

TWELFTH DIVISION

[CA-G.R. SP. No. 134755, June 26, 2014]

FERNANDO B. FRIGILLANA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), JEJ INTERNATIONAL MANPOWER SERVICES, BENEDICTO T. JAVIER AND MARINA BAY SANDS PTE. LTD., RESPONDENTS.

D E C I S I O N

DICDICAN, J.:

Before this Court is a Petition for *Certiorari*^[1] filed pursuant to Rule 65 of the Revised Rules of Court assailing, for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction, the December 27, 2013 Decision^[2] of the National Labor Relations Commission (NLRC), Third Division, in labor case docketed as NLRC LAC OFW-L No. 11- 001095-13, NLRC NCR (L) 01-01051-11 which reversed and set aside the September 20, 2013 Decision^[3] of the Labor Arbiter. Also assailed in this petition is the January 30, 2014 Resolution^[4] of the same Commission which denied the Motion for Reconsideration filed by the petitioner.

The material and relevant facts, as culled from the record, are as follows:

Private respondent Marina Bay Sands Pte. Ltd. ("Marina Bay Sands") is a Singapore-based company acting as a foreign principal/employer and duly registered and accredited with the Philippine Overseas Employment Administration ("POEA"). Marina Bay Sands is a famous tourist destination in Singapore which boasts of its impressive architectural design and its world famous casino frequented by gamers from all throughout the globe.

Private respondent JEJ International Manpower Services ("JEJ International") is a duly licensed recruitment agency with Benedicto Javier as its sole proprietor.

Petitioner Fernando B. Frigillana ("petitioner") was hired by the private respondent Marina Bay Sands on December 12, 2009 as a Pit Supervisor for a contract period of two (2) years. His monthly salary was SG\$3,500.00^[5].

On December 21, 2010, an incident took place which involved herein petitioner and Pit Manager Mr. John Liew ("Liew"), a Malaysian national.

According to the petitioner, he was assigned as marketing agent at the time of the incident. Although it was beyond his usual task as Pit Supervisor, he obliged.

On the said date, Pit Manager Liew allegedly got mad at him after he assisted a new check-in dealer in his presence. He approached Liew on the matter but, instead, he received unsavory words and was taunted in front of the customers and their co-

workers. He was even purportedly challenged to a fistfight by Liew which he only ignored as he opted to go back to his assignment.

As a result of the incident, the petitioner was suspended from work for seven (7) days and eventually, dismissed from employment on December 29, 2010. Consequently, he was immediately repatriated to the Philippines.

On account of the premature termination of his contract and his separation from employment without valid cause, the petitioner filed a complaint with the Labor Arbiter. He alleged that he had been unlawfully dismissed for equivocal grounds and without observance of due process as he was not afforded the opportunity to explain his position with respect to the incident.

The private respondents, on the other hand, claimed that the petitioner was validly terminated from employment after consideration of his written explanation, the statements of the witnesses and the video recording of the incident which took place on December 21, 2010. The private respondents averred that the petitioner was dismissed from employment for having exhibited aggressive behavior and belligerent attitude towards his superior. According to the private respondents, the petitioner admitted that he tapped the hand of Liew and also pushed the latter's hand in a hard manner. The petitioner likewise admitted having uttered the following vulgarities against Liew, *"You want to fight with me, its up to you what you want. Fuck you!"*

As all efforts to reach an amicable settlement proved futile during the conciliation conference conducted by the Labor Arbiter, the case underwent proceedings to determine the merit of petitioner's complaint. The parties were made to submit their respective position papers and evidence in support thereof which they did dutifully submit.

On September 20, 2013, Labor Arbiter Joel S. Lustria rendered a Decision granting the complaint, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, judgment is hereby rendered, declaring respondents guilty of illegal dismissal. Accordingly, respondents are hereby ordered jointly and severally liable:

1)To pay complainant the amount of SG\$ 21,000.00, or its equivalent in Philippine currency prevailing at the exchange rate at the time of payment, representing his unrealized earnings of three (3) months salary for every year of the unexpired term;

2)To pay complainant an amount equivalent to ten (10%) percent of the total judgment award, as attorney's fees.

3)Other claims are dismissed for lack of merit.

" SO ORDERED."

The Labor Arbiter found that, aside from the private respondents' sweeping allegations of petitioner's serious breach of the company's Disciplinary Manual which included insubordination and behavior that embarrasses or negatively impacts the company, no other evidence, be it a documentary or testimonial one, was ever adduced that was substantial enough to prove that end.

Moreover, the Labor Arbiter ratiocinated that the issuance by private respondent Marina Bay Sands of the memorandum of suspension dated December 22, 2010 and the termination letter dated December 29, 2010 were mere afterthoughts to give semblance of legality to the termination from employment of petitioner.

The Labor Arbiter likewise ruled that dismissal from employment was too harsh a penalty to be imposed on the petitioner since he had been an employee of Marina Bay Sands and was assigned in its different branches for almost nine years already with good record. The petitioner's act of uttering obscene words towards Liew was merely a result of provocation due to the maltreatment that he received from the latter.

Dissatisfied, the private respondents appealed from the decision of the Labor Arbiter to the NLRC.

On December 27, 2013, the NLRC, Third Division, rendered the assailed Decision which reversed and set aside the decision of the Labor Arbiter, to wit:

"WHEREFORE, the appeal filed by respondents is hereby GRANTED. The Decision dated 20 September 2013 is VACATED and SET ASIDE. The subject complaint is hereby DISMISSED for lack of merit.

"SO ORDERED."

In reversing the findings of the Labor Arbiter, the NLRC stated that there was valid cause to dismiss the petitioner from employment on account of his insubordination and serious misconduct. The NLRC opined that the petitioner had categorically admitted in his handwritten explanation that he lost his temper and uttered the words, "*Fuck you*" against Pit Manager Liew. The minutes of the due process inquiry conducted by Marina Bay Sands Senior Officer and Human Resource Officer likewise revealed that he had, indeed, shouted invectives against Liew. The petitioner even admitted to pushing the hand of his superior.

With respect to the observance of the due process requirement in termination cases, the NLRC ruled that there was no violation of the same. According to the NLRC, the following events showed compliance with the due process requirement: the first notice dated December 21, 2010 was given to the petitioner which informed him that an investigation shall be conducted in relation to the incident which involved him and Pit Manager Liew; a handwritten explanation was then submitted by the petitioner; an interview was conducted where the petitioner was given the chance to explain his side; and the last notice dated December 29, 2010 finally informed the petitioner of his termination from employment.

The petitioner filed a Motion for Reconsideration of the decision of the NLRC but the said motion was denied in a Resolution dated January 30, 2014, viz:

"ACCORDINGLY, the instant Motion for Reconsideration is hereby DENIED for lack of merit. "No further Motions for Reconsideration shall be entertained.

"SO ORDERED."

Undaunted by the foregoing disposition of the NLRC, the petitioner filed the instant petition with this Court assigning the following acts of grave abuse of discretion which were purportedly committed by the NLRC:

I.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION DESPITE A CLEAR SHOWING THAT THE PETITIONER WAS DISMISSED WITHOUT JUST CAUSE UNDER ARTICLE 282 OF THE LABOR CODE AND THE JURISPRUDENTIAL PRONOUNCEMENTS OF THE SUPREME COURT.

II.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION DESPITE A CLEAR SHOWING THAT THE PETITIONER WAS DISMISSED WITHOUT DUE PROCESS OF LAW UNDER ARTICLE 277 OF THE LABOR CODE AND THE JURISPRUDENTIAL PRONOUNCEMENTS OF THE SUPREME COURT.

III.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION DESPITE A CLEAR SHOWING THAT THE PETITIONER'S DISMISSAL FROM EMPLOYMENT IS TOO HARSH FOR A PENALTY CONSIDERING HIS UNBLEMISHED SERVICE RECORD AND HIS SUSPENSION FOR SEVEN DAYS.

IV.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION DESPITE A CLEAR SHOWING THAT THE PETITIONER IS ENTITLED TO MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES BY REASON OF HIS TERMINATION WITHOUT JUST CAUSE AND DUE PROCESS OF LAW.

In sum, the primordial issue brought before this Court for resolution is whether or not the private respondents had unlawfully terminated the petitioner from employment on the ground of serious misconduct and gross insubordination and without the observance of due process of law.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant petition to be devoid of merit.

The petitioner contends that he could not be held guilty of serious misconduct and gross insubordination because his utterance of the vulgar and obscene words was merely a result of the provocation exerted upon him by Liew. Also, the higher rank and position of Liew did not give the latter an unbridled license to shout and humiliate him in public. He claims that, at the time of the incident, he was merely doing his job for the benefit of the casino business.

The just causes for the termination of employment are specifically enumerated in Article 282 of the Labor Code. Article 282 provides thus:

"ART. 282. Termination by employer.- An employer may terminate an employment for any of the following causes: