503 Phil. 955

SECOND DIVISION

[G.R. NO. 158244, August 09, 2005]

ERNESTO PONCE AND MANUEL C. BALIGNASAY, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), INNODATA PHILIPPINES CORP., INNODATA PROCESSING CORP. (INNODATA CORPORATION) AND TODD SOLOMON, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Petitioners impugn in the instant petition for review the Decision[1] and the Resolution, dated 14 November 2002 and 12 May 2003, respectively, of the Court of Appeals in CA-G.R. SP No. 69811, affirming the judgment of the National Labor Relations Commission (NLRC) which reversed the Decision of the Labor Arbiter, and found petitioners to have committed willful neglect of duties as a result of their absences, but awarded financial assistance to petitioners in the amount of one-half (1/2) month salary for every year of service.

The factual antecedents were synthesized by the Court of Appeals in its decision.

Innodata Philippines Corporation (Innodata) is a corporation engaged in the business of data processing wherein raw data supplied by its clients are fed into computers to process the same into data suitable for computer use, while Todd Solomon is its President. Innodata offered, among other services, encoding, typesetting, indexing, and abstracting data. Data encoding includes pre-encoding, encoding, editing, proofreading and scanning. All job orders or projects of Innodata come from its foreign clientele. In order to assure continuous flow of job orders/projects, it is essential for the company to guarantee its clients that it could faithfully fulfill its commitments within the agreed period and with attention to quality.[2]

All throughout its years of operations, Innodata has been continually beset with the perennial problem of incurring delays in accomplishing its data processing projects. To solve its quandary, Innodata engaged additional manpower, in the process incurring additional cost in the form of overtime pay to ensure that the job orders and projects would be finished promptly. But the work backlog persisted prompting the company to investigate and commission a study as to the cause of the crisis. The study revealed that the problem was attributable to the habitual tardiness and absenteeism of its employees. As a result, Innodata revised its policy on tardiness and absenteeism and came out with the Revised 1998 Absenteeism and Tardiness Policy (1998 Revised Policy), which took effect on 01 January 1998.[3]

The 1998 Revised Policy lessened the number of allowable absences and tardiness in a month and increased the penalties imposed upon the employees for such. For that

reason, the union and employees of Innodata challenged the same through its Grievance Machinery under the National Conciliation and Mediation Board. After exhausting the remedies available in the existing Grievance Machinery, the Innodata Employees Association and respondent Innodata agreed on 18 May 1998, to submit the issue to voluntary arbitration as gleaned from the parties' Submission Agreement.[4]

Pending resolution by the Voluntary Arbitrator of the issue on the validity of the 1998 Revised Policy, Innodata terminated the services of petitioner Ernesto Ponce on 03 August 1998.[5]

On 21 August 1998, the Voluntary Arbitrator declared the 1998 Revised Policy as null and void for lack of consultation with the employees prior to its adoption and for being diminutive of the vested rights of the employees inasmuch as it reduced the number of unexcused absences in a month that an employee can avail of without sanction.[6] On this date, Manuel Balignasay's services were also terminated for absenteeism, under the 1998 Revised Policy. The Court of Appeals, however, reversed the ruling of the Voluntary Arbitrator and affirmed the validity of the 1998 Revised Policy on the ground that it was a valid exercise of management prerogative. On appeal, this Court affirmed with finality the Court of Appeals' decision on 27 June 2001.[7]

Both petitioners Ponce and Balignasay filed a complaint for illegal dismissal against Innodata protesting that they were dismissed by the latter sans just cause and in violation of their right to security of tenure.[8] According to petitioners, their dismissal was illegal considering that the 1998 Revised Policy under which their dismissal from employment was based was, at that time, still subject of voluntary arbitration and which in fact was later nullified by Voluntary Arbitrator Francisco Sobreviñas in his Decision dated 21 August 1998. Finally, petitioners bemoaned that the 1998 Revised Policy is unreasonable and that the penalty of dismissal is too harsh a penalty, not commensurate to the supposed offense of a few days' absences.[9]

In contrast, Innodata argued in its Reply that the 1998 Revised Policy on absenteeism was a valid exercise of management prerogative and necessary to its self-preservation. On petitioners' dismissal, Innodata unfalteringly asserted that petitioners were guilty of serious misconduct, willful disobedience to the lawful order of their employer, violation of the rules and regulations of the company and gross neglect of duty. And pursuant to Article 282 of the Labor Code,[10] as amended, the termination from employment of Ponce and Balignasay was based on just causes. [11]

On 29 December 1999, Labor Arbiter Jovencio Mayor, Jr., rendered a decision favoring the petitioners. In the arbiter's rationale, the dismissal of petitioners was illegal because the 1998 Revised Policy under which their dismissal from employment was founded was, at that time, still subject of voluntary arbitration as agreed upon by the Innodata Employees Association and Innodata. This being the case, the Labor Arbiter was of the view that the implementation of said 1998 Revised Policy should have been suspended until the Voluntary Arbitrator shall have ruled on the validity thereof.

The Labor Arbiter thus ordered the reinstatement of petitioners with full back wages, the dispositive portion of which reads as follows:

> WHEREFORE, in view of all the foregoing, respondents are hereby ordered to reinstate complainants to their former positions without loss of seniority rights and other privileges and benefits with full back wages computed from the time of their illegal dismissal up to their actual reinstatement which up to this promulgation already amounted to, to wit:
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> | | |
> |---|---|
> | ERNESTO PONCE | Php. 122,184.44 |
> | MANUEL BALIGNASAY | 112,060.00 |
> | | --- |
> | | Php 234,244.48 |
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> plus attorney's fees in the amount of TWENTY-THREE THOUSAND FOUR HUNDRED TWENTY-FOUR (Php23, 424.44) PESOS AND 44/100.[12]

In a Decision[13] dated 28 September 2001, the Second Division of the NLRC reversed the arbiter's decision and held that petitioners were validly terminated for having exceeded the maximum allowable absences as provided in the 1998 Revised Policy, the legality of which was upheld by the Supreme Court. The NLRC found that despite being apprised of the implementation of the 1998 Revised Policy effective 01 January 1998, each of the petitioners still incurred a total of 35 unexcused absences for the year 1998 prior to their removal in August of that year. Nonetheless, as an act of justice following case precedents, they were awarded financial assistance equivalent to one-half (1/2) month's salary for every year of service. The NLRC disposed as follows:

> Wherefore, premises considered, the assailed Decision dated 29 December 1999, is hereby REVERSED and SET ASIDE and a new one entered DISMISSING the instant case for lack of merit. However, respondents are hereby ordered to pay complainants financial assistance in the amount of one-half month pay for every year of service.[14]

Both parties moved to reconsider the NLRC Decision. It appears, however, that the NLRC had, for reasons unknown, overlooked the motion for reconsideration[15] filed by petitioners and received by the NLRC on 17 October 2001 because, on 20 November 2001, the NLRC denied only the motion for reconsideration filed by Innodata, without any mention as to that of petitioners. The Resolution reads:

> After due consideration of the Motion for Reconsideration *filed by respondent* on October 22, 2001, from the Decision of September 28, 2001, the Commission (Second Division) resolved to deny the same for lack of merit. [Emphasis supplied.][16]

Within the reglementary period to file an appeal, Innodata proceeded to file a petition for *certiorari* with the Court of Appeals. In their Comment to Innodata's petition for *certiorari* before the Court of Appeals, however, petitioners argued that the petition was prematurely filed as their motion for reconsideration was still pending with the NLRC. Petitioners reiterated that they were illegally dismissed and

prayed for the dismissal of the petition and for other equitable reliefs.[17]

The Court of Appeals did not dwell on the prematurity issue and proceeded to rule on the merits of the petition. On 14 November 2002, the appellate court affirmed the decision of the NLRC, disposing as follows-

> WHEREFORE, in view of the foregoing, the instant petition for certiorari is hereby DISMISSED for lack of merit, and the decision of the NLRC dated September 28, 2001 is AFFIRMED.[18]

Petitioners moved for reconsideration but it was denied in the Resolution[19] dated 12 May 2003. Hence, this appeal via a petition for review where petitioners assign the following single error to the Court of Appeals, *viz*:

> THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE ASSAILED DECISION OF THE NLRC WHILE THERE IS STILL A PENDING MOTION FOR RECONSIDERATION BEFORE THE NATIONAL LABOR RELATIONS COMMISSION. THE DECISION OF NOVEMBER 14, 2002 IS NULL AND VOID.[20]

The lone issue before the Court thus focuses on whether or not the Court of Appeals can take cognizance of the petition for *certiorari* filed by Innodata assailing solely the portion of the NLRC's Decision awarding financial assistance to the petitioners while the latter's motion for reconsideration of the NLRC Decision remained unresolved by the said Commission.

Petitioners decry the Court of Appeals' rendition of the Decision despite the fact that the NLRC had yet to rule on their motion for reconsideration. For this reason, they bellyache that the Court of Appeals lacked the jurisdiction to review the NLRC Decision which had not yet attained finality, thus, the petition filed by Innodata before the Court of Appeals was vulnerable to dismissal for being prematurely filed. Given the foregoing premises, petitioners pray that this Court set aside the assailed Decision and Resolution of the Court of Appeals and a new judgment be entered remanding the case to the NLRC and ordering the said Commission to resolve the petitioners' motion for reconsideration which petitioners say had been pending for almost two years at the time of filing of this petition.[21]

A contrario, in its Comment, the Office of the Solicitor General (OSG), in behalf of Innodata, grouses that petitioners have waived their motion for reconsideration with the NLRC when they actively participated in the proceedings before the Court of Appeals and when they raised the issue of the legality of the dismissal in the same forum. The Court of Appeals, therefore, correctly assumed jurisdiction over the petition for *certiorari* filed by Innodata, says the OSG.[22]

In its memorandum,[23] Innodata is of the same mind as the OSG and entreats this Court to dismiss the present petition for utter want of merit.

Much as we commiserate with the plight of the working class in general, the arguments raised by petitioners in their six-page petition are, to our mind, simply vacuous and lacking in persuasive force.

Preliminarily, we take this occasion to strike a chord that in a petition for review on