

SPECIAL TWELFTH DIVISION

[CA-G.R. SP NO. 81530, September 22, 2006]

**INDUSTRIAL SECURITY CONSULTANCY AND MANAGE-MENT,
INC., PETITIONER, VS. NATIONAL LABOR RELATIONS
COMMISSION, THIRD DIVISION AND REYNALDO ORIA,
RESPONDENTS.**

D E C I S I O N

BATO, JR., J.:

This is a petition for certiorari with prayer for temporary restraining order and/or preliminary injunction filed by petitioner Industrial Security Consultancy and Management Inc. seeking to set aside the Resolution dated September 3, 2003 of the National Labor Relations Commission (NLRC), modifying the Decision of the Labor Arbiter dated July 22, 2002, granting the private respondent's appeal and awarding separation pay therein, as well as the Resolution dated November 14, 2003 denying the motion for reconsideration thereof.

The facts which spawned the filing of the case subject of the present petition are as follows:

Industrial Security Consultancy and Management Inc. (hereinafter referred to as petitioner), represented by its President Salvador Gumapad, is a domestic corporation engaged in the business of providing security consultancy services to its client, Citibank. It hired on September 21, 1998, private respondent Reynaldo N. Oria (respondent) as security consultant for its Branch in Libis, Quezon City.

On November 7, 2001, a complaint^[1] for illegal dismissal with money claims was filed by the respondent before the Labor Arbiter of Quezon City. For failure of the parties to reach an amicable settlement, the Labor Arbiter required the parties to submit their respective Position Papers.

Before the Labor Arbiter, petitioner company alleged that on October 11, 2001 on or about 8:30 a.m., respondent went to the office of Mr. Gumapad to submit a letter request for the release of his Certification of Employment and Compensation in connection with his application for a housing loan with the National Home Mortgage and Finance Corporation (NHMFC); that Mr. Gumapad advised the respondent to submit documents which would support his application thereof; that when the respondent asked him to acknowledge the receipt of his letter and he refused, the respondent allegedly got angry and hurled invectives, "*kung di mo ito ririsibin ilalagay ko dito refused to sign ka at sa labor na lang tayo magkita,*"; that the respondent also challenged the petitioner to a fistfight and said, "*Bakla ka, putang ina mo*"; that before leaving the office, he furiously shouted, "*anong gusto mo, gago ka*" and then slammed the door of petitioner's office.^[2]

Respondent Oria, in his Position Paper,^[3] denied that he uttered invectives against the president of petitioner company. He averred that when he submitted his letter-request to Mr. Gumapad, the latter refused to issue the said certificate without any valid reason; that when he insisted, Mr. Gumapad castigated him, arrogantly telling him that he should be obeyed as he is the president and if he will insist, he will be charged with insubordination.

After the incident, petitioner company issued a Memorandum^[4] dated October 12, 2001 addressed to the respondent asking the latter to explain in writing why no disciplinary action should be taken against him for insubordination. On the same day, respondent submitted his explanation^[5]. Not satisfied with the same, the petitioner company constituted a fact-finding body composed of members of the board of ISCFI to look into the incident which transpired on October 11, 2001 between Mr. Gumapad and the respondent. After due deliberation, it recommended the respondent's dismissal from the service based on its findings that the acts of the respondent towards the president of ISCFI was in gross disrespect to a superior officer of the company and is tantamount to insubordination and serious misconduct which is a ground for termination. Thus, on October 31, 2001, the respondent was served a notice of dismissal.^[6]

On July 22, 2002, Labor Arbiter Virginia T. Luyas-Azarraga, dismissed the respondent's complaint for lack of merit. In finding that respondent Oria was dismissed for a just cause, the Labor Arbiter decided as follows:

"Evidence on record likewise reveal that complainant was dismissed from the service for cause. Respondent Gumapad's (President of the respondent company) action in requiring him proof of his housing loan to support his request for Certificate of Employment and Compensation neither can be considered abuse of authority nor a form of harassment or unfair treatment. Indeed, complainant is entitled to such certification but respondents have likewise every right to know the real purpose of his request. The requirement was not unreasonable and not impossible to perform. Thus, by challenging the President of the company to bring him before the labor court if his request cannot be granted is unwarranted and reprehensible. His explanation dated October 12, 2001 (Annex "C" - Complainant's Position Paper) is full of disrespect and personal insults to his superior which we find just grounds for the termination of the complainant from the service. xxx"^[7]

Aggrieved, the respondent appealed to the NLRC. In a Resolution^[8] dated September 3, 2003, the NLRC reversed the Labor Arbiter's decision. In finding that the respondent's dismissal was illegal, the NLRC maintained that the assailed act of the respondent did not constitute serious misconduct or willful disobedience to warrant his dismissal from work.

The petitioner moved for the reconsideration^[9] of the NLRC Resolution but was denied in a Resolution dated November 14, 2003. Hence, this petition for certiorari.

The core issue for resolution is whether or not the respondent was terminated from service for a just cause or whether he was illegally dismissed.

The petitioner claims that the NLRC committed grave abuse of discretion in reversing the decision of the Labor Arbiter. It maintains that the NLRC disregarded the factual findings of the Labor Arbiter when it held that the act of the respondent in uttering invectives at his superior does not constitute serious misconduct as it was not connected with the performance of his duties.

The petition is devoid of merit.

The settled rule is that when supported by substantial evidence, factual findings made by quasi-judicial and administrative bodies are accorded great respect and even finality by the courts. These findings are not infallible, though; 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. Hence, when factual findings of the Labor Arbiter and the NLRC are contrary to each other, there is a necessity to review the records to determine which conclusions are more conformable to the evidentiary facts.^[10]

Contrary to petitioner's allegations, the public respondent NLRC did not commit grave abuse of discretion in declaring that the petitioner was guilty of illegal dismissal, as the findings of the NLRC are more in accord with the applicable law and jurisprudence. In determining whether or not the respondent was guilty of serious misconduct, the NLRC reviewed the records of the proceedings before the Labor Arbiter. It found that the evidence did not conclusively show that respondent Oria was guilty of serious misconduct. It ratiocinated in this wise:

"Gleaned from the foregoing, it is undisputed that insulting words have been uttered but from their allegation it cannot be established who actually uttered said words since no evidence has been presented in support of their respective bare allegations. While the act of complainant-appellant in challenging respondent-appellee Gumapad to see him before the Labor Court which he admitted to have said when respondent-appellee Gumapad refused to acknowledge receipt of his letter request and in requiring him to submit proof of his application for housing loan may be considered disrespect to a superior officer, the same cannot constitute serious misconduct or willful disobedience to warrant complainant-appellant's dismissal. Moreover, and vital is the fact that the charges of respondents-appellees do not pertain to the duties which complainant-appellant had been engaged to discharge."^[11]

From the foregoing observations and assessment of public respondent NLRC, it distinctly appears that the petitioner failed to adduce clear and convincing evidence to substantiate its accusation of serious misconduct to warrant the dismissal of respondent Oria. The basic principle is that the employer has the burden of proving that the dismissal is for just cause, and failure to do so would necessarily mean that the dismissal was unjustified and, therefore, illegal. It is the employer who must prove its validity, and not the employee who must prove its invalidity.^[12]

A cursory perusal of the records shows that the incident which transpired on October 11, 2001 happened inside the office of Mr. Gumapad. There were no witnesses who actually saw and heard what happened inside the office of Mr. Gumapad on that day. Thus, there was nobody who could attest to the fact that indeed, respondent Oria was grossly disrespectful towards his superior. Also, the petitioner did not adduce