

FIRST DIVISION

[G.R. No. 206891, March 15, 2017]

**ERNESTO BROWN, PETITIONER, VS. MARSWIN* MARKETING,
INC., AND SANY** TAN, REPRESENTED BY BERNADETTE S.
AZUCENA, RESPONDENTS.**

D E C I S I O N

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*^[1] assails the January 18, 2013 Decision^[2] of the Court of Appeals (CA) in CA-GR. SP No. 124098. The CA annulled and set aside the December 19, 2011^[3] and January 31, 2012^[4] Resolutions of the National Labor Relations Commission (NLRC), which affirmed the June 30, 2011 Decision^[5] of the Labor Arbiter (LA) declaring illegal the dismissal from work of Ernesto Brown (Brown). Likewise assailed is the April 23, 2013 CA Resolution^[6] denying Brown's Motion for Reconsideration.

Factual Antecedents

On June 7, 2010, Brown filed a Complaint^[7] for illegal dismissal, nonpayment of salary and 13th month pay as well as claim for moral and exemplary damages and attorney's fees against Marswin Marketing, Inc. (Marswin) and Sany Tan (Tan), its owner and President. He prayed for reinstatement with full backwages and payment of his other monetary claims.

In his Position Paper,^[8] Brown alleged that on October 5, 2009, Marswin employed, him as building maintenance/ electrician with, a salary of P500.00 per day; he was assigned at Marswin's warehouse in Valenzuela, and was tasked to maintain its sanitation and make necessary electrical repairs thereon.

Brown further averred that on May 28, 2010, he reported, at the Main Office of Marswin, and was told that it was already his last day of work. Allegedly, he was made to sign a document that he did not understand; and, thereafter, he was no longer admitted back to work. Thus, he Insisted that he was terminated without due process of law.

For their part, Marswin/Tan argued in their Position Paper^[9] and Comment^[10] that on October 4, 2009, Marswin, a domestic corporation engaged in wholesale trade of construction materials, employed Brown as electrician; during his eight-month stay, Marswin received negative reports anent Brown's work ethics, competence, and efficiency. On May 28, 2010, they summoned him at its Main Office to purportedly discuss the complaints of the Warehouse Manager and the Warehouse Supervisor; during the meeting, they informed .Brown of the following charges against him:

1. x x x [Disobedience to instructions given by the Electrical Engineer and Contractor during the time [of] the renovation of the staff room at the Valenzuela warehouse; making himself scarce and worse not responding to calls for errands regarding electrical connections at the warehouse;
2. Exposing the office to possible criminal liability for installing a jumper at the Valenzuela warehouse without being told to [make such installation];
3. Not performing his job well as electrician, thus, resulting to additional expenses to the company, when it could have been avoided had he been following x x x orders given to him;
4. Unreasonable refusal to perform his assigned tasks despite being repeatedly ordered to do so x x x.^[11]

Marswin/Tan stated that during the meeting, Brown excused himself purportedly to get in touch with his wife; however, he never returned and no longer reported for work.

According to Marswin/Tan, Brown's work as electrician did not involve an activity usually necessary or desirable in the usual business of Marswin; thus, he was not its regular employee. They also contended that during the May 28, 2010 meeting, Bernadette S. Azucena (Azucena), its Accounting Supervisor and Human Resource Head, only admonished Brown but he left the meeting and no longer returned to work. They attached in their Position Paper the *Sinumpaang Salaysay*^[12] executed by Azucena stating the alleged complaints she received against Brown, and the events that transpired during the May 28, 2010 meeting, to wit:

x x x x

11. x x x [Si] Ernesto Brown ay aking pinatawag sa main office noong Mayo 28, 2010 para kausapin dahil sa mga nasabing reklamo sa kanyang pagtatrabaho; noong aking binanggit sa kanya [ang] mga nasabing reklamo ay wala man lang siyang kaimik imik; sinabi ko sa kanya na kung ipagpapatuloy [nya] ang maling pagtrabaho at hindi pagsunod sa mga pinagagawa sa kanya ay walang magagawa ang opisina kundi tanggalin na siya; nanatili siyang walang imik at nagsabi siya na tatawag siya sa kanyang asawa at umalis sya; hindi na siya bumalik noon at hindi na pumasok magmula noon at nakatanggap na nga lang kami ng reklamo [mula] sa tanggapa[n] ng Labor Arbiter. x x x.
12. Hindi totoo ang kanyang reklamo na siya ay dinismis; may legal na kadahilanan na para siya ay dismisiin pero hindi pa siya dinismis noong Mayo 28, 2010; siya mismo ang hindi na bumalik sa tanggapan x x x^[13]

Ruling of the Labor Arbiter

On June 30, 2011, the LA rendered a Decision declaring Brown's dismissal illegal, the decretal portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring complainant Ernesto Brown to have been illegally dismissed from work.

Respondents are directed to reinstate complainant Brown to his former position without loss of seniority rights and to notify this Office of their compliance thereto within ten (10) days from receipt of this Decision. Further respondent Marswin Marketing, Inc. is hereby directed to pay complainant Brown's backwages computed from the time he was illegally dismissed from work until his actual reinstatement pursuant to Article 279 of the Labor Code and to pay his 13th month pay computed as follows:

- a) backwages - P188,335.98
- b) 13th month pay - P 5,308.33

All other claims are dismissed for lack of merit.

SO ORDERED.^[14]

The LA held that Brown was a regular employee of Marswin because Marswin/Tan confirmed hiring him on October 4, 2009; they paid him salary; they had the power to control his conduct, especially on how he should do his work; and, they had the power to dismiss him.

In ruling that Brown was illegally dismissed, the LA noted that the alleged complaints against Brown were embodied in Azucena's affidavit yet no actual complaints or reports against him were adduced in evidence. The LA was also unconvinced that Brown left Marswin's premises and abandoned his work considering that he filed this illegal dismissal case; and his employer failed to notify him to report back to work.

Ruling of the National Labor Relations Commission

On appeal,^[15] the NLRC, through its Resolution dated December 19, 2011, affirmed the LA Decision.

The NLRC held that the purported complaints against Brown were only gathered by Azucena from the reports she supposedly received from the Warehouse Manager and Supervisor; thus, her affidavit was hearsay and of poor evidentiary value. It ratiocinated that Marswin/Tan did not give Brown the opportunity to confront his accusers, and did not observe due process in terminating him. It also declared that there was no showing that Brown abandoned his work as Marswin/Tan did not cite him for his alleged refusal to return to work.

On January 31, 2012, the NLRC denied the Motion for Reconsideration filed by Marswin/Tan.

Ruling of the Court of Appeals

Undaunted, Marswin/Tan filed a Petition for *Certiorari* with the CA arguing that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction by affirming the LA Decision.

On January 18, 2013, the CA annulled and set aside the NLRC Resolutions. It entered a new judgment declaring that Brown was legally dismissed, and therefore not entitled to backwages and 13th month pay.

According to the CA, aside from his allegation that he was unceremoniously terminated, Brown presented no evidence supporting such claim. It also held that there was no showing that Brown was prevented from returning or was deprived of work. It likewise gave weight to the affidavit of Azucena, which asserted that during the May 28, 2010 meeting, Brown was not dismissed but was only informed of the complaints against him.

In sum, the CA decreed that this case did not involve the dismissal of an employee on the ground of abandonment, there being no evidence proving that Brown was actually dismissed.

In its Resolution dated April 23, 2013, the CA denied the Motion for Reconsideration filed by Brown.

Issue

Aggrieved, Brown filed this Petition raising the sole issue as follows:

WHETHER THE COURT OF APPEALS GRAVELY ERRED WHEN IT REVERSED THE NLRC'S RESOLUTIONS AFFIRMING THE LABOR ARBITER'S DECISION THAT THE PETITIONER ERNESTO BROWN WAS ILLEGALLY DISMISSED BY THE PRIVATE RESPONDENTS.^[16]

Brown contends that Marswin failed to discharge its burden to prove that he committed abandonment. He argues that the fact that he challenges his dismissal disproves that he abandoned his employment. He also stresses that the reliance of the CA on Azucena's affidavit is unwarranted as no actual complaints as regards his supposed infractions were adduced in evidence. He posits that the bare allegations of Azucena are hearsay, and are not proof that he committed any infraction.

Marswin/Tan, on their end, counter that the Court should not give due course to this Petition because it raises factual issues which are not within the ambit of a petition under Rule 45 of the Rules of Court.

Our Ruling

The Court grants the Petition.

As a rule, the Court, is not a trier of facts and only questions of law may be raised in a petition under Rule 45 of the Rules of Court. A departure from this rule is nevertheless allowed where the factual findings of the CA are contrary to those of