Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ASIAN TERMINALS, INC.,
Petitioner,

- versus -

ETELIANO R. REYES, JR.,
Respondent.

G.R. No. 240507

Present:

LEONEN, *J.*, *Chairperson,*
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J., *JJ.*

Promulgated:
April 28, 2021

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D E C I S I O N

LOPEZ, J., *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated January 18, 2018 and the Resolution[3] dated June 27, 2018 of the Court of Appeals (*CA*) in CA-G.R. SP No. 146498.

FACTS:

Eteliano Reyes, Jr. (*Reyes*) was employed by Asian Terminals Inc., (*ATI*) as Supervisor III/Foreman on Board who shall be responsible in ensuring that shift vessel operations are carried in accordance with ATI standards.[4]

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1 *Rollo*, pp. 11-49.
2 Penned by Associate Justice Pedro B. Corales, with Associate Justices Jose C. Reyes, Jr. (ret.) and Elihu A. Ybañez, concurring; *id.* at 105-118.
3 *Id.* at 134-135.
4 *Id.* at 106.

On February 17, 2014, Reyes was supervising the loading and lashing operations at Q7 on board MV YH Ideals. He first went to Bay 30, but he had to leave the All Purpose Personnel (APP) tasked to finish the lashing operations as he needed to supervise the loading operations at Bay 38. With a twist of fate, an accident[5] occurred at Bay 30 wherein a lashing bar fell on the pier apron hitting Manuel Quiban (*Quiban*) a vessel security guard.

As expected, ATI directed Reyes to explain why he should not be penalized for negligence under Section 2.4 of the Company Table of Offenses and Penalties (*CTOP*).[6]

In his response,[7] Reyes clarified that while completing the lashing operations at Bay 30, "EC Planner" directed him to transfer to Bay 38 to supervise the commencement of loading operations. Pursuant to said instruction, Reyes left the four (4) APPs to complete lashing operations at Bay 30 and proceeded to Bay 38 where a loading operation was about to start and the crane was already positioned.

In a Notice to Explain with Preventive Suspension[8] dated February 21, 2014, the ATI informed Reyes that his failure to ensure that the safeguards for works on board the vessel were faithfully observed constitutes probable violation under Section 2.2 of the CTOP (neglect of work, incompetence, inefficiency, negligence, failure to perform duties and/or responsibilities, or failure to observe standard operating procedures, in any case resulting in injury or death) and may merit the penalty of dismissal.

Consequently, Reyes filed his supplemental response[9] expounding on the necessity to transfer from Bay 30 to Bay 38. According to him, he needed to go to Bay 38 to ensure that the containers on deck are secured in accordance with the loading plan. Beseeching consideration, Reyes reminded ATI of his satisfactory performance for the past three (3) years and his consistent diligence in the discharge of his duties.

Unmoved by Reyes' entreaty, ATI terminated his employment[10] prompting Reyes to file a complaint[11] for illegal dismissal.

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5 HSE Incident Investigation, *id.* at 163-164.
6 Notice to Explain, *rollo*, p. 165.
7 *Rollo*, p. 166.
8 *Id.* at 167.
9 *Id.* at 168-169.
10 *Id.* at 170.
11 *Id.* at 171-173.

THE RULING OF THE LABOR ARBITER

Finding that Reyes failed to prove the illegality of his dismissal, the Labor Arbiter (*LA*) dismissed the complaint for lack of merit, but awarded service incentive leave and 13th month pay, thus:

> WHEREFORE, a Decision is hereby rendered declaring that the dismissal of the Complainant was valid. However, Respondents are hereby ordered to pay Complainant service incentive leave pay and 13th month pay.
>
> Computation is as follows:
>
> | | | |
> |---|---|---|
> | 13th MONTH PAY | | |
> | P28,000.00 x 3 mos. (sic) | | P84,000.00 |
> | SERVICE INCENTIVE | | |
> | LEAVE PAY (3 yrs.) | | |
> | P28,000.00/26 days = P1,076.92 | | |
> | P1,076.92 x 15 days | | 16,153.80 |
> | | Total | P100,153.50 |
>
> SO ORDERED.[12]

ATI and Reyes filed their respective appeals to the National Labor Relations Commission.

THE NLRC RULING

In a Decision[13] dated March 8, 2016, the NLRC reversed the findings of the LA as to the legality of Reyes' dismissal and modified the monetary award. The NLRC ratiocinated as follows:

> The Labor Arbiter was simplistic in her approach in resolving the issue of negligence.
>
> Her logic is that since complainant left Bay 30 before the lashing operation was completed; that he did not leave instructions to the All Purpose Personnel left behind; and there was no urgency in leaving Bay 30 for Bay 38, he was thus negligent.
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> The Labor Arbiter should have taken into account the following circumstances before deciding that complainant was negligent, *viz*:
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> > a. Complainant before the loading and lashing operations conducted the Tool Box among his subordinates, a safety requirement before starting the work. It means he conducted an orientation about the safety procedures *vis-a-vis* the loading and lashing operations;

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12 *Id.* at 225-226.
13 *Id.* at 225-236.

> b. He personally supervised the lashing operations and observed if the APPs were doing it correctly. It was only when everything was correctly done that he left Bay 30 for Bay 38;
> c. Complainant's going to Bay 38 was in accordance with the schedule of the Quay Crane 7 which was now transferred to Bay 38 to commence loading. This action to transfer QC 7 to Bay 38 is normal as it is dictated by the work program of the crane. Complainant did not wait for the completion of the lashing at Bay 30 since he had to check Bay 38 if the twist and shoe lock are properly placed before the loading starts. As QC 7 supervisor on board, he had to supervise and guide the QC Operator in loading operations. As a rule, all QC operators are not supposed to make any movement, *i.e.*, travelling, discharging and loading without the presence of a supervisor assigned for each QC. His presence in Bay 38 was thus necessary.

When complainant transferred to Bay 38 from Bay 30, he was merely following the instructions of the EC Planner to transfer QC 7 to Bay 38 to commence loading. At the expense of being trite, the procedure for loading and lashing or fastening of cargoes is this: There is no need to wait for the lashing operations to be completed on Bay and to start loading the cross bay or another bay which sufficiently stands between the two bays. Waiting will only result in undue delays due to the fast pace of operations at the pier since vessels, local and international, have a schedule to follow.

In the maritime business, time is gold and of the essence since undue delays disrupt the vessels scheduled (sic) and may result in the payment of demurrage fees.

Finally, We also find that the injured security guard on board had no business walking at the apron of a NO WALK ZONE AREA without permission.

Complainant was initially charged with negligence under the company's Revised Table of Offenses (TOP) 2.4 which provides a graduated penalty, thus: 1st offense – 15 days suspension; 2nd offense – 30 days suspension and 3rd offense - dismissal[,] through a Notice to Explain dated 18th February 2014. Complainant submitted his well-written explanation the following day. Two days thereafter, he was charged with another offense. This time under TOP 2.2 which provides for a sanction of dismissal. Subsequently[,] or on 24th March 2014, he was dismissed.

We believe that complainant's dismissal under the new charge is unwarranted. While it is respondent ATI['s] management prerogative to prescribe rules and regulations to discipline its employees and to impose sanctions on erring workers, the exercise of this prerogative is not unlimited, boundless[,] and absolute. x x x

Given the fact that complainant followed the rules in the performance of his job and the further fact that the incident resulting to injury to the guard would not have happened were it not for the latter's negligence in being in a place he was not authorized to, the imposition of the ultimate penalty of dismissal on complainant violates the rule of fair play and labor justice.

> To recall, complainant was charged with negligence first under TOP 2.4 and later under TOP 2.2[.] Negligence to be a basis for termination of employment must be gross and habitual. "The concept of negligence as enunciated in Article 282 (b) [now renumbered as Article (b)], must not only be gross but habitual in character as well to justify depriving the employee of his means of livelihood" x x x.
>
> x x x x
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> Assuming complainant is guilty of negligence, let it be stressed that in his three years with respondent company, this is his first. Obviously[,] this is not a case of gross and habitual negligence that jurisprudence speaks about as ground for termination of employment. That said, this Commission finds his dismissal unjustified and illegal and as a consequence thereof, he should be reinstated without loss of seniority rights and with full back wages.
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> We agree, however, with respondent that the Labor Arbiter erred in the computation of benefits awarded the complainant. x x x. What appears complainant is entitled to, and the respondent completely is in agreement, is the former's proportionate 13th month pay and SILP for the period January to March 2014 in the amounts of Php10,650.84 and Php4,594.32 respectively or the total sum of Php15,245.16.
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> WHEREFORE, finding both Appeals to be impressed with merit, they are both granted. The Decision of the Labor Arbiter is REVERSED and SET ASIDE and a NEW ONE rendered as follows:
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> 1. Complainant Eteliano R. Reyes, Jr. is declared illegally dismissed and ordered immediate[ly] reinstated, paid his back wages of P28,000.00 a month reckoned from March 24, 2014 until finality of the judgment without loss of seniority rights and privileges; and
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> 2. Respondents Asian Terminal Inc. is ordered to pay his proportionate 13th month pay and SILP for 2014 in the sum of P15,245.16.
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> All other claims are dismissed for lack of merit.
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> SO ORDERED.[14]

ATI moved for reconsideration, but the same was denied in a Resolution[15] dated April 27, 2016.

Dismayed by the NLRC's disposition, ATI instituted a Petition for *Certiorari* before the CA.

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14 *Id.* at 232-236.

15 *Id.* at 99-103.

THE CA RULING

On January 18, 2018, the CA rendered the assailed Decision, the dispositive portion of which states:

> WHEREFORE, the instant petition for *certiorari* is DISMISSED. Accordingly, the March 8, 2016 Decision and April 27, 2016 Resolution of the National Labor Relations Commission, Fourth Division in NLRC LAC No. 10-002783-15 are AFFIRMED.[16]

ATI's motion for reconsideration was also denied in the assailed Resolution[17] dated June 27, 2018.

Hence, the present petition.

ISSUE

Whether or not the CA erred in ruling that no grave abuse of discretion was committed by the NLRC in denying petitioner's assertion of valid dismissal.

ATI maintains the validity of Reyes' termination from employment. ATI argues that as a company engaged in container yardwork, which involves the operation of huge industrial equipment to pick-up cargoes/containers at ports, it needs to ensure that industrial safety protocols are followed by all ATI personnel and third persons such that any deviation therefrom is not taken lightly. ATI adds that it puts high premium on the safety of its employees and workplace environment, that even a first offense caused by non-observance of safety standards where injury or death results, is meted the penalty of dismissal. According to ATI, since Reyes violated his duty in ensuring safety in shift vessel operations which caused injury to a third person, his dismissal is necessarily called for. For the first time, ATI advances that should this Court deem Reyes' dismissal as invalid, it shall be made liable to pay for his separation in lieu of reinstatement.

For Reyes, he asserts that he was illegally dismissed. He insists that the ATI failed to adduce clear, consistent, accurate, and convincing evidence to support the legality of his termination from employment.

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16 *Id.* at 117.

17 *Id.* at 134-135.

THIS COURT'S RULING

ATI's arguments fail to convince.

First, ATI's arguments are mainly questions of fact and are generally not subject to review by the Court in a Rule 45 petition. Only questions of law may be raised in a petition filed under Rule 45 of the Rules of Court as the Supreme Court is not a trier of facts.[18]

Second, in a petition for *certiorari* under Rule 65 of the Rules of Court, the petitioner must establish that the respondent tribunal acted in a capricious, whimsical, arbitrary, or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. As correctly observed by the CA, the petition before it failed to indicate with exactitude and substantiate that the NLRC acted in such a way that would amount to lack of jurisdiction. What the petitioner questioned was the NLRC's appreciation of the evidence before it which pertains to an error of judgment rather than an error of jurisdiction.

Third, the NLRC did not commit grave abuse of discretion. There is grave abuse of discretion when rendition of judgment was done in a capricious, whimsical, or arbitrary manner tantamount to lack of jurisdiction. Moreover, the concept of "grave" connotes that the abuse of discretion is so gross and patent that amounts to "an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."[19] Here, the NLRC's decision, which upheld the illegality of Reyes' dismissal, has basis in evidence as well as in law and jurisprudence, hence, no grave abuse of discretion may be imputed against it.

Also, settled is the rule that in illegal dismissal cases, the employer bears the burden of proving that the termination of the employee was for a valid or authorized cause. This is consistent with the principle of security of tenure as guaranteed by the Constitution and reinforced by Article 292(b) of the Labor Code of the Philippines, which provides:

> Art. 292. *Miscellaneous Provisions* - x x x
>
> (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article [298] of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires

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18 See *Al-Masiya Overseas Placement Agency v. Viernes*, G.R. No. 216132, January 22, 2020.

19 *Dominic Inocentes v. R. Syjuco Construction*, G.R. No. 237020, July 29, 2019.

> in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. x x x

Indeed, as pointed out by the CA, ATI failed to present clear, accurate, positive, and convincing evidence that there is just cause to terminate Reyes' employment. For one, Reyes merely followed the rules in the performance of his job. In fact, his transfer to Bay 38 was by instructions of the EC Planner. Too, his transfer to Bay 38 was necessary because a quay crane has already been prepositioned and loading operation was about to commence.

Withal, We find no reversible error committed by the CA in finding that no grave abuse of discretion is attributable to the NLRC.

ATI advances, for the first time, that reinstatement is not the feasible alternative but the payment of separation pay in view of the strained relations of the parties.

We do not agree.

In *Rodriguez vs. Sintron Systems, Inc.*,[20] this Court elaborated that the doctrine of strained relations cannot be applied indiscriminately since every labor dispute almost invariably results in "strained relations"; otherwise, reinstatement can never be possible simply because some hostility is engendered between the parties as a result of their disagreement. That is human nature. Strained relations must be demonstrated as a fact. The doctrine should not be used recklessly or loosely applied, nor be based on impression alone.

Reinstatement cannot be barred especially when the employee has not indicated an aversion to returning to work, or does not occupy a position of trust and confidence, or has no say in the operation of the employer's business.[21]

Here, aside from the fact that this issue was only raised for the first time, there is also no compelling evidence presented to support the conclusion that the parties' relationship has gone so sour so as to render reinstatement impracticable. Also, Reyes has not demonstrated unwillingness to be reinstated and the existence of a confidential relationship between him, as a supervisory employee, and ATI, has not been established. For lack of evidence

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20 G.R. No. 240254, July 24, 2019.

21 *Fernandez vs. MERALCO*, G.R. No. 226002, June 25, 2018.

on record, it appears that his position was not a sensitive position as would require complete trust and confidence, and where personal ill will would foreclose his reinstatement.[22]

WHEREFORE, the petition is **DENIED**. The Decision and the Resolution, dated January 18, 2018 and June 27, 2018, respectively, of the Court of Appeals in CA-G.R. SP No. 146498 are **AFFIRMED**.

Private respondent Eteliano R. Reyes, Jr., is declared illegally dismissed and ordered immediately reinstated, paid his back wages, from March 24, 2014 until finality of this decision without loss of seniority rights and privileges.

Petitioner Asian Terminals, Inc. is also ordered to pay private respondent his 13th month pay and service incentive leave pay.

It is understood that the award shall exclude salary increase and other benefits which are contingent on variables such as employee's merit increase based on performance or longevity or company's financial standing.

Further, petitioner Asian Terminals, Inc. is ordered to pay private respondent legal interest of six percent (6%) *per annum* from the finality of this decision until full payment of the monetary award.

The labor arbiter is directed to issue and cause the implementation of the writ of execution in accordance with this decision, with utmost dispatch.

SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

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22 *Id.*

WE CONCUR:

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
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.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Third 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.

ALEXANDER G. GESMUNDO
Chief Justice