

## SIXTH DIVISION

[ CA-G.R. SP NO. 126857, May 23, 2014 ]

**COFFEE MASTERS, INC., BERNARDINE T. SIY, FREDERICK T. SIY, JULIET GAMIDO AND MARY JEAN P. FLORES, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) AND JOE EMMAN M. PASAMBA, RESPONDENTS.**

### D E C I S I O N

**BARZA, J.:**

Before the Court is a petition for certiorari seeking to nullify the NLRC decision<sup>[1]</sup> dated May 16, 2012 as well as its resolution<sup>[2]</sup> dated June 25, 2012, in **NLRC LAC No. 02-000593-12 (NLRC-NCR-05-08018-11)**. The antecedent facts of the case are as follows:

Private respondent Joe Emman M. Pasamba was employed by petitioner Coffee Masters, Inc. (CMI for brevity) as a "*barista*" on August 16, 2007. He was initially assigned at the company's Seattle's Best Coffee Bonifacio High Street branch in Fort Bonifacio, Taguig City and thereafter at the Rockwell branch in Makati City. When the Rockwell branch closed on January 3, 2011, he was reassigned at Seattle's Best Coffee in Valero, Makati City.

The controversy between the parties spawned from private respondent's attendance record. It appears that private respondent had been incurring frequent tardiness from January 16-31, 2011 (a total of 172 minutes), February 1-15, 2011 (a total of 235 minutes), February 16-28, 2011 (a total of 117 minutes) and finally on March 1-15, 2011 (a total of 287 minutes). On top of it he incurred absences for three (3) consecutive days on February 11-13, 2011 without official leave. In all of the said infractions, private respondent was issued several show cause memoranda<sup>[3]</sup> dated February 17, 2011, March 2, 2011, March 7, 2011 and April 7, 2011 directing him to explain why he should not be subjected to disciplinary action concerning his tardiness and absences. He was also issued several written warnings<sup>[4]</sup> pertaining to the same violations.

In a handwritten letter<sup>[5]</sup> dated March 3, 2011, private respondent explained that his absences from February 11-13, 2011 was brought about by a family emergency when he had to rush home to the province due to the death of his uncle. In another letter<sup>[6]</sup> of even date, he attributed his tardiness to his weekly work shift which made it difficult for him to adjust his sleep. He gave two other letters<sup>[7]</sup> on various dates still ascribing his tardiness on his difficulty to adjust to his work schedule.

A hearing conducted by CMI was scheduled on April 7, 2011 to afford private respondent the opportunity to fully explain himself regarding the infractions he committed. On May 9, 2011, CMI issued a notice of termination<sup>[8]</sup> of private respondent's employment effective May 13, 2011 on the ground of habitual

tardiness. Private respondent refused to sign the same because he blamed his tardiness on the erratic work schedules he was given.

Thereafter, private respondent filed a complaint<sup>[9]</sup> for illegal dismissal with money claims against petitioners before the Regional Arbitration Branch of the NLRC. The Labor Arbiter rendered its decision<sup>[10]</sup> on the case on November 2, 2011 finding for private respondent. The Labor Arbiter found that private respondent was justified in his tardiness because of the irregular and difficult work schedules given to him. In view thereof, the Labor Arbiter granted backwages, separation pay, proportionate holiday and 13th month pay, exemplary damages and attorney's fees to private respondent which amounted to a sum of Php127,462.75. Aggrieved by the findings of the Labor Arbiter, petitioners appealed the same to the NLRC. In the assailed decision dated May 16, 2012, the NLRC agreed with the findings of the Labor Arbiter and affirmed with modification the latter's judgment. Petitioners' motion for reconsideration on the NLRC decision was denied in the assailed resolution dated June 25, 2012. Thereafter, the NLRC issued an entry of judgment<sup>[11]</sup> on August 30, 2012.

Petitioners thus filed the instant petition raising the following issues for the Court's consideration:

The NLRC acted with grave abuse of discretion amounting to lack of or in excess of jurisdiction when it issued the assailed decision and assailed resolution in light of the following reasons:

A. There is no dispute that private respondent incurred gross and habitual tardiness which is tantamount to just cause under **Art. 282** of the **Labor Code**.

B. Private respondent was never given an erratic schedule by petitioner's cafe manager. As such his gross and habitual tardiness could not be attributed thereto.

C. The law merely requires petitioner (as employer) to present substantial evidence to prove the existence of just cause against private respondent.

D. Private respondent having been validly dismissed from his employment is not entitled to his monetary claims, i.e. backwages, separation pay, damages and attorney's fees.

In a special civil action for *certiorari*, the Court of Appeals has ample authority to make its own factual determination. Thus, the Court of Appeals can grant a petition for *certiorari* when it finds that the NLRC committed grave abuse of discretion by disregarding evidence material to the controversy. To make this finding, the Court of Appeals necessarily has to look at the evidence and make its own factual determination.<sup>[12]</sup>

It is undisputed that private respondent had committed several counts of tardiness in the workplace. Consequently, his employment was terminated on account of gross and habitual negligence.

Gross negligence under **Article 282** of the **Labor Code** connotes want of care in the performance of one's duties, while habitual neglect implies repeated failure to