

TWENTY-FIRST DIVISION

[CA-G.R. SP NO. 03517-MIN, January 30, 2014]

RODRIGO L. PILOTON, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC) 5TH DIVISION, CAGAYAN DE ORO CITY AND VICMAR DEVELOPMENT CORP. AND/OR ROBERT W. KUA, PRESIDENT, RESPONDENTS.

D E C I S I O N

FRANCISCO, J.:

Before Us is a Petition for Certiorari^[1] under Rule 65 of the Rules of Court assailing the Resolution,^[2] dated 27 November 2009, issued by the public respondent, National Labor Relations Commission, 5th Division, Cagayan de Oro City in a case docketed as NLRC No. MAC-09-01033-2009. In the assailed Resolution, the NLRC set aside the Decision,^[3] dated 30 July 2009, of the Regional Arbitration Branch No. X, Cagayan de Oro City in NLRC Case No. RAB-10-10-00596-2008 and dismissed the Complaint for illegal dismissal filed by herein petitioner, Rodrigo L. Piloton.

The Facts

The petitioner, Rodrigo L. Piloton, was first hired by respondent Vicmar Development Corporation (Vicmar) as a temporary employee on 11 August 1980 as a Production Monitor Clerk. Eventually, the petitioner became a regular employee. On 1 August 1986, the petitioner was appointed as the SSS/Benefits Clerk. The petitioner's duties and responsibilities were outlined in a Memorandum^[4] dated 1 August 1986 as follows:

1. Preparation of necessary papers for registration of new employees with the Social Security System [(SSS)].
2. Computation of SSS/Sickness benefit of employees and prepares request of same to SSS office for reimbursement.
3. Prepare SSS monthly report.
4. Prepare SSS quarterly collection list.
5. Maintains/controls records of paid/unpaid SSS and other pertinent papers.
6. Submits to Cash Section the names of employees who loan (Salary, Educational or Housing) at SSS for direct deduction against salary as per schedule.
7. Other related duties that may be assigned to from time to time.

Over the course of his employment as the SSS/Benefits clerk, the petitioner also performed the task of remitting the loan payments of his co-workers to SSS after such amounts were deducted by the company cashier from the employees' salaries.

The company cashier, the late Erlinda Dequito, died on 11 August 2008. Before releasing Dequito's benefits to her heirs, the Accounting Department of respondent Vicmar conducted an audit of the cashier's cash transactions. It was then discovered that there was a shortage in the remittance of the SSS loan payments.

When respondent Vicmar confronted the petitioner on the matter, the latter denied having participated in the taking of the missing funds nor having knowledge of such anomaly.

On 5 September 2008, respondent Vicmar sent the petitioner a Memo^[5] stating as follows:

After a thorough investigation of top management, it was found out and established that you committed lapses in the performance of your job. This resulted in unaccounted monetary losses of SSS salary loan payments of company workers.

For this reason, you are hereby advised by management to turn over your duties, responsibilities and records to designated company staff during the next two days.

Management is hereby advising you to take a force[d] leave of 10 working days beginning Sept. 8, 2008 while we are weighing our options on your employment.

On 16 September 2008, respondent Vicmar issued another Memo^[6] extending the preventive suspension of the petitioner while an investigation was being conducted by management.

On 24 September 2008, the audit team of respondent Vicmar submitted its report stating that a total of Php 607,174.40 of collected salary loan payments were unremitted.

On 2 October 2008, a conference was conducted whereby the petitioner was informed of the results of the investigation.

Thereafter, on 6 October 2008, respondent Vicmar issued a Memo^[7] informing the petitioner of its decision to terminate him from the company on the grounds of negligence as well as loss of trust and confidence.

On 10 October 2008, the petitioner filed the present complaint for illegal dismissal against respondent Vicmar.

After both parties presented their respective pieces of evidence, the Labor Arbiter rendered a Decision, dated 30 July 2009, declaring herein petitioner to have been illegally dismissed by respondent Vicmar. The dispositive portion of the Labor Arbiter's decision states:

WHEREFORE, foregoing premises considered, a judgment is hereby rendered declaring complainant Rodrigo L. Piloton to have been illegally dismissed from employment and thus ordering respondent Vicmar

Development Corporation to pay complainant Piloton his backwages and separation pay, including attorney's fees, in the aggregate amount of P437,756.48.^[8]

Aggrieved with the Labor Arbiter's ruling, the private respondents filed an appeal before the NLRC.

On 27 November 2009, the NLRC issued the assailed Resolution dismissing the petitioner's complaint for illegal dismissal. The petitioner filed a Motion for Reconsideration but the same was denied by the NLRC in a Resolution^[9] dated 21 January 2010.

Hence, the petitioner filed the present petition for certiorari raising the following arguments:

I.

PROCEDURAL

A.

PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO EXCESS OF JURISDICTION BY ENTERTAINING THE APPEAL OF PRIVATE RESPONDENTS, PROCEDURAL REQUIREMENTS NOT SATISFIED.

II.

SUBSTANTIVE

A.

PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO EXCESS OF JURISDICTION IN MAKING THE DISMISSAL OF PETITIONER LEGAL, BUT WITHOUT JUST CAUSE

1.

GROSS NEGLIGENCE AND LOST (sic) OF TRUST AND CONFIDENCE ARE NOT VALID GROUNDS TO DISMISS PETITIONER

2.

PETITIONER WAS A REGULAR EMPLOYEE, BUT A MERE RANK-AND-FILE

B.

PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO EXCESS OF ITS JURISDICTION BY MAKING PETITIONER'S DISMISSAL LEGAL EVEN IF DUE PROCESS IS (sic) NOT AFFORDED TO PETITIONER WITH HIS DISMISSAL FROM HIS EMPLOYMENT

1.

TWO-NOTICE REQUIREMENT WAS NOT SATISFIED

2.

PETITIONER WAS NOT GIVEN WITH (sic) OPPORTUNITY TO BE HEARD

C.

PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION BY NOT RULING ON THE REINSTATEMENT OF THE PETITIONER, OR PAID WITH SEPARATION PAY, RETIREMENT BENEFITS, AND SHOULD BE AWARDED HIS BACKWAGES AND [OTHER] ACCRUED BENEFITS PROVIDED UNDER THE CBA, LABOR LAWS, RULES AND REGULATIONS^[10]

Our Ruling.

We shall first resolve the procedural issues raised by the petitioner.

The petitioner argues that the NLRC committed grave abuse of discretion when it entertained the appeal of respondent Vicmar considering that the surety bond is short of the amount required by law. The petitioner points out that the ruling of the Labor Arbiter provides for an award of Php 397,960.44^[11] in favor of the petitioner. On the other hand, the Surety Bond^[12] posted by respondent Vicmar only amounted to Php 393,980.83.

Under Rule VI, Section 6^[13] of the NLRC Rules of Procedure, the appeal bond must be in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

However, the Supreme Court has held that the bond requirement on appeals may be relaxed when there is substantial compliance with the NLRC Rules of Procedure or when the appellant shows willingness to post a partial bond.^[14]

In the case at bar, respondent Vicmar substantially complied with the rules when it timely posed an appeal bond. Moreover, We find that the deficit of only Php 3,979.61 is simply not enough ground for the dismissal of respondent Vicmar's appeal.

The petitioner also alleges that the surety company, Pioneer Insurance and Surety Corporation (Pioneer), was not duly authorized by the Supreme Court at the time of respondent Vicmar's appeal before the NLRC. The same is likewise unmeritorious.

Respondent Vicmar has duly shown that Pioneer was issued a Certificate of Accreditation^[15] last 26 August 2009 valid until 31 January 2010. Thus, it is clear that Pioneer was duly accredited by the Supreme Court at the time respondent Vicmar filed its appeal before the NLRC.

We shall now proceed with the substantive arguments raised by the petitioner.

In illegal dismissal cases, the employer must comply with both procedural and substantive due process in order to justify the dismissal of the employee. The Supreme Court has defined procedural and substantive due process *to wit*:

For a worker's dismissal to be considered valid, it must comply with both procedural and substantive due process. The legality of the manner of dismissal constitutes procedural due process, while the legality of the act of dismissal constitutes substantive due process.

Procedural due process in dismissal cases consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be affected: (1) the first notice apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second notice informs the employee of the employer's decision to dismiss him. Before the issuance of the second notice, the requirement of a hearing must be complied with by giving the worker an opportunity to be heard. It is not necessary that an actual hearing be conducted.

Substantive due process, on the other hand, required that dismissal by the employer be made under a just or authorized cause under Articles 282 to 284 of the Labor Code.^[16]

The private respondents anchor their dismissal of the petitioner on the grounds of gross negligence as well as loss of trust and confidence.

The NLRC ruled that respondent Vicmar was justified in terminating the services of the petitioner on the ground of gross negligence. According to the NLRC, the petitioner's inaction regarding the irregularities in the remittance of SSS loan payments showed his lack of care or diligence for the safety of the property of respondent Vicmar.

We agree with the NLRC.

Gross negligence as a ground for validly dismissing an employee has been defined by the Supreme Court *to wit*:

Gross negligence connotes want or absence of or failure to exercise even slight care or diligence, or the total absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. To warrant removal from service, the negligence should not merely be gross, but also habitual. A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.

In *JGB and Associates, Inc. v. National Labor Relations Commission*, the Court further declared that 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. Fraud and willful neglect of duties imply bad faith of the employee in failing to perform his job, to the detriment of the employer and the latter's business.^[17]

In his attempt to evade any liability, the petitioner argues that his duties were limited to the physical holding and remitting of the SSS loan payments. This argument is bereft of merit.

As cited by the petitioner, the procedure for the payment of SSS loans was outlined by the private respondents in their Appeal Memorandum before the NLRC as follows:

"It should be recalled that the respondent has established a mechanism, with the consent of the workers, concerning the SSS application and payment of loans. In said set-up, the loan payments of the workers are