

# FIRST DIVISION

[ G.R. No. 227175, January 08, 2020 ]

**NEREN VILLANUEVA, PETITIONER, VS. GANCO RESORT AND RECREATION, INC., PETER MARASIGAN, BENJIE MARASIGAN, LUZ MARASIGAN, BOYA MARASIGAN, AND SERGE BERNABE, RESPONDENTS.**

## DECISION

### CAGUIOA, J:

Assailed in this Petition for Review on *Certiorari*<sup>[1]</sup> (Petition) under Rule 45 are the Decision<sup>[2]</sup> dated June 23, 2016 and Resolution<sup>[3]</sup> dated September 16, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 143474 which reversed the Decision<sup>[4]</sup> dated July 30, 2015 and Resolution<sup>[5]</sup> dated October 19, 2015 of the National Labor Relations Commission (NLRC) and upheld the legality of petitioner Neren Villanueva's dismissal.

### Facts

In 2002, respondent Ganco Resort and Recreation, Inc. (GRRI) hired petitioner as a part-time employee in its resort, La Luz Beach Resort and Spa (La Luz Resort).<sup>[6]</sup> She became a regular employee on February 1, 2003, and was eventually promoted as head of the Housekeeping Department in 2005 and as head of the Front Desk Department in 2008.<sup>[7]</sup>

Sometime in 2013, petitioner was charged with violating company policies, *i.e.*, abuse of authority, when she rejected walk-in guests without management approval, and threat to person in authority, when she threatened the assistant resort manager, respondent Serge Bernabe (respondent Bernabe), with physical harm.<sup>[8]</sup> After the conduct of administrative investigation, GRRI found petitioner guilty of both charges and was meted the penalty of two days suspension without pay for abuse of authority and termination for threat to person in authority.<sup>[9]</sup> The penalty of termination was, however, reduced to a five-day suspension without pay subject to the agreement that petitioner would be under strict performance monitoring and that any further violation which would warrant suspension would be elevated to immediate dismissal.<sup>[10]</sup> After serving her suspension, petitioner resumed her task as a receptionist.<sup>[11]</sup>

In the early part of 2014, petitioner was transferred from the Front Desk Department to the Team Building Department upon the advice of respondent Bernabe.<sup>[12]</sup> Thereafter, in March 2014, GRRI implemented a reorganization in La Luz Resort and issued a Notice of Employees' Lateral Transfer (Notice to Transfer) to five of its employees, including petitioner.<sup>[13]</sup> Through the Notice to Transfer, they

were informed of the reorganization and were advised that they would be laterally transferred to another department effective immediately. Petitioner was transferred from the Reception Department to Storage Department without diminution in rank and benefits.<sup>[14]</sup>

However, petitioner refused to sign the Notice to Transfer and remained at the reception area for two days before reporting to her new station on March 4, 2014.<sup>[15]</sup> Petitioner also sent an e-mail addressed to the management on March 9, 2014 asking questions regarding her transfer.<sup>[16]</sup>

On March 10, 2014, a Memorandum was issued to petitioner directing her to explain within 24 hours from notice why she should not be penalized for insubordination for her repeated failure to sign the Notice to Transfer.<sup>[17]</sup> In her handwritten letter dated March 11, 2014, petitioner explained that she refused to sign the Notice to Transfer pending answers to the questions she sent to the management *via* e-mail.<sup>[18]</sup>

GRRI also issued petitioner a Notice of Preventive Suspension on March 14, 2014 placing her under preventive suspension until March 21, 2014 pending resolution of the charge against her.<sup>[19]</sup> Petitioner, however, failed to report back to work after the lapse of the period of her preventive suspension on March 22, 2014 until March 26, 2014.<sup>[20]</sup>

Thus, on March 26, 2014, GRRI's Human Resource (HR) department issued petitioner another Memorandum directing her to report to the HR department within 24 hours and to explain her absences without leave.<sup>[21]</sup> Upon reporting thereat, petitioner was handed the Termination Notice dated March 21, 2014 advising her that the management found her guilty of "*inhuman and unbearable treatment to person in authority; abuse of authority; serious misconduct - insubordination by not accepting her memorandum of re-assignment by the Executive Committee; and gross and habitual neglect of duties AWOL*" and had decided to terminate her from employment effective immediately.<sup>[22]</sup>

Thus, petitioner filed a complaint for illegal dismissal and money claims (*i.e.*, underpayment of wages, non-payment of overtime pay, rest day premium and service incentive leave pay, unfair labor practice, damages, and separation pay).<sup>[23]</sup>

### **Ruling of the Labor Arbiter**

In a Decision<sup>[24]</sup> dated March 24, 2015, the Labor Arbiter (LA) found that petitioner was illegally dismissed and directed respondents to pay petitioner full backwages, separation pay, and unpaid service incentive leave. The LA held that petitioner's failure to sign the Notice to Transfer does not in itself constitute serious misconduct and willful disobedience for her act is neither willful in character nor does it imply a wrongful intent. Furthermore, the facts of the case show that petitioner abided with the order of transfer despite her refusal to sign the Notice to Transfer, and that no harm or prejudice was caused to respondents by reason of petitioner's act.

The dispositive portion of the LA's Decision reads:

**WHEREFORE**, premises considered, the complainant is declared to have been illegally dismissed by respondents. Respondents La Luz Beach Resort and Spa, Inc./Ganco Resort and Recreation, Inc. are ordered to pay complainant her separation pay with full backwages in the total amount of **P253,022.43**.

Likewise, it is ordered to pay complainant her unpaid service incentive leave pay in the amount of **P5,679.23**.

All other claims are dismissed for lack of merit.

**SO ORDERED.**<sup>[25]</sup>

Respondents appealed the LA's Decision with the NLRC.

### **Ruling of the NLRC**

In a Decision<sup>[26]</sup> dated July 30, 2015, the NLRC affirmed the LA's findings but modified the award of damages by deleting the award of separation pay.

The NLRC held that while the totality of infractions may justify an employee's dismissal, past infractions for which an employee has already been penalized, as in this case, can no longer be cited as bases for the present offense and cannot be collectively taken to justify an employee's termination. The NLRC also concurred with the LA that petitioner's failure to sign and accept the Notice to Transfer is not *per se* serious misconduct and willful disobedience. Likewise, the NLRC found no basis to dismiss petitioner on the ground of gross and habitual neglect of duties.

However, the NLRC held that petitioner cannot be left completely unaccountable for the two-day delay in complying with the transfer as well as the confluence of her actions revealing a brashness of language and tone. Thus, the NLRC found it just and proper to impose a penalty of three months suspension without pay on petitioner, which is deemed to have been completely served during the pendency of the case.

Lastly, the NLRC deleted the award of separation pay because there is no showing of strained relations between petitioner and respondents, and considering also that petitioner has already been reinstated in the payroll of GRRI upon the latter's receipt of the LA ruling.

The dispositive portion of the NLRC Decision reads:

**WHEREFORE**, respondents' appeal is **DISMISSED**. The Decision dated March 24, 2015 of Labor Arbiter Danna M. Castillon is **MODIFIED** to (1) **DELETE** the award of separation pay, and (2) order respondents to **PAY** complainant Full Backwages reckoned from her dismissal on March 21, 2014 up to the time reinstatement is actually carried out, **less** the total monthly salary corresponding to complainant's three-month suspension which is deemed to have been fully served.

The rest of the Decision is **AFFIRMED**.

**SO ORDERED.**<sup>[27]</sup>

Aggrieved, respondents sought reconsideration of the said decision but this was denied in a Resolution<sup>[28]</sup> dated October 19, 2015. Thus, respondents filed a petition for *certiorari* before the CA.

**Ruling of the Court of Appeals**

In a Decision<sup>[29]</sup> dated June 23, 2016, the CA reversed and set aside the NLRC ruling and upheld the validity of petitioner's dismissal. The CA held that the NLRC abused its discretion when it failed to apply the principle of totality of infractions and in ruling that petitioner was illegally dismissed from employment. According to the CA, petitioner was already given a stern warning that her next violation of the company policy would warrant her immediate dismissal. The CA found petitioner's refusal to sign the Notice to Transfer as amounting to insubordination or willful disobedience. Thus, her previous infraction of refusal to accept walk-in guests, taken in conjunction with her manifest refusal to accept her new assignment pursuant to the Notice to Transfer, served as valid grounds for her dismissal from employment.

The dispositive portion of the Decision of the CA reads:

**WHEREFORE**, premises considered, the instant Petition for Certiorari is **GRANTED**. The Decision dated 30 July 2015 and Resolution dated 19 October 2015 of the National Labor Relations Commission in NLRC LAC NO. 07-001824-15 [NLRC CN. RAB IV-05-00735-14-B] are **ANNULED** and **SET ASIDE**. Accordingly, private respondent Neren Villanueva's *Complaint* for illegal dismissal is **DISMISSED**.

**SO ORDERED.**<sup>[30]</sup>

Petitioner filed a motion for reconsideration but the same was denied in a Resolution dated September 16, 2016. Hence, this Petition.

Petitioner insists that her past infractions cannot be used as basis for her dismissal and that the CA erred in applying the principle of totality of infractions.<sup>[31]</sup> Petitioner also argues that there is no basis to hold her liable for willful disobedience and habitual neglect of duty.<sup>[32]</sup> Even assuming that there were just causes to dismiss her, petitioner asserts that she was not afforded due process by GRII.<sup>[33]</sup> Lastly, petitioner also claims entitlement to Service Incentive Leave Pay (SILP).<sup>[34]</sup>

In their Comment<sup>[35]</sup> dated November 10, 2017, respondents argue otherwise and aver that the totality of petitioner's infractions showing her willful disobedience to respondents merits her dismissal. Respondents did not, however, dispute petitioner's claim for SILP.

In her Reply<sup>[36]</sup> dated April 23, 2018, petitioner fortified her arguments.

Whether the CA erred in reversing the NLRC ruling.

### **The Court's Ruling**

The Petition is partly meritorious.

It is settled that the jurisdiction of the Court under Rule 45 is limited only to questions of law as the Court is not a trier of facts.<sup>[37]</sup> This rule, however, allows for exceptions such as when the findings of fact of the trial court, or in this case of the quasi-judicial agencies concerned, are conflicting or contradictory with those of the CA.<sup>[38]</sup>

The main issue in this case is whether petitioner was validly dismissed from employment.

In an illegal dismissal case, the *onus probandi* rests on the employer to prove that the employee's dismissal was for a valid cause.<sup>[39]</sup> A valid dismissal requires compliance with both substantive and procedural due process<sup>[40]</sup> - that is, the dismissal must be for any of the just or authorized causes enumerated in Article 297 [282] and Article 298 [283], respectively, of the Labor Code, and only after notice and hearing.<sup>[41]</sup>

The records of the case show that petitioner was charged with two infractions, *i.e.*, (1) insubordination for her failure to sign the Notice to Transfer and (2) habitual neglect for her absences without leave from March 22 to March 26, 2014, as shown by the two memoranda served on her.

In the Memorandum dated March 10, 2014, GRRRI charged petitioner with insubordination for her refusal to sign the Notice of Transfer which amounts to a non-compliance with procedure, *viz.*:

Please explain within 24 hours why you should not be penalized with insubordination by not accepting in writing your memorandum of re-assignment.

You have been re-assigned by the Executive Committee to function in a much needed area where your knowledge is expected to be shared with the need and growth of the company. However, **you refused to comply with its procedure by not signing and affirming your new work assignment.** Further, it has been noticed that **you are reporting and unofficially functioning on your new given assignment when in fact you have not complied with the procedure.**<sup>[42]</sup> (Emphasis supplied)

Insubordination or willful disobedience requires the concurrence of the following requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude"; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.<sup>[43]</sup> Both requirements are not present in this case.