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FIRST DIVISION

[G.R. NO. 147790, June 27, 2006]

GENUINO ICE COMPANY, INC. PETITIONER, VS. ALFONSO S. MAGPANTAY, RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Alfonso Magpantay (respondent) was employed as a machine operator with Genuino Ice Company, Inc. (petitioner) from March 1988 to December 1995. On November 18, 1996, respondent filed against petitioner a complaint for illegal dismissal with prayer for moral and exemplary damages.[1] In his Position Paper, respondent alleged that he was dismissed from service effective immediately by virtue of a memorandum, after which he was not allowed anymore to enter the company premises. Respondent bewailed that his termination from employment was done without due process.[2]

Petitioner countered that he was not illegally dismissed, since the dismissal was based on a valid ground, *i.e.*, he led an illegal strike at petitioner's sister company, Genuino Agro Industrial Development Corporation, which lasted from November 18 to 22, 1995, resulting in big operation losses on the latter's part. Petitioner also maintained that respondent's dismissal was made after he was accorded due process.[3]

Respondent replied, however, that assuming that he led such illegal strike, he could not be liable therefore because it was done in petitioner's sister company which is a separate and distinct entity from petitioner.[4]

Petitioner initially claimed that respondent's acts were tantamount to serious misconduct or willful disobedience, gross and habitual neglect of duties, and breach of trust. Subsequently, petitioner amended its position paper to include insubordination among the grounds for his dismissal, since it came out during respondent's cross-examination, and the matter was reported only after the new personnel manager assumed his position in August 1996.[5]

On August 14, 1998, the Labor Arbiter of the National Labor Relations Commission (NLRC) dismissed the case for lack of merit[6] finding that petitioner had valid cause to dismiss respondent.

Respondent appealed from the Labor Arbiter's Decision. The NLRC, in its Decision dated June 30, 1999, sustained the findings of the Labor Arbiter and denied the appeal for lack of merit.[7]

Respondent filed a motion for reconsideration of the NLRC Decision, which was

denied in a Resolution dated August 31, 1999.[8]

On October 29, 1999, entry of judgment was made on the NLRC Resolution dated August 31, 1999.[9]

On February 7, 2000, respondent filed a special civil action for *certiorari* with the Court of Appeals (CA), docketed as CA-G.R. SP No. 57105. Respondent's counsel stated that it was on December 20, 1999 that he received the NLRC Resolution dated August 31, 1999.[10]

In his petition before the CA, respondent alleged that the Labor Arbiter committed an error in ruling that his dismissal was for a valid cause; and reiterated his claim that his dismissal was made without due process.[11]

Petitioner filed its Comment, contending that the petition was filed out of time, considering that contrary to respondent's claim that the NLRC Resolution dated August 31, 1999 was received on December 20, 1999, it was actually received on September 15, 1999, as shown in the registry return card. Petitioner also reiterated its arguments that respondent was dismissed for cause and with due process.

On August 3, 2000, the CA[12] rendered the assailed Decision granting the petition and declaring respondent's dismissal as illegal. The dispositive portion of the Decision reads:

> WHEREFORE, the petition is GRANTED. The dismissal of petitioner is hereby declared as illegal. Respondent company is ORDERED to pay to petitioner separation pay and full backwages. Let this case be remanded to the labor arbiter for the computation of the aforesaid awards.
>
> SO ORDERED.[13]

Petitioner filed a motion for reconsideration which the CA denied per its Resolution dated March 16, 2001.[14]

Hence, herein petition for review on *certiorari* under Rule 45 of the Rules of Court stating the following issues:

1. Whether or not the Court of Appeals erred and committed grave abuse of discretion in giving due course to the respondent's Petition for Certiorari?

2. Whether or not the *Court a quo* erred and committed grave abuse of discretion in declaring that the respondent was illegally dismissed from employment?

3. Whether or not the *Court a quo* erred and committed grave abuse of discretion in ordering the payment of separation pay and full backwages to the respondent?[15]

At the outset, it should be stated that under Rule 45 of the Rules of Court, only questions of law may be raised, the reason being that this Court is not a trier of

facts. It is not for this Court to reexamine and reevaluate the evidence on record.[16] However, considering that the CA came up with an opinion different from that of the Labor Arbiter and the NLRC, the Court is now constrained to review the evidence on record.[17]

On the first issue, petitioner argues that the CA should have dismissed respondent's petition for having been filed out of time. According to petitioner, since the registry return receipt shows that the NLRC Resolution dated August 31, 1999 denying respondent's motion for reconsideration was received on September 15, 1999, the petition filed on February 7, 2000 was, therefore, 85 days late.

Respondent, however, counters that the person who received the NLRC Resolution dated August 31, 1999 on September 15, 1999, a certain Mirela G. Ducut of the Computer Services Department, was not a duly-authorized representative of the FEU Legal Aid Bureau, as it is only Ellen Dela Paz, who is authorized to receive all communications addressed to the office.

The CA sustained respondent's contention that since the service was not made to an authorized person, it was not legally effective, and the counting of the period should be reckoned from the date of actual receipt by counsel, which was on December 20, 1999.

The New Rules of Procedure of the NLRC provides the rule for the service of notices and resolutions in NLRC cases, to wit:

> Sec. 4. *Service of notices and resolutions*. – a) Notices or summons and copies of orders, resolutions or decisions shall be served on the parties to the case personally by the bailiff or the duly authorized public officer within three (3) days from receipt thereof by registered mail; Provided, that where a party is represented by counsel or authorized representative, service shall be made on such counsel or authorized representative; x x x

The presumption is that the decision was delivered to a person in his office, who was duly authorized to receive papers for him, in the absence of proof to the contrary.[18] It is likewise a fundamental rule that unless the contrary is proven, official duty is presumed to have been performed regularly and judicial proceedings regularly conducted, which includes the presumption of regularity of service of summons and other notices.[19] The registry return of the registered mail as having been received is *prima facie* proof of the facts indicated therein. Thus, it was necessary for respondent to rebut that legal presumption with competent and proper evidence.

In an attempt to disprove that there was proper receipt of the Resolution, respondent's counsel presented an Affidavit executed by Ellen dela Paz, who attested that she is the only person authorized to receive communications for and in behalf of the FEU Legal Aid Bureau; that she never received the NLRC Resolution dated August 31, 1999 on September 15, 1999; and that it was only on December 20, 1999, through respondent, that they learned of said Resolution.[20]

Records show that Ducut is not an employee of the FEU Legal Aid Bureau, but is connected with the Computer Services Department. The FEU Legal Aid Bureau has

its own personnel which include Ms. dela Paz who is the one authorized to receive communications in behalf of the office. It has been ruled that a service of a copy of a decision on a person who is neither a clerk nor one in charge of the attorney's office is invalid.[21] This was the Court's ruling in *Cañete v. National Labor Relations Commission*,[22] to wit:

> We have ruled that where a copy of the decision is served on a person who is neither a clerk nor one in charge of the attorney's office, such service is invalid. In the case at bar, it is undisputed that *Nenette Vasquez, the person who received a copy of the labor arbiter's Decision, was neither a clerk of Atty. Chua, respondent's counsel, nor a person in charge of Atty. Chua's office. Hence, her receipt of said Decision on March 15, 1993 cannot be considered as notice to Atty. Chua*. Since a copy of the Decision was *actually* delivered by Vasquez to Atty. Chua's clerk only on March 16, 1993, it was only on this date that the ten-day period for the filing of respondent's appeal commenced to run. Thus, respondent's *March 26, 1993* appeal to the NLRC was seasonably filed. [23]

This was recently reiterated in *Prudential Bank v. Business Assistance Group, Inc.*, [24] where the Court accepted the affidavit executed by Arlan Cayno denying that he was an employee of Gella, Danguilan, Nabaza & Associates law firm authorized to receive legal or judicial processes. Cayno likewise disclaimed knowledge of the whereabouts of the notice. According to the Court, since Mr. Cayno was not an employee of the said law firm authorized to receive notices in its behalf, his alleged receipt of the notice is without any effect in law.

Hence, the CA was correct in ruling that the reckoning period should be the date when respondent's counsel actually received the NLRC Resolution dated August 31, 1999, which was on December 20, 1999.

Petitioner, however, pointed out that a certain Ruby D.G. Sayat received a copy of their Motion for Reconsideration filed by registered mail on August 16, 2000.[25] Respondent contended that at the time Sayat received the motion, she was then detailed at the office and was authorized to receive said pleading, and that it was an isolated and exceptional instance.[26] On this matter, the FEU Acting Postmaster certified that Sayat is a permanent employee of the FEU Legal Aid Bureau.[27] As such, she is authorized to receive communications in behalf of the office and need not possess an express authority to do so.

More importantly, the Court has consistently frowned upon the dismissal of an appeal on purely technical grounds. While the right to appeal is a statutory, not a natural right, it is, nonetheless, an essential part of our judicial system. Courts should proceed with caution so as not to deprive a party of the right to appeal, but rather, ensure amplest opportunity for the proper and just disposition of a cause, free from the constraints of technicalities.[28]

On the issue of illegal dismissal, both the Labor Arbiter and the NLRC were one in concluding that petitioner had just cause for dismissing respondent, as his act of leading a strike at petitioner's company for four days, his absence from work during such time, and his failure to perform his duties during such absence, make up a

cause for habitual neglect of duties, while his failure to comply with petitioner's order for him to transfer to the GMA, Cavite Plant constituted insubordination or willful disobedience. The CA, however, differed with said conclusion and found that respondent's attitude "has not been proved to be visited with any wrongdoing", and that his four-day absence does not appear to be both gross and habitual.

The Court sustains the CA's finding that respondent's four-day absence does not amount to a habitual neglect of duty; however, the Court finds that respondent was validly dismissed on ground of willful disobedience or insubordination.

Under Article 282 of the Labor Code, as amended, an employer may terminate an employment for any of the following causes: (a) **serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work**; (b) **gross and habitual neglect by the employee of his duties**; (c) fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; (d) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and, (e) other causes analogous to the foregoing.[29] The employer has the burden of proving that the dismissal was for a just cause; failure to show this would necessarily mean that the dismissal was unjustified and, therefore, illegal.[30]

Neglect of duty, to be a ground for dismissal, must be both gross and habitual.[31] Gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. On the other hand, fraud and willful neglect of duties imply bad faith on the part of the employee in failing to perform his job to the detriment of the employer and the latter's business.[32] Thus, the single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.[33]

Thus, the Court agrees with the CA that respondent's four-day absence is not tantamount to a gross and habitual neglect of duty. As aptly stated by the CA, " (W)hile he may be found by the labor courts to be grossly negligent of his duties, he has never been proven to be habitually absent in a span of seven (7) years as GICI's employee. The factual circumstances and evidence do not clearly demonstrate that petitioner's [respondent] absences contributed to the detriment of GICI's operations and caused irreparable damage to the company."[34]

Petitioner, however, insists that during his four-day absence, respondent was leading an illegal strike in its sister company. In the first place, there is no showing that the strike held at the Genuino Agro Industrial Development Corporation is illegal. It is a basic rule in evidence that each party must prove his affirmative allegation. Since the burden of evidence lies with the party who asserts the affirmative allegation, the plaintiff or complainant has to prove his affirmative allegations in the complaint and the defendant or the respondent has to prove the affirmative allegation in his affirmative defenses and counterclaim.[35] Since it was petitioner who alleged that such strike is illegal, petitioner must, therefore, prove it. Except for such bare allegation, there is a dearth of evidence in this case proving the illegality of said