

SPECIAL SIXTEENTH DIVISION

[CA-G.R. SP NO. 129882, November 07, 2014]

**LAURENCHITO V. HERNANDEZ, PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION, SECOND DIVISION SOBIDA
MOTORS CORP., AND SUSIE JANE V. ABEL, RESPONDENTS.**

D E C I S I O N

ZALAMEDA, R.V., J.:

Before this Court is the Petition for Certiorari^[2] under Rule 65 of the Rules of Court filed by petitioner Laurencito V. Hernandez^[3] assailing, on the ground of grave abuse of discretion the Decision^[4] dated 21 January 2013 and Resolution^[5] dated 28 February 2013 of the public respondent, the National Labor Relations Commission^[6] in NLRC NCR 03-03991-12 (LAC-09-002634-121) entitled, "Laurencito V. Hernandez vs. Sobida Motors Corporation/Susie Jane V. Abel."

As borne by the records of the case, the antecedent facts are as follows:

Petitioner worked as purchaser/buyer/driver by respondent Sobida Motors Corporation^[7] since 14 October 2004. On 25 February 2012, petitioner was told by Warlito Soriano,^[8] his supervisor, to report at the Tayuman office in Manila to be assigned as driver to a certain Mrs. Baguno effective 27 February 2012.^[9] Petitioner was then instructed by private respondent Susie Jane Abel,^[10] the HR Manager, to wait for one Oca Ramos, the driver to be replaced, for proper turn-over of duties.^[11] However, petitioner left the Tayuman office when he heard from Mrs. Baguno's assistant that the latter was not showing up.^[12]

On 27 February 2012, petitioner reported for work at the Tayuman office but since he did not know how to operate a vehicle with an automatic transmission, Mrs. Baguno asked for his replacement.^[13] Likewise, on the same day, he was required to explain why he should not be dismissed for insubordination as defined under Article VII of the company's Code of Discipline.^[14] According to private respondents, petitioner's act of leaving the Tayuman office on 25 February 2012 despite instructions to wait Oca Ramos for turn-over of duties, caused delays in the deliveries, prompting a client to complain.^[15]

Petitioner explained through a letter^[16] dated 27 February 2012 that he was suffering from ulcer, rheumatism, high blood pressure, urinary tract infection and poor eyesight. Also, he claimed not knowing how to drive a vehicle with automatic transmission, thus, he found it necessary to relay the same to Mrs. Baguno. As to the allegation that he left the Tayuman office on 25 February 2012 despite the directive from his superiors, he explained that he did ask permission from Soriano.^[17]

Private respondents were not impressed with petitioner's explanation. For one, Soriano denied that petitioner asked permission to leave the Tayuman office. For another, when petitioner left the said office in his service truck, he encountered engine trouble, stalling the vehicle on the road for a few hours. This apparently caused delay in the operations of the company prompting a client to complain.^[18] Thus, on 06 March 2012, petitioner was issued a Notice of Termination^[19] for violation of Article VII No. 6 of Insubordination of the Code of Conduct, which has the corresponding penalty of dismissal, and which states:

"X x x Refusing or willfully neglecting to perform one's assigned work or refusal to comply with instructions, rules and regulations.

X x x"

Petitioner later on filed a Complaint^[20] for illegal dismissal and for payment of separation pay before the Labor Arbiter.

According to private respondents, petitioner was dismissed for just cause and that due process, substantive and procedural, was observed. Further, they took into account petitioner's propensity to disregard the rules and regulations of the company, *i.e.*, repeated tardiness, in terminating the services of petitioner.^[21]

In her Decision,^[22] the Labor Arbiter ruled that while petitioner is indeed guilty of insubordination, the penalty of dismissal was too severe. Moreover, petitioner's repeated infractions on tardiness have already been dealt with, and thus, petitioner should not be penalized once again for his past infractions.

The dispositive portion of the Labor Arbiter's Decision reads:

"X x x

WHEREFORE, premises considered, judgment is hereby rendered as follows:

- 1) Declaring complainant Larenchito V. Hernandez to have been illegally dismissed from employment;
- 2) Ordering respondent Sobida Motors Corporation liable to pay complainant Larenchito V. Hernandez'
 - a) backwages from date of dismissal on March 7, 2012 up to the finality of this decision, which is provisionally computed as of the date of this decision in the sum of P56,640.00;
 - b) separation pay of one month pay for every year of service, which is in the amount of P94,400.00;
- 3) Denying complainant Larenchito V. Hernandez' claims for moral and

exemplary damages and attorney's fees for lack of factual and legal basis.

All other claims are dismissed for lack of merit.

SO ORDERED.

X x x"[23]

Private respondents partially appealed^[24] the Labor Arbiter's Decision to the NLRC.

In its assailed Decision, the NLRC granted the Partial Appeal and dismissed the Complaint against private respondents. According to the NLRC, private respondents correctly enforced the termination of petitioner based on the company's Code of Conduct which penalizes insubordination with dismissal.

The decretal portion of the assailed Decision provides:

"X x x

WHEREFORE, premises considered, the appealed Decision dated July 29, 2012 is hereby ordered SET ASIDE and a new one entered DISMISSING the complaint for lack of merit.

SO ORDERED.

X x x"[25]

Petitioner filed a Motion for Reconsideration^[26] but the same was denied by the NLRC in its assailed Resolution dated 28 February 2013:

"X x x

WHEREFORE, in view of the foregoing premises, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

No further Motion of similar nature shall be entertained.

SO ORDERED.

X x x"[27]

Feeling aggrieved, petitioner filed the instant Petition for Certiorari, raising the following as issues, to wit:

WHETHER OR NOT THE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF [DISCRETION] WHEN IT REVERSED THE LABOR ARBITER'S DECISION AND DISMISSED THE COMPLAINT.

II.

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT AWARDING PETITIONER'S MONEY CLAIMS.^[28]

The issues, being interrelated, shall be discussed jointly.

According to petitioner, the NLRC committed grave abuse of discretion when it reversed the Decision of the Labor Arbiter finding private respondents guilty of illegal dismissal. Petitioner's alleged insubordination does not merit the supreme penalty of dismissal inasmuch as there was no bad faith on petitioner's part when he failed to wait for Oca Ramos and to return the company's vehicle to the Tayuman office. Further, petitioner's previous infractions on tardiness have already been addressed in the past and thus, the same are considered to have been condoned by the company.

As he was illegally dismissed, petitioner asks for backwages and reinstatement, or if reinstatement is no longer feasible, with the payment of separation pay.

In their Comment/Opposition to the Petition for Certiorari,^[29] private respondents claim that petitioner failed to show that the NLRC committed grave abuse of discretion in granting their Partial Appeal. They maintain that petitioner's dismissal was for just cause and was done in a valid exercise of management prerogative.

After an assiduous deliberation of the facts and evidence presented by both parties, We find merit in petitioner's arguments.

Indeed, whether or not petitioner is guilty of insubordination is no longer of issue. Both the Labor Arbiter and the NLRC ruled that petitioner committed insubordination as defined under the Code of Conduct of private respondent company. However, the Labor Arbiter and the NLRC had different views on the penalty imposed on petitioner. On one hand, the Labor Arbiter found the dismissal too harsh a penalty while the NLRC found the same to be proper.

The NLRC ruled that private respondent company has the management prerogative to formulate rules and regulations and that the same are generally valid and binding on the parties. Concomitant with the said prerogative, the company may validly dismiss an employee who committed an infraction based on such rules promulgated.

We are perfectly aware that the constitutional protection afforded to labor does not condone wrongdoings by the employee; and an employer's power to discipline its workers is inherent to it.^[30] However, while the employer has the inherent

right to discipline, including that of dismissing its employees, this prerogative is subject to the regulation by the State in the exercise of its police power.^[31]

In the present case, petitioner was terminated when he failed to heed the instructions of the company to wait for the driver he was replacing and to turn over his vehicle to the proper person who was supposed to pick it up from the Tayuman office. In considering whether he should be terminated, his previous infractions for tardiness were taken into account.

As We have ruled, there is no dispute that petitioner is guilty of insubordination based on the company's Code of Conduct and said infraction has a corresponding penalty of dismissal. Petitioner's past infractions on tardiness was also used in determining whether or not petitioner should be terminated from work. And We are aware that the totality of infractions could very well be used by the management in determining the appropriate penalty:

"X x x

The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty. Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior onboard. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests. It has the right to dismiss such an employee if only as a measure of self-protection.

X x x"^[32]

Notwithstanding, We agree with the Labor Arbiter that the penalty of dismissal was too severe a penalty. While petitioner had reservations about his new assignment due his health conditions and inability to drive the new vehicle assigned to him, We agree that petitioner's refusal was not willful. Neither was it done in bad faith. Moreover, it was petitioner's first time to be charged with insubordination. Given his length of service with private respondent company, eight (8) years at the time of his termination, the penalty meted out to petitioner should have been tempered.

In this regard, it is a hornbook doctrine that **infractions committed by an employee should merit only the corresponding penalty demanded by**