CEBU CITY

TWENTIETH DIVISION

[CA- G.R. SP NO. 06343, December 16, 2014]

GSR GASOLINE STATION/ GERALDINE COO, OWNER, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION , SEVENTH DIVISION, CEBU CITY, AND JUDY A. DECENA, RESPONDENTS.

D E C I S I O N

QUIJANO-PADILLA, J.:

Petitioner GSR Gasoline Station/Geraldine Coo filed this Petition for Certiorari, under Rule 65 of the Rules of Court, to seek the annulment of (1) the Decision[1] dated March 4, 2011 ("assailed Decision") and (2) the Resolution[2] dated July 29, 2011 ("assailed Resolution") of the National Labor Relations Commission - 7th Division ("public respondent NLRC") in NLRC Case No. VAC-01000070-2011. The assailed Decision found herein respondent Judy Decena to have been illegally dismissed and held petitioner Coo liable for payment of backwages, separation pay, 13th month pay and attorney's fees in respondent Decena's favor, while the assailed Resolution denied petitioner Coo's Motion for Reconsideration.

The antecedent facts are as follows:

Respondent Decena worked as a gasoline attendant (pump boy) with GSR Gasoline Station ("GSR"), which was owned and managed by petitioner Coo, from March 5, 2005 until his termination on April 5, 2010. Respondent Decena's termination from employment spawned from the report of his alleged attempted falsification of Charge Invoice No. 19385[3] ("charge invoice").

The discord between herein petitioner and private respondent arose when, on February 22, 2010, M.B. United Commercial ("M.B. United"), a regular client with existing credit line with GSR, fueled up from a diesel pump attended by one pump boy Jonel Dela Cruz. After the fueling of M.B. United's truck, its driver, Wilhelm Samellano, noticed that the charge invoice given to him wrote the figures 86 liters, representing the amount of diesel that was filled in his truck, when the diesel pump meter displayed only 79 liters. The driver, in his affidavit[4] and corroborated by the affidavit[5] of his helper, Alfredo Tiberio, Jr., stated that he informed Jonel and respondent Decena of the discrepancy, but he received a remark from respondent Decena that he need not complain as he would be given P150.00 for breakfast. The driver refused to receive the charge invoice, so respondent Decena issued a new one which indicates 79 liters instead of 86 liters. This incident was then reported by the driver to M.B. United which, in turn, reported the same to petitioner Coo.

Having received the report from M.B. United, petitioner Coo issued a Memorandum[6] dated February 25, 2010, asking respondent Decena and Jonel dela

Cruz to explain in writing within twenty four (24) hours their alleged act of attempted falsification of the charge invoice as reported. They were charged with Dishonesty and /or Grave Misconduct.

According to petitioner Coo, she served a copy of this Memorandum to respondent Decena on March 1, 2010 but the latter refused to receive and sign to acknowledge his receipt of the said Memorandum. Meanwhile, respondent Decena claimed that he never received the said memorandum and was only instructed to ask for apology for erasing the entries in the credit invoice mentioned. And heeding the oral request for apology, he wrote a letter[7] dated March 1, 2010 asking apology for his act of erasing the entries in the charge invoice.

On March 3, 2010, petitioner Coo served a Notice of Suspension[8] to respondent Decena which the latter received on even date but allegedly refused to sign and acknowledge receipt of such notice. The suspension period ran for thirty (30) days from March 4, 2010 since further investigation was needed. Then, on April 5, 2010, finding just cause to terminate respondent Decena's employment for his attempt to defraud GSR, petitioner Coo dismissed respondent Decena from employment through a Memorandum[9] dated April 5, 2010.

Petitioner Coo then filed a criminal complaint[10] against respondent Decena for attempted estafa through falsification of commercial document.

On his part, respondent Decena filed a complaint for illegal dismissal and for money claims.[11]

In respondent Decena's position paper[12], he argued that he had not committed any misconduct or any dishonesty. He said therein that it was his co-employee Jonel Dela Cruz who attended to the truck of M.B. United; that he only corrected the entry written by Jonel as it was Jonel who wrote 86 liters; and that after verification, he explained to Jonel the discrepancy but the latter already erased the entry in the charge invoice, so he just cancelled such charge invoice by writing on its back the note “cancelled” and then he issued a new charge invoice with the correct entry stating 79 liters. He stated also that he reported the cancellation of the previous charge invoice to their secretary. He likewise claimed that he could not defraud GSR as M.B. United had a credit line with GSR, so he could never receive any money as payment, as such, he could not gain any profit from altering invoices to make a discrepancy between the actual amount of fuel pumped in a vehicle and the amount written in the charge invoice.

On December 6, 2010, the Labor Arbiter Rodrigo Camacho dismissed respondent Decena's complaint for lack of merit. He explained in his Decision[13] that respondent Decena's act of concealing and heavily erasing the entries on the charge invoice is a clear indication of serious misconduct, fraud, and willful breach of trust and confidence. He based his finding of just cause to terminate respondent Decena on the finding of probable cause against respondent Decena by the city prosecutor for the crime of attempted estafa through falsification of commercial document. He likewise ruled that the necessary due process was complied with by petitioner Coo in terminating respondent Decena's employment.

The decretal portion of Labor Arbiter Camacho's December 6, 2010 Decision reads:

> "WHEREFORE, premises considered, judgment is hereby rendered Dismissing the instant case for lack of merit.
>
> All other claims are likewise dismissed for lack of factual and legal basis.
>
> SO ORDERED."[14]

On appeal[15] to herein public respondent NLRC, respondent Decena claimed that the Labor Arbiter committed serious errors in his findings of facts as he insisted that he did not commit any serious misconduct or fraud on his act of erasing a wrong entry in a charge invoice, especially because he was not even the one who erased the same but his co-employee Jonel Dela Cruz. He reiterated in his appeal that his dismissal was not supported by any substantial evidence, and that this was petitioner Coo's means to get back at him as he was the one who reported to the department of labor on petitioner Coo's failure to provide certain labor standard benefits.

On March 4, 2011, public respondent NLRC reversed the Decision of the Labor Arbiter, declaring that respondent Decena was illegally dismissed because petitioner Coo's evidence on respondent Decena's alleged misconduct or fraud was not enough to adjudge his guilt with reasonable certainty. It gave more credence to the respondent Decena's claim that he was not a party to the transaction where the entry in the charge invoice was erased. It also held that loss of trust and confidence could not be a ground to dismiss respondent Decena because he was not holding a position of trust. Likewise, public respondent NLRC also observed that there was really no genuine effort on petitioner Coo's part to provide respondent Decena the required procedural due process considering that he was given only 24 hours to explain and that during the preventive suspension, no concrete investigation was ever conducted in order for respondent Decena to defend himself. It also awarded respondent Decena his claim for 13th month pay but did not grant his other monetary claims for his failure to assign the same as error on appeal.

The assailed Decision[16] of the public respondent NLRC held:

> "xxxx. We are inclined to tilt the scales of justice in favor of the complainant. There is a dearth of evidence on record to sustain the charge of conspiracy between complainant and Jonel Dela Cruz in the alleged falsification of Charge Invoice No. 19385. Concededly, employers have the right to terminate the services of an employee for a just or authorized cause. However, the dismissal of employees must be made in accordance with law. The burden of proof is always on the employer to prove that the dismissal was for a just or authorized cause. From the circumstances obtaining, We cannot, with reasonable certainty, adjudge the guilt of complainant. The extent of complainant's participation in the refueling transaction of United is not sufficient to impute ill intentions upon him. We, likewise, see no apparent gain for the complainant from the said transaction since, there was no cash payment coming from the driver as it was a charge transaction because of the credit line accorded to United by the respondent. Xxxx.

Complainant's act of writing the customer's name on the charge invoice and signing it and of further bringing it to the driver for signature and later erasing the wrong entries, thereon, after learning that they were erroneous, can hardly constitute serious misconduct nor were those acts constitutive of serious breach of trust resulting in loss of confidence. Xxxx.

It bears to stress that complainant did not hold a position of trust and confidence as he was a pump boy tasked only to man the fuel pump at respondent's gasoline station. Surely, loss of trust and confidence cannot be a ground to terminate his employment. Xxx

xxxx

xxxx

WHEREFORE, premises considered, the Decision of the Labor Arbiter dated 24 November 2010 is, hereby, ANNULLED and SET ASIDE. Judgment is, hereby, rendered declaring complainant to have been illegally dismissed and directing respondent to pay complainant backwages, separation pay, 13th month pay and attorney's fees in the total of ONE HUNDRED TWELVE THOUSAND EIGHT HUNDRED SIXTY PESOS (Php.112,860.00)

SO ORDERED."[17]

Petitioner Coo immediately sought for the reconsideration of this adverse Decision, but her motion[18] was denied in public respondent NLRC's assailed Resolution[19].

Aggrieved, petitioner Coo filed the instant petition to Us. She anchored her petition on the following grounds:

"The National Labor Relations Commission, Fourth Division (sic), acted without or in excess of jurisdiction and/or with grave abuse of discretion amounting to lack or in excess of jurisdiction in:

1) that there is a patently capricious, arbitrary and whimsical exercise of judgment on the part of public respondent NLRC in annulling and setting aside the Labor Arbiter's decision thus totally reversing that of the Labor Arbiter's dismissing private respondent's complaint for lack of merit, on the basis of the same evidence adduced by the parties before the Labor Arbiter; and

2) that the assailed decision is palpably wanting in legal basis as it ignores, disregards, and failed to apply pertinent rules and jurisprudence in cases where a party failed to raise an issue in his pleadings. It plainly deserves setting aside as a decision contrary to law."[20]

From the foregoing there are two issues to be resolved: 1) whether public respondent NLRC gravely abused its discretion in finding that respondent Decena was illegally dismissed from employment, thus, he is entitled to separation pay, backwages and attorney's fees; and 2) whether public respondent gravely abused its discretion in awarding respondent Decena his claim for 13th month pay.

We find the petition meritorious.

This case is raised under Rule 65 of the Rules of Court via a petition for certiorari. And "as a general rule, in certiorari proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion."[21] It is a settled rule that "factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence."[22] However, in the case at bar, We are faced with the discordant decisions of the Labor Arbiter and the NLRC – the former found the dismissal of respondent Decena valid, while the latter did not.

And "where the findings of the NLRC contradict those of the Labor Arbiter, the Court, in the exercise of equity jurisdiction, may look into the records of the case and reexamine the questioned findings.[23] In such cases, "the CA examines the factual findings of the NLRC to determine whether or not the conclusions are supported by substantial evidence whose absence points to grave abuse of discretion amounting to lack or excess of jurisdiction.[24]

In *Norkis Trading Corp. v. Buenavista et al.*[25], the Supreme Court held, to wit:

> "On this matter, the settled rule is that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, i.e., the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. We emphasize, nonetheless, that these findings are not infallible. **When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. The CA can then grant a petition for certiorari if it finds that the NLRC, in its assailed decision or resolution, has made a factual finding that is not supported by substantial evidence.** It is within the jurisdiction of the CA, whose jurisdiction over labor cases has been expanded to review the findings of the NLRC.
>
> We have thus explained in *Cocomangas Hotel Beach Resort v. Visca* that the CA can take cognizance of a petition for certiorari if it finds that the NLRC committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which are material to or decisive of the controversy. **The CA cannot make this determination without looking into the evidence presented by the parties. The appellate court needs to evaluate the materiality or significance of the evidence, which are alleged to have been capriciously,**