

SECOND DIVISION

[G.R. Nos. 224308-09, September 27, 2017]

FABRICATOR PHILIPPINES, INC., PETITIONER, VS. JEANIE ROSE Q. ESTOLAS, * RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated September 14, 2015 and the Resolution^[3] dated May 2, 2016 of the Court of Appeals (CA) in CA-G.R. SP Nos. 133794 and 133833, which, *inter alia*, ruled that petitioner Fabricator Philippines, Inc. (petitioner) illegally dismissed respondent Jeanie Rose Q. Estolas (respondent).

The Facts

The instant case arose from a complaint^[4] for illegal dismissal with claims for moral damages, exemplary damages, and attorney's fees filed before the National Labor Relations Commission (NLRC) by respondent against petitioner, a domestic corporation engaged in the manufacture and sale of motorcycle parts,^[5] and its President, Victor Lim (Lim).

Respondent alleged that petitioner hired her as a welder.^[6] Before break time of July 2, 2011, while waiting for a replacement part she requested to be installed on the welding machine she was using, respondent took a seat and rested.^[7] At that time, another employee, Rosario Banayad (Banayad), passed by and saw her sitting, then uttered "Ayos ka ha." The matter was brought to the attention of Assembly Action Team Leader, Warlito Abaya (Abaya), who confronted respondent about the said incident.^[8] Thereafter, while Abaya and Banayad were talking to each other, respondent told the latter in the vernacular "*Ang kitid ng utak mo[.] [B]akit hindi mo muna ako tinanong kung bakit ako nakaupo[?] [B]akit hindi mo muna tinanong kung ano [ang] nasa likod ng nakita mo?*" Banayad retorted, saying, "*Matapang ka ha! Matapang ka!*" Respondent replied, "*Candy, ikaw pa naman ang nagdadasal araw-araw, tapos ganyan ang ugali mo!*"^[9]

Consequently, Abaya directed respondent to see Lim in his office. During their meeting, the latter allegedly asked what she would feel if he would hit her ear, then proceeded to hit her ear.^[10] Respondent reasoned out that she did not hit Banayad's ear and that it was the latter who provoked her. However, Lim insisted that respondent was rude towards Banayad.^[11] Thus, on July 13, 2011, respondent was issued a suspension order effective the following day for a period of three (3) days. While she was in the locker area, the company guard on duty informed respondent to report for work the following day.^[12]

A few months later, or on October 17, 2011, Lim told respondent to resign and that his lawyer will see her on October 19, 2011.^[13] On November 25, 2011, respondent was again instructed not to report for work until she and Lim have talked. On November 28, 2011, Lim directed respondent to sign a paper, which she refused as it pertained to the promotion of Banayad as Strategy and Control Group-Senior Assistant 1. On November 30, 2011, respondent received a letter^[14] from Lim directing her to seek the assistance of a lawyer for the hearing on December 7, 2011. At the scheduled hearing, respondent was required to sign the statements of Banayad and other witnesses, which she refused to follow.^[15] Thereafter, on December 16, 2011, respondent was served a notice^[16] of termination effective December 17, 2011, finding her guilty of serious misconduct. Hence, respondent filed the aforementioned complaint.^[17]

For their part,^[18] petitioner and Lim maintained that respondent was validly dismissed for gross misconduct, as: (a) she was caught sitting down during office hours; and (b) she insulted and uttered offensive language towards her superior, Banayad.^[19] They further pointed out that they sent respondent various memoranda regarding the incident, but the latter refused to receive the same. Thus, they were constrained to terminate her employment.^[20]

The Labor Arbiter's Ruling

In a Decision^[21] dated September 17, 2012, the Labor Arbiter (LA) ruled in favor of respondent, and accordingly, ordered petitioner and Lim to pay her separation pay with full backwages in the total amount of P167,324.29.^[22]

The LA found that while respondent may have indeed committed acts of misconduct, the same were not willful and intentional in character. The LA added that there was no wrongful intent, but a mere spur of the moment incident prompted by a simple miscommunication among workmates.^[23] As such, the penalty meted on respondent, *i.e.*, dismissal, was not commensurate to the offense charged against her.^[24]

Aggrieved, petitioner and Lim appealed^[25] to the NLRC.

The NLRC Ruling

Initially, the NLRC issued a Resolution^[26] dated January 31, 2013 dismissing the appeal on technical grounds. Upon reconsideration, however, the NLRC promulgated a Decision^[27] dated August 30, 2013 modifying the LA ruling by deleting the award of separation pay and backwages, and in lieu thereof, ordered respondent's reinstatement to her former position without loss of seniority rights.^[28]

The NLRC agreed with the LA's finding that while respondent indeed committed an act of misconduct, the same was not of a serious and grave character so as to warrant respondent's dismissal for a just cause.^[29] However, the NLRC found it appropriate to delete the award of backwages in respondent's favor, opining that

this is a commensurate penalty for the latter's act of professional misconduct.^[30]

Both parties moved for reconsideration,^[31] which were, however, denied in a Resolution^[32] dated November 29, 2013. Dissatisfied, they elevated the matter to the CA *via* their respective petitions for *certiorari*.^[33]

The CA Ruling

In a Decision^[34] dated September 14, 2015, the CA reinstated the LA ruling with modifications: (a) ordering petitioner to pay respondent backwages from the time she was illegally dismissed until finality of the ruling less her salary for fifteen (15) days corresponding to her suspension, and separation pay computed from the time respondent was hired until finality of the decision, plus legal interest of six percent (6%) per annum from finality of the decision until fully paid; (b) absolving Lim from any personal liability arising from respondent's illegal dismissal; and (c) ordering the LA to make a recomputation of the total monetary benefits awarded and due respondent.^[35]

Agreeing with the findings of the labor tribunals *a quo*, the CA held that respondent's acts did not amount to gross misconduct that would have justified her termination from work.^[36] In this regard, it found that the NLRC gravely abused its discretion in deleting the award of backwages, pointing out that respondent was already suspended for three (3) days for her misconduct, and thus, a second disciplinary proceeding, which resulted in her dismissal, as well as the consequent filing of the instant case, was no longer warranted.^[37] Nonetheless, the CA opined that respondent's infraction was minor, for which a fifteen (15)-day suspension would have sufficed.^[38]

Anent respondent's claim for moral damages, exemplary damages, and attorney's fees, the CA pointed out that she never appealed the LA ruling which did not grant her such monetary awards, rendering the same final as to her.^[39] Moreover, she failed to present competent evidence to support her claims.^[40]

Finally, the CA absolved Lim from any personal liability as it was not shown that he acted with malice and bad faith in dismissing respondent from service.^[41]

Undaunted, petitioner moved for reconsideration,^[42] but the same was denied in a Resolution^[43] dated May 2, 2016; hence, this petition.^[44]

The Issue Before the Court

The issue for the Court's Resolution is whether or not the CA correctly ruled that respondent was illegally dismissed.

The Court's Ruling

The petition is without merit.

Article 297 (formerly Article 282)^[45] of the Labor Code,^[46] as amended, lists

serious misconduct as one of the just causes for an employee's dismissal from work, pertinent portions of which read:

Article 297 [282]. *Termination by Employer.* — 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;

x x x x

Misconduct is defined as an improper or wrong conduct. It is 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 constitute a valid cause for the dismissal within the text and meaning of the foregoing provision, the following elements must concur: (a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties, showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.^[47]

In this case, the tribunals *a quo* aptly observed that while respondent indeed committed some sort of misconduct when she engaged in a verbal tussle with Banayad during work hours and in front of their superior, Abaya, the same was not serious enough to warrant respondent's dismissal. Neither was it shown that respondent performed such act of misconduct with wrongful intent nor did the same render her unfit to continue working for petitioner. As such, the tribunals *a quo* correctly concluded that petitioner illegally dismissed respondent. It is settled that "where the factual findings of the labor tribunals or agencies conform to, and are affirmed by the CA, the same are accorded respect and finality and are binding upon this Court,"^[48] as in this case.

Moreover, it is well to stress that on July 13, 2011, petitioner already issued an order suspending respondent for a period of three (3) days on account of her misconduct.^[49] Thus, petitioner could no longer subject respondent to another disciplinary proceeding based on the same act of misconduct. Clearly, respondent could not have been validly terminated from work.

As the fact of illegal dismissal has already been established, respondent is entitled to two (2) separate and distinct reliefs, namely: (a) backwages; and (b) reinstatement or the payment of separation pay if the reinstatement is no longer viable.^[50]

As to backwages, the Court upholds the CA's award of the same in respondent's favor, as "the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal."^[51] However, the CA erred in imposing on respondent a fifteen (15)-day suspension for the latter's acts, with the equivalent monetary value corresponding to such suspension to be deducted from respondent's award of backwages. To reiterate, respondent was already meted a three (3)-day suspension for her act of misconduct and hence could no longer be further penalized for the same,^[52] which thus renders such further penalty from the CA without any