

SPECIAL THIRTEENTH DIVISION

[CA-G.R. SP NO. 131120, April 16, 2014]

**MA. LOURDES P. ROGELIO, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION - 3RD DIVISION, ZAHNFABRIK
PHILIPPINES, INC., RESPONDENTS.**

D E C I S I O N

DIMAAMPAO, J.:

The constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers. The commitment under the fundamental law is that the cause of labor does not prevent us from sustaining the employer when the law is clearly on its side.^[1]

While it is true that compassion and human consideration should guide the disposition of cases involving termination of employment since it affects one's source or means of livelihood, it should not be overlooked that the benefits accorded to labor do not include compelling an employer to retain the services of an employee who has been shown to be a gross liability to the employer. The law in protecting the rights of the employees authorizes neither oppression nor self-destruction of the employer.^[2]

We take Our cue from the foregoing doctrinal aphorism as We endeavor to resolve the instant case.

Through this Petition for Certiorari,^[3] petitioner fulminates against the Decision^[4] dated 30 April 2013 and Resolution⁵ dated 31 May 2013 of the National Labor Relations Commission (NLRC) dismissing her *Complaint for Illegal Dismissal*, in NLRC LAC No. 08-002322-12.

The material operative facts are as follows:

Petitioner Ma. Lourdes Rogelio was employed by private respondent Zahnfabrik Philippines, Inc. as a Dental Operator. She was absent from her job from 25 January 2010 to 4 March 2012 or for a period of two years. Petitioner reported back for work on 5 March 2012. The next day or on 6 March 2012, petitioner again did not report for work. Consequently, private respondent informed her that her continuous unauthorized absences constituted abandonment of work, in violation of the company's policies. Ensuingly, petitioner was directed to submit a written explanation why no disciplinary action should be imposed upon her. For the nonce, she was placed under preventive suspension for a period of 30 days effective 2 April 2012.^[6]

After conducting an investigation, private respondent terminated petitioner's

services on 2 May 2012.^[7] This impelled her to initiate a *Complaint*^[8] for illegal dismissal, non-payment of salary, separation pay and illegal suspension. Petitioner averred that her employment was terminated without any valid and just cause and in violation of her right to due process. Her indefinite leave of absence for two years was with the conformity of private respondent as she was suffering from an illness. Likewise, she had an approved leave from 6 to 31 March 2012. When she went back to work on 2 April 2012, she was not allowed to resume her job; instead, she was preventively suspended for 30 days.

Traversing the material allegations in the Complaint, private respondent countered that petitioner's employment was legally terminated as she incurred numerous unauthorized absences. Before her dismissal from employment, she was accorded the required due process.

Assaying the contrasting postulations of the parties, the Labor Arbiter rendered a Decision,⁹ ratiocinating and disposing in this wise:

"x x x **While the complainant alleged that she was on indefinite leave due to an illness, however, there is nothing on record to prove her absence for two (2) years was authorized or approved by the respondent company.** x x x

x x x [T]here is no evidence on record corroborating complainant's approved leave of absence from March 6 to 31, 2012.

Verily, it is without doubt that the excessive unauthorized absences of the complainant from January 25, 2010 to March 31, 2012 have already amounted to abandonment of work. Even by offsetting the allowable leaves under the CBA, there is no question that complainant's absences have already reached beyond what is allowed by the Company Rules and Regulations. **Therefore, complainant's dismissal is justified as her prolonged absence from work constituted gross and habitual neglect of duty under Article 82 (b) of the Labor Code."**

WHEREFORE, premises considered, the instant case is hereby DISMISSED for lack of merit.

SO ORDERED."^[10] (Emphases supplied)

Petitioner appealed the foregoing *Decision* before the NLRC. However, in the impugned *Decision*, the labor tribunal affirmed the findings of the Labor Arbiter.

Petitioner moved for reconsideration thereof but the NLRC paid no heed to her *Motion* in the assailed Resolution.

Unflustered, petitioner is now before Us ascribing grave abuse of discretion on the part of the NLRC—

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IN AFFIRMING THE DECISION OF THE LABOR ARBITER FINDING