

FIRST DIVISION

[G.R. No. 208000[*], July 26, 2017]

**VIRGEL DAVE JAPOS, PETITIONER, V. FIRST AGRARIAN REFORM
MULTI-PURPOSE COOPERATIVE (FARMCOOP) AND/OR
CRISLINO BAGARES, RESPONDENTS.**

D E C I S I O N

DEL CASTILLO, J.:

This Petition for Review on *Certiorari* (With Supplemental Allegations In Support Of The Application To Litigate As An Indigent)^[1] assails the July 29, 2011 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 03319-MIN which reversed and set aside the August 27, 2009 and October 15, 2009 Resolutions^[3] of the National Labor Relations Commission (NLRC) in NLRC Case No. MAC-09-010462-08, and the CA's subsequent September 18, 2012 Resolution^[4] denying herein petitioner's Motion for Reconsideration.^[5]

Factual Antecedents

Respondent First Agrarian Reform Multi-Purpose Cooperative (FARMCOOP) is a registered domestic cooperative doing business in Kisolon, Sumilao, Bukidnon as a banana contract grower for DOLE Philippines, Inc. Respondent Crislino Bagares is FARMCOOP's chairman/executive officer.

Petitioner Virgel Dave Japos was employed by FARMCOOP in 2001 as gardener. Under FARMCOOP's Personnel Policies and Procedures,^[6] it is provided that:

11. Absences

In order not to disrupt the operations due to absences, prior authorization or permission from the immediate superior must be secured. A Personnel Leave Authority (PLA) form must be properly filled up/[sic]approved to be submitted to the Personnel Section. The immediate superior shall have the discretion to allow or [disapprove] leave applications depending on the work/activity schedules at the particular time. However, leave of absence for any personal reason may be granted up to a maximum of 20 days only for every year, subject to our disciplinary action policies.

xxxx

14. Attendance and Punctuality

The Cooperative expects all its members and non-members to be in their work place regularly and at the time designated in the schedule.

Note: AWOL^[7] RULE

An employee/worker is subject to disciplinary action if he/she incurs [sic] the following COMMULATIVE [sic] ABSENCES:

x x x

- | | |
|-------------|---|
| 1st Offense | -Written Warning |
| 2nd Offense | - 1 to 7 days suspension (Notice shall be prepared by Personnel) |
| 3rd Offense | - 8 to 15 days suspension (Notice shall be prepared by Personnel) |
| 4th Offense | - DISMISSAL |

x x x x

I. ATTENDANCE

1. UNAUTHORIZED LEAVE OF ABSENCE

An employee who wants to be absent from work must seek previous approval from his/her supervisor by applying for leave using the prescribed [form] for application for leave.

An employee/worker is subject to discharge if he/she incurs six (6) or more absences without permission within one employment year.

FIRST INFRACTION - suspension 1 to 7 days

SECOND INFRACTION- suspension 8 to 15 days

THIRD INFRACTION - dismissal

Note: AWOP^[8] RULE

An employee is subject to disciplinary action if he/she incurs the following CONSECUTIVE ABSENCES:

x x x

First three (3) days - Written Warning

4th day - 1 to 7 days suspension (Notice shall be prepared by Personnel)

5th day - 8 to 15 days suspension (Notice shall be prepared by Personnel)

6th day - DISMISSAL^[9]

During his stint with FARMCOOP, petitioner incurred the following absences:^[10]

1. May 2-15, 2003 - which is covered by a Medical Certificate dated May 16, 2003;
2. December 18-27, 2003 - for which no doctor's certificate was submitted;
3. January 26, 2005 - absence without permission, for which petitioner was issued a Written Warning dated January 28, 2005;

4. February 28, 2005 - absence without permission, for which petitioner was issued a 2nd Written Warning dated March 2, 2005;
5. May 24, 2005- absence without permission, for which petitioner was issued a Last Warning dated June 9, 2005; and
6. June 22-28, 2005 - absence without permission, but which is supposedly covered by a Medical Certificate^[11] issued on July 7, 2005 by a certain Dr. Carolyn R. Cruz (Dr. Cruz), Medical Officer IV of the Philhealth Center, certifying that petitioner was diagnosed and given treatment for respiratory tract infection, although the document did not indicate the period during which petitioner was ill, diagnosed, or had undergone treatment.

With regard to his June 22-28, 2005 absences, petitioner received on June 28, 2005 an inter-office memorandum^[12] giving him until July 4, 2005 to explain the same in writing. On June 30, 2005, he personally submitted his signed written explanation^[13] of even date, which states, in part:

SIR, MADAM,

SORRY, I WAS NOT ABLE TO REPORT ON JUNE 22, 2005 UNTIL NOW BECAUSE I'M SUFFERING ENFLUENZA [sic]. I'M SORRY IF I DIDN'T REPORT TO THE OFFICE FOR FILLING [sic] LEAVE.

HOPING FOR YOUR KIND CONSIDERATION OF THIS MATTER.^[14]

On July 5, 2005, petitioner reported back to work, but he was not admitted by FARMCOOP as he did not present a medical certificate. It was only on July 7, 2005 that petitioner was able to secure Dr. Cruz's Medical Certificate and submit the same to his employer. Also, on July 5, 2005, FARMCOOP issued a Notice of Termination^[15] informing petitioner that effective July 6, 2005, his employment would be terminated.

On July 8, 2005, petitioner submitted a Personnel Leave Authority Application Form^[16] of even date, which was not acted upon by FARMCOOP as petitioner was already considered dismissed as of July 6, 2005. In said application, petitioner sought approval of his leave/absence from June 22 to July 7, 2005.

Ruling of the Labor Arbiter

On February 6, 2008, petitioner filed a complaint against respondents before the Labor Arbiter for illegal dismissal, separation pay, underpayment of salaries, and other monetary claims, which was docketed as NLRC Case No. RAB 10-02-00116-2008. He claimed that his dismissal was effected without due process and, thus, illegal.

On July 21, 2008, the Labor Arbiter issued a Decision^[17] finding that petitioner was legally terminated for the unauthorized June 22-28, 2005 absences. He ruled that petitioner was dismissed for cause; that petitioner's past infractions, his unauthorized January 26, February 28, and May 24, 2005 absences for which written warnings were issued against him, were justifiably considered by FARMCOOP in arriving at the decision to dismiss petitioner; that procedural due process was

observed by respondents; and that petitioner failed to prove that he is entitled to monetary claims, except for wage differential. Thus, the Labor Arbiter ruled:

WHEREFORE, in view of all the foregoing, judgment is hereby entered ordering the respondent FCI-FARM Coop., Inc. [sic] to pay the complainant in the sum of P8,739.00 representing wage differential plus 10% of the total award in the sum of P873.90 representing attorney's fees.

SO ORDERED. ^[18]

Ruling of the National Labor Relations Commission Petitioner appealed before the NLRC which overturned the Labor Arbiter. In its August 27, 2009 Resolution in NLRC Case No. MAC-09- 010462-08, it ruled as follows:

The complainant being able to present a Personnel Leave Authority and a Medical Certificate for his absences on June 22 to July 5, 2005, his termination from employment cannot be said to be justified. While the Labor Arbiter is correct in citing and we quote:

'Generally, absences, once authorized or with prior approval of the employer, irrespective of length thereof, may not be invoked as ground for termination of employment. Consequently, dismissal of an employee due to his prolonged absence with leave by reason of illness duly established by the presentation of a medical certificate, is not justified x x x. however [sic], unauthorized absences or those incurred without official leave, constitute gross and habitual neglect in the performance of work x x x.'

We cannot sustain his conclusion that '*complainant was dismissed for a valid cause and after observance of due process.*' The Labor Arbiter should have followed the doctrine laid down in the case of *Oriental Mindoro Electric Cooperative, Inc. v. NLRC* and not that of *Cando v. NLRC* considering that a Personnel Leave Authority and a Medical Certificate was [sic] submitted by the complainant. The prolonged absence of complainant cannot be construed as abandonment of work when said absences was [sic] due to a justifiable reason.

The fact that, in complainant's July 7, 2005 medical certificate, he was diagnosed to have "*acute respiratory tract infection*" while in his letter of explanation dated June 30, 2005, complainant mentioned "*influenza*" should not militate against him. Complainant is not a medical practitioner as to be in a position to know how to diagnose his illness. The date of medical certificate, July 7, 2005, is likewise of no serious concern since it merely refers to the date when said medical certificate was executed and not to the date complainant was ill.

In fine, we find the complainant's dismissal illegal.

WHEREFORE, premises considered, the appealed Decision is hereby REVERSED and VACATED, except as regards the award of wage differentials, and a new one is entered declaring the dismissal of complainant as ILLEGAL. Consequently, respondent is hereby ordered to

forthwith reinstate complainant to his former or equivalent position without loss of seniority rights and other privileges and to pay his full backwages, inclusive of allowances and to his other benefits or its [sic] monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

The respondent is likewise ordered to pay complainant's attorney's fees equivalent to ten (10%) percent of the total awards herein granted.

The Regional Arbitration Branch is hereby directed to cause the computation of the awards granted in this Resolution.

The award of wage differentials granted in the appealed decision stays.

SO ORDERED.^[19] (Citations omitted)

Respondents moved to reconsider,^[20] but the NLRC stood its ground.

Ruling of the Court of Appeals

In a Petition for *Certiorari*^[21] filed with the CA and docketed as CAG.R. SP No. 03319-MIN, respondents sought to reverse the above dispositions of the NLRC and reinstate the Labor Arbiter's July 21, 2008 Decision, arguing that the NLRC committed grave abuse of discretion ruling that petitioner was illegally dismissed and was entitled to his money claims; that the NLRC wrongly appreciated the evidence and the facts; that the medical certificate submitted by petitioner, which stated that petitioner was diagnosed and treated for respiratory tract infection, could not be given credence because it conflicted with petitioner's own claim that he was sick with influenza; that petitioner's supposed illness was an obvious fabrication to cover up for his unauthorized absences; that the medical certificate was of doubtful veracity; and that overall, petitioner's case was not covered by substantial evidence.

Petitioner submitted his Comment,^[22] wherein he argued that the NLRC committed no error; that it would be absurd under FARMCOOP's rules and policies to require an employee to submit a Personnel Leave Authority prior to contracting illness when it could not be known or planned precisely when he might get sick; that his past infractions could not be used to justify the penalty of dismissal since he was penalized therefor with mere warnings, thus, the penalty for the latest infraction should have been mere suspension only and not dismissal; and that the penalty of dismissal was not commensurate to his infraction, which did not involve moral turpitude nor gross misconduct.

On July 29, 2011, the CA issued the assailed Decision containing the following pronouncement:

We find the dismissal of private respondent Japos valid.

For an employee's dismissal to be valid, (a) the dismissal must be for a valid cause and (b) the employee must be afforded due process.

In the case at bench, records indubitably show that Japos incurred several absences without authority or permission from his immediate supervisor even before he was terminated from service in violation of FARMCoop's policy. Records likewise show that FARMCoop was quite