

FOURTEENTH DIVISION

[CA-G.R. SP NO. 133161, March 26, 2015]

CLINT A. CABIGON, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, INTERNATIONAL BROADCASTING CORP. (IBC-13) AND ERIC S. CANOY, RESPONDENTS.

DECISION

BATO, JR., J.:

This is a petition for certiorari filed under Rule 65 of the 1997 Revised Rules of Civil Procedure seeking to set aside the *Decision*^[1] of the National Labor Relations Commission ("NLRC") in LAC No. 05-001711-13, NCR-09-13415-12 dated August 30, 2013 as well as its *Resolution*^[2] dated October 16, 2013 denying petitioner's motion for reconsideration thereto. The NLRC reversed the Labor Arbiter ("LA") *Decision*^[3] dated March 26, 2013 which ruled in favor of petitioner. The antecedent facts follow:

Petitioner Clint A. Cabigon ("petitioner") was hired by Intercontinental Broadcasting Corporation ("IBC") as Video Tape Recorder (VTR) Technician on December 16, 1993^[4] until his termination from service on January 20, 2012. As VTR Technician, petitioner was responsible for the operation of VTR machines and all allied pieces of equipment for the purpose of recording, editing, preview and cuing of all video materials, including on-air playback of programs, commercials and promos.^[5]

Petitioner's dismissal stemmed from a complaint dated March 4, 2011 filed by VTR Supervisor Ric Casiple ("Casiple") addressed to Ronie N. Suarez, Engineering Manager of IBC, complaining of petitioner's attitude, to wit:

"Attached are the complain (sic) letter from the producer of the program Up Close and Personnel (sic), that black video appeared and pauses during the airing of the show, and also the operations log dated March 3, 2011 that wrong version was loaded, rewind on air, unable to cue the next material on time.

All these wrong doings has (sic) been happening only on his time of duty. And eventually the switcher personnel brought the matter to their superior x x x. And the meeting was done between Engineering Manager, VTR Supervisor and all personnel concerned. Subject matters had been discussed and agreed, at the end promises was (sic) made that he 'Mr. Clint Cabigon' will do good the next time.

The meeting happened sometime August 2010. Only six months have past (sic), same attitude arise with the same problems encountered in on air operation."^[6]

Acting on the complaint, the Administrative Committee of IBC formally charged petitioner on March 15, 2011 with *Gross Negligence of Duty Resulting To Injury/Prejudice/Danger To The Company and/or Gross Misconduct Prejudicial To The Interest of the Company*, for the following infraction committed by petitioner, viz.:

- 1) On March 2, 2011, Ms. Nenita P. Magsino, Executive Producer of Millicent Productions wrote Mr. Joey Ramos Jr., Program Operations Manager, complaining about the airing of *Up Close and Personal with Marissa del Mar* Episode No. 7 aired on February 16, 2011 and Episode No. 8 aired on February 23, 2011 wherein there was a black video that appeared before during the airing of commercials, pauses during airing and the February 23, 2011 episode was also of (sic) synch.

- 2) In the July 27, 2010 Memo of the Switcher Personnel to Mr. Robert Fullente, Switcher Supervisor, they also complaint (sic) the attitude problem of Mr. Clint Cabigon when he was assigned in on air duty, citing among others:
 - 2.1. Airing material not scheduled on operation log
 - 2.2. Never inform the switcher on duty about the no-material for plugging
 - 2.3. Remove plugging without switcher's consent
 - 2.4. Never standby material to be aired on time that affects the transition of video on air
 - 2.5. Always delayed action everytime (sic) the Switcher Technician ask him to roll the material to be aired
 - 2.6. Always complaining every time Switcher ask him for additional plugging
 - 2.7. Rewind program materials on air
 - 2.8. More focus (sic) on watching other network's programs while on duty instead of IBC program on air.

- 3) The foregoing statements of the Switcher Personnel was (sic) affirmed by the discrepancies recorded on the following dates in 2009, February 26, March 9, 23, April 11, June 15, July 28, and Dec. 30, 2009; in 2010, January 4, 6, Feb. 10, 11, March 22, April 26, June 1, 21, Sept. 14, 17, Oct. 8, 2010, and in 2011, March 3 and 9, 2011.

x x x

x x x

x x x"^[7]

On April 19, 2011, petitioner filed his Affidavit^[8] denying that he was negligent in performing his duties as VTR technician and blaming the technical lapses which occurred during the airing of the program *Up Close and Personal with Marissa del Mar* on February 16, 2011 to the lack of beta camera players and defective switch boards. He likewise denied responsibility for the black video which appeared before the airing of the said program on February 23, 2011 claiming that he was on leave at that time. As to the charge regarding his attitude problem, petitioner averred that there was no need for management to make a big deal out of these "menial

incidents that employees can always settle among themselves.” Pertinent portions of petitioner's affidavit read:

1. X x x Before coming up with the answer for each charges, I would like to point out the insufficiency or lack of equipments (sic) that affects the efficiency and quality of shows. Normally, in order to produce an efficient and good shows (sic), there should be five (5) Beta Camera Player (sic). The switch board must be functioning well and not defective. Deficiency of the beta camera player as well as defects in the switch board results to the delay, blocking on the air or no air.

2. Most of the alleged infractions if they are to be considered as infractions have something to do with the lack of the required number of machine or beta camera player and also due to defective switch board. In order for an efficient, smooth and production of unimpaired and good shows, the management has to provide at least five (5) well-maintained beta camera player (sic). Five (5) beta camera players will prevent and avoid delay. With only three (3) beta camera player (sic), the VTR technician has to spent (sic) additional seconds if not minutes to conduct the necessary rewinding or transfer from one Beta Camera Player to another before a material or an item is finally aired. The sufficiency of beta camera player in number should also be complimented by a well-maintained and functioning switch board. Any defect for both the beta camera player and the switch board result to problems such as delay or even an error or mistake in the loading and unloading of materials for airing or showing.

3. As technician, I have called the attention of my immediate superior regarding the lack of number of beta camera player as well as the need for the repair of the switch board but no such positive actions were taken.

4. May I also point out that because we only (sic) three (3) machines or Beta Camera Player, the work or functions of the VTR technicians is increased causing additional pressure on their part. Furthermore, because of the defect in the switch board, the functions originally assigned to switchers are now passed on the VTR technician like myself. As a result, the technician like myself is pressured and affected that understandably results to some kind of lapses.

5. With respect to the March 16, 2011 incident of blocked on air/no air or delay during Episode No. 7 of the Up-Close and Personal Show, I would like to state that there were defects and lapses that occurred but it was brought about by the following reasons: (a) There were many materials required to be loaded due to so many commercials; (b) Only three (3) Beta Camera Player (sic) were used instead of five (5); (c) There was need to make some rewinding that obviously resulted to some delay. The delay however did not last for minutes but only seconds.”^[9]

Clarificatory hearings were conducted by IBC to give petitioner the opportunity to explain and air his side. On December 19, 2011, the Administrative Committee declared petitioner to have committed infractions prejudicial to the business interest

of IBC and issued a Resolution^[10] recommending his dismissal on the ground of *Gross Negligence of Duty Resulting To Injury/Prejudice/Danger To The Company and/or Gross Misconduct Prejudicial To The Interest of the Company*. Pertinent portions of the Resolution read:

“X x x

IBC-13 as a broadcaster generates income from commercials and programs that it shows. It is through this income generating activities that help and support the station i.e. salary of the employees, payment for operations and maintenance. Needless to say, that it is of vital importance to exercise utmost diligence in cuing the commercials or shows on time and to perform his duties and responsibilities as VTR Technician efficiently and effectively.

Thus, impairing the operations in this manner such as wrong cuing or delaying the airing of material causes irreparable damage to IBC-13.

In view of the foregoing, the infractions committed by Clint were prejudicial to the interest of IBC-13.

X x x

x x x

x x x”

During the clarificatory hearings the committee gave Clint the opportunity to explain and air his side on the formal charges against him.

In his defense he relied heavily that the cause of the delay, blocking on the air or no air was due to the deficiency of the beta machine player as well as defects in the switch board.

It was also during this hearing that the committee came to know that he has been performing his work for the past 10 years using the same equipment. Moreover, the committee came to know that compared to other VTR technician (sic) it was only his time or when he was on duty that a delay, blocking on the air or no air was very recurrent as appearing on the records.

Review of his 201 File also revealed that he was already sanctioned several times for loading uncue materials and for being negligent in the performance of his duties and responsibilities as reflected in the Daily Discrepancy Report. In fact, he was again reprimanded and given final warning on February 24, 2010 for delaying/sabotaging the taping of AutoVote 2010 as he focused more on watching Showtime in Channel 2 while on duty rather than concentrating in the performance of his duties as VTR Technician. Despite the warnings and considerations given to him, however, he again fumbled several times in the airing of Up Close and Personal with Marissa del Mar Episode No. 7 on February 16, 2011, or less than a year after he was sanctioned for violating the IBC General Policy/Standard Operating Procedures and Approvals Manual Art. XI, Sec. 2, Par. 16.

Considering all of the foregoing, the AdminCom therefore recommends

that the penalty of dismissal effective upon service of this Resolution, with forfeiture of all benefits be imposed upon the respondent, Clint Cabigon for GROSS NEGLIGENCE OF DUTY RESULTING TO INJURY/PREJUDICE/DANGER TO THE COMPANY AND/OR GROSS MISCONDUCT PREJUDICIAL TO THE INTEREST OF THE COMPANY.”^[11]

On June 6, 2012, Joseph T. Yee, Union President of Intercontinental Broadcasting Corporation Employees Union, of which petitioner is a member, filed, on behalf of petitioner, a motion for reconsideration asking the Committee to impose suspension instead of the harsh penalty of dismissal.^[12] As no reply/answer thereto was made by IBC, petitioner filed on September 10, 2012, a Complaint^[13] for Illegal Dismissal with prayer for reinstatement and payment of full backwages, moral and exemplary damages, and attorney's fees against IBC and its President, Eric S. Canoy.

In his Position Paper^[14], petitioner alleged that he was illegally dismissed without just cause. Petitioner reiterated that he was not grossly negligent in performing his duties as VTR technician and that he was not responsible for the alleged infractions imputed against him. He further reiterated the defenses he proffered in his affidavit claiming that he should not have been dismissed as he was able to completely refute IBC's charges of serious misconduct and gross negligence.

IBC, on the other hand, averred that there was just cause for petitioner's dismissal not only because he was found to have been responsible for the technical glitches that occurred during the airing of the program *Up Close and Personal with Marissa del Mar* but also because of petitioner's numerous and habitual violations of IBC's rules and regulations. In its position paper, IBC enumerated the offenses previously committed by petitioner which, according to IBC, taken together with his recent transgressions ultimately proved to be prejudicial to the company's interests.^[15]

On March 26, 2013, the Labor Arbiter rendered a Decision^[16] declaring petitioner's dismissal illegal. The dispositive portion of the LA Decision reads:

“WHEREFORE, premises considered, judgment is hereby rendered, declaring complainant to have been illegally dismissed by respondents. Accordingly, respondents are hereby ordered jointly and severally liable:

- 1) To reinstate complainant to his former and/or substantially equivalent position, without loss of seniority rights, benefits and other privileges;
- 2) To pay complainant his backwages, computed up to actual reinstatement. As of this date, his backwages amounted to P457,113.41;
- 3) To pay complainant an amount equivalent to ten (10%) percent of the total judgment award, as and for attorney's fees. Other claims are dismissed for lack of merit.”^[17]

On appeal, however, the aforementioned decision was reversed by the NLRC, viz.: