

FIRST DIVISION

[G.R. No. 234725, September 16, 2020]

BICOL ISAROG TRANSPORT SYSTEM, INC., PETITIONER, VS. ROY R. RELUCIO, RESPONDENT.

D E C I S I O N

LOPEZ, J.:

Before this Court is a petition for review on *certiorari* assailing the: (1) Decision dated March 30, 2017;^[1] and (2) Resolution^[2] dated October 11, 2017 of the Court of Appeals (CA), which reversed the findings of the labor tribunals and declared that respondent Roy R. Relucio (Relucio) was illegally dismissed by petitioner Bicol Isarog Transport System, Inc. (Bicol Isarog).

The facts as summarized by the CA are as follows:

x x x Roy Radasa Relucio filed a complaint with the Labor Arbiter against private respondents Bicol Isarog Transport System, Inc., Jose Marco Hernandez Del Pilar, and Geraldo D. Abano, for illegal dismissal, illegal suspension, underpayment of salaries/wages, holiday pay, service incentive leave pay and 13th month pay, non-payment of overtime pay and night shift differential, illegal deduction (donation and cash bond), and moral and exemplary damages, x x x.

x x x x

In his position paper, [Relucio] averred that, on 11 April 2011, he was employed by [Bicol Isarog] as a bus driver x x x.

On 30 March 2013, he alleged that he was illegally dismissed by [Bicol Isarog's] officers by suspending him first, then telling him thereafter not to report for work anymore without any valid reason and due process.

He further averred that, throughout his employment, he was never given the benefits of ECOLA, PAG-1BIG and Philhealth, and his salary was also underpaid.

On the other hand, [Bicol Isarog] alleged that, sometime on April 2011, petitioner applied for employment as a bus driver with [Bicol Isarog]. Petitioner's services [were] engaged on a probationary basis.

Even as probationary employee, [Bicol Isarog] alleged that [Relucio] received compensation over and above the minimum wage required by law as he was receiving Two Hundred Forty Seven Pesos (P247.00) [*per*] day of work; trip allowance depending on the destination; and *Lutao*

allowance of One Hundred Pesos (P100.00) on his rest days.

On 26 March 2012, petitioner became a regular employee of Bicol Isarog. At the start of his employment, [Bicol Isarog] explained to [Relucio] the provisions of the Code of Discipline of the company, and [Relucio] expressed his willingness to comply with the terms and conditions thereof. However, after [Relucio] became a regular employee, [Bicol Isarog] averred that he repeatedly and willfully violated the company's Code of Discipline, specifically his failure to submit the Trip Collection Report (TCR) and turnover the collection for charter buses on June 5, 8, 10, 12, 16, 17, 18 and 21, 2012.

As a result, [Bicol Isarog] issued Memorandum Circular No. BITS-PM-2012-102-A requiring [Relucio] to submit a written explanation as regards his infraction. After reviewing his explanation and other pieces of evidence, the company issued Circular No. BITS-2012-102-B, finding [Relucio] liable for the offense charged. [Bicol-Isarog] then imposed the penalty of suspension for a period of thirty (30) days starting from 22 June to 22 July 2012.

Then, on 28 March 2013, [Bicol Isarog] received a report that [Relucio] insisted on making a trip from Masbate to Manila with only five (5) passengers on board despite the express order of the Office-in-Charge (OIC) for Operations in Masbate for him not to proceed with the trip and to transfer, instead, the said passengers to another bus of the company. However, [Relucio] disobeyed the express instruction of said OIC and insisted on making the trip.

The Operation Manager of [Bicol Isarog], Kirby Del Castillo, then sent a text message directing [Relucio] to report to him when he [arrived] in Manila. Upon arriving at the J. Ruiz terminal in Manila in the morning of 29 March 2013, [Relucio] walked out of the company premises without reporting to the said operations manager. Hence, another text message was sent to him requiring him to report to the MR Department on 01 April 2013. However, he again failed to report to the MR Department on the said date.

Thus, [Bicol Isarog] issued Memorandum Circular No. BITS-PM-2013-145 ("first memorandum") which stated that: (1) a report was received that [Relucio] allegedly violated company policy and disobeyed the express orders of his superior on 28 March 2013; (2) [Relucio] is being required to present himself to the J. Ruiz Office or to submit a written explanation why he should not be suspended or dismissed from work due to the incident of insubordination which occurred on 28 March 2013; and (3) his failure to comply therewith shall be taken as a waiver of his right to be heard and that respondent company shall then be entitled to decide the report against him based on available evidence.

On the same day, the Human Resource (HR) Manager, Roberto Cabilao, went to the address given by [Relucio] in his biodata, NBI and barangay clearance x x x, to personally serve the first memorandum. However, upon arriving at the said address, Robert Cabilao was told that there was

no Roy Radasa Relucio living in that address, and the person he talked to refused to acknowledge receipt of the memorandum, prompting Cabilao to leave the premises with the memorandum unserved.

On 05 April 2013, [Relucio] still failed to report for work or submit a written explanation. Thus, [Bicol Isarog] issued Memorandum Circular No. BITS-PM-2013-158 ("second memorandum") requiring [Relucio] to report for work and to submit a written explanation why he should not be disciplined, suspended or dismissed from service for not reporting for work since 31 March 2013 without official leave.

Roberto Cabilao again went to [Relucio's address], to personally serve the written memorandum but was told, for the second time, that [Relucio] was not living in that address.

Subsequently, [Bicol Isarog] issued Memorandum Circular No. BITS-PM-2013-159 ("notice of termination"), informing [Relucio] that it is terminating his employment for his failure to report for work for five (5) consecutive days without a valid reason and official leave. However, since [Bicol Isarog] had no information as to the whereabouts of [Relucio], it was only on 18 April 2013, during the conference before the DOLE-NCR Field Office, that [Bicol Isarog] served him a copy of said notice of termination.^[3]

In its Decision^[4] dated February 6, 2015, the labor arbiter dismissed Relucio's complaint for lack of merit. There was just cause to terminate the employment of Relucio, *i.e.*, insubordination and failure to report for work, and there was substantial compliance on the part of Bicol Isarog to observe the requirements of procedural due process in severing Relucio's employment. Finally, the arbiter ruled that Relucio is not entitled to his money claims.

On appeal, the National Labor Relations Commission (NLRC) affirmed the arbiter's Decision.^[5] Failing to secure a reconsideration,^[6] Relucio filed a petition for *certiorari* with the CA.^[7] The petition was granted in the CA Decision^[8] dated March 30, 2017. The CA ruled that Relucio was illegally dismissed since Bicol Isarog failed to discharge its burden to prove just cause for his dismissal. Relucio's failure to obey the order of the Officer-In-Charge (OIC) was not characterized by a wrongful and perverse penalty of dismissal. Moreover, the CA held that Bicol Isarog violated Relucio's right to procedural due process because the memoranda issued by Bicol Isarog never reached Relucio. In fact, the notice of termination was only handed to Relucio during the proceedings before the Department of Labor and Employment (DOLE)-National Capital Region (NCR) Field Office. The CA ordered Relucio's reinstatement and the payment of backwages, holiday pay, service incentive leave pay and 13th month pay.^[9] Bicol Isarog moved for reconsideration, but was denied.^[10]

Hence, this petition alleging that the CA erred in ruling that Relucio was illegally dismissed. Bicol Isarog maintains that failure to report for duty is a grave offense punishable by dismissal under the company's code of conduct. And, in effecting the dismissal, Bicol Isarog complied with the twin-notice rule when it issued two memoranda requiring Relucio to explain his alleged infractions, and another

memorandum terminating his employment. Bicol Isarog likewise questions the monetary awards made by the CA for lack of factual and legal basis.^[11]

For its part, Relucio counters that he did not defy the instructions for him to report for work. Upon arriving in Manila on March 29, 2013, he went to the office of Bicol Isarog but was not able to find any representative to talk to. The next day, Relucio returned but was told to go home because he was already dismissed. Thus, on April 1, 2013, he sought assistance from the NLRC. Relucio also claims that he did not violate any instructions given to him since he was not the on-duty driver for the Masbate-Manila route on March 28, 2013.^[12]

In its Reply,^[13] Bicol Isarog reiterates its allegations in the petition that "*x x x the wealth of evidence on record more than adequately establish that Relucio was dismissed for just cause, and in compliance with the requirements of due process,*"^[14]

We find the petition partly meritorious.

At the outset, the Court is not unmindful that in a petition under Rule 45 of the Rules of Court, only questions of law, not of fact, may be raised. However, where the findings of the labor tribunals contradict that of the CA, this Court may look into the records of the case and re-examine the questioned findings.^[15]

Dismissal from employment has two facets: first the legality of the act of dismissal, which constitutes substantive due process; and, second, the legality of the manner of dismissal, which constitutes procedural due process.^[16]

Under Article 297 of the Labor Code,^[17] 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;
- (b) gross and habitual neglect by the employee of his duties;
- (c) fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- (e) other causes analogous to the foregoing.

The burden of proving that the termination of an employee was for a just or authorized cause lies with the employer. If the employer fails to meet this burden, the conclusion would be that the dismissal was unjustified and therefore, illegal.^[18] To discharge this burden, the employer must present substantial evidence, which is that amount of relevant evidence which a reasonable mind might accept as

adequate to justify a conclusion,^[19] and not based on mere surmises or conjectures.^[20]

In particular, insubordination, as a just cause for the dismissal of an employee, necessitates the concurrence of the following requisites: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; (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.^[21]

Here, Relucio was given specific instructions, by the OIC for Operations in Masbate, not to push through with his trip to Manila on March 28, 2013 since he only had five passengers. The OIC reminded Relucio that it is a policy to transfer passengers to another bus with more passengers to save an operational costs. However, he insisted on pursuing his trip. Thereafter, Relucio was ordered to report to the Operations Manager of Bicol Isarog upon arriving in Manila. But, when Relucio reached Manila on March 29, 2013, he failed to abide by the summons. Through a text message, Relucio was directed to go to the Human Resource (HR) Department on April 1, 2013. Again, he did not heed the directive, prompting Bicol Isarog to issue Memorandum Circular No. BITS-PM-2013-145, which served as a notice of Relucio's infraction and order to submit his explanation.^[22] The order not to continue with the trip is reasonable, lawful, made know to Relucio and pertained to his duty as a bus driver of Bicol Isarog. Relucio did not deny nor offered any explanation for his disobedience. Thus, there is just cause to terminate his employment.

There is no doubt, an employer enjoys a wide latitude of discretion in the promulgation of policies, rules and regulations on work-related activities of the employees so long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements. Company policies and regulations are generally valid and binding on the parties and must be complied with until finally revised or amended, unilaterally or preferably through negotiation, by competent authority.^[23] Bicol Isarog's Code of Conduct categorized insubordination and failure to report for duty as a grave offense, which merits the penalty of dismissal.^[24]

However, to effect a valid dismissal on the ground of a just cause, the employer must substantially comply with the following standards of due process.^[25] (a) a first written notice - containing the specific cause or grounds for termination under Article 297 of the Labor Code, and company policies, if any; detailed narration of the facts and circumstances that will serve as basis for the charge; and a directive to submit a written explanation within a reasonable period;^[26] (b) after serving the first notice, the employer should afford the employee ample opportunity to be heard^[27] and to defend himself; and (c) after determining that termination of employment is justified, the employer shall serve the employee a written notice of termination indicating that all circumstance involving the charge against the employee have been considered; and the grounds have been established to justify the severance of his employment. These standards were refined in *Unilever Philippines, Inc. v. Rivera*,^[28] to wit: