

SECOND DIVISION

[G.R. No. 167218, July 02, 2010]

ERECTOR ADVERTISING SIGN GROUP, INC. AND ARCH. JIMMY C. AMOROTO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, RESPONDENT.

D E C I S I O N

PERALTA, J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner Erector Advertising Sign Group, Inc. assails the February 16, 2005 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 80027. The challenged Decision affirmed the February 28, 2003 Resolution^[2] of the National Labor Relations Commission in NLRC NCR CA No. 028711-01. In turn, the said Decision reversed and set aside the March 30, 2001 Decision^[3] of the Labor Arbiter, which dismissed for lack of merit the complaint for illegal dismissal filed by respondent Expedito Cloma.

The basic facts follow.

Petitioner Erector Advertising Sign Group, Inc. is a domestic corporation engaged in the business of constructing billboards and advertising signs. Sometime in the middle of 1996, petitioner engaged the services of Expedito Cloma (Cloma) as company driver and the latter had served as such until his dismissal from service in May 2000.^[4]

In his Complaint^[5] filed with the National Labor Relations Commission (NLRC), Cloma alleged that he was illegally suspended and then dismissed from his employment without due process of law. He likewise claimed his unpaid monetary benefits such as overtime pay, premium pay for worked rest days, service incentive leave pay and 13th month pay, as well as moral, exemplary and actual damages and attorneys fees.

It is conceded by petitioner that Cloma has been suspended several times from work due to frequent tardiness and absenteeism, but the instant case appears to be likewise the result of documented instances of absenteeism without prior notice to and approval from his superior, and of misbehavior. The former happened between May 12 and May 15, 2000 when Cloma supposedly failed to report for work without prior notice and prior leave approval^[6] which thus effectively prevented the other workers from being transported to the job site as there was no other driver available; whereas the latter incident happened on May 11, 2000 when allegedly, Cloma, without authority, suddenly barged into the premises of the Outright Division and, without being provoked, threatened the employees with bodily harm if they did not stop from doing their work.^[7] This second incident was supposedly narrated fully in a letter dated May 13, 2000 addressed to the personnel manager and signed

by one Victor Morales and Ruben Que.^[8]

As a result of these incidents, petitioner served on Cloma two (2) Suspension Orders dated May 15, 2000 and May 17, 2000, both signed by Nelson Clavacio (Clavacio), personnel and production manager of petitioner company, and approved by Architect Jimmy C. Amoroto (Amoroto), president and chief executive officer. For easy reference, the suspension orders are reproduced as follows:

May 15, 2000

Para kay: MR. EXPEDITO CLOMA
Company Driver
Paksa: SUSPENSION ORDER

Dahil sa iyong pagliban mula pa nuong Mayo 12 hanggang Mayo 15, 2000 na wala man lang pasabi o paalam, ikaw ay binibigyan ng tatlong araw na suspensyon na magsisimula ngayon Mayo 15 hanggang Mayo 17, 2000. Ito ay bilang paggawad ng batas at disiplina sa ating sarili at sa iba upang huwag ng pamarisan pa.

Malinaw na nakasaad sa Company Rules and Regulations SECTION 1, PARAGRAPH 4: "Ang pagliban ng walang paalam na sunod-sunod ay may kalakip na kaparusahan. Dalawang araw na absent ay katumbas ng tatlong araw na suspension."^[9]

May 17, 2000

Para kay: MR. EXPEDITO CLOMA
Company Driver
Paksa: SUSPENSION ORDER

Ikaw ay ginagawaran ng isang linggong Suspensyon mula bukas, Mayo 18, 2000 hanggang Mayo 24, 2000. Ito ay dahil sa [sumusunod] na dahilan:

1. Ang pagpigil sa mga trabahador ni Ms. Anne Dongel na taga-Outright Division na magtrabaho nuong Mayo 11, 2000 at pananakot sa mga trabahador ni Ms. Anne Dongel samantalang iba naman ang kanilang Division. (SECTION 2 PARAGRAPH 2/PANANAKOT "ISANG LINGGONG SUSPENSYON)

Ang iyong suspension ay epektibo kaagad bukas at makakabalik ka lamang sa Mayo 25, 2000. Ang parusang nabanggit ay para sa pagpapairal ng disiplina sa atin at sa ating mga kapwa manggagawa.^[10]

When Cloma reported back for work on May 25, 2000, he was taken by surprise when the security guard on duty prevented him from entering the company's premises and, instead, handed him a termination letter dated May 20, 2000, signed and approved by Clavacio and Amoroto.^[11] The letter states:

May 20, 2000

Para kay: MR. EXPEDITO CLOMA
Company Driver
Paksa: Notice of Termination

Ginoong Expedito Cloma:

Malungkot naming ibinabalita sa iyo na napagpasyahan ng Pamunuang ito na tanggalin ka na sa iyong serbisyo bilang "Company Driver." Ito ay dahil sa mga sumusunod na kadahilanan:

1. Ang pagliban ng dalawang araw na wala man lang pasabi o paalam.
2. Ang pananakot sa kapwa manggagawa o trabahador na nagresulta sa pagkauwi ng mga trabahador ng Outright Division.
3. Ang pagpigil sa operasyon ng ibang Department sa pamamalakad ni Ms. Anne Dongel.
4. Maraming pagkakataon na "late" na naging dahilan ng pagsabotahe ng operasyon ng mga Production Crews.

Mula sa mga dahilan na nabanggit, ito ay sapat na dahilan upang tanggalin ka sa iyong posisyon, nagpapakita lamang na hindi mo nagampanan ng maayos ang iyong trabaho katulad ng inaasahan sa iyo ng Pamunuang ito.^[12]

Ridden with angst and anxiety, Cloma walked away and filed the instant complaint for illegal dismissal.

Following the submission of position papers and other documentary exhibits by both parties, the Labor Arbiter, after evidentiary evaluation, issued its March 30, 2001 Decision dismissing Cloma's complaint for lack of merit.^[13] In so ruling, the Labor Arbiter put much weight on the evidence presented by petitioner company bearing on Cloma's frequent tardiness and unauthorized absences, as well as the several incidents of misbehavior and misconduct in which Cloma figured as the protagonist. It went on to say that while the *onus* of proving the existence of the cause for termination and the observance of due process lie on the employer, petitioner company was actually able to establish the validity of Cloma's dismissal by its evidence.^[14] It also noted that while the company, by memorandum/notice, had directed Cloma to submit his explanation on his alleged infractions, the latter nevertheless did not comply with the directive and instead ignored the same. In this connection, the Labor Arbiter declared that a plea of denial of procedural due process would not lie when he who had been given an opportunity to be heard had chosen not to avail of such opportunity.^[15]

Aggrieved, Cloma appealed to the NLRC.^[16] On February 28, 2003, the NLRC issued its Resolution^[17] reversing and setting aside the Labor Arbiter's decision.

The NLRC pointed out that not only was Cloma dismissed without due process but

also, that he was dismissed without just cause. The NLRC based its finding on the termination letter served by petitioner on Cloma such that with respect to the first ground of termination, *i.e.*, *Ang pagliban ng dalawang araw na wala man lang pasabi o paalam*, the letter did not state the dates when these two absences had been incurred; that in relation to the second and third grounds, *i.e.*, *Ang pananakot sa kapwa manggagawa x x x* and *Ang pagpigil sa operasyon ng ibang Department x x x*, petitioner did not profess having conducted investigation on these matters that would have afforded Cloma the opportunity to confront his witnesses and that Cloma had already been sanctioned for this offense under the May 17, 2000 suspension order; and that as to the last ground, *i.e.*, *Maraming pagkakataon na late x x x*, the NLRC noted that the best proof on this allegation would have been Cloma's corresponding daily time record but which, however, petitioner failed to make of record at the hearing of the case.^[18] Hence, finding that Cloma was dismissed without just cause and without due process, the NLRC ordered petitioner to pay full backwages, allowances and other benefits, as well as separation pay in lieu of reinstatement.^[19] The appeal was disposed of as follows:

WHEREFORE, premises considered, Complainant's appeal is GRANTED. The Labor Arbiter's decision in the above-entitled case is hereby REVERSED and SET ASIDE. A new one is entered declaring that Complainant's dismissal from employment is illegal. Respondents are hereby ordered to jointly as (sic) severally pay Complainant the amount of P271,673.08 as backwages and separation pay, plus ten percent (10%) of his total monetary award as attorney's fees.

SO ORDERED.^[20]

Petitioner's motion for reconsideration was denied,^[21] and forthwith it elevated the case to the Court of Appeals on petition for *certiorari*.^[22]

On February 16, 2005, the Court of Appeals rendered the assailed Decision^[23] adopting the findings and conclusions of the NLRC as follows:

WHEREFORE, the instant petition is DENIED. The resolution of the National Labor Relations Commission dated 28 February 2003 reversing the decision of the Labor Arbiter dated 30 March 2001 in NLRC CASE No. 00-05-02887-2000 is hereby AFFIRMED.

SO ORDERED.

Hence, this petition, which raises the sole issue of whether Cloma was dismissed with just cause and with due process of law.

Petitioner insists that the just cause for Cloma's termination abounds in the records, alluding to several infractions and violations of company rules and regulations for which he has been suspended many times from work. In addition, it likewise enumerates a number of Cloma's other acts of misbehavior such as reporting for work under the influence of alcohol, picking fights with co-workers and others which