

FIRST DIVISION

[G.R. No. 242875, August 28, 2019]

AUGORIO A. DELA ROSA, PETITIONER, VS. ABS-CBN CORPORATION, RESPONDENT.

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated June 19, 2018 and the Resolution^[3] dated October 22, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 152463 declaring petitioner Augorio A. Dela Rosa (petitioner) to have been validly dismissed, and thus, not entitled to backwages, separation pay, and attorney's fees.

The Facts

In 2002,^[4] petitioner was hired by respondent ABS-CBN Corporation (respondent), a duly organized corporation engaged in the business of television and radio broadcasting, as a video editor^[5] for the latter's television broadcasting at an hourly rate of P230.00. He was allegedly rehired^[6] repeatedly and continuously for the same position, under purported fixed-term contracts.^[7]

In 2013, petitioner admittedly reported for work and went to respondent's editing bay while intoxicated. This led to an incident where petitioner placed his hands inside a female co-worker's pants and touched her buttocks.^[8] Thus, on August 23, 2013, petitioner was given a show cause memorandum,^[9] to which he submitted an answer^[10] dated August 28, 2013, explaining that the alleged incident was only accidental, as he just lost balance and fell towards said co-worker.^[11] Subsequently, administrative hearings were conducted on October 9, 2013, January 23, 2014, and March 3, 2014.^[12]

On September 1, 2015, respondent served a memorandum^[13] to petitioner informing him of management's decision to "impose on [him] the penalty of dismissal."^[14] However, respondent claimed that it can no longer effect the same, since petitioner's program contract dated August 16, 2013^[15] had already expired on December 31, 2013, and his "current program contract dated March 16, 2015 to September 15, 2015 no longer covers the incident x x x."^[16] Nonetheless, the said decision was made part of his records, to wit:

Your acts of reporting for work under the influence of alcohol and for committing a lewd act against [your female co-worker] are likewise considered as serious misconduct which is a ground for the termination of your employment under Article 282 (a) of the Labor Code of the Philippines.

For the foregoing, **Management has decided to impose on you the penalty of dismissal.** However, considering that your program contract dated August 16, 2013 had already expired on December 31, 2013 and **the term of your current program contract dated March 16, 2015 to September 15, 2015 no longer covers the incident, Management can no longer impose the aforementioned penalty to your current program contract.** Nonetheless, this decision shall form part of your employee records. x x x x^[17] (Emphases supplied)

Aggrieved, petitioner filed a complaint^[18] for illegal dismissal, underpayment of holiday pay, non-payment of salary/wages, 13th month pay, separation pay, and night shift differential, moral and exemplary damages, and attorney's fees against respondent.^[19]

For its part, ^[20] respondent averred that petitioner was not illegally dismissed. It maintained that petitioner was engaged^[21] only for a fixed period or from March 16, 2015 until September 15, 2015, and consequently, his employment automatically ceased on the end date.^[22] It also claimed that even if petitioner's employment had not yet expired, the latter was dismissed for a just cause for having been found guilty of serious misconduct in: (a) reporting for work while intoxicated; and (b) committing lascivious acts against a female co-worker.^[23]

The Labor Arbiter Ruling

In a Decision^[24] dated October 28, 2016, the Labor Arbiter (LA) found petitioner to have been illegally dismissed, and accordingly, ordered respondent to pay petitioner: (a) backwages in the amount of P1,006,327.07 computed from the date of termination up to the finality of said Decision; (b) separation pay in the amount of P1,270,992.59; (c) moral and exemplary damages in the amount of P50,000.00; and (d) attorney's fees equivalent to ten percent (10%) of the total monetary awards. The LA, however, dismissed petitioner's other claims for lack of merit.^[25]

The LA ruled that petitioner was a regular employee of respondent considering that he was engaged to perform an activity that has a reasonable connection to the business or trade of respondent.^[26] Consequently, petitioner's dismissal due to "end of contract" was illegal because it is not one of the just or authorized causes provided by law.^[27] In this regard, the LA added that the inconsistent stand of respondent in declaring petitioner to have been validly dismissed due to serious misconduct, on one hand, and end of contract, on the other, worked against its favor.^[28]

Aggrieved, respondent appealed^[29] to the NLRC.

The NLRC Ruling

In a Decision^[30] dated April 27, 2017, the NLRC affirmed the LA's Decision with modification, deleting the award of moral and exemplary damages.^[31] It explained that the provision in petitioner's employment contract fixing the period of his employment was unjustified, since respondent failed to show that the same was mutually advantageous and not intended to defeat petitioner's right to security of tenure.^[32] It added that the circumstances of petitioner's employment indicated

regular employment, as petitioner was continuously engaged by respondent for the same position, although under different employment contracts.^[33] Notably, the NLRC opined that petitioner may not be declared validly dismissed on the ground of serious misconduct, considering that respondent terminated his services on the ground of expiration of contract.^[34]

In a Resolution^[35] dated June 30, 2017, the NLRC, upon respondent's motion for partial reconsideration,^[36] modified its April 27, 2017 Decision by reckoning the computation of separation pay from February 1, 2002.^[37]

The matter was elevated to the CA via a petition for *certiorari*.^[38]

The CA's Ruling

In a Decision^[39] dated June 19, 2018, the CA granted the petition and nullified the findings of the NLRC.^[40] It found petitioner to be a regular employee who was validly dismissed for a just cause.^[41] Particularly, petitioner was found guilty of serious misconduct in reporting for work under the influence of alcohol and committing lewd or lascivious acts against his female co-worker. Moreover, the twin requirements of notice and hearing were complied with, considering that: (a) petitioner was given a show cause order,^[42] to which he filed his answer;^[43] (b) during the administrative hearings, petitioner was able to testify and present evidence in his favor; and (c) petitioner was informed^[44] of respondent's decision to terminate him.^[45]

Petitioner moved for reconsideration^[46] but the same was denied in a Resolution^[47] dated October 22, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in ruling that petitioner was legally dismissed for a just cause.

The Court's Ruling

The petition is partly meritorious.

At the outset, it bears stressing that in a Rule 45 review in labor cases, the Court examines the CA's Decision from the prism of whether it had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision.^[48] In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refer to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition.^[49]

Under this premise, the Court finds that the CA did not erroneously grant petitioner's *certiorari* petition since the NLRC gravely abused its discretion in ruling that petitioner was illegally dismissed. However, before delving into the same, it is significant to discuss the nature of petitioner's employment.

Respondent claims that petitioner is a fixed-term employee. According to jurisprudence, for a fixed-term employment contract to be valid, it must be shown that the fixed period was knowingly and voluntarily agreed upon by the parties, who dealt with each other on more or less equal terms with no moral dominance being exercised by the employer over the employee.^[50] Moreover, while fixed-term employment contracts have been recognized to be valid, the Court has held that if it is apparent that the period has been imposed to preclude acquisition of tenurial security by the employee, then such period must be struck down for being contrary to law, morals, good customs, public order, and public policy.^[51]

Applying these standards, the Court finds that contrary to respondent's postulation, petitioner was not a fixed-term employee, but rather, a regular employee. Records show that petitioner was engaged by respondent, through various contracts, as a video editor for the latter's several programs. Among others, his initial contracts for both ANC NEWS AM and ANC NEWS PM started on August 16, 2010 up to February 15, 2011. This same contract was subsequently renewed from February 16, 2011 to August 15, 2011; August 16, 2011 to August 15, 2012; August 16, 2012 to February 15, 2013; and finally, from February 16, 2013 to August 15, 2013.^[52]

While there are other contracts intermittently spanning the years 2014 to 2015,^[53] it is nonetheless clear from the foregoing that petitioner was under the employ of respondent for a period of at least three (3) years without interruption. His employment contracts during said period had been repeatedly extended or renewed covering the same position, and involving the same duties. Case law holds that the repeated engagement under a contract of hire is indicative of the necessity and desirability of the employee's work in the employer's business; and if an employee's contract has been continuously extended or renewed for the same position, with the same duties, without any interruption, then such employee is a regular employee.^[54]

Moreover, the fixed terms were not shown to be mutually advantageous to both parties or reasonably necessary to respondent's business, as it is, in fact, apparent that the same were merely imposed to prevent his acquisition of tenurial security.^[55]

In sum, the labor tribunals, as affirmed by the CA, correctly characterized petitioner as a regular, and not a fixed-term, employee. As such, petitioner's employment may be terminated only for a just or authorized cause, as provided by law, and in accordance with the procedure for termination provided in the Labor Code.

In this case, the Court agrees with the CA that respondent had a just cause in terminating petitioner's employment as the latter committed serious misconduct against a female co-worker.^[56]

Misconduct has been held to be an improper or wrong conduct; a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. To be considered a valid cause for dismissal within the meaning of the Labor Code, the misconduct must be of such a grave and aggravated character and not merely trivial or unimportant.^[57]

Based on the records, respondent was able to establish that while waiting for his shift on August 22, 2013, petitioner reported for work and went to the editing bay