



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated April 25, 2022, which reads as follows:

“G.R. No. 251237 — Lepanto Consolidated Mining Company, petitioner, v. Rudy A. Aowes, Reynaldo R. Mateo, and Lino Fatang-I, respondents. This Petition for Review on *Certiorari*¹ under Rule 45 of the Revised Rules of Court assails the Decision² dated September 17, 2019 and the Resolution³ dated January 7, 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 155439, which upheld the Executive Labor Arbiter’s (ELA) and the National Labor Relations Commission’s (NLRC) finding of illegal dismissal against petitioner Lepanto Consolidated Mining Company (Lepanto).

Lepanto hired respondents Rudy A. Aowes (Aowes) in 1995, Reynaldo R. Mateo (Mateo) in 2002, and Lino Fatang-I (Fatang-I) in 2012 as Muckers. At the time of their dismissal in 2016, Aowes and Fatang-I were working as Lead Miners, while Mateo was working as a Load, Haul, and Dump Machine Operator.⁴

Respondents’ dismissal was solely based on the Joint Statements⁵ of Lepanto’s Mine Patrol Guards Dennis Saldo (Saldo), Marvin del Rosario (del Rosario), and Winston Peyes (Peyes). It was alleged that on July 10, 2016, around 9:15 p.m., while roving the premises, Peyes and del Rosario approached Fatang-I for a body search. Fatang-I refused, quickly took off his skull guard, and grabbed an object from it, which he threw over his shoulders. Peyes then retrieved small pieces of stone ores from the ground, later found to be weighing 86.90 grams and having an assay result of 329.7167 g/t Au with an estimated value of ₱38.58. The incident was reported to the management. Lepanto then issued the “Notice to Explain, Notice of Hearing,

¹ *Rollo*, pp. 3–28.

² *Id.* at 29–39. Penned by Associate Justice Germano Francisco D. Legaspi, with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Samuel H. Gaerlan (now a member of the Court).

³ *Id.* at 40–40-A. Penned by Associate Justice Germano Francisco D. Legaspi, with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Samuel H. Gaerlan (now a member of the Court).

⁴ *Id.* at 271–272 and 274–275.

⁵ *Id.* at 85–86 and 100–101.

and Notice of Preventive Suspension,” charging Fatang-I with high-grading, serious misconduct, and breach of trust and confidence. Fatang-I was preventively suspended from employment for thirty (30) days. For his part, Fatang-I vehemently denied the charges and claimed that, at the time of the incident, he was not on the premises where the guards allegedly caught him. On August 9, 2016, after hearing, Fatang-I received a Notice of Dismissal.⁶

Similarly, Saldo and del Rosario averred that on August 6, 2016, they were patrolling the premises and saw Aowes sitting on the steps of a chamber with his skull guard on his lap. Inside the skull guard, they saw a cellophane, which they grabbed and examined. The cellophane contained small pieces of stone ores, which upon subsequent examination, yielded an assay result of 6.143.23 g/t Au with an estimated value of ₱3,212.23. A fight then ensued between the guards and Aowes. Mateo intervened to halt the scuffle. The guards reported the incident to the management. On August 6, 2016, the “Notice to Explain, Notice of Hearing, and Notice of Preventive Suspension” were issued, charging Aowes and Mateo with high-grading, serious misconduct, and breach of trust and confidence. They were also placed under preventive suspension for thirty (30) days. Aowes and Mateo, through the president of their union, requested a copy of the guards’ statements for them to be able to prepare a proper response to the charges. They were, however, denied on the ground that the requested documents were confidential. Thus, they submitted their affidavits based on the notices. After hearing, they were served with a Notice of Dismissal dated September 6, 2016.⁷

Lepanto filed criminal complaints for high-grading against respondents, but the provincial prosecutor dismissed them for lack of probable cause.⁸

On the other hand, respondents filed complaints for illegal dismissal with money claims, which were granted in the ELA’s Consolidated Decision⁹ dated March 31, 2017. The ELA found the guards’ Joint Statements unverified, questionable, and self-serving, hence, insufficient to prove that respondents committed high-grading. Procedural due process violations were also found as the notices to explain contained no detailed narration of the accusations against respondents. Lepanto’s refusal to furnish respondents with copies of the guards’ statements was also noted. Thus, the ELA ordered respondents’ reinstatement with full back wages. Lepanto was also ordered to pay respondents’ unpaid proportionate 13th month pay and attorney’s fees.¹⁰

On appeal, the NLRC affirmed the ELA’s ruling with modification only as to the amounts of the monetary awards, and the payment of moral and exemplary damages in its Decision¹¹ dated November 29, 2017. Lepanto’s

⁶ Id. at 275–276.

⁷ Id. at 272–274.

⁸ Id. at 30.

⁹ Id. at 219–232. Penned by Executive Labor Arbiter (ELA) Monroe C. Tabinan.

¹⁰ Id.

¹¹ Id. at 270–293. Penned by Presiding Commissioner Joseph Gerard E. Mabilog, with the concurrence of Commissioner Isabel G. Panganiban-Ortiguerra.

motion for reconsideration (MR) was denied in the Resolution¹² dated January 31, 2019. On *certiorari*, the CA upheld the NLRC ruling in its assailed Decision dated September 17, 2019. Subsequently, Lepanto's MR was denied in the assailed Resolution dated January 7, 2020.

In this appeal on *certiorari*, Lepanto urges the Court to conduct an independent assessment of the evidence and determine whether respondents were guilty of high-grading to justify their dismissal from employment.¹³ Lepanto further argues that the notices served to respondents were sufficient to enable them to properly prepare their defense.¹⁴ Also, Lepanto questions the grant of 13th month pay.

Records, however, show that the parties have already settled the case amicably pending appeal with the CA.¹⁵ Together with their counsels, they appeared in a pre-execution conference before the NLRC on March 7, 2019 and settled the judgment award.¹⁶ As agreed, respondents received ₱33,333.00 each in cash. Respondents executed separate Waivers and Quitclaims.¹⁷ The parties then moved for the termination of the cases, and for the withdrawal of Lepanto's appeal with the CA,¹⁸ which the ELA approved in an Order¹⁹ dated March 11, 2019. The cases were declared "SETTLED and, thus, CLOSED and TERMINATED."²⁰ In view of this, the dismissal of the present petition is in order. To be sure, litigations must end and terminate at some point, and an amicable settlement has long been recognized as an effective mechanism for parties to resolve their differences and thus avoid or put an end to a lawsuit. As long as the agreement complied with the requisites and principles of contracts,²¹ it has the effect and the authority of *res judicata* upon the parties once entered into.²² Notably, in this case, no question was raised as to the validity of the agreement or the order terminating the cases.

Despite this ELA-approved settlement, the appeal before the CA proceeded, and the disposition therein is now questioned in the present petition through Lepanto's new counsel. Nevertheless, dismissal of the petition is unavoidable because it wholly deals with a question of fact.²³ Lepanto asks the Court to assess anew the evidence on record and revisit the uniform factual findings of the ELA, NLRC, and the CA that the high-grading

¹² Id. at 317–319. Penned by Presiding Commissioner Joseph Gerard E. Mabilog, with the concurrence of Commissioner Isabel G. Panganiban-Ortiguerra.

¹³ Id. at 15–18.

¹⁴ Id. at 18–20.

¹⁵ See Compliance, id. at 365–367; Minutes, id. at 369; Waivers and Quitclaims, id. at 370–372; and Order dated March 11, 2019, id. at 373.

¹⁶ See Minutes, id. at 369.

¹⁷ Id. at 370–372.

¹⁸ See Minutes, id. at 369.

¹⁹ Id. at 373.

²⁰ Id.

²¹ "As provided by the law on contracts, a valid compromise must have the following elements: (1) the consent of the parties to the compromise, (2) an object certain that is the subject matter of the compromise, and (3) the cause of the obligation that is established." See *Magbanua v. Uy*, 497 Phil. 511, 518-519 (2005).

²² Id.

²³ *Guerrero v. Philippine Transmarine Carriers, Inc.*, 841 Phil. 407 (2018).

charges were not proven. But the Court is precluded from doing an independent review of this factual matter.²⁴ Basic is the rule that the Court is not a trier of facts, and this applies with greater force in labor cases. Factual questions are for the labor tribunal to resolve, not only because of their presumed expertise in matters within their jurisdiction²⁵ but especially because of the unavailability of competent evidence for the Court to make judicious factual determinations.

Moreover, only errors of law are generally reviewed in appeals on *certiorari* criticizing decisions of the CA.²⁶ Specifically, in labor cases, the only issue for our resolution is whether the CA correctly sustained the NLRC ruling based on the absence of grave abuse of discretion, independently of the correctness of the NLRC's ruling on the merits of the case.²⁷ In *Career Philippines Shipmanagement, Inc. v. Serna*,²⁸ we explained:

In a Rule 45 review, x x x [W]e have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.²⁹ (citations omitted)

In *Philippine National Bank v. Gregorio*,³⁰ we emphasized our ruling in the seminal case of *St. Martin Funeral Home v. National Labor Relations Commission*,³¹ that an NLRC decision is final and not subject to appeal or review by the courts; the only exception being the CA's limited review in cases wherein there is grave abuse of discretion. The CA's review of an NLRC decision is necessarily limited to the question of whether the NLRC acted arbitrarily, whimsically, or capriciously, as grave abuse of discretion is contemplated under the law, the rules, and jurisprudence. Owing to the final and unappealable nature of NLRC decisions, the rules proscribe a judicial review that delves into the correctness of the NLRC judgment on the merits. Thus, without allegations of grave abuse of discretion, the petition should not be given due course.³²

Here, Lepanto basically asked the CA, in the same manner, that it is asking the Court, to rule upon the merits of the illegal dismissal case by recalibrating the evidence. There was no allegation, much less proof, that the NLRC acted without jurisdiction, exceeded its jurisdiction, or otherwise acted arbitrarily and capriciously in affirming the factual findings of the LA. Thus,

²⁴ *Bugaoisan v. OWI Group Manila*, 825 Phil. 764, 777 (2018).

²⁵ *Guerrero v. Philippine Transmarine Carriers, Inc.*, supra note 23.

²⁶ *Id.*

²⁷ *Bugaoisan v. OWI Group Manila*, supra note 24 at 776.

²⁸ 700 Phil. 1, 9 (2012).

²⁹ *Id.*

³⁰ 818 Phil. 321, 336 (2017).

³¹ 356 Phil. 811, 819 (1998).

³² *Philippine National Bank v. Gregorio*, supra note 30.

absent grave abuse of discretion, the following factual determinations are deemed conclusive and binding on the Court,³³ viz.:

Records show that Lepanto, in dismissing all [respondents], merely relied on x x x the Joint Statements of Saldo, del Rosario, and Peyes, the veracity, authenticity or truthfulness of which were not x x x adequately established nor proven; and x x x the Incident Reports which were based on [said] Joint Statements. x x x [A]s correctly pointed out by the Executive [LA], the Joint Statements are uncorroborated and self-serving, and therefore, cannot be given much probative value. x x x The Incident Reports x x x are likewise questionable as they are not results of independent [or] separate investigations x x x. x x x [The guards'] version of facts, as contained in their Joint Statement, is not in accord with ordinary human experience and, therefore, raises questions on its truthfulness rather than inspire belief.

[W]hy did Aowes, knowing fully well that high-grading is an offense for which he could lose his job, not keep the stone ores hidden in some secret place instead of hold it [*sic*] in plain sight for everyone x x x to see [as narrated by the guards]? And upon seeing Saldo, why did Aowes continue to hold on to the stone ores and not immediately [hide or] throw them away? Aowes actions, as narrated by Saldo, do not seem to be the actions of a man who has something to hide. Further, Saldo's claim that he immediately grabbed the object from Aowes' skull guard is also highly suspect as it is more in accord with ordinary human behavior for Saldo, upon seeing that Aowes had an object wrapped in cellophane in his skull guard, to first ask him questions before resorting to outright physical confrontation.

x x x x

Further, it bears emphasis that Lepanto's unexplained failure to submit, as part of its evidence, Minutes of the investigative hearings on the cases against [respondents] x x x is fatal. Ideally, the said Minutes would have contained a faithful narration of the true events that actually transpired on the date in question[, which would have helped provide a wholistic view of the case.] Since [respondents] and their accusers would have met face to face during the said hearing/s and given their own versions of the story, then the Minutes would, more or less, be an accurate repository of the [p]arties' accounts of the events that happened. [Worse, Lepanto refused to furnish respondents with a copy of the patrol guards' affidavits, upon which the charges were based.]x x x. It is a rule that failure of employers to submit the necessary documents that are in their possession x x x gives rise to the presumption the presentation thereof is prejudicial to its cause. x x x

Instead of submitting more crucial documents, Lepanto opted to submit additional [a]ffidavits of [purported] witnesses which, as keenly observed by the Executive [LA], "came in only as creations or concoctions when [Lepanto] discovered that the declarations of the mine patrols were bare. Hence, [these] could not be [the] basis at all [to link] Aowes [in the high-grading charge.]

The same is equally true in the case of Mateo. The records are bereft of any evidence that directly points to his commission of the offense of high-

³³ Id.

grading. At best, the records show that Mateo was only involved in the scuffle. Even then, his involvement was only to stop the fight between Aowes and [Saldo], and to physically separate the two men. x x x

[O]ur review of the records further disclosed that Lepanto failed to prove that the stone ores that were tested and yielded the said assayed results were actually the stone ores that were confiscated from Aowes. Neither did Lepanto prove that the tests were conducted by an independent body not answerable to Lepanto or that the said tests were conducted in the presence of Aowes. Given these, the test results themselves become questionable.

Our review of Fatang-I's case records yielded similar findings. [As well,] [t]he belated execution by Lepanto's witnesses x x x of [a]ffidavits where they narrated x x x with amazing clarity and detail events that transpired x x x almost five months [ago], raises doubts on the truthfulness of their statements.³⁴

The foregoing factual determinations impel the Court to sustain the uniform ruling of the LA, NLRC, and the CA, that Lepanto failed to discharge its burden of proving with substantial evidence that respondents committed high-grading to justify their dismissal on grounds of serious misconduct and breach of trust and confidence. Indeed, the unverified allegations of the patrol guards, beclouded by the lingering doubts surrounding the seizure and examination of the stone ores allegedly seized from respondents, are insufficient to persuade a reasonable mind to conclude that respondents are guilty of the serious charge of high-grading. Well-settled is the rule that the burden of proving that the termination of an employee was for a just or authorized cause lies with the employer. If the employer fails to meet this burden, the conclusion is that the dismissal was unjustified and, therefore, illegal.³⁵

Besides, assuming that the charge against Fatang-I was adequately proven, We agree with the NLRC that the penalty of dismissal was too harsh and disproportionate considering that: (1) he was charged with high-grading stone ores with a measly value of ₱38.58; (2) records show that, if the charge was proven, it would have been his first infraction in his four (4) years of employment with Lepanto; and (3) he was already suspended for thirty (30) days.³⁶ Our constant reminder is that every punishment should be commensurate with the offense committed. Caution should be exercised by employers in imposing dismissal to erring employees because such ultimate penalty is "the death penalty to the working man."³⁷ Indeed, "where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only because of the law's concern for the [laborers, but also out of consideration for the families depending on them.]"³⁸

³⁴ *Rollo*, pp. 279–283.

³⁵ *Eagle Clarc Shipping Philippines, Inc. v. National Labor Relations Commission (Fourth Division)*, G.R. No. 245370, July 13, 2020.

³⁶ *Rollo*, pp. 284–285.

³⁷ *Sagales v. Rustan's Commercial Corporation*, 592 Phil. 468, 484–485 (2008).

³⁸ *Id.* citing *Almira v. B.F. Goodrich Phils., Inc.*, 157 Phil. 110, 121 (1974).

Finally, there is likewise no reason to disturb the factual finding that respondents are entitled to their unpaid 13th month pay.³⁹ Besides, we reiterate that the parties had already settled the judgment award before the ELA.⁴⁰

FOR THESE REASONS, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated September 17, 2019 and the Resolution dated January 7, 2020 of the Court of Appeals in CA-G.R. SP No. 155439 are **AFFIRMED**.

SO ORDERED.” (Lazaro-Javier, J., on official business.)

By authority of the Court:

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³⁹ *Rollo*, p. 290.

⁴⁰ See Compliance, id. at 365–367; Minutes, id. at 369; Waivers and Quitclaims, id. at 370–372; and Order dated March 11, 2019, id. at 373.