

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**BOLINAO SECURITY AND
INVESTIGATION SERVICE, INC.,
*Petitioner,***

-versus-

**G.R. No. 139135
January 29, 2004**

**ARSENIO M. TOSTON,
*Respondent.***

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DECISION

SANDOVAL-GUTIERREZ, J.:

The burden of proving the validity of the dismissal of the employee rests on the employer. It is therefore incumbent upon him to prove by the quantum of evidence required by law that the dismissal of an employee is not illegal; otherwise, the dismissal would be unjustified.^[1]

For resolution is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[2] dated February 8, 1999 and the Resolution^[3] dated July 6, 1999 rendered by the Court of Appeals in CA-G.R. SP No. 50525, entitled “Bolinao Security and Investigation Service, Inc. vs. Hon. National Labor Relations Commission and Arsenio M. Toston.”

The facts as borne by the records are:

Sometime in March 1993, Arsenio M. Toston, respondent, was employed as a security guard by Bolinao Security and Investigation Service, Inc., petitioner, with a monthly salary of P5,000.00. Eventually, petitioner assigned respondent at the United States Agency for International Development (USAID) situated at Richgel Realty Compound, Mañalac Avenue, Bagong Tanyag, Taguig, Metro Manila.

On August 17, 1995, at about 9:15 o'clock in the evening, respondent reported early for his eight (8) hour shift^[4] at USAID. He was about to relieve Alberto Nicolas, another security guard. He then informed Nicolas to proceed and report immediately to petitioner's office for an administrative investigation of his participation in the alleged illegal lotto betting within the company premises. He also told Nicolas that earlier, he was investigated but cleared of any participation in the offense.

Enraged, Nicolas suddenly pulled out his .38 caliber service pistol and shot respondent, hitting the back of his head. When Nicolas attempted to shot him again, they grappled for the gun. Nicolas dropped the weapon. Respondent ran away and reported the incident to the Taguig Police Station where he executed a sworn statement.^[5]

Later, respondent went to the Parañaque Medical Center and was examined and treated by Dr. Salvador.

Respondent then filed with petitioner an application for a one month leave of absence or from August 17 to September 15, 1995. He also claimed his sickness and/or medical benefits. While petitioner approved his one-month leave of absence, however, it rejected his claim for benefits.

This prompted respondent to file with the Social Security System (SSS) an application for sickness/medical benefits. At this instance, he came to know that petitioner failed to remit to the SSS its monthly contributions for nine (9) consecutive months. Consequently, he reported the matter to the SSS.

On September 15, 1995, Lucy Caasi, in-charge of remitting petitioner's contributions to the SSS, scolded and rebuked respondent and told him not to report for work and that his name would be "dropped from the rolls."

On September 29, 1995, respondent filed with the Labor Arbiter a complaint against petitioner and its president, Urbano S. Caasi, Jr., for illegal dismissal and non-payment of wages and other benefits, with prayer for reinstatement and payment of full backwages, docketed as NLRC NCR Case No. 00-09-06593-95.

On December 21, 1995, petitioner sent a letter to respondent declaring him absent without leave (AWOL) since September 16, 1995. He could not report then for work due to the pendency of his complaint with the Labor Arbiter.

On January 24, 1996, after conducting an investigation, USAID submitted its report to petitioner recommending that respondent and Nicolas be relieved from their posts.

After the submission of the parties' position papers, the Labor Arbiter rendered a Decision dated August 5, 1996 finding that respondent was illegally dismissed from employment and ordering petitioner (1) to reinstate him to his former position and (2) to pay his full backwages amounting to P109,728.38, moral and exemplary damages in the sum of P50,000.00 and attorney's fees equivalent to 10% of the monetary awards. The dispositive portion of the Decision reads:

"WHEREFORE, the respondents are hereby ordered to reinstate the complainant with full backwages from the time his salaries were withheld from him until his actual reinstatement.

"The respondents are further ordered to pay the complainant P50,000.00 as moral and exemplary damages.

"The respondents are furthermore ordered to pay the complainant 10% of the monetary awards as attorney's fees.

“The complainant’s backwages up to the date of this Decision, as computed by Ma. Cristina T. Paraoan of the Commission’s NCR Branch is P109,728.38.

“Article 223 of the Labor Code in part provides that ‘In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.’ Consequently, the respondents are further directed to reinstate the complainant when he reports for work by virtue of this Decision.

“Other claims are hereby dismissed for lack of merit.

“SO ORDERED.”

Upon appeal, the National Labor Relations Commission (NLRC) promulgated a Decision dated March 31, 1997 affirming with modification the Arbiter’s assailed Decision in the sense that the award of moral and exemplary damages was deleted. Petitioner filed a motion for reconsideration but was denied.

Thereafter, petitioner filed with this Court a petition for certiorari which we referred to the Court of Appeals pursuant to our ruling in *St. Martin’s Funeral Home vs. NLRC*.^[6]

On February 8, 1999, the Court of Appeals rendered a Decision affirming in toto the NLRC Decision and Resolution, thus:

“The records show that private respondent Arsenio M. Toston was scolded and rebuked by one Lucy Caasi of the Bolinao Agency after he filed a claim for medical benefits with the SSS, and on September 15, 1995, she told him not to report for work and that his name was dropped from the rolls. To drop him from the rolls is a definitive mode of severance of a worker from

his employment upon the initiative of the employer. It constitutes a permanent separation from office, and in effect, is a removal from the service. Such separation – dropped from the rolls – for unexplained reason does not constitute a valid cause for removal (Pizza Hut/Progressive Development Corporation vs. NLRC, 252 SCRA 531). His dismissal was effected without notice and hearing as shown in the Labor Arbiter’s finding. The removal for no justifiable cause and without notice and hearing is illegal, and entitles private respondent to reinstatement without loss of seniority rights and with full backwages (Article 279, Labor Code).

“Petitioner insists that the Labor Arbiter did not give the firm and its co-respondent Urbano Caasi the chance to reply. This insistence would not strengthen petitioner’s cause. Due process connotes a reasonable opportunity to be heard and to submit evidence in support of one’s defense (Midas Touch Food Corporation vs. NLRC, 259 SCRA 652). The requirements of due process are satisfied where the parties are given an opportunity to submit position papers (Salonga vs. NLRC, 254 SCRA 111). Petitioner submitted its position paper and documentary evidence. Hearings were conducted by the labor arbiter for reception of the evidence of the contending parties. Petitioner, certainly was afforded all the opportunities to be heard.

“Petitioner’s offer to reinstate private respondent after such separation did not correct his earlier illegal dismissal. Ranara vs. NLRC, 212 SCRA 631, emphasized that an offer made by an employer to re-employ an employee did not cure the vice of his earlier arbitrary disposition. The belated gesture, sincere or not, could not correct his earlier illegal dismissal.

“In any event, with the petition for certiorari under Rule 65 at hand, Our resolve has to be confined only upon the issue of jurisdiction or with grave abuse of discretion, and does not include an evaluation of the evidence (Geslani vs. NLRC, 253 SCRA 612). However, the contentions raised in the petition and related to the power of Lucy Caasi to dismiss private respondent as well as the authenticity and genuineness of the latter’s

application for leave of absence are factual in character and not proper subjects for certiorari under Rule 65. We add that the power of this Court concerning the factual findings of the NLRC, when supported by substantial evidence, deserve respect and finality (Palomado vs. NLRC, 257 SCRA 680). We have no reason to depart from that rule.

“WHEREFORE, the petition for certiorari under Rule 65 of the Revised Rules of Civil Procedure is hereby DISMISSED and the decision appealed from AFFIRMED in toto.

“SO ORDERED.”

On March 9, 1999, petitioner filed a Motion for Reconsideration but was denied by the Appellate Court in a Resolution dated July 6, 1999.

Hence, this Petition for Review on Certiorari. Petitioner ascribes to the Court of Appeals the following errors: (1) in ruling that the issues raised in its petition for certiorari are factual; and (2) in sustaining the finding of both the Labor Arbiter and NLRC that respondent was illegally dismissed from employment.

On petitioner’s first assigned error, we have consistently ruled that resort to a judicial review of the Decisions of the NLRC in a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, is confined only to issues of want or excess of jurisdiction and grave abuse of discretion.^[7] In this petition, the issues posed are: whether or not respondent’s application for leave of absence is authentic and genuine; and whether or not Lucy Caasi is empowered to terminate respondent from his employment. These issues were likewise raised by petitioner before the Court of Appeals which correctly ruled that the same are factual and “not proper subjects of certiorari under Rule 65.”

It is axiomatic that factual findings of the NLRC affirming those of the Labor Arbiter, who are deemed to have acquired expertise in matters within their jurisdiction, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on this Court. As long as their Decisions are devoid of any unfairness or arbitrariness in the process of their deduction from the

evidence proffered by the parties before them, all that is left is the Court's stamp of finality by affirming the factual findings made by the NLRC and the Labor Arbiter.^[8]

The jurisdiction of this Court in a petition for review on certiorari is limited to reviewing only errors of law, not of fact, unless the factual findings being assailed are not supported by evidence on record or the impugned judgment is based on a misapprehension of facts.^[9] These exceptions are not present here.

On the second assigned error, we agree with the Court of Appeals that respondent's dismissal from the service was without justifiable cause and without notice and hearing as required by the Labor Code and its Implementing Rules.^[10] In the case at bar, there is no showing of a clear, valid and legal cause which justifies respondent's removal from employment. Neither did petitioner serve two written notices to respondent prior to his termination from employment as required by the Labor Code. Clearly, this is a case of illegal dismissal.

It is a settled doctrine that "the employer has the burden of proving the lawfulness of his employee's dismissal. The validity of the charge must be clearly established in a manner consistent with due process. The Implementing Rules of the Labor Code provide that no worker shall be dismissed except for a just or authorized cause provided by law and after due process. This provision has two aspects: (1) the legality of the act of dismissal, that is, dismissal based on the grounds provided by Article 282 of the Labor Code, and (2) the legality in the manner of dismissal. The illegality of the act of dismissal constitutes discharge without just cause, while illegality in the manner of dismissal is dismissal without due process."^[11] Clearly, petitioner failed to discharge its burden.

Respondent who was illegally dismissed from work is actually entitled to reinstatement without loss of seniority rights and other privileges as well as to his full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.^[12]

However, the circumstances obtaining in this case do not warrant the reinstatement of respondent. Apparently, antagonism caused a severe strain in the relationship between him and petitioner company. A more equitable disposition would be an award of separation pay equivalent to at least one month pay, or one month pay for every year of service, whichever is higher (with a fraction of at least six (6) months being considered as one (1) whole year),^[13] in addition to his full backwages, allowances and other benefits.^[14]

Records show that respondent was employed from March 1993 to September 15, 1995, or for two (2) years and six (6) months, with a monthly salary of P5,000.00. Hence, he is entitled to a separation pay of P15,000.00.

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals dated February 8, 1999 and July 6, 1999 are hereby **AFFIRMED WITH MODIFICATION** in the sense that, in lieu of reinstatement, respondent is awarded separation pay equivalent to P15,000.00; and his full backwages, other privileges and benefits, or their monetary equivalent during the period of his dismissal up to his supposed actual reinstatement.

Costs against petitioner.

SO ORDERED.

Vitug, J., (Chairman), Corona, and Carpio-Morales, JJ., concur.

[1] See Vicente Sy et al. vs. Hon. Court of Appeals, G.R. No. 142293, February 27, 2003.

[2] Annex "A", Petition for Review, Rollo at 33-37.

[3] Annex "B", id. at 39-41.

[4] 10:00 P.M. to 6:00 A.M.

[5] Annex "E", supra. at 54-55.

[6] G.R. No. 130866, September 16, 1998, 295 SCRA 494. In this case, we held that appeal from the NLRC should be initially filed with the Court of Appeals, no longer with this Court, pursuant to the doctrine of hierarchy of courts.

- [7] Secon Philippines Ltd. vs. NLRC, G.R. No. 97399, December 3, 1999, 319 SCRA 685, citing ComSavings Bank vs. NLRC, 257 SCRA 307, 317 (1996).
- [8] PAL vs. Arthur B. Tongson, G.R. No. 153157, October 14, 2003 at 10, citing. Planas Commercial and Marcial Cohu vs. NLRC, 303 SCRA 49 (1999); Bogomedelin Sugarcane Planters Association, Inc. vs. NLRC, 296 SCRA 108 (1998); and Cocoland Development Corporation vs. NLRC, 259 SCRA 51 (1996).
- [9] Cosmos Bottling Corporation, G.R. No. 146397, July 1, 2003 at 7, citing De Rama vs. Court of Appeals, 351 SCRA 94, (2001).
- [10] Section 2 (a) and (d), Rule 1, Book VI of the Implementing Rules provides: “Section 2. Security of Tenure. (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.

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“(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

“For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.”

- [11] Rolando Y. Tan vs. Leovigildo Lagrama and the Honorable Court of Appeals, G.R. No. 151228, August 15, 2002.
- [12] See Cebu Marine Beach Resort vs. NLRC, G.R. No. 143252, October 23, 2003 at 10 citing, Damasco vs. NLRC, 346 SCRA 714 (2000).
- [13] See Jardine Davies, Inc. vs. NLRC, G.R. No. 76272, July 28, 1999, 311 SCRA 289, 300, citing Lopez vs. NLRC, 297 SCRA 508 (1998).
- [14] See Cebu Marine Beach Resort vs. NLRC, supra., citing Samarca vs. ArcMen Industries, Inc., G.R. No. 146118, October 8, 2003 and Philippine Tobacco Flue-Curing and Redrying Corp. vs. NLRC, 300 SCRA 37 (1998).