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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JUDE DARRY A. DEL RIO,
Petitioner,

- versus -

DPO PHILIPPINES, INC., DANIEL PANS and GRACE LUCERO,
Respondents.

G.R. No. 211525

Present:

PERALTA, *J., Chairperson,*
LEONEN,
CAGUIOA,*
GESMUNDO, and
REYES, J. JR., *JJ.*

Promulgated:

December 10, 2018

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DECISION

REYES, J. JR., *J.*:

The Case

Assailed in this Petition for Review on *Certiorari*[1] are the Decision[2] dated November 6, 2013 and the Resolution[3] dated February 7, 2014 of the Court of Appeals-Cebu City (CA), in CA-G.R. CEB-SP No. 05921 which affirmed with modification the Decision dated January 26, 2011 and the Resolution dated March 31, 2011 of the National Labor Relations Commission (NLRC), in NLRC Case No. VAC-09-000523-2010, by

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* Designated as additional member per Raffle dated December 5, 2018 in lieu of Justice Ramon Paul L. Hernando, who penned the Decision in the Court of Appeals.

1 *Rollo*, pp. 8-23.

2 Penned by then Court of Appeals Associate Justice Ramon Paul L. Hernando (now a member of the Court), with Associate Justices Carmelita Salandanan-Manahan and Ma. Luisa C. Quijano-Padilla, concurring; id. at 24-36.

3 Id. at 37-39.

deleting the award of separation pay to petitioner Jude Darry del Rio (Del Rio).

The Facts

Petitioner Del Rio is an employee of respondent DPO Philippines, Inc. (DPO) which is a Belgian multi-national food distribution company. He was tasked to set up the operations in Cebu to cover Visayas and Mindanao.[4] Respondent DPO succeeded with its business operations in Cebu and thereafter, petitioner was able to establish respondent's office in Davao.[5]

On September 7, 2009, petitioner submitted his notice of resignation[6] which would take effect on October 7, 2009. At the time of his resignation, he was holding the position of Assistant Country Manager.[7] In a letter[8] dated September 14, 2009, respondent DPO accepted petitioner's resignation. On October 11, 2009, respondent DPO published in a newspaper[9] that petitioner has resigned from DPO Philippines, Inc. effective October 7, 2009.

Petitioner realized that after October 7, 2009, he was not yet paid of his salary for the period of September 16, 2009 to October 7, 2009.[10] Petitioner sought from respondent DPO payments of his unpaid salaries, accrued leave credits and separation pay, but all of these were denied.[11]

Aggrieved, petitioner, on October 9, 2009, filed a complaint with the Regional Arbitration Branch of the NLRC in Cebu City for recovery of his monetary claims.

Respondents, for their part, averred that after petitioner resigned, they came to know that in the last part of his employment, he was engaged in activities in direct competition with the business of respondent DPO, which is a violation of the non-competition clause of his contract of employment. On or about August 28, 2009, which was 10 days prior to the date of his resignation letter, petitioner was able to secure from the Securities and Exchange Commission (SEC) the registration of a corporation named Judphilan Foods which has the same primary purpose as that of respondent DPO.

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4 Id. at 25.
5 Id.
6 Id. at 40.
7 Id. at 27.
8 Id. at 40-A.
9 Id. at 40-E.
10 Id. at 12.
11 Id. at 13.

Respondent DPO was unhappy and disappointed with petitioner's act of disloyalty and betrayal but it still offered petitioner the amount of ₱110,692.75 inclusive of his salary from September 16-30, 2009 and October 1-6, 2009; 13th month pay; tax refund; and commissions for August and September 2009. Petitioner refused what was offered to him insisting that aside from what respondent DPO offered, he is also entitled to separation pay and cash conversion of his leave credits.

Respondent DPO asserted that petitioner is not entitled to conversion of unused leave credits from 2006 to 2008 because the same had been forfeited in accordance with the company policy. While his unused leave credits for 2009 was applied as terminal leave after he tendered his resignation. Respondent DPO also asserted that petitioner is not entitled to separation pay because he was the one who voluntarily resigned.

Ruling of the Labor Arbiter

In a Decision dated June 25, 2010, the Labor Arbiter ruled in favor of petitioner, thus:

> WHEREFORE, premises considered, judgment is hereby rendered declaring that respondent DPO Philippines, Inc. should pay complainant Jude Darry Del Rio the following:
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> | | | | |
> |---|---|---|---|
> | 1. | Salary (Sept. 16-30, 2009)
Salary (Oct. 1-6, 2009)
13th Month Pay
Tax refund
Commission- Aug. 2009
Commission- Sept. 2009 | ..... | ₱110,692.75 |
> | 2. | Separation Pay | ..... | 409,500.00 |
> | | Total | ..... | **₱520,192.75** |
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> SO ORDERED.[12]

Respondent DPO filed an appeal with the NLRC.

Ruling of the NLRC

In its January 26, 2011 Decision, the NLRC denied the appeal and affirmed *in toto* the Decision of the Labor Arbiter. Private respondent DPO moved for reconsideration of the NLRC Decision, but it was denied by the NLRC in its Resolution dated March 31, 2011.

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[12] Id. at 28.

Imputing grave abuse to the NLRC, respondent DPO filed a petition for *certiorari* with the CA questioning the award of separation pay despite the glaring fact that petitioner voluntarily resigned. Respondent DPO argued that there was no evidence of an established company practice or policy for the payment of separation pay to voluntarily resigning employees. The payment of separation pay to Michael Legaspi (Legaspi) and Felinio Martinez (Martinez) (resigned DPO employees) did not create company practice. But even if it created company practice, petitioner could not claim any right thereunder because at the time it was supposedly established, petitioner was no longer connected with respondent DPO.

Ruling of the CA

In the now assailed Decision dated November 6, 2013, the CA affirmed with modification the Decision of the NLRC by deleting the award of separation pay, ratiocinating that an employee who voluntarily resigns from his employment is not entitled to separation pay unless otherwise stipulated in the employment contract, or in the Collective Bargaining Agreement (CBA), or sanctioned by established employer practice or policy. The mentioned exceptions do not obtain in the instant case.

Petitioner filed a Motion for Reconsideration,[13] but the same was denied by the CA in another assailed Resolution dated February 7, 2014.

Hence, this petition.

Issue

The central issue in this case is whether or not the CA is correct in deleting the award of separation pay in favor of petitioner.

Petitioner faulted the CA for considering respondents' arguments which they raised for the first time on appeal, to wit:

a) That the giving of separation pay to resigned employees is not a company practice but merely a means by which to encourage them to resign considering that they connived with and helped petitioner with his objective of running down the business of respondent so that he may easily succeed with the operations of his competing business; and,

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[13] Id. at 64-70.

b) That the resignation of Legaspi and Martinez happened on October 15, 2009 after petitioner was already separated from employment on October 7, 2009.

Petitioner opined that the Labor Arbiter and the NLRC had already made factual findings relying mainly on the issues and evidence presented before it. Since their findings are entitled to respect and finality, it is error for the CA to disturb them on appeal by considering the issues introduced by respondents for the first time on appeal.

Ruling of this Court

Contrary to petitioner's assertion, the above-mentioned arguments were timely raised by respondents in their pleadings with the Labor Arbiter and with the NLRC, as follows:

1. Reply to Petitioner's Position Paper filed before the Labor Arbiter;[14]

2. Verified Memorandum of Appeal filed before the NLRC;[15] and

3. Motion for Reconsideration with the NLRC.[16]

In fact, the said arguments were repeatedly raised by respondents with the labor tribunals to counter petitioner's firm position that payment of separation pay to resigned employees is a company practice.

In their Reply to petitioner's Position Paper, respondents explained that the separation pay was given to Legaspi and Martinez in exchange for their resignation in order to spare the company of the pain of having to terminate them.[17] Respondent DPO explained that it knows of the disloyalty of Martinez and Legaspi and their connivance with petitioner, but rather than terminating them, respondent asked them to tender their resignation with a promise of a separation pay.

In their Verified Memorandum of Appeal, respondents explained that the separation pay given to Legaspi and Martinez was not strictly separation pay, but in consideration of their resignation, more of a gift, an act of generosity because Legaspi and Martinez's resignation was more of a favor to the company as it was spared of going through litigation if it would

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[14] Id. at 102-105.
[15] Id. at 118-121.
[16] Id. at 129-132.
[17] Id. at 103-104.

terminate the employees.[18] In other words, Legaspi and Martinez were given the said pay because they were forced to resign.

In their Motion for Reconsideration, respondents maintained that the payments to Legaspi and Martinez were made after their resignations were tendered and accepted, or two months thereafter.[19] Hence, there can be no company policy or practice to speak of. In the said motion, respondents likewise averred that even assuming that by doing so, it became a company practice, it was created after the resignation of petitioner. Verily, petitioner cannot avail of it, because at the time it became a practice, he was already resigned.[20]

Even if these arguments were not considered by the NLRC and the Labor Arbiter in their Decisions, this does not preclude the CA from considering them, especially if they were raised and became part of the records.

It is a well-settled rule that the NLRC's factual findings, if supported by substantial evidence, are entitled to great respect and even finality, unless it was shown that it simply and arbitrarily disregarded evidence before it or had misapprehended evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated.[21] The CA, therefore, may review the factual findings of the NLRC and reverse its ruling if it finds that the NLRC disregarded and misappreciated the evidence extant on records.

In the same manner, factual findings of the CA are generally not subject to this Court's review under Rule 45. However, the general rule on the conclusiveness of the factual findings of the CA is also subject to well-recognized exceptions such as, where the CA's findings of facts contradict those of the lower court, or the administrative bodies, as in this case.[22] Since their findings are at variance, we are compelled to review factual questions and make a further calibration of the evidence at hand.

There is no dispute that petitioner resigned from his employment. This fact is established by the letter of resignation[23] dated September 7, 2009 sent by petitioner to respondents and was even admitted by the latter.

Suffice it to say, an employee who voluntarily resigns from employment is not entitled to separation pay, except when it is stipulated in the employment contract or the CBA, or it is sanctioned by established

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18 Id. at 119.
19 Id. at 129.
20 Id. at 132.
21 *Industrial Timber Corp. v. National Labor Relations Commission*, 323 Phil. 753, 759 (1996).
22 *Vicente v. Court of Appeals*, 557 Phil. 777, 785 (2007).
23 See: Letter of Resignation dated September 7, 2009, supra note 6.

employer practice or policy.[24] The cited exceptions do not obtain in this case. As correctly found by the CA, there was no employment contract, much less a CBA, which contained the stipulation that would grant separation pay to resigning employees. Neither was there a company practice or policy that was proven to exist in the instant case.

In his attempt to prove that there was a company practice of giving separation pay to resigning employees, petitioner presented the payslips of Martinez and Legaspi showing that they received separation pay after they resigned. We are not convinced.

To be considered a company practice, the giving of the benefits should have been done over a long period of time, and must be shown to have been consistent and deliberate.[25] As records would show, the giving of the monetary benefit by respondents in favor of Legaspi and Martinez is merely an isolated instance. From the beginning of respondents' business and up until petitioner's resignation took effect on October 7, 2009, there was no showing that payments of such benefit had been made by respondents to their employees who voluntarily resigned. The first and only instance when such a benefit was given to resigned employees was on or after November 15, 2009 — not because it was a company practice but only to pave the way for Legaspi and Martinez's graceful exit, so to speak.

As explained by respondents, the said benefit was not intended as a separation pay but more of a promise or an assurance to Legaspi and Martinez that they would be paid a benefit if they tender their resignation. Given respondents' knowledge of Legaspi and Martinez's acts of disloyalty and betrayal of trust, respondents opted to give them an alternative way of exit, in lieu of termination. Respondents' decision to give Legaspi and Martinez a graceful exit is perfectly within their prerogative. It is settled that there is nothing reprehensible or illegal when the employer grants the employee a chance to resign and save face rather than smear the latter's employment record.[26]

Relying on respondents' assurance, Legaspi and Martinez tendered their resignation and it is incumbent upon respondents to make good of their promise. As held in *Alfaro v. Court of Appeals,*[27] an employer who agrees to expend such benefit as an incident of the resignation should not be allowed to renege in the performance of such commitment. And true enough, after Legaspi and Martinez resigned, they were paid the promised benefit.

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24 *"J" Marketing Corp. v. Taran*, 607 Phil. 414, 425 (2009).

25 *Societe Internationale De Telecommunications Aeronautiques v. Huliganga*, G.R. No. 215504, August 20, 2018.

26 *Cosue v. Ferritz Integrated Development Corp.*, G.R. No. 230664, July 24, 2017.

27 416 Phil. 310, 312-313 (2001).

This was not the case for petitioner. There was no promise given to him. Rather, petitioner resigned on his own volition. Respondents did not make any commitment to petitioner that he would be paid after his voluntary resignation.

Based on the foregoing, it becomes all too apparent that the CA committed no reversible error in issuing the assailed decision and ruling that petitioner voluntarily resigned from his employment. Thus, the granting of separation pay in his favor has no basis in law and jurisprudence, and must be deleted.

WHEREFORE, premises considered, the instant petition is **DENIED.** Accordingly, the Decision dated November 6, 2013 and the Resolution dated February 7, 2014 of the Court of Appeals-Cebu City in CA-G.R. CEB-SP No. 05921, are hereby **AFFIRMED.**

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice
Chairperson

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LUCAS P. BERSAMIN
Chief Justice