

SECOND DIVISION

[CA-G.R. SP No. 132987, March 06, 2015]

ALBERT A. AÑONUEVO, PETITIONER, VS. HONORABLE NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), ROCHE PHILIPPINES INCORPORATED/LODIVINA BONONO, RESPONDENTS.

DECISION

GONZALES-SISON, M., J.:

Before this Court is a Petition for *Certiorari*^[1] seeking to reverse and set aside the twin resolutions of the National Labor Relations Commission Second Division in NCR 00-10-14794-12 dated 25 June 2013 and 30 September 2013.

The 25 June 2013 resolution affirmed the earlier ruling of the Labor Arbiter dismissing petitioner's complaint of constructive dismissal for lack of merit, thus:

"WHEREFORE, premises considered, the appealed Decision is hereby AFFIRMED in toto. The instant appeal is hereby, DISMISSED for utter lack of merit.

SO ORDERED."^[2]

Meanwhile, the 30 September 2013 resolution denied petitioner's motion for reconsideration of the above decision, hence:

"WHEREFORE, in view of the foregoing premises, the Motion for Reconsideration is hereby DENIED for lack of merit.

No further Motion of similar nature shall be entertained.

SO ORDERED."^[3]

Briefly, the facts of the case, are as follows:

Private respondent Roche Philippines Inc. (Roche) is a domestic corporation engaged in the distribution of pharmaceutical and diagnostic products. Private respondent Lodovina Bonono (Bonono), on the other hand, is the District Manager of Roche and was petitioner's immediate supervisor.

At the other side of the fence is herein petitioner, Albert Añonuevo (Añonuevo), who was hired by Roche in 2003 as a Product Specialist. Among Añonuevo's responsibilities are sales achievement for assigned product, call planning and message delivery. Añonuevo was then assigned to handle the EAD-04 territory which comprises Makati Medical Center, PGH, Manila Doctors Hospital and Cardinal Santos Hospital.

Problems arose when Bonono sent a Memo-Call Performance Improvement (Memo) to Añonuevo on 20 September 2012 calling the latter's attention about his declining performance and other matters from January-August 2012. A pertinent portion of said Memo reads:

"RE: Call for Performance Improvement

It has been observed that your sale performance has been continuously declining for the past months. Looking at your year to date sales as of August, your performance does not reflect the full potential of the territory. The area has a potential of 143 breast cancer patients per month with 22 HER2 positive patients monthly based on ACE MD segmentation and potential territory. Currently, you have an average of 2 patient's recruitment including the RAP which means that we are missing other possible potential patients in your territory.

To give you a clear view of the your actual performance, I tabulated your sales to know if you really grow the full potential of territory based on patient recruitment.

0%	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	YTD
Actual	3.6	2.8	1.9	1.8	2.9	2.5	3.4	2.3	21.2
Study	1.3	1.1	0.55	0.55	0.55	0.55	1.1	0	5.7
Absolute Sales	2.3	1.7	1.35	1.25	2.35	1.95	2.3	2.3	15.5
Target	2.6	2.5	2.6	2.6	2.6	2.6	2.7	2.7	20.9
Sales with study	143%	128%	110%	101%	103%	102%	105%	103%	101%
Sales without study	88%	68%	52%	48%	90%	75%	85%	85%	74%

The consistently declining performance is a potential risk to your territory knowing the competitor and biosimilars capability to rule us if you will not act on it immediately.

xxxx.

Objectives:

1. Maximize the RAP program and develop at least 7-11 enrollments per month until September.
2. 100% implementation of the planned activity based on for the month of August and September as stated on CFAR dated August 22, 2012.
3. Develop the level of engagements to CSMC Mds (Dr. Ma. Luisa Tiambeng, Dr. Marina Chua, Dr. Kat Ferrera and Dr. Pauline So-Kaw) and to other Mds (Dr. Belen Tamayo, Dr. Barbara Domingo, Dr. Antonio Villalon and Dr. Reggie Edusma)

We will review your September performance on October 1, 2012. Review dates for October and November will be communicated to you separately. You are expected to demonstrate a high level of compliance to these performance objectives in your Performance Improvement Plan (PIP). Non-meeting of performance expectations stated in this PIP will be dealt with accordingly in terms of discipline and corrective actions. In the meantime, we closely work with each other to attain the above objectives and feel free to coordinate with me should you need my assistance and support while working on these objectives.”^[4]

Añonuevo felt slighted by said Memo as he had received in the same year a National Excellence Awards as Herceptin Champion and he believed that he had been exerting the same amount of diligence to merit Roche's recognition. On 26 September 2012, Añonuevo submitted a letter enumerating his grievances against the contents of the Memo. In this letter, Añonuevo, among others, stated that he was not accorded “due process” when he was placed on Performance Improvement Plan (PIP).

Thereafter, on 1 October 2012, Añonuevo sent a letter to Mr. Jose Buot, the Human Resources Director of Roche that the former would be resigning from his position effective 31 October 2012. Añonuevo, on said letter, averred that the unreasonable imposition of an almost 100% enrollment of potential patients on his part until the month of September, under pain of disciplinary and corrective actions, convinced him that he was being constructively dismissed. Furthermore, Añonuevo expressed his displeasure that he was required to cultivate strong relationship with the MDs in order to influence the latter to consider using Roche's products. Añonuevo felt that such strategy is borderline unethical. Last, Añonuevo took exception when he was allegedly threatened by Mr. Ramon Perfecto, the Business Unit Head of Roche, of disciplinary action by reason of his protest letter.^[5]

Thereafter, on 1 October 2012, Añonuevo filed a complaint for constructive dismissal against private respondents Roche and Bonono and thus prayed, among others, for the award of backwages and benefits, moral and exemplary damages and attorney's fees.^[6]

In their position paper, the private respondents Roche and Bonono vehemently denied that they constructively dismissed Añonuevo from service. According to the private respondents, the sending of the Memo and the placing of Añonuevo under PIP were intended to help the latter improve his performance and not to ease him out of service.^[7]

In a decision dated 25 February 2013, Labor Arbiter Beatriz T. De Guzman, to whom the case was assigned, dismissed Añonuevo's complaint for lack of merit. Labor Arbiter De Guzman ratiocinated that in the absence of proof that the private respondents discriminated against Añonuevo or made his working condition unbearable, there is no constructive dismissal to speak of. Labor Arbiter De Guzman thus decreed:

“WHEREFORE, premises considered, the complaint is hereby dismissed for lack of merit.”^[8]

On appeal, the National Labor Relations Commission 2nd Division (NLRC), on 25 June 2013, affirmed the ruling of Labor Arbiter De Guzman. The NLRC thus explained that placing Añonuevo under PIP was only meant to help the latter improve his performance and was a valid exercise of management prerogative. In fine, the NLRC ruled that Añonuevo was not coerced by private respondents to tender his resignation, hence he was not constructively dismissed.

With the denial of Añonuevo's motion for reconsideration of the above resolution, he now comes before this Court *via* this instant Petition for *Certiorari* and in support thereof raises the following issues for our consideration, to wit:

I.

PUBLIC RESPONDENT COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE PIECES OF EVIDENCE DID NOT SUFFICE TO PROVE THE GUILT OF PRIVATE RESPONDENT[S] OF THE CHARGES OF CONSTRUCTIVELY DISMISSING PETITIONER BY IMPOSING UNFAIR AND UNREASONABLE STANDARDS AGAINST HIM AND BY SINGLING HIM OUT, AND IN HOLDING THAT HIS RESIGNATION WAS VOLUNTARY AND NOT FORCED.

II.

PUBLIC RESPONDENT COMMISSION COMMITTED SERIOUS AND PALPABLE ERROR IN DISMISSING PETITIONER'S COMPLAINT, CONTRARY TO THE FACTS AND EVIDENCE IN THIS CASE, IN UTTER DISREGARD OF EXISTING LAW AND JURISPRUDENCE, WHICH IF NOT CORRECTED, WOULD CAUSE GRAVE AND IRREPARABLE DAMAGE AND INJURY TO HEREIN PETITIONER.

In essence, Añonuevo decried the lack of basis for the Memo, as he claimed to have exceeded his targets. Añonuevo then characterized the Memo as a written warning to him to achieve unreasonable and unfair future goals, which is thus prelude to his eventual dismissal from service. Also, Añonuevo complained that he was not given sufficient time to comply with the Memo thus depriving him of the right to due process. In addition, Añonuevo stressed that he was compelled to go beyond his job description by fostering strong ties with the MDs and thus perform acts which transgress ethical boundaries. Finally, Añonuevo claimed that he was being singled out in the implementation of the PIP, which is an indication that he was constructively dismissed.

In resolving the issues before this Court, We deem it proper to articulate beforehand the purpose of *certiorari* and what constitutes grave abuse of discretion.

A petition for *certiorari* is the proper remedy when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor any plain speedy, and adequate remedy at law. There is "grave abuse of discretion" when respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.^[9]