Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CAVITE APPAREL, INCORPORATED and ADRIANO TIMOTEO, Petitioners,	**G.R. No. 172044**
	Present:
	CARPIO, *J.*, *Chairperson*, BRION, DEL CASTILLO, PEREZ, and PERLAS-BERNABE, *JJ.*
- versus -	
	Promulgated:
MICHELLE MARQUEZ, Respondent.	FEB 0 6 2013

x----------x

DECISION

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by petitioners Cavite Apparel, Incorporated (*Cavite Apparel*) and Adriano Timoteo to nullify the decision[2] dated January 23, 2006 and the resolution[3] dated March 23, 2006 of the Court of Appeals (*CA*) in C.A.-G.R. SP No. 89819 insofar as it affirmed the disposition[4] of the National Labor Relations Commission (*NLRC*) in NLRC CA No. 029726-01. The NLRC set aside the decision[5] of Labor Arbiter (*LA*) Cresencio G. Ramos in NLRC NCR Case No. RAB-IV-7-12613-00-C dismissing the complaint for illegal dismissal filed by respondent Michelle Marquez against the petitioners.

---

1 Dated May 9, 2006 and filed under Rule 45 of the Rules of Court; *rollo*, pp. 11-29.

2 Id. at 11-18; penned by Associate Justice Renato C. Dacudao, and concurred in by Associate Justices Lucas P. Bersamin (now a member of this Court) and Celia C. Librea-Leagogo.

3 Id. at 9.

4 Id. at 76-81 and 87-88, respectively. Decision of the NLRC First Division dated May 7, 2003 and its resolution dated March 30, 2005.

5 Id. at 57-62; dated April 28, 2001.

The Factual Antecedents

Cavite Apparel is a domestic corporation engaged in the manufacture of garments for export. On August 22, 1994, it hired Michelle as a regular employee in its Finishing Department. Michelle enjoyed, among other benefits, vacation and sick leaves of seven (7) days each per *annum*. Prior to her dismissal on June 8, 2000, Michelle committed the following infractions (with their corresponding penalties):

a.	First Offense:	Absence without leave (AWOL) on December 6, 1999 – written warning
b.	Second Offense:	AWOL on January 12, 2000 – stern warning with three (3) days suspension
c.	Third Offense:	AWOL on April 27, 2000 – suspension for six (6) days.[6]

On May 8, 2000, Michelle got sick and did not report for work. When she returned, she submitted a medical certificate. Cavite Apparel, however, denied receipt of the certificate.[7] Michelle did not report for work on May 15-27, 2000 due to illness. When she reported back to work, she submitted the necessary medical certificates. Nonetheless, Cavite Apparel suspended Michelle for six (6) days (June 1-7, 2000). When Michelle returned on June 8, 2000, Cavite Apparel terminated her employment for habitual absenteeism.

On July 4, 2000, Michelle filed a complaint for illegal dismissal with prayer for reinstatement, backwages and attorney's fees with the NLRC, Regional Arbitration Branch No. IV.

The LA Ruling

In a decision dated April 28, 2001,[8] LA Ramos dismissed the complaint. He noted that punctuality and good attendance are required of employees in the company's Finishing Department. For this reason, LA

---

[6] Id. at 12, 16-17 and 79.

[7] Id. at 12, 17, 79 and 186. Cavite Apparel denied receiving Michelle's medical certificate. See Petition, Cavite Apparel's Reply, and Annex G-1 of its Position Paper, Annex "A" to the Petition; at 17, 186 and 43, respectively.

[8] *Supra* note 5.

Ramos considered Michelle's four absences without official leave as habitual and constitutive of gross neglect of duty, a just ground for termination of employment. LA Ramos also declared that due process had been observed in Michelle's dismissal, noting that in each of her absences, Cavite Apparel afforded Michelle an opportunity to explain her side and dismissed her only after her fourth absence. LA Ramos concluded that Michelle's dismissal was valid.[9]

The NLRC Decision

On appeal by Michelle, the NLRC referred the case to Executive LA Vito C. Bose for review, hearing and report.[10] Adopting LA Bose's report, the NLRC rendered a decision[11] dated May 7, 2003 reversing LA Ramos' decision. The NLRC noted that for Michelle's first three absences, she had already been penalized ranging from a written warning to six days suspension. These, the NLRC declared, should have precluded Cavite Apparel from using Michelle's past absences as bases to impose on her the penalty of dismissal, considering her six years of service with the company. It likewise considered the penalty of dismissal too severe. The NLRC thus concluded that Michelle had been illegally dismissed and ordered her reinstatement with backwages.[12] When the NLRC denied Cavite Apparel's motion for reconsideration in a resolution[13] dated March 30, 2005, Cavite Apparel filed a petition for *certiorari* with the CA to assail the NLRC ruling.

The CA Ruling

Cavite Apparel charged the NLRC with grave abuse of discretion when it set aside the LA's findings and ordered Michelle's reinstatement. It disagreed with the NLRC's opinion that Michell's past infractions could no longer be used to justify her dismissal since these infractions had already been penalized and the corresponding penalties had been imposed.

The CA found no grave abuse of discretion on the part of the NLRC and accordingly dismissed Cavite Apparel's petition on January 23, 2006.[14] While it agreed that habitual absenteeism without official leave, in violation of company rules, is sufficient reason to dismiss an employee, it nevertheless did not consider Michelle's four absences as habitual. It especially noted

---

9 *Rollo*, pp. 61-62.
10 Id. at 77.
11 Id. at 76-80.
12 Ibid.
13 Id. at 87-88.
14 *Supra* note 2.

that Michelle submitted a medical certificate for her May 8, 2000 absence, and thus disregarded Cavite Apparel's contrary assertion. The CA explained that Michelle's failure to attach a copy of the medical certificate in her initiatory pleading did not disprove her claim.

The CA agreed with the NLRC that since Cavite Apparel had already penalized Michelle for her three prior absences, to dismiss her for the same infractions and for her May 8, 2000 absence was unjust. Citing jurisprudence, The CA concluded that her dismissal was too harsh, considering her six years of employment with Cavite Apparel; it was also a disproportionate penalty as her fourth infraction appeared excusable.

In its March 23, 2006 resolution,[15] the CA denied Cavite Apparel's motion for reconsideration; hence, Cavite Apparel's present recourse.

The Petition

Cavite Apparel imputes grave abuse of discretion against the CA when:

> 1. it did not find that the NLRC committed grave abuse of disretion in setting aside the decision of the CA;
>
> 2. it failed to consider Michelle's four (4) AWOLs over a period of six months, from December 1999 to May 2000, habitual; and
>
> 3. it ruled that the series of violations of company rules committed by Michelle were already meted with the corresponding penalties.[16]

Cavite Apparel argues that it is its prerogative to discipline its employees. It thus maintains that when Michelle, in patent violation of the company's rules of discipline, deliberately, habitually, and without prior authorization and despite warning did not report for work on May 8, 2000, she committed serious misconduct and gross neglect of duty. It submits that dismissal for violation of company rules and regulations is a dismissal for cause as the Court stressed in *Northern Motors, Inc., v. National Labor Union, et al.*[17]

---

15 *Supra* note 3.
16 *Rollo*, pp. 18-27.
17 102 Phil. 958, 960 (1958).

The Case for the Respondent

Michelle asserts that her dismissal was arbitrary and unreasonable. For one, she had only four absences in her six (6) years of employment with Cavite Apparel. She explains that her absence on May 8, 2000 was justified as she was sick and had sick leave benefits against which Cavite Apparel could have charged her absences. Also, it had already sanctioned her for the three prior infractions. Under the circumstances, the penalty of dismissal for her fourth infraction was very harsh. Finally, as the CA correctly noted, Cavite Apparel terminated her services on the fourth infraction, without affording her prior opportunity to explain.

The Court's Ruling

The case poses for us the issue of whether the CA correctly found no grave abuse of discretion when the NLRC ruled that Cavite Apparel illegally terminated Michelle's employment.

We stress at the outset that, as a rule, the Court does not review questions of fact, but only questions of law in an appeal by *certiorari* under Rule 45 of the Rules of Court.[18] The Court is not a trier of facts and will not review the factual findings of the lower tribunals as these are generally binding and conclusive.[19] The rule though is not absolute as the Court may review the facts in labor cases where the findings of the CA and of the labor tribunals are contradictory.[20] Given the factual backdrop of this case, we find sufficient basis for a review as the factual findings of the LA, on the one hand, and those of the CA and the NLRC, on the other hand, are conflicting.

After a careful review of the merits of the case, particularly the evidence adduced, we find no reversible error committed by the CA when it found no grave abuse of discretion in the NLRC ruling that Michelle had been illegally dismissed.

Michelle's four absences were not habitual; "totality of infractions" doctrine not applicable

---

[18] *DUP Sound Philippines v. Court of Appeals*, G.R. No. 168317, November 21, 2011, 660 SCRA 461,467, citing *Union Industries, Inc. v. Vales*, 517 Phil. 247 (2006).

[19] *Iglesia Evangelista Metodista en las Islas Filipinas (IEMELIF), Inc. v. Juane*, G.R. Nos. 172447 and 179404, September 18, 2009, 600 SCRA 555, 567.

[20] *DUP Sound Philippines v. Court of Appeals*, *supra* note 18, at 467; citation omitted.

Cavite Apparel argues that Michelle's penchant for incurring unauthorized and unexcused absences despite its warning constituted gross and habitual neglect of duty prejudicial to its business operations. It insists that by going on absence without official leave four times, Michelle disregarded company rules and regulations; if condoned, these violations would render the rules ineffectual and would erode employee discipline.

Cavite Apparel disputes the CA's conclusion that Michelle's four absences without official leave were not habitual since she was able to submit a medical certificate for her May 8, 2000 absence. It asserts that, on the contrary, no evidence exists on record to support this conclusion. It maintains that it was in the exercise of its management prerogative that it dismissed Michelle; thus, it is not barred from dismissing her for her fourth offense, although it may have previously punished her for the first three offenses. Citing the Court's ruling in *Mendoza v. NLRC*,[21] it contends that the totality of Michelle's infractions justifies her dismissal.

We disagree and accordingly consider the company's position unmeritorious.

Neglect of duty, to be a ground for dismissal under Article 282 of the Labor Code, must be both gross and habitual.[22] Gross negligence implies want of care in the performance of one's duties. Habitual neglect imparts repeated failure to perform one's duties for a period of time, depending on the circumstances.[23] Under these standards and the circumstances obtaining in the case, we agree with the CA that Michelle is not guilty of gross and habitual neglect of duties.

Cavite Apparel faults the CA for giving credit to Michelle's argument that she submitted a medical certificate to support her absence on May 8, 2000; there was in fact no such submission, except for her bare allegations. It thus argues that the CA erred in holding that since doubt exists between the evidence presented by the employee and that presented by the employer, the doubt should be resolved in favor of the employee. The principle, it contends, finds no application in this case as Michelle never presented a copy of the medical certificate. It insists that there was no evidence on record supporting Michelle's claim, thereby removing the doubt on her being on absence without official leave for the fourth time, an infraction punishable with dismissal under the company rules and regulations.

---

21 G.R. No. 94294, March 22, 1991, 195 SCRA 606, 613.

22 *Nissan Motor Phils., Inc. v. Angelo*, G.R. No. 164181, September 14, 2011, 657 SCRA 520, 530.

23 *Valiao v. Court of Appeals*, 479 Phil. 459, 469 (2004), citing *JGB & Associates, Inc. v. NLRC*, 324 Phil. 747, 754 (1996).

Cavite Apparel's position fails to convince us. Based on what we see in the records, there simply cannot be a case of gross and habitual neglect of duty against Michelle. Even assuming that she failed to present a medical certificate for her sick leave on May 8, 2000, the records are bereft of any indication that apart from the four occasions when she did not report for work, Michelle had been cited for any infraction since she started her employment with the company in 1994. Four absences in her six years of service, to our mind, cannot be considered gross and habitual neglect of duty, especially so since the absences were spread out over a six-month period.

Michelle's penalty of dismissal too harsh or not proportionate to the infractions she commited

Although Michelle was fully aware of the company rules regarding leaves of absence, and her dismissal might have been in accordance with the rules, it is well to stress that we are not bound by such rules. In *Caltex Refinery Employees Association v. NLRC*[24] and in the subsequent case of *Gutierrez v. Singer Sewing Machine Company,*[25] we held that "[e]ven when there exist some rules agreed upon between the employer and employee on the subject of dismissal, x x x the same cannot preclude the State from inquiring on whether [their] rigid application would work too harshly on the employee." This Court will not hesitate to disregard a penalty that is manifestly disproportionate to the infraction committed.

Michelle might have been guilty of violating company rules on leaves of absence and employee discipline, still we find the penalty of dismissal imposed on her unjustified under the circumstances. As earlier mentioned, Michelle had been in Cavite Apparel's employ for six years, with no derogatory record other than the four absences without official leave in question, not to mention that she had already been penalized for the first three absences, the most serious penalty being a six-day suspension for her third absence on April 27, 2000.

While previous infractions may be used to support an employee's dismissal from work in connection with a subsequent similar offense,[26] we

---

[24] 316 Phil. 335, 343-344 (1995).

[25] 458 Phil. 401, 413 (2003).

[26] *De Guzman v. National Labor Relations Commission*, 371 Phil. 192, 204 (1999), citing *Filipro, Inc. v. Hon. Minister Ople*, 261 Phil. 104 (1990).

cautioned employers in an earlier case that although they enjoy a wide latitude of discretion in the formulation of work-related policies, rules and regulations, their directives and the implemtation of their policies must be fair and reasonable; at the very least, penalties must be commensurate to the offense involved and to the degree of the infraction.[27]

As we earlier expressed, we do not consider Michelle's dismissal to be commensurate to the four absences she incurred for her six years of service with the company, even granting that she failed to submit on time a medical certificate for her May 8, 2000 absence. We note that she again did not report for work on May 15 to 27, 2000 due to illness. When she reported back for work, she submitted the necessary medical certificates. The reason for her absence on May 8, 2000 – due to illness and not for her personal convenience – all the more rendered her dismissal unreasonable as it is clearly disproportionate to the infraction she committed.

Finally, we find no evidence supporting Cavite Apparel's claim that Michelle's absences prejudiced its operations; there is no indication in the records of any damage it sustained because of Michelle's absences. Also, we are not convinced that allowing Michelle to remain in employment even after her fourth absence or the imposition of a lighter penalty would result in a breakdown of discipline in the employee ranks. What the company fails to grasp is that, given the unreasonableness of Michelle's dismissal – *i.e.*, one made after she had already been penalized for her three previous absences, with the fourth absence imputed to illness – confirming the validity of her dismissal could possibly have the opposite effect. It could give rise to belief that the company is heavy-handed and may only give rise to sentiments against it.

In fine, we hold that Cavite Apparel failed to discharge the burden of proving that Michelle's dismissal was for a lawful cause.[28] We, therefore, find her to have been illegally dismissed.

As a final point, we reiterate that while we recognize management's prerogative to discipline its employees, the exercise of this prerogative should at all times be reasonable and should be tempered with compassion

---

[27] *Moreno v. San Sebastian College-Recoletos Manila*, G.R. No. 175283, March 28, 2008, 550 SCRA 414, 429; citation omitted.

[28] Labor Code, Article 277(b).

and understanding.[29] Dismissal is the ultimate penalty that can be imposed on an employee. Where a penalty less punitive may suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe for what is at stake is not merely the employee's position, but his very livelihood and perhaps the life and subsistence of his family.[30]

WHEREFORE, premises considered, the petition is **DENIED.** The assailed January 23, 2006 decision and March 23, 2006 resolution of the Court of Appeals in CA-G.R. SP No. 89819 are **AFFIRMED.** Costs against Cavite Apparel, Incorporated.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

---

[29] *Philippine Long Distance Company v. Teves*, G.R. No. 1435511, November 15, 2010, 634 SCRA 538, 552.

[30] Ibid.

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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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.

MARIA LOURDES P. A. SERENO
Chief Justice