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SECOND DIVISION

[G.R. No. 208908, March 11, 2015]

THE COFFEE BEAN AND TEA LEAF PHILIPPINES, INC. AND WALDEN CHU, PETITIONERS, VS. ROLLY P. ARENAS, RESPONDENT.

D E C I S I O N

BRION, J.:

We resolve in this petition for review on *certiorari*[1] the challenge to the Court of Appeals' (CA) decision[2] dated March 26, 2013 and resolution[3] dated August 30, 2013 in CA-G.R. SP No. 117822. These assailed CA rulings affirmed the National Labor Relations Commission's (*NLRC*) decision[4] dated August 13, 2010, which also affirmed the Labor Arbiter's (*LA*) February 28, 2010 decision.

The Antecedent Facts

On April 1, 2008, the Coffee Bean and Tea Leaf Philippines, Inc. (*CBTL*) hired Rolly P. Arenas (*Arenas*) to work as a "barista" at its Paseo Center Branch. His principal functions included taking orders from customers and preparing their ordered food and beverages.[5] Upon signing the employment contract,[6] Arenas was informed of CBTL's existing employment policies.

To ensure the quality of its crew's services, CBTL regularly employs a "mystery guest shopper" who poses as a customer, for the purpose of covertly inspecting the baristas' job performance.[7]

In April 2009, a mystery guest shopper at the Paseo Center Branch submitted a report stating that on March 30, 2009, Arenas was seen eating non-CBTL products at CBTL's *al fresco* dining area while on duty. As a result, the counter was left empty without anyone to take and prepare the customers' orders.[8]

On another occasion, or on April 28, 2009, Katrina Basallo (Basallo), the duty manager of CBTL, conducted a routine inspection of the Paseo Center Branch. While inspecting the store's products, she noticed an iced tea bottle being chilled inside the bin where the ice for the customers' drinks is stored; thus, she called the attention of the staff on duty. When asked, Arenas muttered, "*kaninong iced tea*?" and immediately picked the bottle and disposed it outside the store.[9]

After inspection, Basallo prepared a store manager's report which listed Arenas' recent infractions, as follows:

1. Leaving the counter unattended and eating chips in an unauthorized area while on duty (March 30, 2009);

2. Reporting late for work on several occasions (April 1, 3 and 22); and
3. Placing an iced tea bottle in the ice bin despite having knowledge of company policy prohibiting the same (April 28, 2009).[10]

Based on the mystery guest shopper and duty manager's reports, Arenas was required to explain his alleged violations. However, CBTL found Arenas' written explanation unsatisfactory, hence CBTL terminated his employment.[11]

Arenas filed a complaint for illegal dismissal. After due proceedings, the LA ruled in his favor, declaring that he had been illegally dismissed. On appeal, the NLRC affirmed the LA's decision.

CBTL filed a petition for *certiorari* under Rule 65 before the CA. CBTL insisted that Arenas' infractions amounted to serious misconduct or willful disobedience, gross and habitual neglect of duties, and breach of trust and confidence. To support these allegations, CBTL presented Arenas' letter[12] where he admitted his commission of the imputed violations.

On March 26, 2013, the CA issued its decision dismissing the petition. The CA ruled that Arenas' offenses fell short of the required legal standards to justify his dismissal; and that these do not constitute serious misconduct or willful disobedience, and gross negligence, to merit his termination from service. The CA denied CBTL's motion for reconsideration opening the way for this present appeal *via* a petition for review on *certiorari.*

The main issue before us is whether CBTL illegally dismissed Arenas from employment.

The Petition

CBTL argues that under the terms and conditions of the employment contract, Arenas agreed to abide and comply with CBTL's policies, procedures, rules and regulations, as provided for under CBTL's table of offenses and penalties and/or employee handbook.[13] CBTL cites *serious misconduct* as the primary reason for terminating Arenas' employment. CBTL also imputes dishonesty on the part of Arenas for not immediately admitting that he indeed left his bottled iced tea inside the ice bin.

Our Ruling

We DENY the petition.

As a rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the CA does not assess and weigh each piece of evidence introduced in the case. The CA only examines the factual findings of the NLRC to determine whether its conclusions are supported by substantial evidence, whose absence points to grave abuse of discretion amounting to lack or excess of jurisdiction.[14] In the case of *Mercado v. AMA Computer College*,[15] we emphasized that:

> As a general rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. x x x[16] [Italics supplied]

Our review of the records shows that the CA did not err in affirming the LA and the NLRC's rulings. No grave abuse of discretion tainted these rulings, thus, the CA's decision also warrants this Court's affirmation. The infractions which Arenas committed do not justify the application of the severe penalty of termination from service.

First, Arenas was found eating non-CBTL products inside the store's premises while on duty. Allegedly, he left the counter unattended without anyone to entertain the incoming customers. Second, he chilled his bottled iced tea inside the ice bin, in violation of CBTL's sanitation and hygiene policy. CBTL argues that these violations constitute willful disobedience, thus meriting dismissal from employment.

We disagree with CBTL.

For willful disobedience to be a valid cause for dismissal, these two elements must concur: (1) the employee's assailed conduct must have been willful, that is, characterized by a **wrongful and perverse attitude**; and (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.[17]

Tested against these standards, it is clear that Arenas' alleged infractions do not amount to such a wrongful and perverse attitude. Though Arenas may have admitted these wrongdoings, these do not amount to a wanton disregard of CBTL's company policies. As Arenas mentioned in his written explanation, he was on a scheduled break when he was caught eating at CBTL's *al fresco* dining area. During that time, the other service crews were the one in charge of manning the counter. Notably, CBTL's employee handbook imposes only the penalty of **written warning** for the offense of eating non-CBTL products inside the store's premises.

CBTL also imputes gross and habitual neglect of duty to Arenas for coming in late in three separate instances.

Gross negligence implies a want or absence of, or failure to exercise even a slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[18] There is habitual neglect if based on the circumstances, there is a repeated failure to perform one's duties for a period of time.[19]

In light of the foregoing criteria, we rule that Arenas' three counts of tardiness cannot be considered as gross and habitual neglect of duty. The infrequency of his tardiness already removes the character of habitualness. These late attendances were also broadly spaced out, negating the complete absence of care on Arenas'