

SPECIAL SEVENTEENTH DIVISION

[CA-G.R. SP NO. 129555, June 23, 2014]

FERNANDO MEDICAL ENTERPRISES, INC. AND RAFAEL P. FERNANDO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND JUDE RICARDO D. EUGENIO, RESPONDENTS.

D E C I S I O N

BATO, JR., J.:

In this Petition for Certiorari^[1] under Rule 65 of the Rules of Court, petitioners seek to set aside the 31 January 2013 and 25 March 2013 Resolutions of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000245-13.

Petitioner Fernando Medical Enterprises, Inc. is a corporation engaged in the selling and distribution of medical supplies and equipments. Petitioner Rafael P. Fernando is the majority stockholder of petitioner corporation.

On 28 October 2011, private respondent Jude Ricardo D. Eugenio filed against the herein petitioners a complaint^[2] for non-payment of salary, service incentive leave pay, 13th month pay, incentives/commissions, separation pay, moral and exemplary damages and illegal deductions.

In the position paper^[3] that he filed before the Labor Arbiter, Eugenio alleged that he worked for petitioner corporation from June 2008 until his resignation on 24 August 2011. His last position with petitioner corporation was as District Manager with a monthly salary of Php16,000.00. Aside from his salary, he also received a daily allowance of Php200.00. But said daily allowance was stopped by the petitioners starting May 2011 until his resignation on 24 August 2011. Petitioners also failed to pay him his 13th month pay corresponding to his services from 01 January 2011 to 24 August 2011.

Eugenio further alleged that petitioner corporation has an Incentive Program wherein District Managers who meet the sales target of 100% shall be entitled to a monthly incentive pay equivalent to 0.75% of the sales; quarterly incentive pay of 0.5% of the sales; and annual incentive pay of 0.5% of the sales. Thus, for the period covering September 2010 to August 2011, he is entitled to Php412,287.94 as incentive pay and commissions. Petitioner corporation, however, refused to pay him said amount despite his repeated demands.

For their part, petitioners countered that Eugenio is not entitled to his money claims. They pointed out that it is actually Eugenio who is indebted to petitioner corporation for his Globe bills, SSS condonation, absences on 25 and 26 August 2011 and the amount representing the products which he misappropriated. Moreover, pursuant to their Training and Travel Agreement, which Eugenio signed on 17 June 2011, Eugenio bound himself to render 24 months of service to the company or else he has to reimburse petitioner corporation for his training expenses. Considering that it

was Eugenio who resigned and was not able to serve petitioner corporation for the agreed period of time, he has to reimburse the corporation for his training expenses in the amount of Php52,552.36.

Petitioners further countered that expressly written in the corporation's Incentive Program is that the management has the right to modify, suspend and nullify the grant of commissions. In Eugenio's case, they deemed it necessary to nullify the grant of commission since he had not accounted for the sum of Php8,349.60 representing the value of the Optiray vials which he received in February 2009. But assuming *arguendo* that Eugenio is entitled to commissions, his computation is inaccurate. Per computation of Phoebe G. Borbon, petitioner corporation's Cash Custodian, Eugenio is entitled to a commission of only Php211,511.11, had said award not been cancelled.

On 30 August 2012, the Labor Arbiter (LA) rendered a Decision^[4] ruling that Eugenio is entitled to his remaining salary for the period covering 12 August 2011 until his resignation on 24 August 2011 and pro-rated 13th month pay for 2011. Nonetheless, Eugenio would still be the one indebted to petitioner corporation because he is obligated to reimburse the latter for his training expenses amounting to Php52,552.36. The LA further ruled that the petitioners had admitted that Eugenio is entitled to receive commissions. Based on the computation of petitioner corporation's Cash Custodian, Eugenio is entitled to Php211,511.11 as incentives/commissions. Hence, the dispositive portion of the LA's Decision reads:

"WHEREFORE, judgment is hereby rendered ordering respondent Fernando Medical Enterprise, Inc. to pay complainant P211,511.11 as incentives/commissions.

All other claims are dismissed for lack of merit.

SO ORDERED."^[5]

From the LA's decision, the petitioners filed a partial appeal^[6] to the NLRC. They contended that they never admitted that Eugenio is entitled to commissions. As a matter of fact, their consistent stand is that Eugenio is not entitled to receive commissions since he still has unsettled accounts and the grant thereof is a management prerogative, not a demandable right or enforceable obligation.

In the first assailed Resolution,^[7] the NLRC saw no reason to depart from the LA's finding that Eugenio is entitled to receive commissions under the Incentive Program of petitioner. It ruled that petitioners indeed admitted that Eugenio is entitled to receive commissions amounting to Php211,511.11, had it not been cancelled. The NLRC then ruled that petitioner corporation's cancellation of Eugenio's commissions was unfair and arbitrary since Eugenio already earned the same. It is of no moment that petitioner corporation's Incentive Program has an express reservation that the management "has the right to modify, suspend and nullify the program when deemed necessary."

The NLRC further ruled that the payment of commissions to Eugenio cannot be considered as a mere act of generosity on the part of petitioners. It is a contractual obligation that they have undertaken when they issued the Incentive Program to their employees. Petitioners also failed to substantiate their allegation that Eugenio is not entitled to receive commissions since he had misappropriated fourteen (14)

Optiray vials sometime in February 2009. On the other hand, Eugenio had submitted in evidence documents showing that said items were returned to the corporation's Central Storage Office.

The dispositive portion of the assailed 31 January 2013 NLRC Resolution^[8] reads:

"WHEREFORE, premises considered, the appeal is DISMISSED. The 30 August 2012 Decision of the Labor Arbiter Adolfo C. Babiano is hereby AFFIRMED.

SO ORDERED."

Petitioners then filed a motion for reconsideration,^[9] which was denied by the NLRC in the second assailed Resolution.^[10]

Hence, this petition for certiorari wherein petitioners contend that:

"It is respectfully submitted that in dismissing the appeal and in denying the motion for reconsideration the respondent Commission has gravely abused its discretion from which there is no appeal, nor any other plain, speedy and adequate remedy except this petition for certiorari."^[11]

Essentially, petitioners reiterate their argument that Eugenio is not entitled to receive commissions. First, they never admitted that Eugenio is entitled thereto. Second, it was a management prerogative to nullify the Incentive Program because of Eugenio's unsettled accounts. And third, the NLRC's conclusion that Eugenio had returned the 14 Optiray vials is unsupported by evidence.

By way of Comment,^[12] Eugenio contends that this Court cannot, by way of a petition for certiorari under Rule 65, re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the factual findings of the NLRC.

In the case of *Univac Development, Inc. vs. Soriano*,^[13] the Supreme Court ruled that the Court of Appeals can review, by way of a petition for certiorari under Rule 65, the finding of facts of the NLRC and the evidence of the parties to determine whether the NLRC gravely abused its discretion. In exercising the expanded judicial review over labor cases, the Court of Appeals can grant the petition if it finds that the NLRC committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which is material or decisive of the controversy which necessarily includes looking into the evidence presented by the parties.

As defined by jurisprudence, grave abuse of discretion means such capricious and arbitrary exercise of judgment as equivalent, in the eyes of the law, to lack of jurisdiction.^[14] There is grave abuse of discretion where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.^[15] Through time, the meaning of grave abuse of discretion has been expanded to include any action done contrary to the constitution, the law or jurisprudence.^[16]

Guided by the aforementioned legal precepts, we find no grave abuse of discretion on the part of the NLRC in concluding that Eugenio is entitled to receive commissions under petitioner corporation's Incentive Program.