

SPECIAL FOURTH DIVISION

[CA-G.R. SP No. 121220, November 27, 2014]

**LEON G. REYES, JR., PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, MERCURY DRUG CORPORATION,
AND/OR VIVIAN QUE ASCONA, RESPONDENTS.**

DECISION

SORONGON, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court assailing the April 29, 2011 Decision^[1] and June 24, 2011 Resolution^[2] of the National Labor Relations Commission (NLRC) which affirmed *in toto* the decision^[3] of the Labor Arbiter, dismissing petitioner's complaint for illegal suspension and illegal dismissal against private respondent Mercury Drug Corporation with a directive to the latter to pay petitioner his proportional 13th month pay from the period January 1 to October 7, 2009.

The records bear the following salient facts:

Mercury Drug Corporation (MDC) is a domestic corporation engaged in the business of operating drug stores nationwide and distributing medicines, pharmaceutical products and selected grocery items to the public while private respondent Vivian Que Ascona is the president thereof.

MDC hired petitioner as a utility man on July 1, 1971^[4] and was eventually promoted as merchandiser in 1991.^[5] Petitioner was again promoted to Purchasing Assistant^[6] on May 1, 2003 with an initial monthly salary of Php38,106.00 which was later raised to his current salary of Php55,256.00 per month. As Purchasing Assistant, he is responsible for examining the accreditation request from suppliers and finally recommending to Mrs. Corazon S. Lim (Mrs. Lim), Vice President for Merchandising, the approval of the accreditation of products to be displayed on the shelves of MDC outlets for sale to the public.^[7]

Some of the products accredited and displayed for sale by MDC were Ever Bilena and Careline Cosmetic products supplied by DSS Trading/Ever Bilena Cosmetics Inc. (EBCI) through its Key Accounts Specialist, Richard Go (Mr. Go). The work of Mr. Go was subsequently taken over by Renato Añel (Mr. Añel), Current Sales Manager of EBCI.

Sometime in February, 2008, Mr. Añel inquired with Mrs. Lim about the "listing fee" which his predecessor, Mr. Go, had been paying to MDC for the accreditation of EBCI's products. Mrs. Lim, however, told Mr. Añel that no "listing fee" was ever imposed by MDC. On February 14, 2008, Mrs. Lim called petitioner and another supervisor named Florante Gandoza (Mr. Gandoza) to her office, and asked them

about the so called "listing fee" and the discount in display rentals but both denied any knowledge thereof.

Meanwhile, petitioner submitted a letter^[8] to Mrs. Lim on April 16, 2008, applying for optional retirement based on his 37 years of service. No action, however, was taken by MDC.

On June 2, 2008, petitioner received a show-cause notice^[9] from MDC requiring him to explain why he should not be terminated for dishonesty for allegedly receiving money from Mr. Go to facilitate the accreditation of Ever Bilena products. The "show-cause notice" came about after Mr. Go implicated petitioner during the May 30, 2008 administrative investigation on the dishonesty case against Mr. Gandoza, wherein the latter received a total amount of Php195,000.00 as "listing fees" for Ever Bilena products. Immediately, petitioner submitted his written explanation denying the charge of dishonesty and calling Mr. Go a big liar.^[10]

On June 6, 2008, Mr. Go executed a sworn statement^[11] stating that in 2004, in order to facilitate the accreditation of some Ever Bilena products, petitioner asked money from him which he gave after getting the approval of his superior.

On June 23, 2008 petitioner was suspended for 30 days. Thus, an investigating committee was formed to conduct hearing on the charges against petitioner.

On August 13, 2009, petitioner filed with the Labor Arbiter a complaint for illegal suspension, non-payment of holiday pay, service incentive leave, 13th month pay, retirement benefits, damages and attorney's fees. MDC's counsel then charged^[12] petitioner with Estafa before the Quezon City Prosecutor's Office which was later on dismissed.

On October 8, 2009, petitioner received from MDC a notice of termination dated October 7, 2009, for dishonesty and loss of trust and confidence. Accordingly, petitioner's complaint with the Labor Arbiter was amended on November 11, 2009, to include illegal dismissal as a cause of action.

On March 26, 2010, the Labor Arbiter rendered a decision^[13], the dispositive portion whereof reads:

"WHEREFORE, judgment is hereby made DISMISSING as wanting in merit the charge of illegal dismissal but ordering the respondent company to pay Complainant a proportionate 13th month pay (January 1, 2009 to October 7, 2009).

Vivian Que Ascona is hereby dropped as party respondent.

Other claims are DISMISSED for lack of merit

SO ORDERED."

Therefrom, petitioner appealed^[14] to the NLRC but by Decision^[15] dated April 29,

2011, it affirmed *in toto* the ruling of the Labor Arbiter in this fashion:

"**WHEREFORE**, finding no reversible error in the decision under appeal, the appeal is **DISMISSED** for lack of merit and the decision dismissing the complaint is **AFFIRMED** en toto.

SO ORDERED."

Petitioner's motion for reconsideration^[16] likewise failed.^[17] Hence, this recourse raising as issues the following:^[18]

1. Whether or not the NLRC gravely erred in affirming in toto the finding of the Labor Arbiter that herein petitioner was not illegally suspended by the respondents;
2. Whether or not the NLRC gravely erred in affirming in toto the finding of the Labor Arbiter that herein petitioner was not illegally dismissed by the respondents;
3. Whether or not the NLRC gravely erred in affirming in toto the finding of the Labor Arbiter that petitioner is not entitled to attorney's fees, moral and exemplary damages; and
4. Whether or not the NLRC gravely erred in affirming in toto the finding of the Labor Arbiter that Vivian Que Ascona should be dropped as party-respondent.

We filter these issues into two main issues:

1. Whether or not petitioner was illegally suspended; and
2. Whether or not petitioner was illegally dismissed.

On the first issue, petitioner contends that his suspension by MDC is illegal due to the following grounds: (1) it is tainted with bad faith because he was deprived of the opportunity to confront Mr. Go, his accuser during the committee hearing; (2) that the investigative committee failed to produce any rules and regulation of the proceedings before the investigating committee; and (3) the preventive suspension lasted for more than one year.

We disagree.

It is an established rule that preventive suspension in administrative cases is not a penalty in itself. It is designed as a measure of precaution so that the employee who is charged may be separated, for obvious reasons from the scene of his alleged misfeasance while the same is being investigated.^[19] An employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or his co-workers.^[20] It is undisputed that petitioner, by virtue of his position, was in direct

contact with MDC's business partners, and possessed documents pertaining to MDC's accreditation process which he could manipulate while the latter's investigation of the charge against him is on-going. The NLRC thus correctly found that:

"Respondent MDC was merely exercising its right to self-preservation when it placed complainant under preventive suspension. The company felt that complainant's irregular act of soliciting a listing fee would further erode the goodwill and the good name it has generated towards companies who trusted it with their products for long periods of time. The preventive suspension of the employee(s) responsible thereof, is one way of abating the damage to its name."

The lack of confrontation between petitioner and his accuser and the absence of formal rules and regulations during the proceedings before the investigative committee does not mean

that petitioner has been deprived of due process. In administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense.^[21] There is no requirement under the Labor Code for the investigative committee to adopt a fixed set of rules in the conduct of its proceedings. Due process is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof^[22]. The essence of due process in administrative proceedings is an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of.^[23] Before an employee can be validly dismissed, the Labor Code requires the employer to furnish the employee with two (2) written notices: (a) a written notice containing a statement of the cause for termination to afford the employee ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires; and (b) if the employer decides to terminate the services of the employee, the employer must notify him in writing of the decision to dismiss him, stating clearly the reasons therefor.^[24] The above requisites have been complied by private respondent in this case.

Also, the Implementing Rules and Regulations of the Labor Code provides that while no preventive suspension shall last longer than thirty (30) days, an employer has the option to extend the period of suspension provided that during the period of extension, the employer pays the wages and other benefits that are due to the worker.^[25] When MDC extended the preventive suspension of petitioner on account of the prolonged investigation conducted by its investigative committee, it only exercised its legal option to just pay the wages and benefits due to petitioner instead of fully reinstating him, which fact is not disputed by petitioner.

On the second issue, petitioner disputes the factual findings of the NLRC and the Labor Arbiter and insists that his dismissal was based on mere speculation, surmises or conjectures of respondent and probably done to prevent him from receiving his retirement and other labor benefits.