THIRD DIVISION

[G.R. No. 240507, April 28, 2021]

ASIAN TERMINALS, INC., PETITIONER, VS. ETELIANO R. REYES, JR., RESPONDENT. D E C I S I O N

LOPEZ, J., J.:

This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated January 18, 2018 and the Resolution[3] dated June 27, 2018 of the Court of Appeals (*CA*) in CA-G.R. SP No. 146498.

FACTS:

Eteliano Reyes, Jr. (*Reyes*) was employed by Asian Terminals Inc., (*ATI*) as Supervisor III/Foreman on Board who shall be responsible in ensuring that shift vessel operations are carried in accordance with ATI standards.[4]

On February 17, 2014, Reyes was supervising the loading and lashing operations at Q7 on board MV YH Ideals. He first went to Bay 30, but he had to leave the All Purpose Personnel (APP) tasked to finish the lashing operations as he needed to supervise the loading operations at Bay 38. With a twist of fate, an accident[5] occurred at Bay 30 wherein a lashing bar fell on the pier apron hitting Manuel Quiban (*Quiban*) a vessel security guard.

As expected, ATI directed Reyes to explain why he should not be penalized for negligence under Section 2.4 of the Company Table of Offenses and Penalties (*CTOP*).[6]

In his response,[7] Reyes clarified that while completing the lashing operations at Bay 30, "EC Planner" directed him to transfer to Bay 38 to supervise the commencement of loading operations. Pursuant to said instruction, Reyes left the four (4) APPs to complete lashing operations at Bay 30 and proceeded to Bay 38 where a loading operation was about to start and the crane was already positioned.

In a Notice to Explain with Preventive Suspension[8] dated February 21, 2014, the ATI informed Reyes that his failure to ensure that the safeguards for works on board the vessel were faithfully observed constitutes probable violation under Section 2.2 of the CTOP (neglect of work, incompetence, inefficiency, negligence, failure to perform duties and/or responsibilities, or failure to observe standard operating procedures, in any case resulting in injury or death) and may merit the penalty of dismissal.

Consequently, Reyes filed his supplemental response[9] expounding on the necessity to transfer from Bay 30 to Bay 38. According to him, he needed to go to Bay 38 to ensure that the containers on deck are secured in accordance with the loading plan. Beseeching consideration, Reyes reminded ATI of his satisfactory performance for the past three (3) years and his consistent diligence in the discharge of his duties.

Unmoved by Reyes' entreaty, ATI terminated his employment[10] prompting Reyes to file a complaint[11] for illegal dismissal.

THE RULING OF THE LABOR ARBITER

Finding that Reyes failed to prove the illegality of his dismissal, the Labor Arbiter (*LA*) dismissed the complaint for lack of merit, but awarded service incentive leave and 13th month pay, thus:

> WHEREFORE, a Decision is hereby rendered declaring that the dismissal of the Complainant was valid, However, Respondents are hereby ordered to pay Complainant service incentive leave pay and 13th month pay,
>
> Computation is as follows:
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> | | |
> |---|---|
> | 13th MONTH PAY | |
> | P28,000,00 x 3 mos. (sic) | P84,000.00 |
> | SERVICE INCENTIVE LEAVE PAY (3 yrs.) | |
> | P28,000.00/26 days= P1,076.92 | |
> | P1,076.92 x 15 days | 16,153.80 |
> | Total | P100,153.50 |
>
> SO ORDERED.[12]

ATI and Reyes filed their respective appeals to the National Labor Relations Commission.

THE NLRC RULING

In a Decision[13] dated March 8, 2016, the NLRC reversed the findings of the LA as to the legality of Reyes' dismissal and modified the monetary award. The NLRC ratiocinated as follows:

> The Labor Arbiter was simplistic in her approach in resolving the issue of negligence.
>
> Her logic is that since complainant left Bay 30 before the lashing operation was completed; that he did not leave instructions to the All Purpose Personnel left behind; and there was no urgency in leaving Bay 30 for Bay 38, he was thus negligent.
>
> The Labor Arbiter should have taken into account the following circumstances before deciding that complainant was negligent, *viz*:
>
> > a. Complainant before the loading and lashing operations conducted the Tool Box among his subordinates, a safety requirement before starting the work. It means he conducted an orientation about the safety procedures *vis-a-vis* the loading and lashing operations;
> > b. He personally supervised the lashing operations and

observed if the APPs were doing it correctly. It was only when everything was correctly done that he left Bay 30 for Bay 38;
c. Complainant's going to Bay 38 was in accordance with the schedule of the Quay Crane 7 which was now transferred to Bay 38 to commence loading. This action to transfer QC 7 to Bay 38 is normal as it is dictated by the work program of the crane. Complainant did not wait for the completion of the lashing at Bay 30 since he had to check Bay 38 if the twist and shoe lock are properly placed before the loading starts. As QC 7 supervisor on board, he had to supervise and guide the QC Operator in loading operations. As a rule, all QC operators are not supposed to make any movement, *i.e*., travelling, discharging and loading without the presence of a supervisor assigned for each QC. His presence in Bay 38 was thus necessary.

When complainant transferred to Bay 38 from Bay 30, he was merely following the instructions of the EC Planner to transfer QC 7 to Bay 38 to commence loading. At the expense of being trite, the procedure for loading and lashing or fastening of cargoes is this: There is no need to wait for the lashing operations to be completed on Bay and to start loading the cross bay or another bay which sufficiently stands between the two bays. Waiting will only result in undue delays due to the fast pace of operations at the pier since vessels, local and international, have a schedule to follow.

In the maritime business, time is gold and of the essence since undue delays disrupt the vessels scheduled (sic) and may result in the payment of demurrage fees.

Finally, We also find that the injured security guard on board had no business walking at the apron of a NO WALK ZONE AREA without permission.

Complainant was initially charged with negligence under the company's Revised Table of Offenses (TOP) 2.4 which provides a graduated penalty, thus: 1st offense – 15 days suspension; 2nd offense – 30 days suspension and 3rd offense – dismissal[,] through a Notice to Explain dated 18th February 2014. Complainant submitted his well-written explanation the following day. Two days thereafter, he was charged with another offense. This time under TOP 2.2 which provides for a sanction of dismissal. Subsequently[,] or on 24th March 2014, he was dismissed.

We believe that complainant's dismissal under the new charge is unwarranted. While it is respondent ATI['s] management prerogative to prescribe rules and regulations to discipline its employees and to impose sanctions on erring workers, the exercise of this prerogative is not unlimited, boundless[,] and absolute. x x x

Given the fact that complainant followed the rules in the performance of his job and the furt.h.er fact that the incident resulting to injury to the guard would not have happened were it not for the latter's negligence in being in a place he was not authorized to, the imposition of the ultimate

penalty of dismissal on complainant violates the rule of fair play and labor justice.

To recall, complainant was charged with negligence first under TOP 2.4 and later under TOP 2.2[.] Negligence to be a basis for termination of employment must be gross and habitual. "The concept of negligence as enunciated in Article 282 (b) [now renumbered as Article (b)], must not only be gross but habitual in character as well to justify depriving the employee of his means of livelihood" x x x.

x x x x

Assuming complainant is guilty of negligence, let it be stressed that in his three years with respondent company, this is his first. Obviously[,] this is not a case of gross and habitual negligence that jurisprudence speaks about as ground for termination of employment. That said, this Commission finds his dismissal unjustified and illegal and as a consequence thereof, he should be reinstated without loss of seniority rights and with full back wages.

We agree, however, with respondent that the Labor Arbiter erred in the computation of benefits awarded the complainant. x x x. What appears complainant is entitled to, and the respondent completely is in agreement, is the former's proportionate 13th month pay and SILP for the period January to March 2014 in the amounts of Php10,650.84 and Php4,594.32 respectively or the total sum of Php15,245.16.

WHEREFORE, finding both Appeals to be impressed with merit, they are both granted. The Decision of the Labor Arbiter is REVERSED and SET ASIDE and a NEW ONE rendered as follows:

> 1. Complainant Eteliano R. Reyes, Jr. is declared illegally dismissed and ordered immediate[ly] reinstated, paid his back wages of P28,000.00 a month reckoned from March 24,2014 until finality of the judgment without loss of seniority rights and privileges; and
>
> 2. Respondents Asian Terminal Inc. is ordered to pay his proportionate 13th month pay and SILP for 2014 in the sum of P15,245.16.

All other claims are dismissed for lack of merit.

SO ORDERED.[14]

ATI moved for reconsideration, but the same was denied m a Resolution[15] dated April 27, 2016.

Dismayed by the NLRC's disposition, ATI instituted a Petition for *Certiorari* before the CA.

THE CA RULING

On January 18, 2018, the CA rendered the assailed Decision, the dispositive portion of which states: