

SIXTEENTH DIVISION

[CA-G.R. SP NO. 122983, June 18, 2014]

GERONIMO C. SAN JUAN, PETITIONER, VS. MERCURY DRUG CORPORATION, MS. VIVIAN QUE AZCONA AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

DECISION

CORALES, J.:

This is a Petition for *Certiorari*^[1] under Rule 65 of the Rules of Court assailing the July 29, 2011 Decision^[2] and October 17, 2011 Resolution^[3] of the National Labor Relations Commission (NLRC) in NLRC LAC 03-000804-11. The assailed Decision set aside the January 31, 2011 Decision^[4] of the Labor Arbiter and dismissed the illegal dismissal case filed by petitioner Geronimo San Juan (San Juan) against private respondent Mercury Drug Corporation (MDC). The questioned Resolution denied San Juan's subsequent motion for reconsideration.

The Antecedents

San Juan worked as a self-service attendant in MDC and was tasked to monitor stocks in the grocery section, ensure correct pricing of items, attend to the needs of the customers,^[5] and oversee the activities of promo merchandisers (promodizers) who were subcontracted to promote certain products.^[6] Sometime in November 2009, he requested promodizer Hazel Anne San Diego (San Diego) to display items in the grocery section but the latter did not comply. When confronted, San Diego responded in defiance telling San Juan "*eh bakit ako ang magdidisplay nyan, eh di ba gawain mo ito?*". San Juan reported the matter to MDC's Branch Manager Lanie Capistrano (Capsitrano) who advised San Diego to accommodate the request.^[7]

On November 13, 2009, San Diego sent an email^[8] to Vivian Que Azcona, the President of MDC, alleging that at one time, San Juan maliciously brushed her breast and butt and there were instances when his orders were made in a disdainful manner. She also complained Capistrano's failure to act when she approached her for redress. Thereafter, San Diego did not report to work and resigned on November 17, 2009.^[9]

Acting on San Diego's complaint, MDC's District Manager Lota D. Ilete (Ilete) conducted a branch level investigation^[10] and interviewed the parties involved. According to San Diego, at the start of her employment, San Juan asked her for a date and told her he would court her. Afterwards, she would feel San Juan hands touching her breast, butt and legs every time she passes near him. Sometime in late September or early October 2009, she was about to wear her I.D. when San Juan passed his arms through her raised arms touching her breasts. In another occasion, she was getting her bag in the men's rest room, when San Juan kicked her butt. San Juan also uttered malicious and vulgar words to San Diego such as

"hubad," and "tuwad, tirahin kita diyan." San Diego further claimed that San Juan gave orders in a disrespectful manner and at one time, accosted her in front of other promodizers saying she should display stocks instead of merely gossiping with other merchandisers, then, threw two (2) boxes to her.^[11]

San Juan denied all the accusations against him and insisted that all he wanted was to help the branch management in maintaining the proper display of stocks.^[12]

On December 4, 2009, Capistrano submitted her report stating that when she first confronted San Diego as to the undisplayed products, the latter relayed to her that when the box was handed by San Juan, "*may nasanggi*". However, when San Diego's aunt Connie San Diego, the Branch Manager of MDC-Sta. Maria, called her to clarify what happened, she was surprised to learn that the "*may nasanggi*" incident became "*may hinipuan*". Capistrano met with San Diego at MDC Sta. Maria-Waltermart Branch and the latter admitted that emotion got the better of her due to San Juan's "bossy" attitude. Thus, Capistrano concluded that there was no clear case of sexual harassment and the complaint was only "due to pent up anger". Nevertheless, she recommended a written reprimand against San Juan for his undue usurpation of authority.^[13]

On the same day, San Diego submitted a letter^[14] retracting her complaint and admitting that her earlier email was motivated by a misunderstanding with San Juan due to the report he made to Capistrano. She allegedly realized that San Juan's actuations were never intentional and she fully understood why San Diego had to report her disobedience in the work place.

Notwithstanding San Diego's recantation, Iletto recommended a grievance investigation against San Juan after finding that the complained incidents constituted a Type D Offense of sexual harassment.^[15]

On January 10, 2010 San Diego executed a "*Sinumpaang Salaysay*"^[16] reiterating her accusations against San Juan who was later on put under preventive suspension upon receipt of a February 12, 2010 notice.^[17] San Juan was also enjoined to personally appear in the hearing to be conducted by an investigating committee because the acts imputed to him by San Diego were tantamount to sexual harassment, a Type D offense referring to acts of indecency and punishable by dismissal under the Employee's Manual.

The investigating committee convened on February 19, 2010 and heard the testimonies of San Diego, San Juan, Capistrano, Iletto and Pharmacy Assistant Nieves O. Jose (Jose). Jose allegedly heard San Diego telling Capistrano that "*Mam, tama din po ba na dadaan lang siya sa likod, masasagi na puwet ko, pati breast ko, nahawakan.*"^[18]

On April 8, 2010, the investigating committee concluded that San Juan indeed committed sexual harassment against San Diego as well as acts unbecoming of a male employee.^[19] Thus, MDC terminated San Juan's employment on the ground of indecency and sexual harassment.^[20]

The Rulings of the Labor Arbiter and the NLRC

In the January 31, 2011 Decision,^[21] the Labor Arbiter ruled that San Juan was not afforded due process of law because he was not furnished with a copy of San Diego's January 10, 2010 *Sinumpaang Salaysay* and he was not represented by counsel during the February 19, 2010 hearing. The Labor Arbiter did not also find any sufficient evidence to support San Diego's accusation of sexual harassment against San Juan considering that the former's sworn affidavit was not presented to the latter for purposes of confrontation and the recantation she earlier made. The dispositive portion of this Decision reads:

WHEREFORE, premises considered, a Judgment is hereby rendered declaring complainant to have been "**ILLEGALLY DISMISSED**" from his position as Service Staff Attendant of Mercury Drug Corporation, Sta. Maria Branch, St. Maria, Bulacan, to be **REINSTATED** to his former or equivalent position without loss of seniority rights, privileges and benefits attached to his position.

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SO ORDERED. (Emphasis appears in the original text of the Decision)

On appeal, the NLRC set aside the Labor Arbiter's ruling and rendered its July 29, 2011 Decision^[22] dismissing the illegal dismissal complaint filed by San Juan. The NLRC held that San Diego's email complaint and sworn statement are replete with details showing that San Juan violated the moral value that MDC instills in its employees as enunciated in the employee's manual. It disregarded San Diego's recantation of her earlier complaint and stressed that her resignation is indicative of the severity of San Juan's harassment and she later on reasserted what really happened after she was allowed to withdraw her resignation and was reassigned to another area. Nonetheless, the NLRC agreed with the Labor Arbiter's findings that San Juan was denied of procedural due process; thus, while his dismissal is legal, MDC should be held liable for nominal damages for non-compliance with the required written notice. It then disposed the case as follows:

WHEREFORE, premises considered, the appealed Decision is hereby **SET ASIDE** and a new one is entered DISMISSING the complaint for illegal dismissal but ordering respondent **MERCURY DRUG CORPORATION** to pay complainant the amount of P12,255.64 representing his proportionate 13th month pay for the year 2010 and the amount of P30,000.00 as nominal damages.

All other claims are dismissed for lack of merit.

SO ORDERED. (Emphasis appears in the original text of the Decision)

San Juan moved for reconsideration^[23] but the NLRC denied the same through its October 17, 2011 Resolution.^[24] Hence, the instant petition for *certiorari* anchored on the following grounds:

I

Petitioner was illegally dismissed from service.

II

Petitioner is entitled to reinstatement, backwages and other money claims[.]

III

Labor arbiter a quo acted well in accordance with law and the settled jurisprudence declaring the dismissal of petitioner illegal.

San Juan contends that there is no just and valid cause for his dismissal. He insists that the NLRC committed grave abuse of discretion in giving credence to San Diego's sworn statement considering that her credibility and motive in filing the sexual harassment case against him is highly questionable because of her several conflicting statements during the course of the investigation; in not taking into account the recommendation of Capistrano who is his direct supervisor and had initially conducted the investigation; and in not considering San Diego's recantation letter which was submitted spontaneously without any intervention and pressure from him.

This Court's Ruling

The petition is devoid of merit.

As a rule, petitions for *certiorari* under Rule 65 of the Rules of Court involve only jurisdictional issues, or grave abuse of discretion amounting to lack or excess of jurisdiction. Hence, this Court refrains from reviewing factual assessments of the NLRC except when there is insufficient or insubstantial evidence on record to support those factual findings; or when too much is concluded, inferred or deduced from the bare or incomplete facts appearing on record; or when the NLRC and the Labor Arbiter have come up with conflicting positions.^[25] In the present case, the NLRC and the Labor Arbiter had conflicting decisions as to the commission of the sexual harassment and the validity of San Juan's termination from employment, thus, We are constrained to wade into the factual matters to determine which findings are more in conformity with the evidence on records.

NLRC's Findings Supported by Substantial Evidence

Preliminarily, the Court clarifies that there is no sexual harassment as defined and penalized under Section 3 of Republic Act No. 7877 (R.A. No. 7877) which reads:

Sec. 3. Work, Education or Training-related Sexual Harassment Defined.

– Work, education or training-related sexual harassment is committed by an employer, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

(a) In a work-related or employment environment, sexual harassment is committed when:

- (1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or