

THIRD DIVISION

[G.R. No. 176506, November 25, 2009]

MERCK SHARP AND DOHME (PHILIPPINES) AND PETER S. CARBONELL, PETITIONERS, VS. JONAR P. ROBLES, GEORGE G. GONITO AND CHRISTIAN ALDRIN S. CRISTOBAL, RESPONDENTS.

D E C I S I O N

NACHURA, J.:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court is the Court of Appeals (CA) Decision^[1] in CA-G.R. SP No. 94265 which partially granted the petition for *certiorari* filed by respondents Jonar P. Robles, George G. Gonito and Christian Aldrin S. Cristobal and reversed the National Labor Relations Commission's (NLRC's) finding of illegal dismissal as regards Cristobal in NLRC CA No. 043454-2005. In turn, the NLRC affirmed the Labor Arbiter's dismissal of respondents' complaint against petitioner Merck Sharp and Dohme (Philippines) (MSD) for illegal dismissal.^[2]

The facts, fairly summarized by the CA, follow.

[Respondents] Jonar P. Robles, George G. Gonito, and Christian Aldrin S. Cristobal (hereafter Jonar, George, and Christian, respectively and [respondents] collectively) are former health care representatives assigned at the District V-MSD Cardiovascular Unit, Region I (hereafter MSD -V) of [petitioner corporation] Merck Sharp and Dohme x x x, a pharmaceutical corporation organized under Philippine law.

[Respondents] alleged that on November 28, 2003, they were summoned together with the other health care representatives in MSD-V by their Regional Sales Manager, Peter S. Carbonell [petitioner Carbonell] to a meeting. [Respondents] claim that no meeting took place. Instead, the other health care representatives were directed to leave while [respondents] were told to stay behind.

Thereafter, the director of Human Resources, General and Legal, Jerome Sarte, came and distributed to [respondents], Employees' Notice to Explain (hereafter ENTE) dated November 27, 2003. [Respondents] were told that they were being preventively suspended based on an evidence gathered through an informer-witness. [Respondents] alleged that the ENTE was read aloud to them. A sample of an ENTE reads as follows:

Gonito, George

"It has come to the attention of management, through a signed document submitted by a source we cannot reveal at

this point, that you may have been involved in several questionable transactions deemed contrary to company and corporate values. The seriousness of accusations contained therein prompted management to conduct an initial investigation of facts, which involved a re-review of the Expense Reports you have submitted beginning at the start of this year. Preliminary findings showed that there is cause for citing you under several provisions of the Company's Code of Conduct, herein enumerated:

Facts of the case:

1. EXPENSE REPORT for January 16-31

- Event: PR Campaign for VMMC Supply Department
- Receipt: Lorna's Food Services - 6 February 2003, Php 2,500.

o Receipt appeared old and yellowish x x x

o When double checked x x x the person talked to said that they are not engaged in Catering Services

o An independent private investigation agency commissioned by the company, x x x was able to locate said Lorna's Food Services x x x she denied having validly issued the said receipt and that the signature in the said receipt was not her hand nor any other authorized signatory of her business. In other words, the transaction covered by the said receipt is fictitious.

x x x x

2. EXPENSE REPORT for April 16-30 x x x

- Event: Journal Club Meeting
- Receipt: Lorna's Food Services - 23 April 2003, Php 3,500.

o Same comments as above on phone double checking and proprietor declaration.

o Receipt[,] however[,] had a Control Number (397), which according to private investigation agency appeared to be manually stamped and therefore spurious. x x x

POSSIBLE DISCIPLINARY INFRACTION/S

1. DISHONESTY: Misrepresentation, forging, or falsifying personal or company records. (1st Offense - Termination)

2. OFFENSES AGAINST COMPANY INTEREST: Submitting false, misleading, or inaccurate data about the work of other

employees.

- a) willful (1st Offense - Termination)
- b) Due to negligence (1st Offense - Written Reprimand)

3. LOSS OF TRUST AND CONFIDENCE

You are hereby required to explain in writing your side on the facts above mentioned, within seventy-two (72) hours upon receipt of this notice (Tuesday, 2 December 2003). Kindly state in clear terms your reasons behind this issue and explain why no corrective action, including termination of employment should be taken against you for above alleged actions. Please take note also that your written response will be taken without prejudice to other incriminatory findings which may be discovered in the course of formal investigation and hearing of this case.

x x x x

In the meantime, pending completion of formal investigation and hearing of this case, and in view of the seriousness of the charges raised in the light of the sensitivity of the position you presently occupy, management is putting you under PREVENTIVE SUSPENSION effective immediately upon receipt of this notice. You shall be notified in due course of the scheduled administrative investigation to be conducted by the Company. Please make the necessary turn over of your Company Car to the Admin. Officer within twenty-four (24) hours, as well as other company properties in your possession before going on preventive suspension. The company will allow you to further use your company issued cell phone while on Preventive Suspension to allow open communication lines when this case is on-going. However, billing for your calls during said period will be fully charged to your personal account."

[Respondents] were directed to submit a written explanation within 72 hours from receipt and their salaries and benefits will be withheld indefinitely. [Respondents] assert that the ENTEs were general and the documents [referred] to were not attached.

On December 1, 2003, [respondents] filed with the Labor Arbiter a complaint for illegal suspension. On December 4, 2003, [petitioners] summoned [respondents] for a hearing. During the said hearing, [respondents] reiterated their request that they be furnished a copy of the alleged primary findings against them. [Petitioners] refused stating that the investigation is not a formal hearing thus, a trial type proceeding was inapplicable.

On December 22, 2003, [respondents] Jonar and George received a Notice of Corrective Action (hereafter NOCA) informing them that

management has decided to terminate their services effective immediately. Christian, however, was informed that his suspension was lifted. Jonar and George filed a supplemental complaint affidavit for illegal termination.

Christian, on the other hand, reported back for work. He was shocked, however, when he discovered that he was reassigned to District I of Baguio City and La Union as his new area of responsibility. Christian requested for a transfer. His request was not favorably acted upon, instead, he received his second ENTE dated January 19, 2004, for dishonesty and offenses against company interest. [Respondent] Christian answered the ENTE stressing that although he was previously exonerated, he is again being charged for the same offense. To support his case, Christian secured a certification from the Chief Resident of the Department of Family Medicine FEU-NRMF with regard [to] his sponsoring [a] lecture in the said department on May 7, 2003. Thereafter, Christian got sick due to the stress brought about by his receiving several ENTEs. As such, he was compelled to apply for a sick leave. Christian stated that his sick leave application was not acted upon and instead he received his third ENTE dated February 4, 2004, for insubordination, serious misconduct or willful disobedience. Christian, thereafter, resigned citing oppression and utter unbearability of the work atmosphere. Christian then amended his complaint for constructive dismissal.

On November 15, 2004, the Labor Arbiter rendered a decision dismissing [respondents'] complaint for utter lack of merit. Upon appeal to the NLRC, the latter affirmed the Labor Arbiter.^[3]

Undaunted, respondents filed a petition for *certiorari* before the CA alleging grave abuse of discretion in the NLRC's dismissal of their complaint.

As previously adverted to, the CA partially granted the petition for *certiorari* and declared that respondent Cristobal was constructively dismissed by petitioner MSD.

Hence, this petition for review on *certiorari* raising the following issues:

1. [WHETHER THE] COURT OF APPEALS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT GAVE DUE COURSE TO PRIVATE RESPONDENT'S (CRISTOBAL'S) PETITION FOR *CERTIORARI*.
2. [WHETHER] THE COURT OF APPEALS GRAVELY ERRED WHEN IT REVERSED THE NLRC DECISION.
3. [WHETHER THE] HONORABLE COURT MAY REVIEW FACTUAL CONCLUSION[S] OF THE COURT OF APPEALS WHEN CONTRARY TO THOSE OF THE NLRC OR THE LABOR ARBITER.^[4]

We first dispose of the procedural issues.

The issue of whether we can review factual conclusions of the CA, when contrary to those of the administrative tribunal, need not detain us unnecessarily. We have long

held in a number of cases that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence.^[5] Corollary thereto is our well-entrenched holding that this Court is not a trier of facts; this is strictly adhered to in labor cases.^[6] However, the rule admits of exceptions when: (1) the findings are grounded entirely on speculation, surmises or conjectures; (2) the inference made is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both appellant and appellee; (7) the findings are contrary to those of the trial court; (8) the findings are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition, as well as in petitioner's main and reply briefs, are not disputed by respondent; (10) the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.^[7] In the case at bar, we gave due course to MSD's petition as the findings of fact and the conclusions of law of the Labor Arbiter and the NLRC differ from those of the CA.

MSD next contends that the CA gravely erred when it did not dismiss outright respondent Cristobal's petition for *certiorari* for the latter's failure to first file a motion for reconsideration of the NLRC's resolution.

While MSD is correct in stating that, generally, *certiorari*, as a special civil action, will not lie unless a motion for reconsideration is filed before the respondent tribunal to allow it an opportunity to correct its imputed errors,^[8] the rule admits of the following exceptions:

- (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
- (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
- (d) where, under the circumstances, a motion for reconsideration would be useless;
- (e) where petitioner was deprived of due process and there is extreme urgency for relief;
- (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;