

TWENTIETH DIVISION

[CA- G.R. SP NO. 08152, January 14, 2015]

**PREMIER PHOTO INC., COLOURS DIGITAL FOTO/KELLY S.T. UY,*
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION
– SEVENTH DIVISION, AND RIO L. MASOMBOL, RESPONDENTS.**

D E C I S I O N

QUIJANO-PADILLA, J.:

This is a petition for certiorari^[1] filed under Rule 65 of the Rules of Court, seeking the annulment of (1) the Decision^[2] dated May 31, 2013 (“assailed Decision”) and (2) the Resolution^[3] dated August 30, 2013 (“assailed Resolution”) of the National Labor Relations Commission - 7th Division (NLRC) in NLRC Case No. VAC-03-000107-2013. The assailed Decision reversed the findings of the Labor Arbiter, declared herein private respondent to have been illegally dismissed and awarded her separation pay, backwages, 13th month pay, service incentive leave pay, refund of cash bond and attorney's fees. Meanwhile, the assailed Resolution denied petitioner's Motion for Reconsideration.

The antecedent facts are as follows:

Petitioner Premier Photo Inc. hired private respondent Rio Masombol as bookkeeper on February 8, 2010. In March 2012, petitioner received reports from its employees that private respondent Rio uttered irresponsible remarks against her co-employees and against the management. Hence, on March 8, 2012, petitioner issued a memorandum directing private respondent to explain this alleged misconduct of spreading derogatory remarks. The same Memorandum also contained a notice of preventive suspension.

An administrative hearing also ensued, and according to the petitioner, private respondent Rio during the hearing admitted to have told newly hired employees not to work with the petitioner since the pay is minimal; that she raised her voice at her co-employees at times; and that she resented the president Kelly S.T. Yu as the latter gave higher salary to new hires.

Petitioner, after the administrative investigation found cause to terminate private respondent, but it offered the latter a graceful exit where she would resign and the company would give her a separation pay or financial assistance. Private respondent refused the offer, hence petitioner issued a notice of termination severing private respondent's employment with the company.

As such, private respondent filed an illegal dismissal case against the petitioner company. She alleged in her position paper that she was a victim of intrigues and gossips prevalent in the workplace.

Petitioner insisted that private respondent's termination was due to the finding that she spread derogatory information about the company and used abusive language towards her co-employees in the workplace, which she actually admitted during the administrative hearing. It alleged that the dismissal was with a just cause pertaining to serious misconduct and that the necessary procedural due process was observed in the conduct of private respondent's termination from employment.

On September 19, 2012, Labor Arbiter Butch Donabel Ragas-Bilocura proceeded to rule that private respondent failed to prove the fact of her dismissal because of the absence of any evidence supporting her allegation that she was dismissed. With this conclusion, the Labor Arbiter denied private respondent's claims for separation in lieu of reinstatement, backwages, 13th month pay and damages. The Labor Arbiter, however, awarded the private respondent service incentive leave pay and attorney's fees considering that herein petitioner failed to prove that it paid the said benefit.

The decretal portion of the Labor Arbiter's September 19, 2012 decision reads:

"WHEREFORE, foregoing premises considered, judgment is hereby rendered DISMISSING the case for illegal dismissal for lack of merit.

Respondents -PREMIERE PHOTO INC./COLOURS DIGITAL FOTO/KELLY YU are directed to pay complainant the following:

Service Incentive leave pay P2,904.46

Attorney's fees P290.45

Or a total of Three Thousand One Hundred Ninety Four and 91/100 (P3,194.91)

Other claims are denied for lack of basis.

SO ORDERED."^[4]

Private respondent appealed the Labor Arbiter's Decision. She argued that the fact of her dismissal was admitted by the petitioner in its position paper, thus, the Labor Arbiter erred when she did not rule on the legality or illegality of such dismissal. Private respondent also questioned the denial of her other monetary claims.

Public respondent NLRC found merit in private respondent's appeal. It ruled that, indeed, petitioner did not deny dismissing private respondent, and what is left to be ruled is the legality thereof. After finding that the pieces of evidence presented by the petitioner were not sufficient to prove that private respondent was indeed guilty of the alleged serious misconduct, the NLRC declared that private respondent was illegally dismissed and awarded the latter backwages and separation pay. It also awarded the 13th month pay claimed by private respondent in the absence of any record presented by the petitioner showing payment of such benefit. Hence, its assailed Decision decreed:

"WHEREFORE, premises considered, the appealed decision dated 19 September 2012 is hereby REVERSED and a new one is entered finding complainant to have been illegally dismissed. Respondent Premiere Photo

Inc./Colours Digital Foto is directed to pay complainant her monetary award in the aggregate amount of Two Hundred Thousand Four Hundred Nineteen Pesos and 47/100 (P200, 419.47).

SO ORDERED.”^[5]

Petitioner moved for a reconsideration^[6] of the foregoing assailed Decision. Petitioner alleged that it presented substantial evidence to support the validity of private respondent's dismissal. It even attached the minutes of the administrative hearing^[7] and the affidavits^[8] of its employees which the public respondent found wanting. Ruling that the absence of the signature of the hearing officer in the minutes makes the same hearsay, public respondent NLRC ultimately denied petitioner's motion for reconsideration through its assailed Resolution.^[9]

Aggrieved, petitioner filed the instant petition to Us on the following ground:

“THE PUBLIC RESPONDENT SEVENTH DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN GRANTING THE PRIVATE RESPONDENT'S APPEAL, IN DENYING THE MOTION FOR RECONSIDERATION OF THE PETITIONER AND IN FAILING TO CONSIDER THE DOCUMENTARY EVIDENCES (SIC) ATTACHED TO THE MOTION FOR RECONSIDERATION AND SUPPLEMENTAL MOTION FOR RECONSIDERATION FILED BY PETITIONERS.”^[10]

The main issue to be resolved is whether private respondent Rio was dismissed for just cause. A resolution of this issue will determine whether private respondent is entitled to separation pay in lieu of reinstatement and backwages. Petitioner also raises the issue whether there is valid basis to award 13th month pay despite the presence of payslips evidencing payment of such benefit.

We find the petition meritorious.

Generally, “in certiorari proceedings under Rule 65 of the Rules of Court, the CA does not assess and weigh each piece of evidence introduced in the case. But what the CA examines are the factual findings of the NLRC to determine whether or not the conclusions are supported by substantial evidence whose absence points to grave abuse of discretion amounting to lack or excess of jurisdiction.”^[11]

In the case of *Norkis Trading Corp. v. Buenavista et al.*^[12], the Supreme Court held, to wit:

“On this matter, the settled rule is that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, i.e., the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. We emphasize, nonetheless, that these findings are not infallible. **When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. The CA can then grant a petition for**

certiorari if it finds that the NLRC, in its assailed decision or resolution, has made a factual finding that is not supported by substantial evidence. It is within the jurisdiction of the CA, whose jurisdiction over labor cases has been expanded to review the findings of the NLRC.

We have thus explained in *Cocomangas Hotel Beach Resort v. Visca* that the CA can take cognizance of a petition for certiorari if it finds that the NLRC committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which are material to or decisive of the controversy. The CA cannot make this determination without looking into the evidence presented by the parties. The appellate court needs to evaluate the materiality or significance of the evidence, which are alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record.”^[13]

Otherwise stated, re-evaluation of evidence, as a general rule, cannot be properly done in a petition for *certiorari* under Rule 65, EXCEPT in cases where substantial evidence to support the NLRC's findings are wanting and where there is disregard of the evidence on record.

In the case at bar, We rule that specific evidence was disregarded by the NLRC when it ruled the absence of just cause to warrant the dismissal of private respondent. The finding of illegal dismissal by the NLRC, having overlooked specific pieces of evidence presented by the petitioner, clearly constitutes grave error on its part that warrants this Court's judicial intervention and correction.

It is an oft-repeated rule that in labor cases, as in other administrative and quasi-judicial proceedings, the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. The burden of proof rests upon the party who asserts the affirmative of an issue.^[14] As such, the duty to present substantial evidence to prove the legality of dismissal rests on the employer.

We rule that petitioner has adequately discharged its burden in proving that private respondent was legally dismissed and that she was afforded due process prior to her dismissal.

To recall, petitioner dismissed private respondent from employment for her violation of the petitioner company's policy against “spreading derogatory information about the company, co-employees, client or other party doing business with the company”; and, “use of abusive language towards co-employees, superior while at work or within the company premises.”^[15]

In proving that just cause existed when private respondent was dismissed, petitioner presented employees' report regarding the derogatory statements uttered by private respondent against her co-employees and against the petitioner, however, these employees' report was unsigned.^[16] Aside from this report, it submitted an affidavit of the administrative hearing officer, Manollette F. E. Dinsay, who conducted the administrative hearing.^[17] According to the hearing officer's affidavit, private respondent actually admitted to have uttered negative statements against the