



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

AUGORIO A. DELA ROSA,
Petitioner,

G.R. No. 242875

- versus -

Present:

ABS-CBN CORPORATION,
Respondent.

BERSAMIN, C.J., Chairperson,
PERLAS-BERNABE,
JARDELEZA,
GESMUNDO, and
CARANDANG, JJ.

Promulgated:

AUG 28 2019

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated June 19, 2018 and the Resolution³ dated October 22, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 152463 declaring petitioner Augorio A. Dela Rosa (petitioner) to have been validly dismissed, and thus, not entitled to backwages, separation pay, and attorney's fees.

¹ *Rollo*, pp. 12-32.

² *Id.* at 34-50. Penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court) with Associate Justices Fernanda Lampas Peralta and Jhosep Y. Lopez, concurring.

³ *Id.* at 52-52A.

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The Facts

In 2002,⁴ petitioner was hired by respondent ABS-CBN Corporation (respondent), a duly organized corporation engaged in the business of television and radio broadcasting, as a video editor⁵ for the latter's television broadcasting at an hourly rate of ₱230.00. He was allegedly rehired⁶ repeatedly and continuously for the same position, under purported fixed-term contracts.⁷

In 2013, petitioner admittedly reported for work and went to respondent's editing bay while intoxicated. This led to an incident where petitioner placed his hands inside a female co-worker's pants and touched her buttocks.⁸ Thus, on August 23, 2013, petitioner was given a show cause memorandum,⁹ to which he submitted an answer¹⁰ dated August 28, 2013, explaining that the alleged incident was only accidental, as he just lost balance and fell towards said co-worker.¹¹ Subsequently, administrative hearings were conducted on October 9, 2013, January 23, 2014, and March 3, 2014.¹²

On September 1, 2015, respondent served a memorandum¹³ to petitioner informing him of management's decision to "impose on [him] the penalty of dismissal."¹⁴ However, respondent claimed that it can no longer effect the same, since petitioner's program contract dated August 16, 2013¹⁵ had already expired on December 31, 2013, and his "current program contract dated March 16, 2015 to September 15, 2015 no longer covers the incident x x x."¹⁶ Nonetheless, the said decision was made part of his records, to wit:

Your acts of reporting for work under the influence of alcohol and for committing a lewd act against [your female co-worker] are likewise considered as serious misconduct which is a ground for the termination of your employment under Article 282 (a) of the Labor Code of the Philippines.

For the foregoing, **Management has decided to impose on you the penalty of dismissal.** However, considering that your program contract dated August 16, 2013 had already expired on December 31,

⁴ The Certification issued by respondent shows that petitioner had been employed since February 1, 2002 only (see *id.* at 121).

⁵ See Certification dated August 26, 2014; *id.* at 277.

⁶ See *id.* at 282-287.

⁷ See *id.* at 35. See also Agreements covering the periods from August 16, 2010 to August 15, 2013 (*id.* at 314-315), February 16, 2011 to August 15, 2011 (*id.* at 317-318), and March 16, 2015 to September 15, 2015 (*id.* at 207).

⁸ *Id.* at 208-209.

⁹ Dated August 23, 2013. *Id.* at 216.

¹⁰ *Id.* at 238.

¹¹ See *id.* at 209.

¹² See *id.* at 110. See also Certification dated August 15, 2016; *id.* at 242.

¹³ See memorandum dated September 1, 2015; *id.* at 208-212.

¹⁴ *Id.* at 212.

¹⁵ Not attached to the *rollo*.

¹⁶ *Rollo*, p. 212.

2013 and the **term of your current program contract dated March 16, 2015 to September 15, 2015 no longer covers the incident, Management can no longer impose the aforementioned penalty to your current program contract.** Nonetheless, this decision shall form part of your employee records.

x x x x¹⁷ (Emphases supplied)

Aggrieved, petitioner filed a complaint¹⁸ for illegal dismissal, underpayment of holiday pay, non-payment of salary/wages, 13th month pay, separation pay, and night shift differential, moral and exemplary damages, and attorney's fees against respondent.¹⁹

For its part,²⁰ respondent averred that petitioner was not illegally dismissed. It maintained that petitioner was engaged²¹ only for a fixed period or from March 16, 2015 until September 15, 2015, and consequently, his employment automatically ceased on the end date.²² It also claimed that even if petitioner's employment had not yet expired, the latter was dismissed for a just cause for having been found guilty of serious misconduct in: (a) reporting for work while intoxicated; and (b) committing lascivious acts against a female co-worker.²³

The Labor Arbiter Ruling

In a Decision²⁴ dated October 28, 2016, the Labor Arbiter (LA) found petitioner to have been illegally dismissed, and accordingly, ordered respondent to pay petitioner: (a) backwages in the amount of ₱1,006,327.07 computed from the date of termination up to the finality of said Decision; (b) separation pay in the amount of ₱1,270,992.59; (c) moral and exemplary damages in the amount of ₱50,000.00; and (d) attorney's fees equivalent to ten percent (10%) of the total monetary awards. The LA, however, dismissed petitioner's other claims for lack of merit.²⁵

The LA ruled that petitioner was a regular employee of respondent considering that he was engaged to perform an activity that has a reasonable connection to the business or trade of respondent.²⁶ Consequently, petitioner's dismissal due to "end of contract" was illegal because it is not one of the just or authorized causes provided by law.²⁷ In this regard, the LA

¹⁷ Id. at 212.

¹⁸ Dated June 15, 2016. Id. at 345-347.

¹⁹ See id. at 36.

²⁰ See Position Paper for Respondent dated August 15, 2016; id. at 178-200.

²¹ See Agreement between the parties; id. at 207.

²² See id. at 36. See also id. at 179.

²³ See id. at 39. See also id. at 180-182.

²⁴ Id. at 165-177. Penned by Labor Arbiter J. Potenciano F. Napeñas, Jr.

²⁵ Id. at 176-177.

²⁶ See id. at 172-173.

²⁷ See id. at 173-174.

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added that the inconsistent stand of respondent in declaring petitioner to have been validly dismissed due to serious misconduct, on one hand, and end of contract, on the other, worked against its favor.²⁸

Aggrieved, respondent appealed²⁹ to the NLRC.

The NLRC Ruling

In a Decision³⁰ dated April 27, 2017, the NLRC affirmed the LA's Decision with modification, deleting the award of moral and exemplary damages.³¹ It explained that the provision in petitioner's employment contract fixing the period of his employment was unjustified, since respondent failed to show that the same was mutually advantageous and not intended to defeat petitioner's right to security of tenure.³² It added that the circumstances of petitioner's employment indicated regular employment, as petitioner was continuously engaged by respondent for the same position, although under different employment contracts.³³ Notably, the NLRC opined that petitioner may not be declared validly dismissed on the ground of serious misconduct, considering that respondent terminated his services on the ground of expiration of contract.³⁴

In a Resolution³⁵ dated June 30, 2017, the NLRC, upon respondent's motion for partial reconsideration,³⁶ modified its April 27, 2017 Decision by reckoning the computation of separation pay from February 1, 2002.³⁷

The matter was elevated to the CA via a petition for *certiorari*.³⁸

The CA's Ruling

In a Decision³⁹ dated June 19, 2018, the CA granted the petition and nullified the findings of the NLRC.⁴⁰ It found petitioner to be a regular employee who was validly dismissed for a just cause.⁴¹ Particularly,

²⁸ See *id.* at 174-175. See also respondent's memorandum dated September 1, 2015; *id.* at 212.

²⁹ See Memorandum of Appeal dated February 17, 2017; *id.* at 127-157.

³⁰ *Id.* at 98-117. Penned by Commissioner Isabel G. Panganiban-Ortiguerra with Commissioner Nieves E. Vivar-De Castro concurring and Presiding Commissioner Joseph Gerard E. Mabilog dissenting. *Id.* at 111.

³¹ See *id.* at 107-108.

³² See *id.* at 108-109.

³³ Respondent's September 1, 2015 memorandum shows that its management did not impose the corresponding penalties for petitioner's offenses, and instead opted to terminate his services on the ground of expiration of contract (see *id.* at 110).

³⁴ *Id.* at 119-122.

³⁵ See motion for partial reconsideration dated May 25, 2017; *id.* at 349-377.

³⁶ *Id.* at 121.

³⁷ Dated September 6, 2017; *id.* at 53-92.

³⁸ *Id.* at 34-50.

³⁹ *Id.* at 49-50.

⁴⁰ *Id.* at 43-47.

petitioner was found guilty of serious misconduct in reporting for work under the influence of alcohol and committing lewd or lascivious acts against his female co-worker. Moreover, the twin requirements of notice and hearing were complied with, considering that: (a) petitioner was given a show cause order,⁴² to which he filed his answer;⁴³ (b) during the administrative hearings, petitioner was able to testify and present evidence in his favor; and (c) petitioner was informed⁴⁴ of respondent's decision to terminate him.⁴⁵

Petitioner moved for reconsideration⁴⁶ but the same was denied in a Resolution⁴⁷ dated October 22, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in ruling that petitioner was legally dismissed for a just cause.

The Court's Ruling

The petition is partly meritorious.

At the outset, it bears stressing that in a Rule 45 review in labor cases, the Court examines the CA's Decision from the prism of whether it had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision.⁴⁸ In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refer to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition.⁴⁹

Under this premise, the Court finds that the CA did not erroneously grant petitioner's *certiorari* petition since the NLRC gravely abused its discretion in ruling that petitioner was illegally dismissed. However, before delving into the same, it is significant to discuss the nature of petitioner's employment.

⁴² Id. at 216.

⁴³ Id. at 238.

⁴⁴ See memorandum dated September 1, 2015; id. at 208-212.

⁴⁵ Id. at 47-49.

⁴⁶ Dated July 12, 2018; id. at 419-424.

⁴⁷ Id. at 52-52A.

⁴⁸ See *Maricalum Mining Corporation v. Florentino*, G.R. Nos. 221813 & 222723, July 23, 2018.

⁴⁹ *Quebral v. Angbus Construction, Inc.*, 798 Phil. 179, 188 (2016); citations omitted.

Respondent claims that petitioner is a fixed-term employee. According to jurisprudence, for a fixed-term employment contract to be valid, it must be shown that the fixed period was knowingly and voluntarily agreed upon by the parties, who dealt with each other on more or less equal terms with no moral dominance being exercised by the employer over the employee.⁵⁰ Moreover, while fixed-term employment contracts have been recognized to be valid, the Court has held that if it is apparent that the period has been imposed to preclude acquisition of tenurial security by the employee, then such period must be struck down for being contrary to law, morals, good customs, public order, and public policy.⁵¹

Applying these standards, the Court finds that contrary to respondent's postulation, petitioner was not a fixed-term employee, but rather, a regular employee. Records show that petitioner was engaged by respondent, through various contracts, as a video editor for the latter's several programs. Among others, his initial contracts for both ANC NEWS AM and ANC NEWS PM started on August 16, 2010 up to February 15, 2011. This same contract was subsequently renewed from February 16, 2011 to August 15, 2011; August 16, 2011 to August 15, 2012; August 16, 2012 to February 15, 2013; and finally, from February 16, 2013 to August 15, 2013.⁵²

While there are other contracts intermittently spanning the years 2014 to 2015,⁵³ it is nonetheless clear from the foregoing that petitioner was under the employ of respondent for a period of at least three (3) years without interruption. His employment contracts during said period had been repeatedly extended or renewed covering the same position, and involving the same duties. Case law holds that the repeated engagement under a contract of hire is indicative of the necessity and desirability of the employee's work in the employer's business; and if an employee's contract has been continuously extended or renewed for the same position, with the same duties, without any interruption, then such employee is a regular employee.⁵⁴

Moreover, the fixed terms were not shown to be mutually advantageous to both parties or reasonably necessary to respondent's business, as it is, in fact, apparent that the same were merely imposed to prevent his acquisition of tenurial security.⁵⁵

In sum, the labor tribunals, as affirmed by the CA, correctly characterized petitioner as a regular, and not a fixed-term, employee. As such, petitioner's employment may be terminated only for a just or

⁵⁰ See *Dumpit-Murillo v. CA*, 551 Phil. 725, 739 (2007).

⁵¹ See *Price v. Innodata Phils. Inc.*, 588 Phil. 568, 582 (2008).

⁵² See *rollo*, p. 285.

⁵³ *Id.* at 285-287.

⁵⁴ See *Philips Semiconductors, Inc. v. Fadríquela*, 471 Phil. 355, 369-370 (2004).

⁵⁵ See *Price v. Innodata Phils. Inc.*, *supra* note 51.

authorized cause, as provided by law, and in accordance with the procedure for termination provided in the Labor Code.

In this case, the Court agrees with the CA that respondent had a just cause in terminating petitioner's employment as the latter committed serious misconduct against a female co-worker.⁵⁶

Misconduct has been held to be an improper or wrong conduct; a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. To be considered a valid cause for dismissal within the meaning of the Labor Code, the misconduct must be of such a grave and aggravated character and not merely trivial or unimportant.⁵⁷

Based on the records, respondent was able to establish that while waiting for his shift on August 22, 2013, petitioner reported for work and went to the editing bay while intoxicated. While there, he tried to hug and kiss a female co-worker, then placed his hands inside her pants and touched her buttocks. This incident was witnessed by several employees who stated that despite the resistance from and uneasiness of said co-worker, petitioner persistently teased and harassed her, thereby negating petitioner's claim that the same was a mere accident.⁵⁸

Clearly, the foregoing acts constitute serious misconduct, as petitioner did not only violate respondent's Code of Conduct,⁵⁹ particularly, its policy on Offenses Against Persons and Offenses Against Conduct and Decorum, but also adversely reflected on the ethics and morality in the company. As respondent aptly pointed out, when he came to work intoxicated, petitioner posed a serious threat to company property, considering that the editing bay contained expensive equipment which he could have damaged due to his intoxication. Further, his inebriated state at that time posed a serious peril to his co-employees, as in fact, was manifested when he repeatedly attempted to kiss a female co-worker and eventually, touched her buttocks.

However, despite the existence of a just cause, the Court finds that respondent failed to observe the proper procedure in terminating petitioner's employment.

As a rule, the employer is required to furnish the employee with two (2) written notices before termination of employment can be effected: a first written notice that informs the employee of the particular acts or omissions for which his or her dismissal is sought, and a second written notice which informs the employee of the employer's decision to dismiss him.⁶⁰ Anent the

⁵⁶ See Article 297 (formerly 282), paragraph (a) of the Labor Code.

⁵⁷ See *Maula v. Ximex Delivery Express, Inc.*, 804 Phil. 365, 378-379 (2017).

⁵⁸ See *rollo*, pp. 210-211.

⁵⁹ See *id.* at 217-237.

⁶⁰ See *Sang-An v. Equator Knights Detective and Security Agency, Inc.*, 703 Phil. 492, 502 (2013).

second notice, the written notice of termination should indicate that: (a) all circumstances involving the charge against the employees have been considered; and (b) grounds have been established to justify the severance of their employment.⁶¹

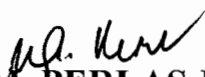
In this case, no valid second notice was given to petitioner because while the memorandum dated September 1, 2015 informed him that he was sanctioned with the penalty of dismissal for his serious misconduct, the same was not effected considering the expiration of his purported fixed-term employment contract. Consequently, for not having been furnished the second notice, which purpose is to inform the employee of his or her termination from employment,⁶² petitioner's right to procedural due process was violated.

Jurisprudence provides that in cases where the dismissals are for a just cause but are procedurally infirm, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee for violation of his statutory rights.⁶³ The rationale is that the employer should not be compelled to continue employing a person who is admittedly guilty of misfeasance or malfeasance and whose continued employment is patently inimical to the employer,⁶⁴ as in this case.

In view of the foregoing, the Court upholds the validity of petitioner's dismissal on the ground of serious misconduct. Nevertheless, respondent is ordered to pay nominal damages in the amount of ₱30,000.00, in line with existing jurisprudence, for violating petitioner's right to procedural due process.⁶⁵

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated June 19, 2018 and the Resolution dated October 22, 2018 of the Court of Appeals in CA-G.R. SP No. 152463 are **AFFIRMED with MODIFICATION**. Respondent ABS-CBN Corporation is hereby **ORDERED** to pay petitioner Augorio A. Dela Rosa the amount of ₱30,000.00 as nominal damages.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

⁶¹ See *Puncia v. Toyota Shaw/Pasig, Inc.*, 788 Phil. 464, 481 (2016); citations omitted.

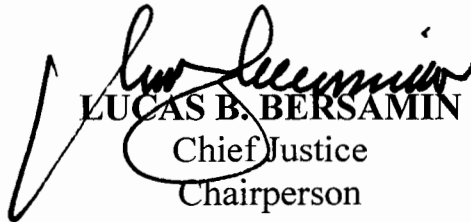
⁶² See *JARL Construction v. Atencio*, 692 Phil. 256, 270 (2012), citing *Austria v. NLRC*, 371 Phil. 340, 357 (1999).

⁶³ *Abbott Laboratories, Philippines v. Alcaraz*, 714 Phil. 510, 540 (2013).

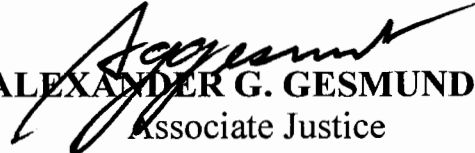
⁶⁴ *Agabon v. NLRC*, 485 Phil. 248, 286 (2004).

⁶⁵ See *Ortiz v. DHL Philippines Corporation*, 807 Phil. 626, 639 (2017).

WE CONCUR:


LUCAS B. BERSAMIN
Chief Justice
Chairperson

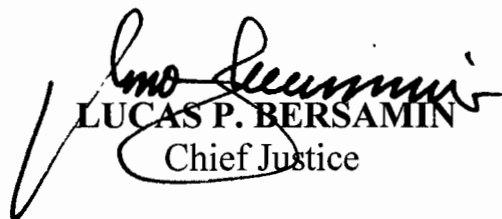

FRANCIS H. JARDELEZA
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


ROMAR B. CARANDANG
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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