

SPECIAL SEVENTEENTH DIVISION

[CA-G.R. SP NO. 129513, June 19, 2014]

**JEANEFER P. PEREZ, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, PREMIUM SECURITY &
INVESTIGATION AGENCY, INC. / FELIX ARAGON,
RESPONDENTS.**

D E C I S I O N

BATO, JR., J.:

Assailed in this Petition for Certiorari^[1] under Rule 65 of the Rules of Court are the 29 November 2012 Decision^[2] and 28 January 2013 Resolution^[3] of the National Labor Relations Commission (NLRC) in NLRC-LAC No. 10-002895-12.

The instant case stemmed from a Complaint^[4] filed by petitioner Jeanefer P. Perez against Premium Security and Investigation Agency, Inc. (PSIA) and its President, Felix Aragon, before the NLRC, National Capital Region, Quezon City. His causes of action include illegal dismissal, nonpayment of overtime pay, nonpayment of holiday pay and attorney's fees.

In his position paper^[5] filed before the Labor Arbiter, petitioner averred that he started working for PSIA on 05 March 2009. Before working for PSIA, he worked for Bonifacio Security Services, a sister company of PSIA. On 21 March 2011, while he was assigned at Ayala Center, Makati City, he had an argument with his fellow security guard while they were roving the Edsa Car Park. Thereafter, they went back to their Ayala Center Association Office Base wherein their Officer-in-Charge accused him of "*pagkasa ng armalite sa kasama*" (cocking a gun at his companion). Despite his denial of the accusation levied against him, his gun was taken away from him and he was told to go home. Without due process and a valid cause, he was never again given a posting.

For their part, PSIA and Felix Aragon alleged in their Position Paper^[6] that petitioner was dismissed for a just cause after an investigation. That at around 11:45 P.M. on 21 March 2011, Salvador Sordevilla, a security guard assigned in Glorietta Complex, went to their Ayala Center Association Office and reported to Edwin Balasabas, OIC of the security personnel, that an altercation ensued between him and herein petitioner Perez. Allegedly, while petitioner and Sordevilla were on their tour of duty, Sordevilla reminded petitioner not to use a cellular phone. To which petitioner replied: "*wag mo akong pakialaman, baka gusto mong isama kita sa problema ko.*" Thereafter, the two continued their tour of duty. When they reached a station road, petitioner asked Sordevilla what sector they were in, and Sordevilla answered that petitioner should be the one to know their location since he was the one holding the radio. Petitioner, in turn, said: "*di wala tayong tanungan.*" When they reached the corner of Park Square, petitioner suddenly cocked his M-16 rifle and challenged Sordevilla to also get his gun "*para magkaalaman na.*" Sordevilla did not retaliate

but told petitioner that "*nakakatatlong beses mo na yan ginagawa sa 'kin. Hindi na tama 'yang ginagawa mo.*" Sordevilla then reported said incident to Balasabas.

As a preventive measure, Balasabas confiscated the firearms of both petitioner and Sordevilla. Balasabas reported the incident to PSIA and an investigation transpired. In a Notice^[7] dated 24 March 2011, petitioner was directed to explain his version of the incident. On even date, petitioner submitted his explanation wherein he denied cocking his M-16 rifle at Sordevilla. He, however, admitted that Sordevilla told him not to use his cellular phone while they were on duty and when he asked Sordevilla what area they were in, the latter replied that he should be the one to know their position.

An administrative hearing was also conducted by PSIA on 26 March 2011, wherein petitioner admitted that during his altercation with Sordevilla, he took his firearm and hit the weapon's magazine or ammunition storage and feeding device, to wit: "*tapos po kinuha ko ang baril sa kabilang upo-an tapos pinalo ko yong magasin.*" PSIA likewise took into consideration the statements of Balasabas and the other security guards assigned in Ayala Center, namely, Marnylson Mendoza, Randy Letada and Lloyd Feliciano, to the effect that petitioner is always hot headed and has a penchant for cursing his fellow security guards.

After a comprehensive evaluation of the facts and evidence, PSIA decided to terminate petitioner for serious misconduct. However, petitioner refused to receive the Notice of Dismissal^[8] dated 15 April 2011 signed by respondent Aragon. Hence, said notice of dismissal was mailed to petitioner's residential address.

On 23 July 2012, the Labor Arbiter rendered a Decision^[9] declaring that no illegal dismissal took place since petitioner was terminated for a just cause. Nonetheless, petitioner was awarded holiday pay and attorney's fees. The decretal portion of said Decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for illegal dismissal for lack of merit.

Respondents Premium Security and Investigation Agency, Inc./Felix Aragon are however, ordered to pay complainant Jeanfer P. Perez the amount of EIGHT THOUSAND FIFTY EIGHT PESOS & 60/100 (P8,058.60) representing his holiday pay and attorney's fees.

All other claims are DISMISSED for lack of merit.

SO ORDERED."

Thereafter, petitioner filed a Memorandum of Appeal^[10] on the ground that the Labor Arbiter committed grave abuse of discretion in finding for the private respondents.

Via the assailed 29 November 2012 Decision,^[11] the NLRC denied petitioner's appeal for having been filed beyond the reglementary period. The NLRC likewise delved into the merits of petitioner's appeal but nonetheless found it to be unmeritorious. The NLRC ruled as follows:

"...While complainant denied having cocked his firearm at Sordevilla, complainant nevertheless admitted during investigation that while he and

Sordevilla were having a discussion 'kinuha ko ang baril sa kabilang upo-an tapos pinalo ko yong magasin' (p. 61, Records). In this connection, we agree with the respondents that complainant's actuations manifested threat to the life and limb of his roving partner, Sordevilla. Complainant, as a security guard, is expected to safeguard the person and properties of respondents' clients and not to engage in a fight with anybody moreso with a co-security guard. We find complainant's dismissal justified.

Complainant's contention that he is entitled to his money claims is likewise untenable. A perusal of the payslips (pp. 23 to 30, Records) which complainant himself attached to his position paper, reveals that he was paid his overtime pay ranging from 30% to 200% of his basic pay.

In fine, in the absence of evidence showing that the Labor Arbiter whimsically and capriciously rendered the decision, we affirm (Filcon Mfg. vs. NLRC, 199 SCRA 814).

WHEREFORE, the appeal of complainant is hereby DISMISSED for having been filed out of time and DENIED for lack of merit. The decision dated 23 July 2010 is AFFIRMED.

SO ORDERED."

Petitioner's motion for reconsideration was likewise denied by the NLRC *via* the assailed Resolution^[12] dated 28 January 2013.

Hence, the instant petition with the following issues for the Court's resolution:

"I

WHETHER PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT PETITIONER WAS NOT ILLEGALLY DISMISSED.

II

WHETHER PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING PETITIONER'S MONEY CLAIMS. III WHETHER PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING OUTRIGHT PETITIONER'S MERITORIOUS APPEAL."^[13]

The above-quoted issues boil down to whether or not the NLRC committed grave abuse of discretion in sustaining the Labor Arbiter's ruling that the petitioner was validly terminated from his job.

By way of Comment,^[14] the private respondents contend that the petitioner's arguments are mere reiterations of the ones already resolved by the Labor Arbiter and NLRC. Furthermore, petitioner miserably failed to substantiate his claim of abuse of discretion on the part of the NLRC.

Grave abuse of discretion means such capricious and arbitrary exercise of judgment as is equivalent, in the eyes of the law, to lack of jurisdiction.^[15] There is grave abuse of discretion where the power is exercised in an arbitrary or despotic manner