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THIRD DIVISION

[G.R. No. 194686, September 23, 2015]

TRI-C GENERAL SERVICES, PETITIONER, VS. NOLASCO B. MATUTO, ROMEO E. MAGNO AND ELVIRA B. LAVIÑA, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

Fair evidentiary rule dictates that before employers are burdened to prove that they did not commit illegal dismissal, it is incumbent upon the employee to first establish by substantial evidence the fact of his or her dismissal.[1]

For resolution of this Court is a petition for review on *certiorari,* dated December 23, 2010 of petitioner Tri-C General Services, seeking the reversal of the Decision[2] dated June 17, 2010 and Resolution[3] dated December 9, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 111644 reversing the Decision[4] and Resolution[5] dated June 30, 2009 and September 22, 2009, respectively, of the National Labor Relations Commission (*NLRC*) Second Division, Quezon City in LAC No. 12-003297-07 which affirmed the Decision[6] dated July 26, 2007 of the Labor Arbiter (*LA*) in NLRC Case No. RAB-IV-12-20177-04-C. The assailed Decision and Resolution of the CA declared that respondents Nolasco B. Matuto, Romeo E. Magno and Elvira B. Laviña were illegally dismissed, and ordered their reinstatement and payment of full backwages.

The facts are as follows:

Petitioner Tri-C General Services, Inc. is a manpower agency engaged in the business of supplying services to all PLDT Business Offices in Laguna.[7]

Respondents Nolasco Matuto (Matuto), Romeo Magno (Magno) and Elvira Laviña (Laviña) were hired by petitioner as janitors/janitress assigned at the PLDT Business Office in Calamba City. Magno was hired on August 1, 1993 while Matuto was hired on June 5, 1995 and Laviña on February 4, 1996.[8]

On November 3, 2004, Matuto and Laviña were barred from their work place in PLDT-Calamba, while Magno was denied entry on November 26, 2004.[9]

Thus, respondents filed an illegal dismissal case against petitioner on December 15, 2004.[10] Carmela Quiogue, the owner of Tri-C General Services, Inc., was impleaded in the complaint.[11]

For their part, respondents averred that sometime in January 1997, they

spearheaded the first complaint of several janitors against petitioner for underpayment of wages and violation of labor standards before the Department of Labor and Employment. The LA decided on September 1, 2003 in their favor and ordered the petitioner to pay their underpaid salaries. However, petitioner did not pay the respondents with the mandated minimum wage but merely increased their salaries by P5.00 every year. They alleged that since then, they earned the ire of petitioner and experienced harassment and intimidation.[12]

Respondents further alleged that assuming that petitioner had valid ground to terminate them, their termination was still deemed illegal since petitioner failed to furnish them with the two notices required by law. They only received a notice informing them that their services had already been terminated effective on the same date of the notice.[13]

In its defense, petitioner denied dismissing respondents. Sometime in October 2004, PLDT-Laguna informed petitioner that it would implement cost-cutting measures and that it would discontinue, after careful assessment, the services of respondents.[14] Petitioner further claimed that it had no other recourse but to temporarily put the respondents on "floating status" upon termination of client's contract since their work was entirely dependent on the need for janitorial services of its clients. It alleged that the complaint for illegal dismissal was premature since the six months legal period for placing an employee on a "floating status" has not yet lapsed.[15] It insisted that it was a legitimate exercise of its management prerogative.

In its reply to respondents' position paper, petitioner insisted that respondents abandoned their posts. It averred that its Personnel Department sent a series of letters to the respondents• from October 2004 to November 2004.[16] On October 14, 2004, Matuto and Laviha received similar letters, reading as follows:

> From: PMI Personnel Department
> Subject: **Requested to Report at the Office**
>
> You are hereby requested to report on Saturday, October 16, 2004, 8:00 AM at our office #45 Zorra St., San Francisco Del Monte, Quezon City.
>
> In regards to the on going re-shuffling or Notice of transfer.
>
> Thank you.[17]

Subsequent letters dated October 19, 25 and November 11, 2004 pertain to the same request for the respondents to report at petitioner's main office. Petitioner warned respondents Matuto and Laviña in a letter[18] dated November 11, 2004 that failure to report at their office will mean that they were no longer interested in their work. When such request went unheeded, petitioner sent the final letter, dated November 16, 2004, reading as follows:

> From: Personnel Department
> Subject: **Failure to Report at the Office**

> You were given ample time to report at the office since October 16, 2004 at our office at #45 Zorra St., San Francisco Del Monte, Quezon City, but you did not appear at all. Therefore, we took action that you are hereby terminating your services with this company voluntarily.
>
> Due to this, we were left with no recourse but to delete you from our active roster of employees effective today November 16, 2004.
>
> We wish you the best of luck.
>
> Thank you.[19]

Respondent Magno received similar letters on November 11 and 16, 2004 directing him to report to petitioner's main office. On November 22, 2004, he received a letter[20] informing him that his failure to appear at the office left petitioner with no recourse but to delete him from its active roster of employees.

The LA ruled in favor of the petitioner, the dispositive portion of the decision reads:

> WHEREFORE, premises considered, the complaint for illegal dismissal is DISMISSED for lack of merit except that TRI-C GENERAL SERVICES, INC. is ordered to pay complainants their separation pay as follows:
>
> Nolasco Matuto - P 42,432.00
> Romeo Magno - 45,968.00
> Elvira Laviña - 38,896.00
> GRAND TOTAL - P127,296.00
>
> SO ORDERED.[21]

The LA considered the respondents on floating status and the legal period during which they could be placed under floating status has not yet lapsed at the time of the filing of the complaint on December 15, 2004. Hence, they could not be considered constructively dismissed.[22]

Respondents elevated the matters to the NLRC, wliich sustained the decision of the LA that they were not illegally dismissed. The separation pay, however, was deleted. The dispositive portion of the decision states:

> WHEREFORE, premises considered, the appealed Decision is hereby AFFIRMED with MODIFICATION only insofar as Our order for the monetary award of separation pay to be DELETED from the subject Decision, for lack of basis.
>
> SO ORDERED.[23]

The NLRC ruled that the filing of the complaint was premature since petitioner had proof that it could only be sued if no new post or assignment was given to respondents after the lapse of a period of six months. The awards of separation pay to respondents were deleted for being misplaced absent any showing that respondents were illegally dismissed.[24]

After their Motion for Reconsideration was denied,'respondents filed before the CA a petition for *certiorari* under Rule 65. The CA reversed the findings of the LA and the NLRC and ruled for the respondents, the fallo of the decision reads:

> **WHEREFORE**, the instant petition for *certiorari* is **GRANTED**. The assailed Decision and Resolution of the public respondent National Labor Relations Commission are **ANNULLED** and **SET ASIDE**. Judgment is hereby rendered declaring the petitioners Nolasco B. Matuto, Romeo E. Magno and Elvira B. Lavifia were illegally dismissed from their employment by private respondent Tri-C General Services and, accordingly, ordering said private respondent to reinstate the petitioners to their former positions without loss of seniority rights and with payment of full backwages from the time of their illegal dismissal on 03 November 2004 (for petitioners Matuto and Lavifia) and on 26 November 2004 (for petitioner Magno).
>
> Private respondent is further ordered to pay petitioners the amounts equivalent to ten percent (10%) of the monetary awards as and for attorney's fees.
>
> This case is thus **REMANDED** to the Labor Arbiter for the computation, within 30 days from receipt hereof, of the backwages, inclusive of allowances and other benefits due to petitioners, computed from the time their compensation was withheld up to the time of their actual reinstatement, as well as the award of attorney's fees in their favor.
>
> **SO ORDERED.**[25]

The CA held that the paramount consideration is the dire exigency of the business of the employer which compelled it to put some of its employees temporarily out of work. It found that there was nothing to support petitioner's allegation aside from its bare assertion that its client PLDT-Laguna requested for discontinuance of its services. There was also no showing that there was lack of available posts to which the respondents might be assigned after they were relieved from their last assignment.[26]

The CA denied petitioner's Motion for Reconsideration. Hence, the petitioner raised before this Court the following issues:

1. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ANNULLING AND SETTING ASIDE THE DECISION ISSUED BY THE NATIONAL LABOR RELATIONS COMMISSION-SECOND

DIVISION.

2. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DENYING THE MOTION FOR RECONSIDERATION FILED BY TRI-C EVERLASTING FOR THE REVIEW OF ITS DECISION ISSUED ON JUNE 17, 2010.

3. WHETHER THE HONORABLE COURT OF APPEALS ERRED IN DECLARING MATUTO, MAGNO AND LAVIÑA AS ILLEGALLY DISMISSED BY TRI-C.

4. WHETHER THE HONORABLE,COURT OF APPEALS ERRED IN ORDERING THE: REINSTATEMENT OF MATUTO, MAGNO AND LAVIÑA AND TO PAY THE LATTER'S BACKWAGES INCLUSIVE OF ALLOWANCES AND OTHER BENEFITS DUE THEM AS WELL AS ATTORNEY'S FEES.[27]

We find the instant petition meritorious.

In a petition for review on *certiorari* under Rule 45, we review the legal errors that the CA may have committed in the assailed decision, in contrast with the review for jurisdictional error undertaken in an original *certiorari* action. In reviewing the legal correctness of the CA decision in a labor case made under Rule 65 of the Rules of Court, this Court examines the decision in the context that the CA determined the presence or the absence of grave abuse of discretion in the NLRC decision before it and not on the basis of whether the NLRC decision, on the merits of the case, was correct.[28]

The conflicting factual findings of the LA, the NLRC and the CA are not binding on us, and we retain the authority to pass on the evidence presented and draw conclusions therefrom. In the exercise of its equity jurisdiction, this Court would re-evaluate and re-examine the relevant findings.[29]

For the first two issues, petitioner alleged that the CA erred when it annulled and set aside the decision of the NLRC and denied its motion for reconsideration. It posited that when the findings of fact of the LA is affirmed by the NLRC, said finding is considered as final and is viewed with respect by the higher tribunals.

It has been settled that judicial review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which its labor officials' findings rest. Hence, the findings of facts and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence.[30]

It was held that in labor cases elevated to it via petition for *certiorari,* the CA is empowered to evaluate the materiality and significance of the evidence alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC in relation to all other evidence on record.[31] To make this finding, the CA necessarily has to view the evidence if only to determine if the NLRC ruling had basis in evidence.[32]