625 Phil. 232

SECOND DIVISION

[G.R. No. 181357, February 02, 2010]

MALAYAN EMPLOYEES ASSOCIATION-FFW AND RODOLFO MANGALINO, PETITIONERS, VS. MALAYAN INSURANCE COMPANY, INC., RESPONDENT.

D E C I S I O N

BRION, J.:

The petitioner Malayan Employees Association-FFW (*union*) asks us in this petition for *certiorari*,[1] to set aside the June 26, 2007 decision[2] and the November 29, 2007 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 80691, ruling that the suspension imposed by the respondent Malayan Insurance Company, Inc. (*company*) on union member Rodolfo Mangalino (*Mangalino*) is valid. Mangalino was suspended for taking a union leave without the prior authority of his department head and despite a previous disapproval of the requested leave.

BACKGROUND FACTS

The union is the exclusive bargaining agent of the rank-and-file employees of the company. A provision in the union's collective bargaining agreement (*CBA*) with the company allows union officials to avail of union leaves with pay for a total of "ninety-man" days per year for the purpose of attending grievance meetings, Labor-Management Committee meetings, annual National Labor Management Conferences, labor education programs and seminars, and other union activities.

The company issued a rule in November 2002 requiring not only the prior notice that the CBA expressly requires, but prior approval by the department head before the union and its members can avail of union leaves. The rule was placed into effect in November 2002 without any objection from the union until a union officer, Mangalino, filed union leave applications in January and February, 2004. His department head disapproved the applications because the department was undermanned at that time.

Despite the disapproval, Mangalino proceeded to take the union leave. He said he believed in good faith that he had complied with the existing company practice and with the procedure set forth in the CBA. The company responded by suspending him for one week and, thereafter, for a month, for his second offense in February 2004.

The union raised the suspensions as a grievance issue and went through all the grievance processes, including the referral of the matter to the company's president, Yvonne Yuchengco. After all internal remedies failed, the union went to the National Conciliation and Mediation Board for preventive mediation. When this recourse also failed, the parties submitted the dispute to voluntary arbitration[4] on the following

issues:

1. whether or not Mangalino's suspensions were valid; and
2. whether or not Mangalino should be paid backwages for the duration of the suspensions.

The Voluntary Arbitrators decided the submitted dispute on November 26, 2004,[5] ruling as follows:

> WHEREFORE, in view of the foregoing, this Honorable Office adjudged the suspension of Mr. Rodolfo Mangalino's on first availment of union leave invalid while the second suspension valid but illicit in terms of penalty of thirty (30) days suspension. We consider the honesty of the same as mitigating circumstances, for the Chairman of this panel of Arbitrators attested that complainant attended labor matter in the Office of Voluntary Arbitrator last January 19, 2004 and February 5, 2004. However, it is good to note the wisdom of Justice Narvasa in the aforecited Supreme Court Ruling of obey first before you complain.
>
> In view thereof, this Honorable Office reduced the suspension from thirty seven (37) days to ten (10) days only. Henceforth, the Complainant is entitled to twenty seven (27) days backwages.
>
> Proof of payment of backwages should be submitted to the chairman of this Panel of Arbitrators within ten (10) days from receipt hereof.
>
> Parties are hereby enjoined to comply in this Award as provided in the submission Agreement.
>
> SO ORDERED.

Notably, the decision was not unanimous. Voluntary Arbitrator dela Fuente submitted the following dissent:[6]

> The act of any employee that can only be interpreted to be an open and utter display of arrogance and unconcern for the welfare of his Company thru the use of what he pretends to believe to be an unbridled political right cannot be allowed to pass without sanction lest the employer desires anarchy and chaos to reign in its midst.
>
> Hence, having failed to comply with the requirements for availment of union leaves and for going on such leave despite the express disapproval of his superior, Mr. Mangalino's two suspensions are valid and he is not entitled to any backwages for the duration of his suspensions.

The company appealed the decision to the CA on May 12, 2005 through a petition for review under Rule 43 of the Rules of Court (*Rules*). In a decision promulgated on

June 26, 2007, the CA granted the company's petition and upheld the validity of Mangalino's suspension on the basis of the company's prerogative to prescribe reasonable rules to regulate the use of union leaves.[7]

The union moved for the reconsideration of the CA decision and received the CA's denial (through its resolution of November 29, 2007) on December 8, 2007.[8]

THE PETITION

The union seeks relief from this Court against the CA decision through its Rule 65 petition for *certiorari* filed on February 6, 2008.[9] It alleged that the CA committed grave abuse of discretion when, despite the clear terms of the CBA grant of union leaves, it disregarded the evidence on record and recognized that the company's use of its management prerogative as justification was proper.

In our Resolution of March 5, 2008, we resolved to treat the Rule 65 petition as a petition for review on *certiorari* under Rule 45 of the Rules, and required the respondent company to comment.[10] After comment, we required the union to file its reply.[11] Thereafter, the parties submitted their respective memoranda.[12]

In its comment, the company raised both procedural and substantive objections.

It questioned the petition's compliance with the Rules, particularly the use of a petition for *certiorari* under Rule 65 to question the CA decision, when the appropriate remedy is a petition for review on *certiorari* under Rule 45. The company also asserted that the union violated Section 2, Rule 45 when it failed to attach the material portions of the record as would support its petition, such as the company's pleadings and the entirety of the company's evidence. More importantly, it posited that the petition is *barred by time limitation and has lapsed to finality* as it was filed sixty-two (62) days after the union's receipt of the CA decision.

On the substantive aspect, the company mainly contended that the regulation of the use of union leaves is within the company's management prerogative, and the company was simply exercising its management prerogative when it required its employees to first obtain the approval of either the department head or the human resource manager before making use of any union leave. Thus, Mangalino committed acts of insubordination when he insisted on going on leave despite the disapproval of his leave applications.

In its reply and subsequent memorandum, the union presented its justification for the technical deficiencies the company cited (quoted below), and maintained as well that the use of management prerogative was improper because the CBA grant of the union leave benefit did not require prior company approval as a condition; any change in the CBA grant requires union conformity. The union posited as well that any unilateral change in the CBA terms violates Article 255 of the Labor Code, which guarantees the right of employees to participate in the company's policy and decision-making processes on matters directly affecting their interests. It argued against the company position that it had not objected to the company rule and is now in estoppel.

THE COURT'S RULING

We deny the petition for lack of merit.

The company position that the union should have filed an appeal under Rule 45 of the Rules and not a petition for *certiorari* is correct. Section 1, Rule 45 of the Rules states that:

> SECTION 1. *Filing of petition with Supreme Court.* - **A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals,** the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, **may file with the Supreme Court a verified petition for review on *certiorari.*** The petition shall raise only questions of law which must be distinctly set forth. [Emphasis supplied.]

Complementing this Rule is Section 1, Rule 65 which provides that a special civil action for *certiorari* under Rule 65 lies only when "there is no appeal, nor plain, speedy and adequate remedy in the ordinary course of law." From this Rule proceeds the established jurisprudential ruling that a petition for *certiorari* cannot be allowed when a party fails to appeal a judgment despite the availability of that remedy, as *certiorari* is not a substitute for a lost appeal.[13]

In our Resolution of March 5, 2008, we opted to liberally apply the rules and to treat the petition as a petition for review on *certiorari* under Rule 45 in order to have a total view of the merits of the petition in light of the importance of a ruling on the presented issues. The union - which did not present any justification at the outset for the petition's deficiencies, particularly for the late filing - had this to say:

> 9) In a resolution dated 05 March 2008, this Honorable Court resolved to treat the petition in the above-captioned case as a petition for review on certiorari under Rule 45 of the Rules of Civil Procedure. All along the petitioner thought that the filing of the petition for certiorari under Rule 65 is appropriate considering that the ground raised is grave abuse of discretion by the Honorable Court of Appeals for reversing the decision of the majority decision of the Panel of Voluntary Arbitration in arbitrary and whimsical manner.
>
> 10) For having treated this petition under Rule 45 of the Rules of Civil Procedure, petitioner humbly admits that delay was incurred in the filing thereof, such delay was caused by several factors beyond control such as the transfer of handling legal assistant to another office and the undersigned had to reassign the case for the preparation of the petition. Furthermore, the undersigned counsel, other than being the Chief of FFW LEGAL CENTER is also the Vice President of the Federation of Free Workers (FFW), who has to attend similar and urgent pressing problems of local affiliates arising from the effects of contracting out and closure of companies.