

FIFTEENTH DIVISION

[CA-G.R. SP No. 131920, June 27, 2014]

**ASM TRADING CENTER CORP. AND/OR ALLAN MACASAET,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION
(THIRD DIVISION) AND NESTOR V. LUCES, RESPONDENTS.**

DECISION

CASTILLO, M., J.:

This is a petition for certiorari seeking to annul and set aside the Resolutions dated 12 July 2013^[1] and 30 August 2013,^[2] both of the public respondent National Labor Relations Commission, in NLRC LAC No. 05-001670-13 [NLRC NCR Case No. 07-10756-11], affirming with modification the appealed Decision of Labor Arbiter Jaime M. Reyno^[3] and denying petitioners' partial motion for reconsideration, respectively.

The antecedents of this petition as faithfully summarized in the first assailed Resolution of the NLRC are as follows:^[4]

Respondent-appellee company^[5] is engaged in the printing business. On 16 July 1993, it hired complainant-appellant^[6] as a Platemaker. At the time of his separation, he was receiving the amount of P13,595.42 as monthly salary.

On 25 May 2011, by virtue of the incident report of its security guard Joel Mangulad, respondent-appellee company issued a Notice to Explain to complainant-appellant requiring him to show cause why no disciplinary action should be taken against him for reporting to his place of work under the influence of liquor on 02 May 2011, which is in clear violation of company rules.

The following day, complainant-appellant submitted his written explanation wherein he admitted coming from a drinking spree. He asked for management's forgiveness claiming that it was unintentional on his part to do so.

On 02 June 2011, an administrative hearing was held wherein complainant-appellant acknowledged that he knew of the company rule which prohibits employees from reporting to the workplace under the influence of liquor and its corresponding penalty. He admitted his violation of said rule.

On 06 June 2011, another Notice to Explain was issued by respondents-appellees^[7] to complainant-appellant for sleeping during working hours also on 02 May 2011.

Again, complainant-appellant replied and owned up to his wrongdoing. He once more sought forgiveness from management.

On 27 June 2011, complainant-appellant was issued a Notice of Termination for having violated company rules and regulations.

Aggrieved by his dismissal, complainant-appellant filed against respondents-appellees a complaint for illegal dismissal and payment of separation pay. He claimed that while he was indeed under the influence of liquor when he reported for work on 02 May 2011, he did not deserve the supreme penalty of dismissal considering his 18 years of service and his untarnished employment record. He also contended that there was no malicious intent on his part to disregard company rules and that respondents-appellees did not suffer any actual damage by his acts.

On the other hand, respondents-appellees alleged that complainant-appellant was dismissed for cause.

Complainant-appellant was charged with violations of Company's Rules and Regulations, particularly, Section 5, Rule IV [Reporting for work while Drunk] and Section 4, Rule VII [Sleeping during Working Hours]. Having admitted his infractions in his written replies and during the administrative investigation, respondents-appellees were left with no choice but to impose the penalty as ordained by their rules.

On 18 March 2013, Labor Arbiter Jaime M. Reyno exonerated respondents-appellees from the charge of illegal dismissal. He also denied complainant-appellant's money claims.

On appeal, the NLRC in its first assailed Resolution, concurred with the finding of the labor arbiter that private respondent Nestor V. Luces was validly dismissed from his employment by petitioner ASM Trading Center Corporation (ASM) for serious misconduct or willful disobedience of the lawful orders of the employer. However, the public respondent awarded separation pay equivalent to ½ month pay for every year of service or the aggregate amount of P122,358.78 in favor of the private respondent, as and by way of financial assistance. The NLRC justified said award, as follows:^[8]

An employee who is dismissed for cause is generally not entitled to any financial assistance. Equity considerations, however, provide an exception. Equity has been defined as justice outside law, being ethical rather than jural and belonging to the sphere of morals than of law. It is grounded on the precepts of conscience and not on any sanction of positive law, for equity finds no room for application where there is law xxx

Given the facts established on record, namely, that complainant-appellant had worked with respondents-appellees for a period of eighteen (18) years and without any previous derogatory record, the ends of social and compassionate justice would be better served if he is given some equitable relief in the form of separation pay equivalent to one half (1/2) month for every year of service xxx.

Petitioners moved for the NLRC to reconsider the award of separation pay to the private respondent, arguing essentially that the same was unfounded. Their motion for reconsideration was denied by the public respondent in its second assailed Resolution.

Hence, this petition.

For failure of the private respondent to file his comment on the petition for certiorari within the period granted by this Court, the filing thereof was deemed to have been waived by the private respondent and the case was submitted for decision.

Petitioners impute grave abuse of discretion on the part of the public respondent in awarding separation pay to the private respondent notwithstanding the legality of his dismissal from work. They insist that the same is baseless and that the NLRC did not act in accordance with settled jurisprudence on the matter in rendering its assailed Resolutions insofar as the award of separation pay is concerned.

We are accordingly called upon to determine the propriety of the NLRC's award of separation pay, as and by way of financial assistance, to the private respondent.

As the rule now stands, an employee is not entitled to a separation pay if he had been dismissed for any of the just causes enumerated under Article 282 of the Labor Code, which states:

ART. 282. Termination by employer. – An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing.

Such an award is authorized only in the situations contemplated in Articles 283 and 284 of the same Code.

Thus, in the recent case of *Unilever Philippines, Inc. v. Maria Ruby M. Rivera*,^[9] it was held:

The pivotal issue in the case at bench is whether or not a validly dismissed employee, like Rivera, is entitled to an award of separation pay.

As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282 of the Labor Code is not entitled to a separation pay. Section 7, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code provides: