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FIRST DIVISION

[G.R. NO. 160325, October 04, 2007]

ROQUE S. DUTERTE, PETITIONER, VS. KINGSWOOD TRADING CO., INC., FILEMON LIM AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

D E C I S I O N

GARCIA, J.:

By this petition for review on certiorari, petitioner Roque S. Duterte seeks the review and setting aside of the decision[1] dated June 20, 2003 of the Court of Appeals (CA) in *CA-G.R. SP No. 71729,* as reiterated in its resolution[2] of October 5, 2003, affirming an earlier resolution[3] of the National Labor Relations Commission (NLRC) which ruled that petitioner was not illegally dismissed from employment due to disease under Article 284 of the Labor Code.

The facts:

In September 1993, petitioner was hired as truck/trailer driver by respondent Kingswood Trading Company, Inc. (KTC) of which co-respondent Filemon Lim is the President. Petitioner was on the 6:00 a.m. – 6:00 p.m. shift. He averaged 21 trips per month, getting P700 per trip. When not driving, petitioner was assigned to clean and maintain respondent KTC's equipment and vehicles for which he was paid P125 per day. Regularly, petitioner would be seconded by respondent Filemon Lim to drive for one of KTC's clients, the Philippine National Oil Corporation, but always subject to respondents' convenience.

On November 8, 1998, petitioner had his first heart attack and was confined for two weeks at the Philippine Heart Center (PHC). This was confirmed by respondent KTC which admitted that petitioner was declared on sick leave with corresponding notification.

A month later, petitioner returned to work armed with a medical certificate signed by his attending physician at the PHC, attesting to petitioner's fitness to work. However, said certificate was not honored by the respondents who refused to allow petitioner to work.

In February 1999, petitioner suffered a second heart attack and was again confined at the PHC. Upon release, he stayed home and spent time to recuperate.

In June 1999, petitioner attempted to report back to work but was told to look for another job because he was unfit. Respondents refused to declare petitioner fit to work unless physically examined by the company physician. Respondents' promise to pay petitioner his separation pay turned out to be an empty one. Instead, petitioner was presented, for his signature, a document as proof of his receipt of the

amount of P14,375.00 as first installment of his Social Security System (SSS) benefits. Having received no such amount, petitioner refused to affix his signature thereon and instead requested for the necessary documents from respondents to enable him to claim his SSS benefits, but the latter did not heed his request.

On November 11, 1999, petitioner filed against his employer a complaint for illegal dismissal and damages.

In a decision[4] dated September 26, 2000, the labor arbiter found for the petitioner. However, while categorically declaring that petitioner's dismissal was illegal, the labor arbiter, instead of applying Article 279[5] of the Labor Code on illegal dismissals, applied Article 284 on *Disease as ground for termination* on the rationale that since the respondents admitted that petitioner could not be allowed back to work because of the latter's disease, the case fell within the ambit of Article 284. We quote the *fallo* of the labor arbiter's decision:

> WHEREFORE, in the light of the foregoing, judgment is hereby rendered declaring complainant to have been terminated from employment on the ground that he has been suffering from a disease.
>
> Respondents are hereby directed to pay complainant as follows:
>
> 1. Separation pay equivalent to one-half (1/2) month salary for every year of service computed at six (6) years of service in the amount of Forty-Two Thousand (P42,000.00) Pesos.
>
> 2. Holiday pay for three (3) years in the amount of Twenty-One Thousand (P21,000.00) Pesos; and
>
> 3. Service Incentive Leave pay for three (3) years in the amount of Ten Thousand (P10,000.00) Pesos.
>
> All other claims herein sought are hereby denied for lack of merit and factual basis.
>
> SO ORDERED.

On respondents' appeal, the NLRC, in its Resolution[6] of April 24, 2002, set aside the labor arbiter's decision, ruling that Article 284 of the Labor Code has no application to this case, there being "no illegal dismissal to speak of." The NLRC accordingly dismissed petitioner's complaint for illegal dismissal, thus:

> WHEREFORE, the decision appealed from is VACATED and SET ASIDE.[7] A new one is hereby entered DISMISSING the instant case for lack of merit.

Therefrom, petitioner went on certiorari to the CA in *CA-G.R. SP No. 71729*. In the herein assailed decision dated June 20, 2003, the CA upheld the NLRC Resolution, saying that the Commission committed no grave abuse of discretion in holding that petitioner was not illegally dismissed and could not be granted any relief. With his motion for a reconsideration having been denied by the CA in its resolution of October 5, 2003, petitioner is now with this Court via the present recourse.

We REVERSE.

At bottom, this case involves the simple issue of the legality of one's termination from employment made complicated, however, by over analysis. Simply put, the question at hand pivots on who has the onus of presenting the necessary medical certificate to justify what would otherwise be classified as legal or illegal, as the case may be, dismissal from the service. The following may be another formulation of the issue: For purposes of Article 284 of the Labor Code, would the dismissal of an employee on the ground of disease under the said Article 284 still require the employer to present a certification from a competent public health authority that the disease is of such a nature that it could not be cured within a period of six months even with proper medical treatment? To both the NLRC and the CA, a dismissal on the ground of disease under Article 284 of the Code is illegal only if the **employee** himself presents the required certification from the proper health authority. Since, as in this case, petitioner failed to produce such certification, his dismissal could not be illegal.

In the precise words of the NLRC which the CA effectively affirmed:

> Neither can it be gainsaid that Article 284 of the Labor Code applies in the instant case since **the complainant [petitioner] failed to establish that he is suffering from a disease and his continued employment is prohibited by law or prejudicial to his health** or to the health of his co-employees nor was he able to prove that his illness is of such nature or at such stage that it **cannot be cured within a period of six months even with proper treatment.**[8]
>
> **In order for the complainant to be covered by Article 284 of the Labor Code, he must first present a certification by a competent public health authority that his continued employment will result in the aforesaid consequences, but unfortunately for the complainant, we find none in the instant case.** For the respondents to require the complainant to submit a medical certificate showing that he is already physically fit as a condition of his continued employment under the prevailing circumstance cannot be considered as neither harsh nor oppressive. xxx
>
> Prescinding from the above, there is no illegal dismissal to speak of. This finding is further strengthened by the fact that no termination letter or formal notice of dismissal was adduced to prove that complainant's services have been terminated. Considering that no illegal dismissal took place, the complainant's claim that his right to due process of law had been violated finds no application to the case at bar. (Emphasis added).

The Court disagrees with the NLRC and CA.

Article 284 of the Labor Code explicitly provides:

> Art. 284. DISEASE AS GROUND FOR TERMINATION. -- An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of

> his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

Corollarily, in order to validly terminate employment on the basis of disease, Book VI, Rule I, Section 8 of the Omnibus Implementing Rules of the Labor Code requires:

> Disease as a ground for dismissal. -- Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment **unless there is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment.** If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the employee to take a leave. The employer shall reinstate such employee to his former position immediately upon the restoration of his normal health. (Book VI, Rule 1, Sec. 8 of the Implementing Rules)

In a very real sense, both the NLRC and the appellate court placed on the petitioner the burden of establishing, by a certification of a competent public authority, that his ailment is such that it cannot be cured within a period of six months even with proper medical treatment. And pursuing their logic, petitioner could not claim having been illegally dismissed due to disease, failing, as he did, to present such certification.

To be sure, the NLRC's above posture is, to say the least, without basis in law and jurisprudence. And when the CA affirmed the NLRC, the appellate court in effect placed on the petitioner the onus of proving his entitlement to separation pay and thereby validated herein respondents' act of dismissing him from employment even without proof of existence of a legal ground for dismissal.

The law is unequivocal: the employer, before it can legally dismiss its employee on the ground of disease, must adduce a certification from a competent public authority that the disease of which its employee is suffering is of such nature or at such a stage that it cannot be cured within a period of six months even with proper treatment.

Here, the record does not contain the required certification. And when the respondents asked the petitioner to look for another job because he was unfit to work, such unilateral declaration, even if backed up by the findings of its company doctors, did not meet the quantum requirement mandated by the law, *i.e.*, there must be a certification by a **competent public authority**.[9]

For sure, the posture taken by both the NLRC and the CA is inconsistent with this Court's pronouncement in *Tan v. National Labor Relations Commission,*[10] thus:

> Consistent with the Labor Code state policy of affording protection to labor and of liberal construction of labor laws in favor of the working class, Sec. 8, Rule 1, Book VI, of the Omnibus Rules Implementing the