REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **25 January 2021** *which reads as follows*:

"G.R. No. 230997 (*Michael P. Rogas v. Radio Mindanao Network, Inc. and Eric S. Canoy).* – The Court resolves to:

1. **NOTE** the Reply dated September 1, 2020 of petitioner to the comment/opposition to the petition for review on *certiorari* in compliance with the Resolution dated June 26, 2019;

2. **NOTE** and **DEEM AS SERVED,** by substituted service pursuant to Section 8, Rule 13 of the 2019 Amended Rules of Court, the returned and unserved copy of the Resolution dated February 3, 2020 (which, among other matters, required respondents to furnish petitioner with a copy of their comment on the petition and to submit proof of service) sent to Atty. Remigio D. Saladero, Jr., counsel for petitioner, at his address on record with notation, "RTS Unclaimed."

This is an appeal from the January 16, 2017 Decision and March 31, 2017 Resolution[1] of the Court of Appeals *(CA)* in CA-G.R. SP No. 134823, which affirmed the November 27, 2013 Decision and January 30, 2014 Resolution[2] of the National Labor Relations Commission *(NLRC)* in NLRC LAC No. 04-001404-13.

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[1] *Rollo*, pp. 27-49 and pp. 50-53; penned by Associate Justice Carmelita Salandanan Manahan, with Associate Justices Japar B. Dimaampao and Franchito N. Diamante, concurring.
[2] Id. at 272-298 and 408-410, penned by Presiding Commissioner Herminio V. Suelo, with Commissioners Angelo Ang Palana and Numeriano D. Villena, concurring.

Antecedents

Michael P. Rogas *(petitioner)* was employed as an anchor and reporter for respondent Radio Mindanao Network, Inc. *(RMN)*, and was effectively dismissed by RMN on December 18, 2011. Petitioner, together with other former RMN employees Shane Waldo S. Juan *(Juan)* and Lorenz Francis Tanjoco *(Tanjoco)*, filed a complaint for illegal dismissal, unfair labor practice, and non-payment of labor standard benefits against RMN and Eric Canoy *(collectively, respondents)*, in his capacity as President of RMN. The complainants alleged that they were dismissed due to their labor union activities: Petitioner and Tanjoco were elected as union President and Vice-President, respectively, while Juan was a union Board Member.[3]

Respondents alleged that petitioner was validly dismissed for various and numerous infractions. RMN received a complaint alleging that petitioner was doing live reports via phone patch which were aired at least three (3) times a month by the Provincial Radio Station of Occidental Mindoro. On July 8, 2011, a Notice to Explain was issued to petitioner as such act, without prior written permission from management, was a violation of the company's policy against outside interest.[4]

Two (2) administrative hearings were conducted and petitioner was able to submit a written explanation, followed by a letter of apology. The management of RMN determined that petitioner's action was indeed in violation of company policy, which has the corresponding sanction of dismissal on the first offense. It was even determined that on June 23, 2011, petitioner absented himself allegedly for medical reasons, but in fact went on board the other radio station on said date. A Memorandum detailing RMN's findings was issued on October 12, 2011. The company, for humanitarian considerations, opted to suspend petitioner for one (1) month without pay, instead of terminating his employment.[5]

The October 12, 2011 Memorandum, however, was not served upon petitioner.[6] A new schedule of news programming was released by Mr. Weng dela Peña *(dela Peña)*, the Network Program Director. On October 13, 2011, petitioner confronted dela Peña regarding the new schedule, seeking reconsideration as the new schedule would affect his side job. Later that day, petitioner was heard to have repeatedly uttered "*Ang bobo ng gumawa ng schedule!*" On October 24, 2011, another Notice to Explain was issued against petitioner for his use of disrespectful, insulting, and abusive language

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[3] Id. at 29-32.
[4] Id. at 32-33 and 370.
[5] Id. at 375.
[6] Id. at 32-33.

towards a superior. The notice specified that his utterances constitute a Type "B" Offense under the RMN's Company Manual, which has the corresponding penalty of one (1) week suspension for the first offense. He was asked to submit a written explanation within five (5) days.[7]

In a letter dated October 26, 2011, petitioner admitted his fault regarding the incident with dela Peña, claiming that he reacted emotionally because the new schedule affected his ability to teach classes at the University of Makati. He asked for forgiveness and manifested his willingness to comply with his new schedule.[8]

On November 17, 2011, RMN issued another Memorandum which resolved both the July 8, 2011 and the October 24, 2011 Notices to Explain. Therein, RMN Management resolved to terminate petitioner's employment based on the totality of his infractions. The memorandum listed the accumulated infractions against him as follows:

1. RMN issued a memorandum designating Jake Madarazo as its official spokesperson regarding a hostage-taking incident at the Quirino Grandstand on August 23, 2010, and prohibiting all other employees from disclosing any information or granting interviews to any other organization without prior approval from management. Despite such prohibition, petitioner allowed himself to be interviewed by several other media outlets such as ABS-CBN and GMA.

2. Petitioner was also quoted as the source of an article published in the August 31, 2010 issue of the Philippine Star pertaining to the stand of RMN regarding the hostage-taking incident.

3. Sometime in August or September 2010, while part of the program "*Unang Radyo, Unang Balita*", petitioner personally and directly attacked Mr. Mike Enriquez *(Mr. Enriquez)* regarding his physical appearance, in violation of Article 4, Section 3 of the Broadcast Code of 2007 of the *Kapisanan ng mga Broadkaster ng Pilipinas (KBP)*.

4. Violation of the prohibition against outside interest subject of the July 8, 2011 Notice to Explain.

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[7] Id. at 116-117 and 376-377.
[8] Id. at 378.

5. The incident that transpired with Mr. dela Peña on October 13, 2011 which found him guilty of a Type "B" offense.[9]

Ruling of the Labor Arbiter

In a Decision[10] dated February 27, 2013, Labor Arbiter Jaime M. Reyno *(LA Reyno)* found for petitioner and his fellow complainants. RMN failed to establish that any of the just or authorized causes for termination were present in the case.

Petitioner was allegedly dismissed for repeated violations of the regulations established in the Company Manual. Violation of the company's rules and regulations is obviously a ground for dismissal, more so if there is an accumulation of past offenses. Under the totality of infractions principle, previous offenses taken together may warrant termination of the employee. However, such previous offenses may be used as justification for dismissal from work only if the infractions are related to the subsequent offense upon which basis the termination of employment is decreed.[11]

As the latest violation committed by petitioner was for uttering disrespectful language – classified as a Type "B" offense punishable by one week suspension on the first offense – it is totally different from previous charges, and the totality doctrine is inapplicable.[12]

Furthermore, the October 24, 2011 Notice to Explain did not categorically state that petitioner may be terminated as a result of his infraction. As petitioner was not apprised of the risk of dismissal, his subsequent termination violated his right to due process.[13]

Finding that there was illegal dismissal, LA Reyno awarded petitioner full backwages and ordered his reinstatement. The monetary claims of complainants and the charge of unfair labor practice, however, were dismissed for lack of basis. LA Reyno also awarded petitioner 10% of the judgment award as attorney's fees. Dissatisfied, RMN filed their memorandum of appeal.

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[9] Id. at 379-380.
[10] Id. at 228-239.
[11] Id. at 234.
[12] Id. at 235.
[13] Id. at 235-236.

Ruling of the NLRC

On appeal, the NLRC disagreed with the finding of LA Reyno with regard to the lack of valid grounds for dismissing petitioner. The totality of petitioner's infractions during the term of his employment may be weighed against him in determining the penalty to be imposed. The acts complained of were all admitted by petitioner. His actions constituted serious misconduct and willful disobedience to lawful orders, which are valid causes for dismissal under Article 282 of the Labor Code.[14]

Nevertheless, the NLRC held that RMN failed to comply with procedural due process requirements. A two-notice rule is required, wherein the employee is first informed of the acts or omissions complained of and that there is an intention to dismiss; and after, a notice of the decision to dismiss. Also, the employee should be given an opportunity to answer and rebut the charges in between such notices. While petitioner was furnished with the October 24, 2011 Notice to Explain, the same failed to state that dismissal was sought for the acts charged therein. Thus, the NLRC ordered respondent RMN to pay petitioner nominal damages in the amount of ₱30,000.00.[15]

Petitioner and his fellow complainants moved for reconsideration, but their motion was denied by the NLRC.[16] The case was then elevated to the CA by way of a special civil action for *certiorari*.[17]

Ruling of the CA

The CA found that the NLRC did not gravely abuse its discretion in dismissing the complaint for illegal dismissal. Petitioner's dismissal was founded on the just cause of serious misconduct and willful disobedience to the lawful orders of RMN. Petitioner admitted his violations of the company policies pertaining to outside interest and unpleasant deportment in the workplace, as well as violation of the KBP Broadcast Code. The CA likewise upheld the finding that RMN violated petitioner's right to procedural due process. The ruling of the NLRC was thus affirmed.[18]

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[14] Id. at 286-288.
[15] Id. at 289-292 and 297-298.
[16] Id. at 313-314.
[17] Id. at 315-335.
[18] Id. at 43-48; *see* January 16, 2017 Decision.

Petitioner and his fellow complainants again moved for reconsideration, but their motion was denied by the CA.[19] Petitioner now comes before this Court by way of an Appeal by *Certiorari*.[20]

ISSUES

The instant petition raises the sole legal question: "Did the CA commit a legal error in affirming the ruling of the NLRC which reversed the finding of the Labor Arbiter to the effect that petitioner was unduly dismissed from his job?"[21]

Petitioner alleges that there was no substantial and credible evidence to justify his termination from employment. He maintains that his dismissal was based on past transgressions, which were revived as retaliation for his support and organization of a labor union.

Particularly, petitioner denies his outside interest in another radio station, and claims that the CA gravely erred in adopting respondents' self-serving allegations on the matter. As regards his language towards dela Peña, petitioner claims that he was shocked and offended when the new schedule was implemented without his knowledge. Worse, he was not informed of the starting date of his new assignment. As he was unreasonably provoked, dismissal was uncalled for and a lesser penalty would have sufficed. On the violation of the company memorandum regarding his comments on the August 23, 2010 hostage-taking incident, petitioner claims that he did not intentionally violate the company resolution. Finally, on his alleged attack on Mr. Enriquez, petitioner claims that his comments on Mr. Enriquez' physical appearance were made in jest. Further, he was arbitrarily singled-out for the incident, and his co-anchor at the time was not held administratively liable.

In their comment/opposition, respondents posit that the questions raised by petitioner require a re-examination of the evidence presented before the labor tribunal, which falls outside the ambit of the instant review. They maintain that there is sufficient evidence of petitioner's various infractions, and thus there is valid ground for his termination under the Labor Code.

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[19] Id. at 50-53; *see* March 31, 2017 Resolution.
[20] Id. at 12-24.
[21] Id. at 17.

Petitioner submitted his reply[22] thereto, basically reiterating the arguments raised in his petition.

The Court's Ruling

The petition is unmeritorious.

Petitioner's challenge requires a review of the factual findings of the CA. This Court, however, cannot delve into factual questions in this appeal because Rule 45 of the Rules of Court expressly provides that a petition for review on *certiorari* shall only raise questions of law.[23] In labor cases, the factual findings of the Labor Arbiter and of the NLRC are generally respected and, if supported by substantial evidence, accorded finality.[24] While the rule is not absolute, petitioner has not shown that any of the exceptions are present in this case.

The LA, the NLRC, and the CA all found that petitioner indeed committed the acts attributed to him. Said findings were supported by substantial evidence presented before the LA. Attached to respondents' Verified Petition Paper were letters[25] from petitioner explaining his side regarding the charge of outside interest and the incident with dela Peña. While he sought to justify his actions, he also admitted his mistakes and apologized for his actions.

With regard to his violation of the memorandum against making comments or granting interviews regarding the August 23, 2010 hostage-taking incident, petitioner failed to rebut the same. He did not deny giving the interviews to ABS-CBN and GMA. He merely claims that he did not give an interview to the Philippine Star, and the quotes attributed to him were obtained from the investigation conducted by the Department of Justice. Thus, he argues that there was no intention on his part to violate company resolution. This is not enough, however, to overturn the labor tribunals' findings that he did in fact disregard RMN's memorandum on the matter.

On his violation of the Broadcast Code, again, petitioner failed to deny making the remarks against Mr. Enriquez and, in fact, admitted to uttering them. As to his claim that his co-anchor was not similarly punished, petitioner failed to prove that his co-anchor was equally liable for those remarks. Petitioner failed to identify the alleged co-anchor, and whether such co-anchor

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[22] Id. at 550-554.
[23] *Shangri-La Properties, Inc. v. BF Corp.*, G.R. Nos. 187552-53 & 187608-09, October 15, 2019.
[24] *Sampaguita Auto Transport Corp. v. NLRC*, 702 Phil. 701, 709 (2013).
[25] *Rollo*, pp. 373, 374, and 378; Annexes "E," "F" and "I" thereof.

also made similar remarks. The burden of evidence lies with the party who asserts an affirmative allegation.[26] Barring any proof that there was anyone else involved in the incident, this Court cannot give any credence to the claim that petitioner was being singled-out.

Petitioner's repeated failure to abide by the company rules and policy constituted serious misconduct and willful disobedience to the lawful orders of his employer. This is one of the just causes for termination by the employer provided in Article 282(a) of the Labor Code.

Serious misconduct is defined as the 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 of judgment.[27] Willful disobedience, on the other hand, envisages the concurrence of at least two (2) requisites: the employee's assailed conduct must have been [willful] or intentional, the [willfulness] being characterized by a "wrongful and perverse attitude"; and the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[28] This Court finds that the various infractions committed by petitioner, amount to such serious misconduct and willful disobedience as to justify the termination of his employment.

Likewise, RMN was within its rights to dismiss petitioner based on the totality of infractions, a concept explained in *Merin v. NLRC*:[29]

> The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty. Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts

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[26] *Princess Talent Center Production, Inc. v. Masagca*, 829 Phil. 381, 407 (2018).
[27] *Ha Yuan Restaurant v. NLRC*, 516 Phil. 124, 128 (2006).
[28] *Gold City Integrated Port Services, Inc. v. NLRC*, 267 Phil. 863, 872 (1990).
[29] 590 Phil. 596 (2008).

> inimical to its interests. It has the right to dismiss such an employee if only as a measure of self-protection. x x x.[30] (citations omitted)

Petitioner claims that the company practice is that RMN does not include violations committed in previous years in assessing violations committed for the current year. However, this allegation is again unsubstantiated. On the other hand, respondents, citing Article XV, item 11, number 4 of its Company Manual, established that a combination of violations may be basis for termination:

> A combination of any three (3) offenses or violations under the company rules and regulations may constitute cause for termination or discharge. On the other hand, the schedule of penalties enumerated for violation of any single rule will apply only if the offense committed shall occur within one (1) year from the date of each previous infraction. [31]

It appears then that petitioner mistakenly applied the limitation in the last sentence of the above provision to the first sentence thereof. A cursory reading of the provision will reveal, however, that the two sentences may operate independently of each other. Said provision further justifies petitioner's dismissal based on the doctrine of totality of infractions.

As to petitioner's claim that he was dismissed as retaliation for supporting and organizing a labor union within the company, mere allegation is not proof. Neither the appellate court nor the labor tribunals found any act tantamount to unfair labor practice on the part of respondents. On the contrary, the above discussion shows that respondents were able to sufficiently establish just cause in terminating petitioner's employment with them.

Finally, this Court finds that the CA correctly affirmed the NLRC in upholding the finding that RMN violated petitioner's right to procedural due process. Procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two (2) written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his or her dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him or her.[32]

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[30] Id. at 602-603.
[31] *Rollo*, p. 214.
[32] *Slord Development Corp. v. Noya*, G.R. No. 232687, February 4, 2019.

Here, the two relevant notices given by RMN were the October 24, 2011 Notice to Explain and the November 17, 2011 Memorandum. As correctly observed by the NLRC, the October 24, 2011 Notice to Explain failed to sufficiently inform petitioner that one of the possible outcomes of the investigation would be his dismissal. Where a dismissal was for just cause but without observance of the twin requirements of notice and hearing, the validity of the dismissal shall be upheld, but the employer shall be ordered to pay nominal damages in the amount of ₱30,000.00.[33]

All told, this Court finds no error on the part of the CA in ruling that the NLRC did not commit grave abuse of discretion in reversing the ruling of the LA.

WHEREFORE, the petition is hereby **DENIED**. The January 16, 2017 Decision and March 31, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 134823 are hereby **AFFIRMED**.

SO ORDERED. (Rosario, *J.*, designated additional member per Special Order No. 2797 dated November 5, 2020)"

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
19 FEB 2021

[33] Id.

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