

SPECIAL FOURTH DIVISION

[CA-G.R. SP NO. 122275, November 27, 2014]

**BENEDICT C. COLINGAN, PETITIONER, VS. LEPANTO
CONSOLIDATED MINING COMPANY, FELIPE U. YAP AND
NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION),
RESPONDENTS.**

DECISION

SORONGON, J.:

This resolves the Petition for Certiorari filed pursuant to Rule 65 of the 1997 Rules of Civil Procedure seeking to set aside the Decision^[1] dated April 29, 2011 of the National Labor Relations Commission (NLRC), First Division, in NLRC LAC No. 02-000405-11, which affirmed the December 30, 2010 Decision^[2] of the Labor Arbiter dismissing petitioner's complaint for illegal dismissal. Also assailed is the NLRC Resolution^[3] dated July 15, 2011, denying petitioner's motion for reconsideration.

The facts, as culled from the records, follow:

Lepanto Consolidated Mining Company (LCMC for brevity) is a domestic corporation engaged in mining while petitioner Benedict C. Colingan (petitioner) was under its employ as miner.

On April 29, 2010 at about one-twenty (1:20) o'clock in the afternoon, petitioner together with Alfred Faroden and another miner were about to take a bath when they were stopped by security guards (also called mine patrols) Copernico Sayson, Roy Balajo, Cornel Awal, Benny Bugtong and Dao-ey Ngapan at the 950 Main Level Drift, Nayak Underground of LCMC, Lepanto, Mankayan, Benguet. Then Roy Balajo confronted petitioner about the suspicious object he was holding but the latter turned his back and threw it to the ground landing near Copernico Sayson who immediately picked it up. When examined, the suspicious object turned out to be several pieces of stone ores wrapped in a dirty white cellophane. Petitioner was immediately brought to the Security Office for investigation.

Thereat, petitioner was given a copy of the Incident Report^[4] and a Notice to Explain^[5] for the offenses of Serious Misconduct, Highgrading^[6] and Breach of Trust and Confidence with preventive suspension starting on April 30, 2010 to May 29, 2010. He was also directed to submit his written explanation during the hearing on May 12, 2010.

On May 1, 2010, the confiscated stones were brought to the Mill Assay Department for assay testing. The result revealed that the stones are highgrade materials specifically having an assay of 9,805.9489 g/t gold.

At the hearing on May 12, 2010, the security guards were present and narrated the incident. Petitioner also appeared who was then accompanied by the officers of his labor union. He submitted his written explanation^[7] and that of his witnesses. His narrations run this way:

"xxx xxx xxx

I was so surprised that you charged me for violation of code of conduct for an allegation of high grading which was merely imputed against me.

At any rate, I deny having doing act of high grading on April 29, 2010 at about 1:20 o'clock at the main drift of 950, level. The truth is:

- 1. I freely submitted my self (sic) to SG BALAJO when he came to my position and frisked me then he confiscated my wrapped soap.*
- 2. I am not holding any thing from my right hand, only my wrapped soap which I am holding from my left hand.*
- 3. I did not resist and turned my back from SG BALAJO nor threw anything and landed in front of SG SAYSON as they alleged from their statement.*
- 4. They, mine patrols only showed to me a wrapped object when we were at 950, level shaft station and they are saying that the said wrapped object belongs to me which I vehemently deny.*
- 5. I know nothing about the wrapped object which the mine patrols is claiming that is belongs (sic) to me.*

xxx xxx xxx"

On June 1, 2010, petitioner received a copy of the notice of his termination^[8] dated May 27, 2010. To vindicate his plight, petitioner filed a complaint^[9] for illegal dismissal with the Labor Arbiter against LCMC and its Chairman of the Board, Felipe U. Yap (Yap).

Petitioner's complaint essentially alleged that (1) the charges against him were fabricated; (2) the security guards or mine patrols who apprehended him did not execute any written statement or report about the incident; (3) the incident report and the notice to explain were prepared by a certain PCI Michael AB. Martin, who has no personal knowledge about the incident involving his possession of stone ores; (4) the stone ores, which were allegedly confiscated from him, were not presented during the investigation hearing; (5) his right to due process was violated as he was not duly furnished a copy of the written statement of the security guards, he was not allowed to cross-examine them and he was denied the opportunity to examine the confiscated stone ores; (6) since 2008, respondents failed to give him his salary but only allowed him to make cash advances in the amount of One Thousand Pesos (Php 1,000.00) per pay day; and (7) aside from his prayers for reinstatement, backwages, damages and attorney's fees, he also asked for payment of his unpaid salaries.

Petitioner also submitted the written testimonies of Alfred Faroden^[10], Jose Van M. Ngalew, Samuel B. Seling, Johnny N. Pindosan,^[11] Orlando B. Betong, Moreno S. Palayen, and Ricardo H. Chinolong^[12] whose combined statements showed that petitioner did not resist when the security guards conducted body search on him. It is not true that petitioner turned his back and threw the stone ores covered with dirty white cellophane when accosted by the security guards. They insisted that what was taken from petitioner was a soap wrapped in a cellophane.

On December 30, 2010, Labor Arbiter Monroe C. Tabinagan dismissed the complaint but ordered the private respondents to pay petitioner his unpaid salaries in the amount of One Hundred Seven Thousand Two Hundred Seventy Four and 13/100 Pesos (Php 107,274.13) and attorney's fees equivalent to 10% of the total monetary award^[13].

Upon appeal by petitioner, the NLRC affirmed the ruling of the Labor Arbiter, with the *fallo* of its decision reading in this wise:

WHEREFORE, complainant's appeal is DISMISSED for lack of merit, and the appealed decision, dated 30 December 2010, is AFFIRMED.^[14]

Petitioner's motion for reconsideration likewise failed per NLRC Resolution^[15] dated July 15, 2011 denying the same.

Undaunted, petitioner seeks redress via this recourse alleging grave abuse of discretion amounting to lack and in excess of jurisdiction on the NLRC because:

I. IT DID NOT GIVE DUE CONSIDERATION AND/OR CREDENCE TO THE TESTIMONY OF PETITIONER AND THAT OF HIS EYE WITNESSES WHEN THEIR TESTIMONIES WERE NEVER REFUTED BY THE SECURITY GUARDS AND PRIVATE RESPONDENTS; AND

II. IT DID NOT CONSIDER THE FACT THAT THE CHAIN OF CUSTODY OF THE ALLEGED WRAPPED OBJECT WAS NOT ESTABLISHED BY PRIVATE RESPONDENTS AND THE SECURITY GUARDS.

Petitioner's arguments lack merit.

At the outset, it must be stressed that a petition for certiorari under Rule 65 of the Rules of Court will lie only where a grave abuse of discretion or an act without or in excess of jurisdiction on the part of the respondent commission is clearly shown.^[16] As enunciated in the case of *Protacio vs. Laya Mananghaya & Co.*:^[17]

As a general rule, in certiorari proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their