

TWELFTH DIVISION

[CA-G.R. SP No. 126995, October 16, 2014]

**RAMIRO I. SAMAR, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION AND COCA COLA BOTTLERS PHILS,
INC./VIRGILIO MINDO/CHRISTINE KALAW/JOEL JAVELLANA,
RESPONDENTS.**

D E C I S I O N

SALANDANAN-MANAHAN, J.:

Before Us is a Petition for Certiorari under Rules 65 of the Rules of Court seeking to reverse and set aside the following issuances of public respondent National Labor Relations Commission ("NLRC") in NLRC LAC No. 09-0023964-11 (NLRC NCR Case No. SRAB V-12-00192-10/NLRC NCR Case No. SRAB V-05-00065-10), to wit:

1. Decision^[1] dated 30 January 2012; and
2. Resolution^[2] dated 25 July 2012

The assailed NLRC Decision^[3] dated 30 January 2012 found Petitioner validly dismissed from employment on the ground of serious misconduct, willful disobedience to a lawful order and gross habitual neglect of duty. The dispositive portion of which reads:

"WHEREFORE, complaint's appeal is DENIED for lack of merit while respondent's partial appeal is GRANTED. The Decision promulgated on 25 July 2011 is MODIFIED by DELETING the awards of separation pay, service incentive leave pay and 13th month pay.

The rest of the Labor Arbiter's decision is AFFIRMED.

SO ORDERED."

On the other hand, the impugned Resolution^[4] dated 25 July 2012 denied Petitioner's motion for reconsideration. The decretal portion of which states:

"WHEREFORE, the motion for reconsideration is hereby DENIED for lack of merit. No further motion for reconsideration of the same tenor shall be entertained.

SO ORDERED"

The antecedent facts are as follows:

On 13 February 2001, Petitioner Ramiro I. Samar ("Petitioner" for brevity) started his employment with Coca Cola Bottlers Philippines, Inc. ("CCBPI", for brevity) as salesman. On 1 July 2009, Petitioner was promoted as Account Developer.^[5]

Pursuant to his assignment as Account Developer, Petitioner was required to attend the 1st Account Developer Daily Routine Training on 14-16 July 2009.^[6] After the lecture, a test was given to assess the knowledge of the trainees on the Account Developer's Routine. Petitioner inexplicably refused to answer the test and wrote "I'll do it in actual" across the test paper.^[7] Consequently, Petitioner failed the said training. Nonetheless, he was given another chance and was required to attend the 2nd Account Developer Routine Training on 4-6 August 2009.^[8] Petitioner attended said training and eventually passed.

Subsequently, Petitioner was informed of his areas of assignment. On 12 August 2009, an area map and list of outlets within his scope of responsibility was sent to him, but Petitioner strangely refused to accept the same.^[9] On 23 October 2009, Petitioner was likewise furnished a Memorandum^[10] reiterating his assignment to the then named District 43 (renamed later as District 33), informing him of his immediate superior who at that time was District Team Leader Carlos Rivera, and ordering him to report to the latter and resume his duties by 26 October 2009. He was also furnished with a hard copy of his responsibilities as an Account Developer.^[11] Petitioner was also provided with a service vehicle, a Tamaraw Sinki but he also refused to accept the same, demanding a "better" four-wheeled vehicle.

On 23 April 2010, the acting District Team Leader Joseph V. Estrada ("DTL Estrada" for brevity) was informed by the Human Resources Department that Petitioner failed to submit the required Individual Attendance Sheets as proof of his attendance for periods 5 to 10 and 12 to 15 of April 2010.^[12]

To give Petitioner an opportunity to explain his side, a Notice to Explain^[13] dated 28 April 2010 was furnished to him with a directive to explain his failure to submit the "prescribed weekly individual attendance sheet" within five (5) days from receipt. However, the period lapsed and no written explanation was tendered by Petitioner.

On 6 May 2010, DTL Estrada was again informed that Petitioner failed to submit the required Individual Attendance Sheet for the period 16 to 30 of April 2010.^[14] DTL Estrada sent a Memorandum^[15] to Petitioner directing him to explain within five (5) days his failure to submit the proofs of attendance. However, Petitioner again failed to advance any explanation.

On 7 May 2010, a complaint for constructive dismissal; non-payment/underpayment of salaries, holiday and rest day premium, holiday pay, and overtime pay; illegal deductions; damages and attorney's fees was filed by Petitioner against CCBPI and docketed as NLRC Case No. SRAB-V-05-00065-10.^[16]

On 11 May 2010, HR Manager Christine O. Kalaw ("HR Manager Kalaw" for brevity)

informed Petitioner of the reduction in his salaries due to his failure to submit proofs of attendance.^[17]

On 13 May 2010, Territory Sales Manager Javellana issued a Memorandum^[18] giving Petitioner another chance to respond to the Notice to Explain dated 20 April 2010 and Memorandum dated 28 April 2010 of DTL Estrada and to explain his absences on 5-10, 12-15, and 19 April 2010 and failure to submit the required Individual Attendance Sheets. In response, Petitioner informed TSM Javellana that a complaint for constructive dismissal was already filed and pending before the NLRC.^[19]

In the interim, the Tamaraw Sinki service vehicle previously assigned to Petitioner was changed to a Mitsubishi Canter, a 6-pallet truck upon request of Petitioner of a better four wheeled vehicle.^[20] Despite this accommodation, Petitioner still failed to perform his duties as Account Developer.

On 13 May 2010, a Memorandum^[21] was sent to him by TSM Javellana requiring Petitioner to report to his assigned area covering Sagnay to Patitinan in Camarines Sur under DTL Ralph Canlas on 17 May 2010.

Instead of reporting for work on 17 May 2010, Petitioner sent a letter, to CCBPI regarding his failure to submit the required Individual Attendance Sheets. But rather than providing an explanation, Petitioner asked for a photocopy of the "attendance sheet for the period April 1 to 30, 2010 from HR Manager Kalaw.^[22]

In response, on 21 May 2010, a letter was sent to him asking him to clarify exactly what attendance sheet he is requesting, given that he has not submitted any Individual Attendance Sheets for that period.^[23]

As a result, DTL Canlas issued several Memoranda^[24] directing Petitioner to submit an explanation regarding his failure to report for work in his assigned area. In addition, Petitioner was informed of the possibility of being charged with Violations of CCBPI Employee's Code of Disciplinary Rules and Regulations, specifically Rule 2, Section 5, thereof, on Absence Without Permission or Leave.

On 23 June 2010, Petitioner submitted his explanation letter wherein he countered that he was either on union leave or was inside the plant premises in Naga Plant having allegedly filed the Personnel Leave Authorities corresponding to such leaves.^[25]

On 2 July 2012, a Memorandum^[26] was issued by DTL Canlas stating that the Personnel Leave Authorities covering the claimed union leaves filed by Petitioner were in fact not approved prior to Petitioner availing of the supposed union leaves. Furthermore, DTL Canlas pointed out that, on said dates, Petitioner did not report to his assigned area nor did he submit the required Individual Attendance Sheets signed by the MEP of his area. DTL Canlas, thus, informed Petitioner that the charges for his Absences without Permission or Leave will stand and continue to be implemented.

On the same day that Petitioner was informed that he will be charged for Absence without Permission or Leave, he received his Account Development Tools and

Materials which he initially refused to accept on 12 August 2009.^[27]

On 8 July 2010, a Notice to Explain^[28] was issued informing Petitioner of the charge against him particularly violation of CCBPI's Employee's Code of Disciplinary rules and Regulations Section 5 on "*Absences without Permission or Leave*" due to his numerous unexplained absences. The said Notice to Explain required him to explain his side in writing within five (5) days from receipt thereof.

On 19 July 2010, Petitioner submitted his Answer^[29] and reiterated his previous claims that on the said dates he was either on union leave or at the CCBPI's Naga Plant. Petitioner added that some of the days were either holidays or non-working days.

In a Letter^[30] dated 30 July 2010, Petitioner further explained that the service vehicle assigned to him, the Mitsubishi Canter is not suitable for him because of his medical condition which disabled him to drive large vehicles. In the said letter, Petitioner again demanded that the vehicle be replaced with a smaller and more compact vehicle, with power steering, if possible.

In a Memorandum^[31] dated 31 August 2010, TSM Javellana reiterated the order for Petitioner to report to his assigned area and perform his duties as an Account Developer. TSM Javellana informed Petitioner that by 6 September 2010, the latter should have already complied with the order. Petitioner was likewise informed that a smaller vehicle, one with power steering was being assigned to him a 3-pallet truck instead of the 6-pallet truck previously assigned to him.

Despite this accommodation of CCBPI, Petitioner still failed to report for work at his assigned area. Petitioner sent a Letter^[32] dated 6 September 2010 claiming that he had consulted his doctor regarding the possible effect of driving the vehicle assigned to him. Petitioner insisted that CCBPI issue a written assurance that it will take full responsibility for whatever consequence to his health by reason of driving the assigned vehicle.

On 7 September 2010 a Notice of Investigation^[33] was issued informing Petitioner that an investigation will be conducted on 20 September 2010 relative to his violation of CCBPI Employee's Code of Disciplinary Rules and Regulations on "*Absence without Permission or Leave*".

The 20 September 2010 investigation however was discontinued after Petitioner informed the investigators of the pendency of his constructive dismissal case docketed as NLRC Case No. SRABV-05-00065-10.^[34]

On 20 September 2010, TSM Javellana issued a Memorandum^[35] charging Petitioner with another set of violations to wit: (1) violation of Section 10, Rule 3 of the Company Employee's Code of Disciplinary Rules and Regulations, i.e., Insubordination or willful disobedience; and (2) serious misconduct and willful disobedience under Article 282 of the Labor Code on account of his failure to report to his areas of assignment despite instructions to do so from DTLs Canlas and Carlos Rivera. In response, Petitioner averred that he was effectively prevented from going to his assigned area because his medical condition made it difficult for him to drive

the service vehicle which was eventually assigned to him.^[36]

On 7 October 2010, a Memorandum^[37] was issued for the continuation of the administrative hearing on 20 October 2010. In reply, Petitioner contended that the investigation, among others, not only violated the existing CBA but also "served nothing but a mechanism of harassment". In addition, he countered that he would consider the investigation result as null and void.^[38]

On 20 October 2010, the scheduled administrative hearing was conducted without Petitioner's presence, Consequently, the hearing was then declared closed.^[39]

On 27 October 2010, Petitioner was informed of a hearing set on 29 October 2010 relative to the second charge of insubordination, willful disobedience and serious misconduct.^[40] Petitioner manifested that he considers the investigation as "pure and simple harassment".^[41] In view of Petitioner's absence the hearing was adjourned.^[42]

Subsequently, a Notice of Decision^[43] dated 13 December 2010 was issued dismissing Petitioner after finding him guilty of several instances of absences without permission or leave, abandonment of work, gross and habitual negligence, serious misconduct or willful disobedience of the lawful order.

This prompted Petitioner to file a complaint for illegal dismissal and other money claims before the NLRC docketed as NLRC Case No. SRABV-12-00192-10 on 30 December 2010.^[44]

On 2 February 2011, the constructive dismissal case docketed as NLRC Case No. SRABV-05-00065-10 was consolidated with the actual illegal case docketed as NLRC Case No. SRABV-12-00192-10.^[45]

On 25 July 2011, the Labor Arbiter rendered the decision^[46] upholding the validity of Petitioner's dismissal from employment. The Labor Arbiter opined that Private Respondent presented substantial evidence that clearly and convincingly support the fact that Petitioner committed absence without permission or without leave and insubordination or willful disobedience.

The Labor Arbiter further denied Petitioner's claim for damages and attorney's fees but awarded separation pay, service incentive leave pay, 13th month pay

Dismayed, Petitioner appealed the case to the NLRC and reiterated his previous arguments regarding the illegality of his dismissal and entitlement to his unpaid wages for the period 15 April to 30 September 2010 and from 1 to 14 December 2010, holiday pay, and holiday and restday premium, damages and attorney's fees.^[47]

Also unsatisfied, CCBPI filed a Partial Appeal^[48] wherein they asserted that Petitioner is not entitled to separation pay as a form of financial assistance because he was dismissed due to just causes, i.e., serious misconduct, willful disobedience to their lawful order, and gross and habitual neglect of duty. CCBPI further argued that