

TWENTIETH DIVISION

[CA-G.R. SP NO. 08131, December 17, 2014]

**REAL MARIS RESORT AND HOTEL, INC., PETITIONER, VS.
ROMULO C. ARBIOL, JR., AND THE NATIONAL LABOR RELATIONS
COMMISSION, SEVENTH DIVISION, CEBU CITY, RESPONDENTS.**

DECISION

QUIJANO-PADILLA, J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the: (1) Decision^[1] dated March 27, 2013 affirming with modification the decision of the labor arbiter dated July 26, 2012,^[2] and (2) Resolution^[3] dated July 31, 2013 denying petitioner's motion for reconsideration. Both were issuances of public respondent National Labor Relations Commission (NLRC) in NLRC Case No. VAC-10-000609-2012.

The Antecedents

Private respondent Romulo Arbiol, Jr. (Arbiol) started working for petitioner Real Maris Resort and Hotel Inc. (Real Maris/resort) in March 2006. He became waiter on December 15, 2006 and was later appointed as officer-in-charge (OIC) of the Food and Beverage Department (F&B) on July 11, 2011.

On March 29, 2011, Real Maris issued a notice^[4] requiring Arbiol to explain the irregularity in Order Slip (OS) No. 30716. The OS detailed 2 orders of rum coke and indicated that it was 2 shots per order, instead of 1 shot per order which was the standard policy used in the F&B, thereby, resulting in a discrepancy in the amount of P98.00.

In his letter^[5] dated March 30, 2011, Arbiol explained that he had a Filipino guest who requested for extra 2 shots of rum. He asked Eric, the bartender about the extra shots and the latter told him that there was no need to charge it. Eric also told Arbiol that for inventory purposes, the latter had to write in the OS the extra 2 shots of rum which was not charged to the guest. Arbiol stated in his letter that he would not consent to have the P98.00 charged to him as it was not only his fault.

On November 28, 2011, Real Maris issued a memorandum to Arbiol on his alleged failure to account or report information required by the company within the prescribed period; and for his failure to record, accomplish or submit the required forms or reports.^[6] As OIC of the F&B, Arbiol's attention was called regarding the submission of every report or accountable forms to the Human Resource Department upon receipt or within the prescribed period. He was warned in the memorandum not to commit again the same violation, otherwise, a more serious disciplinary action would be imposed.

On the same date, November 28, 2011, Real Maris issued another memorandum^[7] to Arbiol requiring him to give, within 24 hours from notice, his written explanation regarding the fire incident that occurred in the boy's locker room on November 26, 2011. Upon investigation by the management and on the statements that he himself issued, Arbiol was found to be the one who smoked and left a lighted cigarette in the plastic trash bin of the locker room.

In a letter^[8] dated November 30, 2011, Arbiol admitted that he smoked in the comfort room (CR) of the locker room. He however disclaimed liability as he averred that only a little was left of his cigarette. He pressed it first against the metal above the toilet seat and thereafter on a piece of rug in order to put it off. It was no longer smoldering when he threw it in a plastic trash bin. He even double-checked the trash bin before leaving the locker room.

Meanwhile, the management investigated the fire incident further by inquiring from Arbiol's fellow employees and requiring their statements regarding the incident. The employees gave their written accounts of what they knew about it.^[9]

On December 20, 2011, Arbiol was issued another memorandum^[10] for having allegedly incurred on December 16, 2011, the following violations against Real Maris' company policies, *viz.* :

- 1) failure to account or report correctly any information required by the company within the prescribed period; failure to record, accomplish or submit required forms or reports when Arbiol failed to collect the exact amount of 1 bottle of Jose Cuervo wine from the guest under the name of Mr. Choi staying at room 107;
- 2) Staying overtime, or overnight in the office, unless with prior authorization or approval from the management. It was found from the records of the security that Arbiol stayed until 12:33 a .m. when he was supposed to stay only until 11:00 pm;
- 3) Offering services to guests or employees which are immoral in nature and entering guest room without prior authorization from department head. Arbiol was allegedly seen by other staff and security personnel staying in room 106 after his duty, and he even told his co-employees, Mr. Lacuesta and Mr. Torre about what happened between him and the guest inside the room;

In a letter^[11] dated December 21, 2011, Arbiol gave his written explanations on the incidents alluded to in the memorandum. He claimed that on December 17, 2011 at around 10:45 in the evening, he and Mr. Lacuesta, a fellow employee, were already cleaning up when Mr. Choi, a guest, inquired what time the bar would be closing. When he told Mr. Choi that it was only up to 11:00 o'clock in the evening, the latter requested Arbiol to extend his service even for just an hour. Arbiol knew that it was prohibited to render overtime without authority from the head so he extended his duty and served Mr. Choi's group but did not claim overtime pay. Mr. Choi ordered tequila. Arbiol was not familiar with the price so he got the menu. When he looked

at the price, he saw it as P1,500.00. He did not notice that below it was the price of P2,500.00 since he allegedly focused only on the P1,500.00. He admitted his mistake and just had the discrepancy charged to him.

On the alleged immoral services, Arbiol explained that on December 17, 2011, Joseph Ferre and his friends were drinking outside Real Maris. When Joseph Ferre came to get ice, he told Arbiol that Mr. Choi would come back on February the following year and would get Arbiol as their bartender. They would give him a tip, albeit it would be a kiss; and for every shot, there would be a kiss. Arbiol just laughed at what Joseph told to him. Arbiol was already out on duty at about 12:33 in the morning but he had not gone home. He was sitting and resting when the guard asked him what he was doing in room 106. He told the guard that the guest asked to have something translated in her cellphone. The guard asked Arbiol why he did not enter the guest's room and he replied that he knew it was prohibited. The guard allegedly replied that it was prohibited only if somebody sees or squeals. Arbiol insisted in his letter that he did not violate anything as he did not enter the guest's room. He, however, admitted that he told his co-workers what Mr. Choi said while still in the resort.

On December 22, 2011, Real Maris issued investigation notices to concerned employees regarding the incident involving Arbiol as referred to in the Memorandum dated December 20, 2011. The employees also gave their written explanation thereon.^[12]

Also on December 22, 2011, Real Maris issued a memorandum^[13] to Arbiol informing him that the management received his explanation regarding the fire incident and found him liable for gross negligence under Article 282 of the Labor Code. Thus, he was suspended for one (1) month starting January 10, 2012. On the same day, Arbiol received another memorandum^[14] informing him that after his explanation dated December 21, 2011, he was also found to have violated the company policies stated in the notice to explain dated December 20, 2011. Hence, the memorandum served as his final written warning and notice of his 7-day suspension to start on February 11, 2011.

On December 24, 2011, Real Maris issued a memorandum^[15] dismissing Arbiol effective December 25, 2011. According to the memorandum, Arbiol already committed six (6) violations within the year and under the company policy, an employee who has been warned five (5) times for various offenses within one year would be subject to dismissal. Arbiol was served a copy of the memorandum but he refused to sign his name to evidence his receipt thereof.^[16]

Arbiol filed a case^[17] for illegal dismissal and money claims with the Sub-Regional Arbitration Branch of the NLRC in Iloilo City. The labor arbiter ruled in his favor and the dispositive portion of his decision is hereby quoted, *viz.* :

WHEREFORE, premises considered complainants were found to be illegally dismissed, respondents REAL MARIS IN BORACAY BEACH RESORT/TOM KIM/MYUNG-SUNG-YANG, are DIRECTED to immediately pay complainant the following:

Separation Pay

Php

IT AFFIRMED WITH MODIFICATION THE DECISION RENDERED BY THE LABOR ARBITER IN NLRC'S RAB CASE NO. VI-01-001-AKLAN-2012 AND DENIED THE MOTION FOR RECONSIDERATION FILED BY THE PETITIONER.

Real Maris contended that Arbiol was legally dismissed. He had violated their company policies and committed at least five offenses in a span of one year, which under the Table of Offenses and Penalties in the Staff Manual, warranted the discharge of the employee. Real Maris insisted that it observed procedural due process in effecting Arbiol's dismissal as he was given notices and had the chance to explain himself. Other employees were likewise investigated so the management could determine the truth and Arbiol was dismissed only after the investigation. With these circumstances, the dismissal was valid and the awards for separation pay and backwages had no basis.

As for the unpaid salary from December 14-24, 2011, night shift differential and the unused leave and holiday pay for December 25, 2011, the management prepared the total sum of P4,234.65 for Arbiol to claim before he left the resort but he did not get the amount. Regarding the award for 13th month pay in the sum of P21,639.80, Real Maris protested this because Arbiol already received the amount before he was dismissed.

This Court's Ruling

The petition is impressed with merit.

This Court notes that the labor arbiter and the NLRC were in unison in declaring that Arbiol was illegally dismissed. On the part of the labor arbiter, he resolved the case without Real Maris' position paper since he decided the case even before the extension requested by Real Maris expired. Thus, on the issue regarding Arbiol's dismissal, the labor arbiter declared that Real Maris had no evidence to discharge the burden of proving its legality.

When the case was appealed to the NLRC, the NLRC noted the labor arbiter's blunder of deciding the case even before Real Maris' deadline came to pass. Hence, the NLRC took into account Real Maris' position paper and the evidence attached thereto, which documented the events that led to Arbiol's termination. Notwithstanding the consideration of Real Maris' evidence, however, the NLRC still ruled in Arbiol's favor. It found that the employee did not have a reasonable opportunity to explain his side as he was only given either 24 hours or 2 days to submit his explanation regarding the offenses charged against him. The NLRC also found Real Maris' observance of procedural due process pretentious as it suspended Arbiol even before it finished gathering other employees' accounts and concluded its investigation.

After thoroughly evaluating the circumstances of this case, however, this Court finds that the NLRC erred in sustaining the labor arbiter's finding that Arbiol was illegally dismissed.

Although it is well-established that the findings of facts of the NLRC are entitled to great respect and are generally binding on this Court, it is equally well-settled that the Court will not uphold erroneous conclusions of the NLRC when the Court finds