

## THIRD DIVISION

[ G.R. No. 170661, December 04, 2009 ]

**RAMON B. FORMANTES, PETITIONER, VS. DUNCAN  
PHARMACEUTICALS, PHILS., INC., RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision<sup>[1]</sup> and the Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 57528, which affirmed with modification the Resolutions rendered by the National Labor Relations Commission (NLRC), Second Division, dated October 19, 1999<sup>[3]</sup> and December 21, 1999,<sup>[4]</sup> respectively, in NLRC NCR CA 010480-96.

Petitioner Ramon B. Formantes was employed as a medical representative by respondent Duncan Pharmaceuticals, Phils., Inc. on September 1, 1990. He later became the Acting District Manager of respondent for the Ilocos District.

On March 18, 1994, petitioner received a long distance call from Rey Biscaro, Regional Sales Manager of respondent, asking him to report at the head office on March 21, 1994. Thereafter, petitioner went to the head office and was confronted by said Mr. Biscaro and Emeterio Shinyo, Marketing and Sales Director, due to his attempt to sexually force himself upon his subordinate Cynthia Magat, one of the medical representatives of respondent company. Petitioner and Ms. Magat separately related their sides of the incident to the respondent company's officers. Petitioner was then compelled by respondent to take a leave of absence.

Thereafter, Biscaro tried to induce petitioner to resign, which the latter refused. Petitioner's salary was then withheld from him. He was not allowed to attend the meetings and activities of the company. His subordinates no longer reported to him and the company directed one of its district managers to take over his position and functions without prior notice to him. Due to the foregoing, petitioner was constrained to file a case for illegal suspension, constructive dismissal, payment of salaries, allowances, moral and exemplary damages on April 13, 1994 before the NLRC, Regional Arbitration Branch No. I, San Fernando, La Union.

On April 19, 1994, petitioner received a telegram from Lelet Fernando of the Human Resources Department (HRD), advising him to report to the respondents' head office. Petitioner advised her and Biscaro that he has not received his salary and reimbursements for incurred expenses. He also informed them that he had already filed a case for constructive dismissal against the respondent company.

On April 25, 1994, petitioner received a telegram<sup>[5]</sup> dated April 22, 1994 from respondent, advising him that his reasons for not reporting were unacceptable, and

ordering him to report to the office in the morning of April 25, 1994. Petitioner was not able to report due to time constraints, as it was physically impossible for him to report on the very same day that he received the telegram ordering him to do so. Thereafter, respondent sent several letters to petitioner. These letters, among others, include the following: letter<sup>[6]</sup> charging him of grave misconduct on the attempted sexual abuse upon the person of Ms. Cynthia Magat, and directing him to submit his written explanation thereon; letter<sup>[7]</sup> recalling the company car issued to him; letter<sup>[8]</sup> informing him of violation of Rule IV.5.a of the respondent's company rules by failing to turn over the company car, and directing him to explain in writing why no further disciplinary action should be given to him; letter<sup>[9]</sup> suspending him for one day for failure to carry out instructions, and ordering him to report to the company's head office; letter<sup>[10]</sup> placing him under suspension without pay for eight days for failure to return the company car without explanation.

On May 19, 2004, petitioner received a letter<sup>[11]</sup> dated May 18, 1994, terminating his employment with respondent company due to insubordination; for failure to report to the respondent company; for failure to submit the required operations report; and for failure to turn over the company car.

In the meantime, Executive Labor Arbiter (LA) Norma C. Olegario rendered a decision<sup>[12]</sup> dated November 10, 1995, dismissing the complaint, finding that Formantes was validly dismissed for an attempt to sexually abuse Cynthia Magat, but imposing a penalty on respondent for its failure to give formal notice and conduct the necessary investigation before dismissing petitioner. The LA found that when the first written notice was sent to petitioner on April 25, 1994, regarding the incident with Cynthia Magat, petitioner had already been dismissed, or at least, constructively dismissed, because as early as March 23, 1994, he was no longer allowed to participate in the activities of the company and his salary was withheld from him. The LA directed the respondent to pay petitioner the amount of P1,000.00.

Dissatisfied with the Labor Arbiter's finding, petitioner appealed to the NLRC, on grounds of grave abuse of discretion; serious errors of law; and serious errors in the findings of facts, which, if not corrected, would cause irreparable damage to petitioner. Petitioner alleged that the LA erred in ruling that he was legally dismissed for sexual abuse, when the charge against him stated in the termination letter was insubordination.

The NLRC, Second Division, in its Resolution<sup>[13]</sup> dated October 19, 1999 affirmed the findings of the LA. Petitioner filed a motion for reconsideration, which the NLRC denied in a Resolution<sup>[14]</sup> dated December 21, 1999.

Undaunted, petitioner filed a petition for *certiorari* under Rule 65 with the CA, alleging that the NLRC gravely abused its discretion and acted in excess of its jurisdiction in affirming the decision of the Labor Arbiter that petitioner's dismissal from employment was justified on a ground not alleged in the notice of termination and not established by substantial evidence. Petitioner further alleged that the NLRC erred in not holding that petitioner was constructively dismissed by the respondent.

The CA, in its Decision dated July 18, 2005, affirmed the resolutions of the NLRC,

but with the modification that the sanction imposed on respondent company for non-observance of due process be increased from P1,000.00 to P5,000.00.

Petitioner filed a Motion for Reconsideration, which the CA denied in a Resolution dated November 23, 2005. Hence, the instant petition assigning the following errors:

THE JUDGMENT RENDERED [BY] THE NLRC [IS] NULL AND VOID ON THE GROUND OF LACK OF DUE PROCESS TAKING INTO ACCOUNT THAT PETITIONER-APPELLANT WAS UNKNOWINGLY DEPRIVED OF COMPETENT LEGAL ASSISTANCE OF COUNSEL AS IT TURNED OUT THAT THE "COUNSEL" WHO REPRESENTED HIM WAS LATER FOUND NOT TO BE A MEMBER OF THE BAR AS [HE REPRESENTED HIMSELF TO BE].

THE COURT A *QUO* GROSSLY ERRED AND DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT AND HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS IN NOT HOLDING THAT THE PETITIONER WAS CONSTRUCTIVELY DISMISSED BY THE RESPONDENT COMPANY.

THE COURT A *QUO* GROSSLY ERRED AND DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT AND HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT AFFIRMED THE DECISION OF THE NLRC THAT PETITIONER'S DISMISSAL FROM EMPLOYMENT WAS JUSTIFIED ON ANOTHER GROUND NOT ALLEGED IN THE NOTICE OF TERMINATION AND WAS NOT ESTABLISHED BY SUBSTANTIAL EVIDENCE.<sup>[15]</sup>

On the alleged deprivation of due process, petitioner alleged that he was not duly represented by a competent counsel, as Rogelio Bacolor, who represented him in the proceedings before the NLRC, was not a member of the bar, thereby depriving him of his right to due process. Hence, he prayed that the case be remanded to the LA for further proceedings.

We are not persuaded.

Records will show that aside from Mr. Bacolor, petitioner was represented by other lawyers at the commencement of the action before the NLRC and during the proceedings before the NLRC and the Court of Appeals.

Petitioner was duly represented by Atty. Jannette B. Ines in the filing of the Complaint,<sup>[16]</sup> the Position Paper,<sup>[17]</sup> and the Reply<sup>[18]</sup> before the LA. He was also represented by the same Atty. Ines during the initial stage of the hearing before the NLRC.<sup>[19]</sup> Further, although Mr. Bacolor appeared in the several stages of the hearing before the LA and filed petitioner's memorandum of appeal, he also retained the services of Guererro and Turgano Law Office, as collaborating counsel. Atty. Arnel Alambra of said law office filed a Supplemental Memorandum of Appeal<sup>[20]</sup>

and Reply<sup>[21]</sup> to the respondent's answer to the Supplemental Memorandum of Appeal in petitioner's behalf. Thereafter, upon denial of the appeal by the NLRC, petitioner's motion for reconsideration<sup>[22]</sup> was filed by Arnold V. Guerrero Law Offices, together with its battery of lawyers, which includes Atty. Arnold V. Guerrero, Atty. Ma. Josefa C. Pinza, Atty. Carmencita M. Chua and Atty. Ma. Loralie C. Cruz. Petitioner was also represented by said law office in the proceedings before the CA, more particularly during the filing of the Petition for *Certiorari*<sup>[23]</sup> under Rule 65, the Reply<sup>[24]</sup> and the Memorandum.<sup>[25]</sup> Upon denial of the petition before the CA, petitioner was also represented by another law office in the name of Argue Law Office, which filed the petitioner's motion for reconsideration and the present petition before this court.

In fine, petitioner was fully represented by a barrage of competent lawyers. Thus, he cannot claim that he was deprived of due process of law.

In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,<sup>[26]</sup> this Court held that:

There is no question that the "essence of due process is a hearing before conviction and before an impartial and disinterested tribunal" but due process as a constitutional precept does not, always and in all situations, require a trial-type proceeding. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. **"To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.** (Emphasis supplied.)

Further, in *Fernandez v. National Labor Relations Commission*,<sup>[27]</sup> respondents failed to attend the hearing on the scheduled cross examination of the petitioner's witness. Due to the foregoing, the LA deemed the case submitted for resolution. Respondents claimed denial of due process due to non-reception of its evidence. On appeal, the NLRC vacated the LA's Order and remanded the case for further proceedings. The issue is whether the failure to attend hearings before the LA is a waiver of the right to present evidence. This court held that:

Private respondents were able to file their respective position papers and the documents in support thereof, and all these were duly considered by the labor arbiter. Indeed, the requirements of due process are satisfied where the parties are given the opportunity to submit position papers. In any event, **Respondent NLRC and the labor arbiter are authorized under the Labor Code to decide a case on the basis of the position papers and documents submitted. The holding of an adversarial trial depends on the discretion of the labor arbiter, and the parties cannot demand it as a matter of right. In other words, the filing of position papers and supporting documents fulfilled the requirements of due process.** Therefore, there was no denial of this

right because private respondents were given the opportunity to present their side.

Taken altogether, although petitioner, during some parts of the trial proceedings before the LA was not represented by a member of the bar, he was given reasonable opportunity to be heard and submit evidence to support his arguments, through the medium of pleadings filed in the labor tribunals. He was also able to present his version of the Magat incident during his direct examination conducted by his lawyer Atty. Jannette Inez.<sup>[28]</sup> Thus, he cannot claim that he was denied due process.

On the issue of petitioner's dismissal on another ground not alleged in the notice of termination, petitioner argued that the LA's justification for his dismissal on the ground of sexual abuse is not proper, as said ground is not alleged in the notice of termination. The notice of termination stated that petitioner was dismissed due to failure to report to the office; failure to submit reports; and failure to file written explanations despite repeated instructions and notices.

The argument is not meritorious.

In *Rubberworld (Phils.), Inc. v. NLRC*,<sup>[29]</sup> we held that:

It is now axiomatic that if just cause for termination of employment actually exists and is established by substantial evidence in the course of the proceedings before the Labor Arbiter, the fact that the employer failed, prior to such termination, to accord to the discharged employee the right of formal notice of the charge or charges against him and a right to ventilate his side with respect thereto, will not operate to eradicate said just cause so as to impose on the employer the obligation of reinstating the employee and otherwise granting him such other concomitant relief as is appropriate in the premises. x x x

Although petitioner was dismissed from work by the respondent on the ground of insubordination, this Court cannot close its eyes to the fact that the ground of sexual abuse committed against petitioner's subordinate actually exists and was established by substantial evidence before the LA.

When petitioner filed the complaint for constructive dismissal on April 13, 1994, he was still unsure of the actual ground for his suspension and constructive dismissal. The very reason why he sought refuge in the labor tribunals was to ascertain the ground for his termination. In keeping with its duties, the LA, in order to ascertain the petitioner's cause for constructive dismissal, required the parties to submit their respective position papers and their respective replies thereto. After analyzing the pleadings submitted before her and the proceedings taken thereon, the LA made a finding that petitioner was validly dismissed due to the sexual abuse committed against his subordinate. However, the LA imposed a monetary penalty upon respondent for its failure to observe procedural due process.

The LA would be rendered inutile if she would just seal her lips after finding that a just cause for dismissal exists merely because the said ground was not stated in the