

THIRD DIVISION

[G.R. No. 192113, September 07, 2020]

UNIROCK CORPORATION, PETITIONER, VS. HONORABLE COURT OF APPEALS AND EDUARDO PAJARITO, RESPONDENTS.

DECISION

GAERLAN, J.:

This resolves the Petition for Review on *Certiorari*^[1] assailing the Decision^[2] dated October 16, 2009 and the Resolution^[3] dated March 29, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 106754 which reinstated with modification the first Decision^[4] dated March 28, 2007 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 048226-06, finding Eduardo Pajarito (Pajarito) illegally dismissed, and set aside the NLRC's second Decision^[5] dated October 8, 2008, declaring Pajarito retrenched from service. The assailed Resolution denied reconsideration of the CA's assailed Decision.

Factual Antecedents

The undisputed facts, as culled from the Decision of the CA, are as follows:

x x x Eduardo Pajarito was hired on March 9, 1999 by x x x company Unirock Corporation [Unirock] as a heavy equipment operator with a basic daily salary of P258.00.

On March 14, 2005, the company's vice-president for Human Resources Development (HRD), x x x Roberto Ignacio, issued a transfer order for [Pajarito] to work in Davao effective March 17, 2005 as his skill is needed in its job site operation. Together with the transfer, he was offered additional benefits like P1000.00 monthly relocation allowance and P50.00 daily meal allowance. [Unirock] also committed to shoulder his transportation fare and food on his way to the new place of work. Despite personal service of such order, [Pajarito] refused to receive the same. Hence, the transfer notice was sent through registered mail but [Pajarito] failed to receive it because he had moved out from his last known address. Immediately, [Unirock] issued a memorandum asking [Pajarito] to explain his refusal to accept the transfer. In the meantime, or on March 18, 2005, [Pajarito] filed a request for mediation and conciliation with the NLRC's Conciliation and Mediation Center.

On March 19, 2005, [Pajarito] submitted to [Unirock] his written explanation, the full text of which reads:

Ako po si Eduardo Pajarito. Narito po ang aking paliwanag.
Mula po ng natanggap ko yung kautusan sa Tagapangasiwa
hindi ko po tinatanggi ang kautusan sa Itaas, dahil malapit

po ang aking magulang doon. Kaya nga lang po nagkaroon ng problem na, sinasabing tinanggihan ko po ang kautusan. Sa katunayan nga po nagpahanap na po [a]ko sa aking kapatid ng bahay ng malilipatan doon. Sa totoo po hindi po ako tumatangi, ang ipinakiusap ko po lang po [sic] sana ay patapusin ko po muna yung pag-aaral ng aking mga anak hanggang sa bakasyon po nila sa April 1, dahil hindi ko po sila pweding [sic] iwanan dahil nasa murang edad pa po sila [a]t wala pang tamang pagiisip, kailangan pa po nila ng kalinga [n]g isang magulang. Pangalawa po wala po akong kamag-anak [d]ito na pwedeng pag-iwanan sa kanila.

Paano po ninyo nasasabi na tinatangihan ko po ang mga bagay na iyan, [a]t yung inaalok po ninyong relocation na P1,000.00 at allowance P50.00 sa tingin po ninyo sapat po kaya. Hindi po kaya malinaw na paglabag po ito sa human rights/karapatang pantao. Sa tingin po ninyo hindi kaya itoy isang harassment. Sa tingin ko po kasi panghaharass na po ito sa akin. Sana po ay maunawaan po ninyo ang aking panig. Maraming salamat po.

On March 31, 2005, [Unirock] issued a *Memorandum of Termination* against [Pajarito] effective that date, allegedly for willful disobedience to the transfer order, and abandonment of work for his unauthorized absences from March 17-30, 2005.

Hence, [Pajarito] filed a complaint for illegal dismissal on April 21, 2005, docketed as NLRC Case No. 00-04-03513-2005. [Pajarito] posited that his dismissal was without cause and lacked due process; that he did not disobey the order but only asked for time to allow his children to finish their schooling so he could bring his family to Davao; that the intended transfer was due to his suspected organization of a union; and, that he is entitled to reinstatement with full back wages, damages and attorney's fees, as well as wage differentials for the last three years of his employment.

[Unirock] maintained that respondent was given due notices for his transfer to the Davao project; that the company merely exercised its management prerogative in the questioned transfer; and, that he committed insubordination when he unjustly disobeyed such transfer, and neglect of duties when he incurred prolonged absence without leave which constituted valid grounds for his dismissal.^[6]

In the Decision^[7] dated November 29, 2005, Labor Arbiter Pablo C. Espiritu, Jr. dismissed the complaint for lack of merit. The Labor Arbiter found that Pajarito was validly terminated from employment on the ground of his willful insubordination to the lawful order of Unirock to transfer him to Davao and his absences without leave (AWOL) from March 17-31, 2005. Anent his claim of underpayment, the Labor Arbiter found no basis to sustain the same as his weekly gross payslips showed that his wages were paid beyond minimum wage, and that, in any case, his failure to raise the same in the sworn affidavit—having raised it only in his rejoinder—rendered the Labor Arbiter devoid of jurisdiction to entertain the same.^[8]

On Pajarito's appeal, the NLRC rendered the Decision^[9] dated March 28, 2009, disposing as follows:

WHEREFORE, the assailed decision of the Labor Arbiter is accordingly REVERSED. Respondents-appellees are therefore hereby ordered to reinstate complainant Eduardo Pajarito to his former position with payment of full backwages and an indemnity in the amount of Php30,000.00.

SO ORDERED.^[10]

In finding for Pajarito, the NLRC found that the conduct of Pajarito of requesting additional time to implement his transfer cannot be considered a wrongful or perverse attitude, as would constitute willful disobedience. The NLRC, thus, held that the penalty of dismissal was too harsh and manifestly disproportionate to his alleged insubordination, which was excusable under the given circumstances. The NLRC also found that Pajarito was deprived of procedural due process for want of any written notice charging the latter of insubordination.

Unirock filed a motion for reconsideration^[11] and supplemental motion for reconsideration^[12] with a prayer to reinstate the November 29, 2005 Labor Arbiter Decision. On October 8, 2008, the NLRC rendered an amended Decision,^[13] the decretal part of which reads:

WHEREFORE, we modify our Decision and declare that complainant was considered retrenched from work. Accordingly[,] he should be paid his retrenchment pay at half month pay per year of service plus financial assistance in the amount of P25,000.00.

SO ORDERED.^[14]

Pajarito elevated the case to the CA. On October 16, 2009, the CA rendered the herein assailed Decision,^[15] which disposed as follows:

WHEREFORE, the petition is GRANTED. The assailed Decision dated October 8, 2008 of the NLRC is ANNULLED and SET ASIDE. The NLRC *Decision* dated March 28, 2007 is REINSTATED with MODIFICATION that petitioner is awarded separation pay (in lieu of reinstatement) equivalent to one month for every year of service from the date of hiring on March 9, 1999 and full backwages computed from the date of his illegal dismissal on March 17, 2005 until the finality of this decision.

SO ORDERED.^[16]

In the Resolution^[17] dated March 29, 2010, the CA denied Unirock's motion for reconsideration.

Hence, this petition was filed.

Unirock argues that the CA gravely erred when it delved into the legality of retrenchment especially when the same was never raised as a defense by the petitioner. It further argued that the CA gravely erred when it held that Pajarito was

illegally dismissed on the ground that Pajarito's act of not reporting to work in Davao does not constitute insubordination and abandonment.

The petition lacks merit.

For one, the appellate court had cogent reason to delve into the matter of retrenchment, which constituted the very cause for which the termination of Pajarito from service was considered authorized by the NLRC in its second Decision, *viz.*:

Be that as it may, complainant's intransigence to the lawful order of respondent company should not result in his dismissal from the service. We cannot see it as abandonment of work as he took steps to allegedly seek rectification of the perceived violation of his rights.

It would rather be equitable to grant him separation pay for retrenchment on account of his services of six (6) years at half month's pay for every year of service, a fraction of six (6) months being considered as one whole year.

In addition, as a matter of equity, and in order to tide complainant and his family over during the time that he is seeking a new employment, respondents should give him financial assistance in the amount of P25,000.00[.]^[18]

To state the obvious, it was the NLRC that unceremoniously declared the retrenchment of Pajarito despite the lack of basis therefor. Thus, in the exercise of its power in a *certiorari* proceeding to correct grave abuse of discretion, the CA imperatively passed upon the matter.

Aptly, the CA ruled that Pajarito cannot be validly separated from service on the ground of retrenchment, view of the absence of all the requisites thereof, consisting of the following: a) the retrenchment is necessary to prevent losses and such losses are proven; b) written notice to the employees and to the Department of Labor and Employment (DOLE) at least one month prior to the intended date of retrenchment; c) payment of separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher.

This brings Us to the issue of gross insubordination and abandonment.

Under Article 297 [282]^[19] of the Labor Code, an employer may terminate the services of an employee who commits willful disobedience of the lawful orders of the employer:

Article 297. [282] *Termination by Employer.* - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work[.]

x x x x

For disobedience to be considered as just cause for termination, two requisites must concur: first, the employee's assailed conduct must have been willful or intentional, and second, the order violated must have been reasonable, lawful, made known to