manuel and Val Lugti (*collectively, respondents*) before the NLRC Sub-Regional Arbitration Branch No. I of Dagupan City.

On November 6, 2008, petitioner amended^[5] his Complaint to include Cherry Ann V. Heath (*Ms. Heath*) as respondent and increased his claim for damages and attorney's fees.

In his Position Paper^[6], petitioner alleged that:

He was a Territory Manager of Pepsi Cola assigned at Mangaldan, Pangasinan.

On August 29, 2008, his friend, Mr. Jose S. Velasco (*Mr. Velasco*), a former key Account Manager of Pepsi Cola, asked him if he heard any rumors about Mr. Velasco's wife, respondent Ms. Heath. He told Mr. Velasco that he heard a rumor that his wife and respondent Robert C. Rosuman (*Mr. Rosuman*), the Lead Territory Manager and petitioner's immediate supervisor, were going out after work.

On September 3, 2008, Mr. Rosuman asked petitioner to report to the Udiao plant, where Mr. Rosuman ordered him, without prior notice or hearing, to surrender his service vehicle immediately upon arrival. When petitioner protested, Mr. Rosuman sought the advice of Atty. Alvin Manuel (*Atty. Manuel*), the Human Resource Department Manager. Atty. Manuel told petitioner that Mr. Rosuman could no longer

work with him as he exposed Mr. Rosuman's illicit affair. Petitioner was advised to tender his resignation, with the option of making it effective immediately or at the end of the month. When petitioner countered that he would never resign because of the Rosuman-Heath affair, Atty. Manuel ordered him to leave his sales post at Mangaldan and to start reporting to Mr. Rosuman. Such arrangement was said to have the prior approval of General Manager Vhal Lugti, Mr. Rosuman's brother-in-law.

On the same day, petitioner was served a notice to explain^[7] his alleged "continued gross negligence, inefficiency or incompetence." Petitioner denied the charges and pointed out that the reports of his sales performance are a sham and lacked his signature. He also pointed out that he earned an excellent performance appraisal from the former Lead Territory Manager, Paul Estacio, and which appraisal performance is in his 2001 file (the personnel file). Mr. Rosuman brushed aside petitioner's contention and, instead, demanded his resignation. Petitioner received^[8] the notice "Under Protest."

On September 5, 2008, petitioner wrote an explanation letter^[9] addressed to Mr. Rosuman. On September 8, 2008, Mr. Rosuman served petitioner with a notice^[10] of his preventive suspension effective September 17 until October 3, 2008.

As Mr. Rosuman continuously asked petitioner to resign, he suffered mental anguish compelling him to seek the help of the company doctor, who found petitioner to be suffering from hypertension stage 2 and acute bronchitis. Another company accredited doctor also treated him for hypertension stage 2 and acute bronchitis from September 9 to 15, 2008, and advised him to rest for two (2) weeks. Despite notice of petitioner's state of health, the medical expenses being shouldered by the company, Mr. Rosuman issued him a notice of Absence Without Official Leave (AWOL)^[11]. This prompted petitioner to file a complaint for illegal suspension and illegal dismissal.

On the other hand, Pepsi Cola, in its position paper^[12], alleged that:

As Territory Manager, petitioner was fully apprised of Pepsi Cola's sales and distribution targets for 2008. Unfortunately, petitioner's performance for the months of May to August, 2008, was way below the target and his performance in the first half of 2008 was far from satisfactory.

Despite Mr. Rosuman's repeated warning during daily and weekly team meetings, petitioner failed to shape up prompting Mr. Rosuman to serve petitioner with a Notice to Explain the charges of continuing gross negligence, inefficiency and/or incompetence in the performance of duties under Group IV, no. 18 of the Company's Rules and Regulations as well as under Article 282^[13] of the Labor Code.

On September 6, 2008, petitioner submitted his written explanation^[14], which, however, failed to adequately address the charges against him.

After petitioner was accorded the required due process, respondents rendered a decision imposing a penalty of fifteen (15) day suspension without pay from September 17 until October 3, 2008. The notice^[15] of preventive suspension was received by petitioner on September 8, 2008.

Respondents were caught by surprise when petitioner filed a complaint for illegal dismissal on September 29, 2008, as he was fully aware that his employment had not been terminated, but that he had been placed under preventive suspension for fifteen (15) days, from September 17 until October 3, 2008.

On October 7, 2008, when petitioner failed to report for work after the expiration of his 15 day suspension, Mr. Rosuman sent petitioner a Notice of Offense charging him for absence without official leave (AWOL)^[16], and directed him to report for work immediately, which petitioner ignored.

Meanwhile, respondents received a complaint from a sales outlet that petitioner had borrowed money from the owner, an infraction under Company Rules and Regulations. The complaint prompted respondents to serve, again, a Notice of Charge and a Notice of Administrative Hearing^[17] dated October 21, 2008, charging petitioner not only for his continued AWOL but also for borrowing money from a sales outlet. The charge notice was received by petitioner on October 27, 2008, during the mandatory conference before the Labor Arbiter.

On December 16, 2008, Pepsi Cola issued a Notice of Decision^[18] terminating petitioner's employment.

Upon termination of the mandatory conference and the parties' submission of their respective position papers, the Labor Arbiter rendered a Decision^[19] dated May 14, 2010, the fallo of which, reads:

IN VIEW THEREOF, judgment is hereby rendered declaring that the complainant (petitioner) was illegally suspended and illegally dismissed. Consequently, the Pepsi-Cola Products Philippines, Inc. is hereby directed to pay the petitioner the following:

- a) P358,750.00 - as backwages
- b) P307,500.00 - as commissions
- c) P 50,000.00 - as moral damages
- d) P 50,000.00 - as exemplary damages plus 10% thereof as attorney's fees.

The reinstatement aspect is immediately executory without the need for the issuance of a writ of execution. The respondents are directed to show proof of compliance with this aspect of the decision within a period of ten (10) days from their receipt hereof.

The rest of the claim (*sic*) are denied for lack of factual and legal basis.

SO ORDERED.

Pepsi Cola appealed to the NLRC, which reversed the findings of the Labor Arbiter. The dispositive portion of the NLRC assailed Decision^[20] dated December 20, 2010, is quoted as follows:

WHEREFORE, the appeal is **GRANTED** and the Decision promulgated on 14 May 2010 is **REVERSED** and **SET ASIDE**. A new one is hereby issued DISMISSING the complaint for lack of merit.

SO ORDERED. (*Emphasis in the original*)

His motion for reconsideration having been denied in the Resolution²¹ dated January 16, 2012, petitioner filed the instant appeal.

ISSUE

In fine, the issue for resolution is whether or not petitioner was illegally suspended and illegally dismissed.

THE COURT'S RULING

The Petition is, in part, meritorious.

For a worker's dismissal or suspension to be considered valid, it must comply with both procedural and substantive due process. The legality of the manner of dismissal constitutes procedural due process, while the legality of the act of dismissal constitutes substantive due process^[22].

Procedural due process requires that the employee be given a notice of the charge against him, an ample opportunity to be heard, and a notice of termination^[23] or suspension. Substantive due process, on the other hand, requires that dismissal by the employer be must be for any of the just causes provided in Article 282^[24] of the Labor Code or the authorized causes under Articles 283^[25] and 284^[26] of the same Code.^[27]

In this case, petitioner was accorded procedural due process. He received a notice to explain^[28] the charge against him, and did issue his written Explanation Letter^[29] to Mr. Rosuman. He also received the notice of his preventive suspension^[30].

As to substantive due process, Section 8^[31], Rule XXIII, Implementing Book V of the Omnibus Rules Implementing the Labor Code, provides that preventive suspension is justified where the employee's continued employment poses a serious and imminent threat to the life or property of the employer or of the employee's co-workers. Without this kind of threat, preventive suspension is not proper.

In the case at bar, petitioner was suspended for failure to meet the required sales and distribution volume in his assigned territory for at least four (4) months. As aptly explained by Pepsi Cola in its Position Paper^[32], such performance is disastrous to the company that is reliant upon the successful sales and distribution of its products. Thus, petitioner's preventive suspension is proper as his continued employment poses a serious and imminent threat to the property of Pepsi Cola.

As to the issue of illegal dismissal, it is worthy to note that petitioner filed the complaint for illegal suspension and illegal dismissal at the time when he was under preventive suspension. Therefore, when petitioner filed the complaint for illegal dismissal, he had not, as yet, been terminated from employment. Nonetheless, We