

## TWENTIETH DIVISION

**[ CA- G.R. SP NO. 08171, November 21, 2014 ]**

**RICARDO HELLENI L. RAAGAS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION – SEVENTH DIVISION, THE REDSYSTEMS COMPANY INC., COCA-COLA BOTTLERS, JOSEPH SARMEN AND/ DANIELO ARCE, RESPONDENTS.**

### D E C I S I O N

#### **QUIJANO-PADILLA, J.:**

Petitioner Ricardo Helleni Raagas ("petitioner Raagas") filed this Petition for Certiorari, under Rule 65 of the Rules of Court, seeking the annulment of (1) the Decision<sup>[1]</sup> dated July 31, 2013 ("assailed Decision") of the National Labor Relations Commission - 7<sup>th</sup> Division ("public respondent NLRC") in NLRC Case No. VAC-06-000388-2013 which affirmed *in toto* the decision dated May 16, 2013 of Labor Arbiter Arturo M. Camiller; and (2) the Resolution<sup>[2]</sup> dated September 30, 2013 ("assailed Resolution") of the public respondent in the same case, which denied the Motion for Reconsideration of petitioner Raagas.

The antecedent facts are as follows:

Respondent The Redsystems Company, Inc. (TRCI) is engaged in distribution and warehousing services for various products, including those for Coca Cola Bottlers Philippines, Inc. (CCBPI). It has sixty-five (65) employees, including its Delivery Service Representatives (DSRs) who are tasked to deliver and distribute CCBPI products to various Market Executioner Partners (MEP) of CCBPI in Region 8.

Petitioner Raagas was one of respondent TRCI's DSRs; he was hired on April 1, 2011.

The controversy between petitioner Raagas and respondent TRCI arose when, in the morning of August 4, 2012, the guard-on-duty, ASG Charlito Altichie, of the CCBPI, after conducting his routine inspection, allegedly found an excess load of 17 bottles of Sparkle 240 ml beneath the passenger seat of the route truck driven by petitioner Raagas. Hence, based on the security incident report<sup>[3]</sup>, petitioner Raagas was asked to explain about his alleged violation of company rules which would constitute theft.<sup>[4]</sup> Then, an investigation ensued.

In his explanation,<sup>[5]</sup> petitioner claimed that in the morning of August 4, 2012, he was tasked to deliver 10 pallets or 560 cases of Sparkle 240 ml to Carilla Burauen MEP dealer. Of all the cases he delivered, one case was returned because seven bottles in the case were broken, missing or uncapped. The other remaining bottles (17 Sparkle 240 ml) were in good condition, so he brought them back to CCBPI Tacloban Plant on the same day in time for the second load and delivery. That upon

arrival at the plant, he directly proceeded to the check-in area for verification with the finance office, and there he declared the returned products and the same were documented. His truck was then brought to the loading area, but, being in a hurry to leave the loading area for he still had to process the papers for the next loading and delivery, he inadvertently forgot to inform the personnel in the loading area that there were 17 bottles of Sparkle 240 ml returned goods that had to be unloaded from the truck. That when he returned to the loading area and rode his truck to commence his delivery, he did not anymore notice that there were goods that were not unloaded. So, when he passed by the main gate going out from the plant, a routine inspection was conducted, and that was the time ASG Altichie noticed the 17 Sparkle bottles placed on the floor where the passenger seat is located. That when he was asked about the goods, he declared immediately that these were the returned goods from Carilla Burauen which the personnel from the loading area forgot to unload. Then the goods were unloaded and placed inside the guard house. Petitioner Raagas claimed that ASG Altichie never asked for a document regarding the returned goods, contrary to the latter's report.

Finding petitioner Raagas' explanation unmeritorious and giving more credence to the security incident report, respondent TRCI dismissed petitioner Raagas from employment on January 30, 2013.<sup>[6]</sup>

Consequently, petitioner Raagas filed a complaint for illegal dismissal, unfair labor practice and claims for reinstatement and backwages, overtime pay, holiday pay, vacation/sick leave pays, and for moral and exemplary damages.

In his position paper,<sup>[7]</sup> petitioner Raagas alleged that he is an active member and a Union Coordinator of the Federation of Free Workers (FFW) in Tacloban City; that his work schedule ranged from 4:00AM to 5PM (for short distance travels) and twenty-four (24) hours (for long distance travels), or an average of eighteen (18) hours a day; that he worked from Monday to Saturday and was receiving a daily rate of P243.00; that he was entitled to 11.5 days of vacation leave; that his meal allowances and hotel allowance for long distance deliveries were discontinued without notice; that he had not received his holiday pay for the past two years; and that before he was illegally dismissed, he had been working with TRCI for a total of 2 years and 9 months. He mainly argued in his position paper that he had no intention to steal the Sparkle products and that he only inadvertently forgot to unload the same after reporting these as returned goods to the CCBPI office.

Respondents, on the other hand, argued that petitioner Raagas was paid a daily rate of P260.00; that he could not demand for overtime pay and premium pay for holiday and rest day work and holiday pay because he was a field personnel; that even if he could not demand the benefits under the provisions on working conditions of the Labor Code, his wage under TRCI's payment scheme was more than the minimum wage for his day's work including premium payments for holiday, holiday pay and allowances; that records show that he was able to avail of his vacation and sick leaves; that TRCI cannot be liable of unfair labor practice considering that it had recently forged a Memorandum of Agreement with FFW union; and that his termination from employment was for a just cause considering that he violated TRCI's Employee's Code of Conduct having been found guilty of theft after administrative investigation.<sup>[8]</sup>

On May 16, 2013, Labor Arbiter Arturo Camiller proceeded to rule that respondent TRCI did not commit any unfair labor practice and held that petitioner Raagas was a field personnel, so he could not claim for overtime pay and holiday pay. More importantly, the Labor Arbiter ruled that the penalty of dismissal imposed on petitioner Raagas is too harsh a penalty, hence he concluded that petitioner Raagas is entitled to reinstatement, but further explained that reinstatement is not anymore feasible due to loss of trust and confidence, so petitioner Raagas is entitled to separation pay in lieu of reinstatement. However, the Labor Arbiter did not award backwages as he found that there was no illegal dismissal. Finally, he awarded the monetary value of vacation leave that is due to petitioner Raagas.<sup>[9]</sup>

The decretal portion of the Labor Arbiter's May 16, 2013 decision reads:

"WHEREFORE, in view of the foregoing, a Decision is hereby rendered ordering respondent The Red System Corporation, Inc. (TRCI) of Coca-Cola to pay complainant Ricardo Hellini Raagas the following benefits:

1. Separation Pay	P13,520.00
2. Money Value of Vacation Leave	<u>2,990.00</u>
Total	P16,510.00

All other claims are DISMISSED for lack of merit.

SO ORDERED."<sup>[10]</sup>

Finding the above decision adverse to his cause, petitioner Raagas appealed his case to the public respondent NLRC.<sup>[11]</sup> He raised basically the same issues and arguments raised before the Labor Arbiter. He, however, underscored that if the Labor Arbiter found the penalty of dismissal too harsh, then the same was also a finding of illegal dismissal, so he should have been entitled to the twin reliefs of reinstatement and backwages, and not only separation pay in lieu of reinstatement. Likewise, he argued that he is not a field personnel, thus, he is entitled to holiday pay and overtime pay.

Public respondent NLRC found no reason to reverse any finding of the Labor Arbiter. It also ratiocinated that separation pay in lieu of reinstatement is a valid relief afforded to petitioner Raagas considering that there was already a loss of trust and confidence and such created strained relations between the parties. Hence, its assailed Decision reads:

"WHEREFORE, premises considered, the Decision of the Labor Arbiter dated 16 May 2013 is hereby AFFIRMED in toto.

SO ORDERED."<sup>[12]</sup>

Petitioner Raagas moved for a reconsideration of the foregoing assailed Decision, but public respondent NLRC denied his motion in its assailed Resolution.<sup>[13]</sup>

Aggrieved, petitioner Raagas filed the instant petition to Us. He alleges that the public respondent NLRC committed serious errors in its findings of facts and law which would be tantamount to a grave abuse of discretion. Hence, he raised the following issues for resolution:

I. "WHETHER OR NOT PUBLIC RESPONDENT NLRC- SEVENTH DIVISION COMMITTED GRAVE AND PALPABLE BUT REVERSIBLE ERROR IN ITS APPRECIATION OF FACTS PARTICULARLY AS TO THE REQUIREMENT OF MEETING THE STANDARD OF SUBSTANTIAL EVIDENCE CONSIDERING THAT PETITIONER DID NOT COMMIT GRAVE NEGLIGENCE OF DUTY TO WARRANT HIS DISMISSAL FROM EMPLOYMENT.

II. WHETHER OR NOT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN ITS FINDINGS OF APPLICABLE LAWS PARTICULARLY AS TO THE FINDINGS THAT DELIVERY SERVICE REPRESENTATIVES ARE DELIVERY DRIVERS OF THE COMPANY AND THUS ARE NOT FIELD PERSONNEL CONSISTENT WITH THE RULING OF THE SUPREME COURT IN *AUTOBUS TRANSPORT SYSTEM, INC. VS. BAUTISTA*.

III. WHETHER OR NOT PETITIONER WAS ILLEGALLY AND UNJUSTLY DISMISSED FROM HIS EMPLOYMENT; AND

IV. WHETHER OR NOT PETITIONER IS ENTITLED TO REINSTATEMENT, FULL BACKWAGES AND OTHER MONETARY BENEFITS, DAMAGES AND ATTORNEY'S FEES."<sup>[14]</sup>

The resolution of the above issues is dependent on the determination whether petitioner Raagas was dismissed for just cause. A resolution on whether petitioner Raagas is a field personnel or not would also determine the issue whether he is entitled to his claim for monetary benefits.

We find the petition partly meritorious.

Foremost, We rule on the contention of the private respondent TRCI that petitioner cannot anymore question the similar findings of facts by the Labor Arbiter and the NLRC in a petition for certiorari. Indeed, "in certiorari proceedings under Rule 65 of the Rules of Court, the CA does not assess and weigh each piece of evidence introduced in the case. But what the CA examines are the factual findings of the NLRC to determine whether or not the conclusions are supported by substantial evidence whose absence points to grave abuse of discretion amounting to lack or excess of jurisdiction."<sup>[15]</sup>

In the recent case of *Protacio v. Laya Mananghaya & Co.*<sup>[16]</sup>, the Supreme Court ruled that:

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 conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. **However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence. The Court has not hesitated to affirm the appellate court's reversals of the decisions of labor tribunals if they are not supported by substantial evidence.**<sup>[17]</sup>

In the same vein, in *Norkis Trading Corp. v. Buenavista et al.*<sup>[18]</sup>, the Supreme Court held, to wit:

“On this matter, the settled rule is that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, i.e., the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. We emphasize, nonetheless, that these findings are not infallible. **When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. The CA can then grant a petition for certiorari if it finds that the NLRC, in its assailed decision or resolution, has made a factual finding that is not supported by substantial evidence.** It is within the jurisdiction of the CA, whose jurisdiction over labor cases has been expanded to review the findings of the NLRC.

We have thus explained in *Cocomangas Hotel Beach Resort v. Visca* that the CA can take cognizance of a petition for certiorari if it finds that the NLRC committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which are material to or decisive of the controversy. The CA cannot make this determination without looking into the evidence presented by the parties. The appellate court needs to evaluate the materiality or significance of the evidence, which are alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record.”<sup>[19]</sup>

Otherwise stated, re-evaluation of evidence, as a general rule, cannot be properly done in a petition for *certiorari* under Rule 65, EXCEPT in cases where substantial evidence to support the NLRC's findings are wanting or where there is disregard of the evidence on record.

In the case at bar, We rule that the findings of Labor Arbiter and the NLRC as regards the existence of just cause to warrant the dismissal of petitioner Raagas are not supported by substantial evidence. However, We affirm its finding that petitioner Raagas is a field personnel.

*Petitioner Raagas was illegally dismissed as the evidence of theft is not substantial. He is entitled not only to reinstatement but also to the award of backwages.*

The basis for petitioner Raagas' termination was the incident he was involved in on August 4, 2012. The security incident report prepared by the Chief Security Office stated, among others:

“Brief Narration of Incident

Timeline of Events: