

THIRD DIVISION

[G.R. No. 164939, June 06, 2011]

SAMAHAN NG MGA MANGGAGAWA SA HYATT (SAMASAH-NUWHRAIN), PETITIONER, VS. HON. VOLUNTARY ARBITRATOR BUENAVENTURA C. MAGSALIN AND HOTEL ENTERPRISES OF THE PHILIPPINES, INC., RESPONDENTS.

[G.R. NO. 172303]

SAMAHAN NG MGA MANGGAGAWA SA HYATT (SAMASAH-NUWHRAIN), PETITIONER, VS. HOTEL ENTERPRISES OF THE PHILIPPINES, INC., RESPONDENT.

DECISION

VILLARAMA, JR., J.:

Before this Court are two consolidated petitions filed by petitioner *Samahan ng mga Manggagawa sa Hyatt-NUWHRAIN-APL* under Rule 45 of the 1997 Rules of Civil Procedure, as amended. The first petition, docketed as G.R. No. 164939, assails the Resolutions dated October 3, 2003^[1] and August 13, 2004^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 78364, which dismissed petitioner's petition for review at the CA for being the wrong remedy. The second petition, docketed as G.R. No. 172303, assails the Decision^[3] dated December 16, 2005 and Resolution^[4] dated April 12, 2006 of the CA in CA-G.R. SP No. 77478, modifying the judgment of the Voluntary Arbitrator in NCMB-NCR-CRN-07-008-01.

The antecedent facts are as follows:

Petitioner *Samahan ng mga Manggagawa sa Hyatt-NUWHRAIN-APL* is a duly registered union and the certified bargaining representative of the rank-and-file employees of Hyatt Regency Manila, a five-star hotel owned and operated by respondent Hotel Enterprises of the Philippines, Inc. On January 31, 2001, Hyatt's General Manager, David C. Pacey, issued a Memorandum^[5] informing all hotel employees that hotel security have been instructed to conduct a thorough bag inspection and body frisking in every entrance and exit of the hotel. He enjoined employees to comply therewith. Copies of the Memorandum were furnished petitioner.

On February 3, 2001, Angelito Caragdag, a waiter at the hotel's Cafe Al Fresco restaurant and a director of the union, refused to be frisked by the security personnel. The incident was reported to the hotel's Human Resources Department (HRD), which issued a Memorandum^[6] to Caragdag on February 5, 2001, requiring him to explain in writing within forty-eight (48) hours from notice why no disciplinary action should be taken against him. The following day, on February 6, 2001, Caragdag again refused to be frisked by the security personnel. Thus, on

February 8, 2001, the HRD issued another Memorandum^[7] requiring him to explain.

On February 14, 2001, the HRD imposed on Caragdag the penalty of reprimand for the February 3, 2001 incident, which was considered a first offense, and suspended him for three days for the February 6, 2001 incident, which was considered as a second offense.^[8] Both penalties were in accordance with the hotel's Code of Discipline.

Subsequently, on February 22, 2001, when Mike Moral, the manager of Hyatt's Cafe Al Fresco and Caragdag's immediate superior, was about to counsel two staff members, Larry Lacambacal and Allan Alvaro, at the training room, Caragdag suddenly opened the door and yelled at the two with an enraged look. In a disturbing voice he said, "*Ang titigas talaga ng ulo n'yo. Sinabi ko na sa inyo na huwag kayong makikipagusap sa management habang ongoing pa ang kaso!*" (You are very stubborn. I told you not to speak to management while the case is ongoing!) Moral asked Caragdag what the problem was and informed him that he was simply talking to his staff. Moral also told Caragdag that he did not have the right to interrupt and intimidate him during his counseling session with his staff.

On February 23, 2001, Moral issued a Memorandum^[9] requiring Caragdag to explain his actions in the training room. Caragdag submitted his written explanation on February 25, 2001^[10] narrating that he was informed by someone that Lacambacal and Alvaro were requesting for his assistance because Moral had invited them to the training room. Believing that he should advise the two that they should be accompanied by a union officer to any inquisition, he went to the training room. However, before he could enter the door, Moral blocked him. Thus, he told Lacambacal and Alvaro that they should be assisted by a union representative before giving any statement to management. Caragdag also prayed that Moral be investigated for harassing union officers and union members.

On February 28, 2001, Moral found the explanations unsatisfactory. In a Memorandum^[11] issued on the same date, Moral held Caragdag liable for Offenses Subject to Disciplinary Action (OSDA) 3.01 of the hotel's Code of Discipline, *i.e.*, "threatening, intimidating, coercing, and provoking to a fight your superior for reasons directly connected with his discharge of official duty." Thus, Caragdag was imposed the penalty of seven days suspension in accordance with the hotel's Code of Discipline.

Still later, on March 2, 2001, Caragdag committed another infraction. At 9:35 a.m. on the said date, Caragdag left his work assignment during official hours without prior permission from his Department Head. He was required to submit an explanation, but the explanation^[12] he submitted was found unsatisfactory. On March 17, 2001, Moral found Caragdag liable for violating OSDA 3.07, *i.e.*, "leaving work assignment during official working hours without prior permission from the department head or immediate superior," and suspended him for three days.^[13]

Because of the succession of infractions he committed, the HRD also required Caragdag to explain on May 11, 2001 why the hotel's OSDA 4.32 (Committing offenses which are penalized with three ^[3] suspensions during a 12-month period) should not be enforced against him.^[14] An investigation board was formed after

receipt of Caragdag's written explanation, and the matter was set for hearing on May 19, 2001. However, despite notice of the scheduled hearing, both Caragdag and the Union President failed to attend. Thereafter, the investigating board resolved on the said date to dismiss Caragdag for violation of OSDA 4.32.^[15] Caragdag appealed but the investigating board affirmed its resolution after hearing on May 24, 2001.

On June 1, 2001, the hotel, through Atty. Juancho A. Baltazar, sent Caragdag a Notice of Dismissal,^[16] the pertinent portion of which reads:

Based on the findings of the Investigation Board dated May 19, 2001 which was approved by the General Manager Mr. David Pacey on the same day and which did not merit any reversal or modification after the hearing on your appeal on May 24, 2001, the penalty of DISMISSAL is therefore affirmed to take effect on June 1, 2001.

Caragdag's dismissal was questioned by petitioner, and the dispute was referred to voluntary arbitration upon agreement of the parties. On May 6, 2002, the Voluntary Arbitrator rendered a decision,^[17] the dispositive portion of which reads:

WHEREFORE, premises considered, this Arbiter rules that the three separate suspensions of Mr. Caragdag are valid, his dismissal is legal and OSDA 4.32 of Hyatt's Code of Discipline is reasonable.

However, for humanitarian considerations, Hyatt is hereby ordered to grant financial assistance to Mr. Caragdag in the amount of One Hundred Thousand Pesos (PhP100,000.00).

In finding the three separate suspensions of Caragdag valid, the Voluntary Arbitrator reasoned that the union officers and members had no right to breach company rules and regulations on security and employee discipline on the basis of certain suspicions against management and an ongoing CBA negotiation standoff. The Voluntary Arbitrator also found that when Caragdag advised Lacambacal and Alvaro not to give any statement, he threatened and intimidated his superior while the latter was performing his duties. Moreover, there is no reason why he did not arrange his time-off with the Department Head concerned. Thus, Caragdag was validly dismissed pursuant to OSDA 4.32 of Hyatt's Code of Discipline, which states that an employee who commits three different acts of misconduct within a twelve (12)-month period commits serious misconduct.

Petitioner sought reconsideration of the decision while respondent filed a motion for partial reconsideration. However, the Voluntary Arbitrator denied both motions on May 26, 2003.^[18]

On August 1, 2003, petitioner assailed the decision of the Voluntary Arbitrator before the CA in a petition for *certiorari* which was docketed as CA-G.R. SP No. 78364.^[19] As mentioned at the outset, the CA dismissed the petition outright for

being the wrong remedy. The CA explained:

Rule 43, Section 5 of the 1997 Rules of Civil Procedure explicitly provides that the proper mode of appeal from judgments, final orders or resolution of voluntary arbitrators is through a Petition for Review which should be filed within fifteen (15) days from the receipt of notice of judgment, order or resolution of the voluntary arbitrator.

Considering that petitioner intends this petition to be a Petition for Certiorari, the Court hereby resolves to dismiss the petition outright for being an improper mode of appeal.

Even if this Court treats the instant petition as a Petition for Review, still the Court has no alternative but to dismiss the same for having been filed out of time. As admitted by the petitioner it received the Order dated 26 May 2003 denying their motion for reconsideration on 02 June 2003. The fifteen (15) day period within which to appeal through a Petition for Review is until June 17, 2003. The petitioner filed the present petition on August 1, 2003, way beyond the reglementary period provided for by the Rules.^[20]

Petitioner duly filed a motion for reconsideration of the dismissal, but the motion was denied by the CA. Thus, petitioner filed before this Court a petition for review on *certiorari* which was docketed as G.R. No. 164939.

In the meantime, on June 30, 2003, respondent also filed a petition for review^[21] with the CA on the ground that the Voluntary Arbitrator committed a grievous error in awarding financial assistance to Caragdag despite his finding that the dismissal due to serious misconduct was valid. On December 16, 2005, the CA promulgated a decision in CA-G.R. SP. No. 77478 as follows:

WHEREFORE, the Decision dated May 6, 2002 of Voluntary Arbitrator Buenaventura C. Magsalin is AFFIRMED with MODIFICATION by DELETING the award of financial assistance in the amount of P100,000.00 to Angelito Caragdag.

SO ORDERED.^[22]

In deleting the award of financial assistance to Caragdag, the CA cited the case of *Philippine Commercial International Bank v. Abad*,^[23] which held that the grant of separation pay or other financial assistance to an employee dismissed for just cause is based on equity and is a measure of social justice, awarded to an employee who has been validly dismissed if the dismissal was not due to serious misconduct or causes that reflected adversely on the moral character of the employee. In this case, the CA agreed with the findings of the Voluntary Arbitrator that Caragdag was validly dismissed due to serious misconduct. Accordingly, financial assistance should not have been awarded to Caragdag. The CA also noted that it is the employer's prerogative to prescribe reasonable rules and regulations necessary or proper for

the conduct of its business or concern, to provide certain disciplinary measures to implement said rules and to ensure compliance therewith.

Petitioner sought reconsideration of the decision, but the CA denied the motion for lack of merit. Hence, petitioner filed before us a petition for review on certiorari docketed as G.R. No. 172303.

Considering that G.R. Nos. 164939 and 172303 have the same origin, involve the same parties, and raise interrelated issues, the petitions were consolidated.

Petitioner raises the following issues:

In G.R. No. 164939

THE COURT OF APPEALS ERRED IN DISMISSING OUTRIGHT THE PETITION FOR CERTIORARI ON THE GROUND THAT THE SAME IS AN IMPROPER MODE OF APPEAL.^[24]

In G.R. No. 172303

THE COURT OF APPEALS ERRED IN DELETING THE AWARD OF FINANCIAL ASSISTANCE IN THE AMOUNT OF P100,000.00 TO ANGELITO CARAGDAG.^[25]

The issues for our resolution are thus two-fold: first, whether the CA erred in dismissing outright the petition for *certiorari* filed before it on the ground that the same is an improper mode of appeal; and second, whether the CA erred in deleting the award of financial assistance in the amount of P100,000.00 to Caragdag.

On the first issue, petitioner argues that because decisions rendered by voluntary arbitrators are issued under Title VII-A of the Labor Code, they are not covered by Rule 43 of the 1997 Rules of Civil Procedure, as amended, by express provision of Section 2 thereof. Section 2, petitioner points out, expressly provides that Rule 43 "shall not apply to judgments or final orders issued under the Labor Code of the Philippines." Hence, a petition for *certiorari* under Rule 65 is the proper remedy for questioning the decision of the Voluntary Arbitrator, and petitioner having availed of such remedy, the CA erred in declaring that the petition was filed out of time since the petition was filed within the sixty (60)-day reglementary period.

On the other hand, respondent maintains that the CA acted correctly in dismissing the petition for *certiorari* for being the wrong mode of appeal. It stresses that Section 1 of Rule 43 clearly states that it is the governing rule with regard to appeals from awards, judgments, final orders or resolutions of voluntary arbitrators. Respondent contends that the voluntary arbitrators authorized by law include the voluntary arbitrators appointed and accredited under the Labor Code, as they are considered as included in the term "quasi-judicial instrumentalities."

Petitioner's arguments fail to persuade.

In the case of *Samahan ng mga Manggagawa sa Hyatt-NUWHRAIN-APL v. Bacungan*,^[26] we repeated the well-settled rule that a decision or award of a