

G.R. No. 187722 – SURIGAO DEL NORTE ELECTRIC COOPERATIVE and/or DANNY Z. ESCALANTE, *petitioners v. TEOFILO GONZAGA, respondent.*

Promulgated:

JUN 10 2013 *AKK Cabalag*

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SEPARATE CONCURRING OPINION

BRION, J.:

I concur in the result. I write this opinion to put in the proper perspective the Court's treatment of labor cases elevated to us through a petition for review on *certiorari* under Rule 45 of the Rules of Court, from a decision of the Court of Appeals on petition for *certiorari* under Rule 65 of the Rules of Court.

Pursuant to the established rules and jurisprudence, a labor case is generally elevated to this Court through a petition for review on *certiorari* under Rule 45 of the Rules of Court, after it has been resolved by the CA through a petition for *certiorari* under Rule 65 of the Rules of Court. The object of a Rule 45 petition is to determine the correctness of the assailed decision, *i.e.*, whether the respondent court committed a reversible legal error in resolving the case. In contrast, the object of a Rule 65 petition is to determine jurisdictional error on the part of the respondent court, *i.e.*, whether the respondent court committed grave abuse of discretion amounting to lack or excess of jurisdiction. In light of this review process, the Court takes on a unique approach in reviewing a CA decision on a labor case in that ***“we...examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the [National Labor Relations Commission] decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.”***¹ Hence, the question to ask is whether the CA correctly determined whether the NLRC committed grave abuse of discretion in ruling in this case. In this particular case, I believe that the CA erred in ascribing grave abuse of discretion on the part of the NLRC.

The CA ruled that the petitioners' evidence was insufficient to establish that the respondent Teofilo Gonzaga's dismissal as due to a just and valid cause. The CA ruled that “the petitioners' evidence did not prove the imputed shortage in Gonzaga's collection since the numbers of the collection receipts were not indicated so as to compare them with the remittance receipts.”² But as pointed out by the *ponencia*, it was unnecessary to present the collection receipts due to their voluminous

¹ *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 343.

² *Ponencia*, p. 5.

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character.³ Moreover, the petitioners have presented other documentary evidence, *i.e.*, the Collection Report, the Summaries, and the September 15, 2003 Audit Report, that sufficiently established the shortage of funds in Gonzaga's custody. In light of this evidence and Gonzaga's general denial, there was sufficient and reasonable basis for the NLRC to conclude that Gonzaga was liable for misappropriation; the NLRC's factual findings and legal conclusion are fully supported by the evidence and records of the case. It was, therefore, erroneous for the CA to ascribe grave abuse of discretion on the NLRC.

Gonzaga's misappropriation of the funds under his custody constitutes a just and valid cause for his dismissal. Nonetheless, as the *ponencia* found, Gonzaga was not afforded the procedural due process for failure of the petitioners to observe their own established policy in investigating erring employees. As ruled in *Agabon v. National Labor Relations Commission*,⁴ "[w]here the dismissal is for a just cause, as in the instant case, 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 the violation of his statutory rights..." Hence, the employer should be required to pay the employee nominal damages, which has been set by jurisprudence at ₱30,000.00.

In light of these considerations, I concur in the result with the *ponencia*.


ARTURO D. BRION
Associate Justice

³ *Ponencia*, p.7.

⁴ G.R. No. 158693, November 17, 2004, 442 SCRA 573.