Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

IMASEN PHILIPPINE MANUFACTURING CORPORATION,
Petitioner,

- versus -

RAMONCHITO T. ALCON and JOANN S. PAPA,
Respondents.

G.R. No. 194884

Present:

CARPIO, *J., Chairperson,*
BRION,
MENDOZA,
REYES,* and
PERLAS-BERNABE,** *JJ.*

Promulgated:
OCT 22 2014

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DECISION

BRION, *J.*:

We resolve in this petition for review on *certiorari*[1] the challenge to the June 9, 2010 decision[2] and the December 22, 2010 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 110327. This CA decision nullified the December 24, 2008 decision[4] of the National Labor Relations Commission *(NLRC)* in NLRC CA No. 043915-05 (NLRC CASE No. RAB IV-12-1661-02-L). The NLRC ruling, in turn, affirmed the December 10, 2004 decision[5] of the Labor Arbiter *(LA)*, dismissing the illegal dismissal complaint filed by respondents Ramonchito T. ***Alcon*** and Joann S. ***Papa*** (collectively referred to as *respondents*).

The Factual Antecedents

Petitioner ***Imasen*** Philippine Manufacturing Corporation is a domestic corporation engaged in the manufacture of auto seat-recliners and slide-adjusters. It hired the respondents as manual welders in 2001.

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* Designated as Additional Member in lieu of Associate Justice Mariano C. Del Castillo, per Raffle dated October 11, 2012.

** Designated as Acting Member in lieu of Associate Justice Marvic M.V.F. Leonen, per Special Order No. 1841 dated October 13, 2014.

1 *Rollo*, pp. 10-38.

2 Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Hakim S. Abdulwahid and Samuel H. Gaerlan; id. at 232-242.

3 Id. at 251.

4 Penned by Commissioner Romeo L. Go, id. at 125-130.

5 Penned by Labor Arbiter Enrico Angelo C. Portillo, id. at 106-112.

On ***October 5, 2002***, the respondents reported for work on the second shift – from 8:00 pm to 5:00 am of the following day. At around 12:40 am, Cyrus A. ***Altiche,*** Imasen's security guard on duty, went to patrol and inspect the production plant's premises. When Altiche reached Imasen's Press Area, he heard the sound of a running industrial fan. Intending to turn the fan off, he followed the sound that led him to the plant's "Tool and Die" section.

At the "Tool and Die" section, Altiche saw the respondents having sexual intercourse on the floor, using a piece of carton as mattress. Altiche immediately went back to the guard house and relayed what he saw to Danilo S. ***Ogana***, another security guard on duty.

On Altiche's request, Ogana made a follow-up inspection. Ogana went to the "Tool and Die" section and saw several employees, including the respondents, already leaving the area. He noticed, however, that Alcon picked up the carton that Altiche claimed the respondents used as mattress during their sexual act, and returned it to the place where the cartons were kept. Altiche then submitted a handwritten report[6] of the incident to Imasen's Finance and Administration Manager.

On October 14, 2002, Imasen issued the respondents separate inter-office memoranda[7] informing them of Altiche's report on the October 5, 2002 incident and directing them to submit their individual explanation. The respondents complied with the directive; they claimed that they were merely sleeping in the "Tool and Die" section at the time of the incident. They also claimed that other employees were near the area, making the commission of the act charged impossible.

On October 22, 2002, Imasen issued the respondents another inter-office memorandum[8] directing them to appear at the formal hearing of the administrative charge against them. The hearing was conducted on October 30, 2002,[9] presided by a mediator and attended by the representatives of Imasen, the respondents, Altiche and Ogana. Altiche and Ogana reiterated the narrations in Altiche's handwritten report.

On December 4, 2002, Imasen issued the respondents separate inter-office memoranda[10] terminating their services. It found the respondents guilty of the act charged which it considered as "gross misconduct contrary to the existing policies, rules and regulations of the company."

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6 Id. at 71.
7 Id. at 72-73.
8 Id. at 76-78.
9 Minutes of the hearing, id. at 79-81.
10 Id. at 82-83.

On December 5, 2002, the respondents filed before the LA the complaint[11] for illegal dismissal. The respondents maintained their version of the incident.

In the December 10, 2004 decision,[12] the LA dismissed the respondents' complaint for lack of merit. The LA found the respondents' dismissal valid, *i.e.,* for the just cause of gross misconduct and with due process. The LA gave weight to Altiche's account of the incident, which Ogana corroborated, over the respondents' mere denial of the incident and the unsubstantiated explanation that other employees were present near the "Tool and Die" section, making the sexual act impossible. The LA additionally pointed out that the respondents did not show any ill motive or intent on the part of Altiche and Ogano sufficient to render their accounts of the incident suspicious.

The NLRC's ruling

In its December 24, 2008 decision,[13] the NLRC dismissed the respondents' appeal[14] for lack of merit. In affirming the LA's ruling, the NLRC declared that Imasen substantially and convincingly proved just cause for dismissing the respondents and complied with the required due process.

The respondents filed before the CA a petition for *certiorari*[15] after the NLRC denied their motion for reconsideration[16] in its May 29, 2009 resolution.[17]

The CA's ruling

In its June 9, 2010 decision,[18] the CA nullified the NLRC's ruling. The CA agreed with the labor tribunals' findings regarding the infraction charged – engaging in sexual intercourse on October 5, 2002 inside company premises – and Imasen's observance of due process in dismissing the respondents from employment.

The CA, however, disagreed with the conclusion that the respondents' sexual intercourse inside company premises constituted serious misconduct that the Labor Code considers sufficient to justify the penalty of dismissal. The CA pointed out that the respondents' act, while provoked by "reckless passion in an inviting environment and time," was not done with wrongful intent or with the grave or aggravated character that the law requires. To the CA, the penalty of dismissal is not commensurate to the respondents'

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11 Id. at 39-41.
12 *Supra* note 5.
13 *Supra* note 4.
14 *Rollo,* pp. 113-124.
15 Id. at 145-171.
16 *Rollo,* pp. 131-142.
17 Id. at 143-144.
18 *Supra* note 2.

act, considering especially that the respondents had not committed any infraction in the past.

Accordingly, the CA reduced the respondents' penalty to a three-month suspension and ordered Imasen to: (1) reinstate the respondents to their former position without loss of seniority rights and other privileges; and (2) pay the respondents backwages from December 4, 2002 until actual reinstatement, less the wages corresponding to the three-month suspension.

Imasen filed the present petition after the CA denied its motion for reconsideration[19] in the CA's December 22, 2010 resolution.[20]

The Petition

Imasen argues in this petition that the act of engaging in sexual intercourse inside company premises during work hours is serious misconduct by whatever standard it is measured. According to Imasen, the respondents' infraction is an affront to its core values and high ethical work standards, and justifies the dismissal. When the CA reduced the penalty from dismissal to three-month suspension, Imasen points out that the CA, in effect, substituted its own judgment with its (Imasen's) own legally protected management prerogative.

Lastly, Imasen questions the CA's award of backwages in the respondents' favor. Imasen argues that the respondents would virtually gain from their infraction as they would be paid eight years worth of wages without having rendered any service; eight (8) years, in fact, far exceeds their actual period of service prior to their dismissal.

The Case for the Respondents

The respondents argue in their comment[21] that the elements of serious misconduct that justifies an employee's dismissal are absent in this case, adopting thereby the CA's ruling. Hence, to the respondents, the CA correctly reversed the NLRC's ruling; the CA, in deciding the case, took a wholistic consideration of all the attendant facts, *i.e.,* the time, the place, the persons involved, and the surrounding circumstances before, during, and after the sexual intercourse, and not merely the infraction committed.

The Issue

The sole issue for this Court's resolution is whether the respondents' infraction – engaging in sexual intercourse inside company premises during work hours – amounts to serious misconduct within the terms of Article 282 (now Article 296) of the Labor Code justifying their dismissal.

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19 *Rollo,* pp. 243-249.
20 *Supra* note 3.
21 *Rollo,* pp. 245-262.

The Court's Ruling

We GRANT the petition.

We find that the CA reversibly erred when it nullified the NLRC's decision for grave abuse of discretion the NLRC's decision.

Preliminary considerations: tenurial security vis-à-vis management prerogative

The law and jurisprudence guarantee to every employee security of tenure. This textual and the ensuing jurisprudential commitment to the cause and welfare of the working class proceed from the social justice principles of the Constitution that the Court zealously implements out of its concern for those with less in life. Thus, the Court will not hesitate to strike down as invalid any employer act that attempts to undermine workers' tenurial security. All these the State undertakes under Article 279 (now Article 293)[22] of the Labor Code which bar an employer from terminating the services of an employee, except for just or authorized cause and upon observance of due process.

In protecting the rights of the workers, the law, however, does not authorize the oppression or self-destruction of the employer.[23] The constitutional commitment to the policy of social justice cannot be understood to mean that every labor dispute shall automatically be decided in favor of labor.[24] The constitutional and legal protection equally recognize the employer's right and prerogative to manage its operation according to reasonable standards and norms of fair play.

Accordingly, except as limited by special law, an employer is free to regulate, according to his own judgment and discretion, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, worker supervision, layoff of workers and **the discipline, dismissal and recall of**

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[22] As directed by Republic Act No. 10151, entitled "An Act Allowing the Employment of Night Workers, thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as Amended, Otherwise known as The Labor Code of the Philippines," approved on June 21, 2011, the Labor Code articles beginning with Article 130 are renumbered.

Article 279 of the Labor Code, as amended by Section 34 of Republic Act No. 6715, reads in full:

ART. 279. *SECURITY OF TENURE*

In cases of regular employment, the employer shall not terminate the services of an employee except for just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed form the time his compensation was withheld from him up to the time of his actual reinstatement.

[23] *Mercury Drug Corporation v. NLRC,* G.R. No. 75662, September 15, 1989, 177 SCRA 580, 586-587.

[24] Id.

workers.[25] As a general proposition, an employer has free reign over every aspect of its business, including the dismissal of his employees as long as the exercise of its *management prerogative* is done reasonably, in good faith, and in a manner not otherwise intended to defeat or circumvent the rights of workers.

In these lights, the Court's task in the present petition is to balance the conflicting rights of the respondents to security of tenure, on one hand, and of Imasen to dismiss erring employees pursuant to the legitimate exercise of its management prerogative, on the other.

Management's right to dismiss an employee; serious misconduct as just cause for the dismissal

The just causes for dismissing an employee are provided under Article 282[26] (now Article 296)[27] of the Labor Code. Under Article 282(a), serious misconduct by the employee justifies the employer in terminating his or her employment.

Misconduct is defined as an improper or wrong conduct. It is a 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 in judgment.[28] To constitute a valid cause for the dismissal within the text and meaning of Article 282 of the Labor Code, the employee's misconduct **must be serious,** *i.e.,* **of such grave and aggravated character** and not merely trivial or unimportant.[29]

Additionally, the misconduct must be **related to the performance of the employee's duties showing him to be unfit to continue working for**

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[25] *San Miguel Brewery Sales Force Union (PTGWO) v. Hon. Ople,* 252 Phil. 27, 30 (1989); *Autobus Workers' Union v. NLRC,* 353 Phil. 419, 429 (1998).

[26] Article 282 reads:

> ART. 282. *TERMINATION BY EMPLOYER*
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> An employer may terminate an employment for any of the following causes:
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> (a) **Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work**;
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> (b) Gross and habitual neglect by the employee of his duties;
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> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
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> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative;
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> (e) Other causes analogous to the foregoing. [Emphasis ours]

[27] *Supra* note 23.

[28] *Yabut v. Manila Electric Company,* G.R. No. 190436, January 16, 2012, 663 SCRA 92, 105; *Torreda v. Toshiba Information Equipment (Phils.), Inc.,* 544 Phil. 71, 92 (2007), citing *Fujitsu Computer Products Corp. of the Philippines v. Court of Appeals,* 494 Phil. 697 (2005); *Caltex (Philippines), Inc. v. Agad,* G.R. No. 162017, April 23, 2010, 619 SCRA 196, 213; and *Tomada, Sr. v. RFM Corporation-Bakery Flour Division,* G.R. No. 163270, September 11, 2009, 599 SCRA 381, 391.

[29] See *Caltex (Philippines), Inc. v. Agad, supra* note 28, at 213; *Tomada, Sr. v. RFM Corporation-Bakery Flour Division, supra* note 28, at 391; *Sang-an v. Equator Knights Detective and Security Agency, Inc.,* G.R. No. 173189, February 13, 2013, 690 SCRA 534, 542.

the employer.[30] Further, and equally important and required, the act or conduct **must have been performed with wrongful intent.**[31]

To summarize, for misconduct or improper behavior to be a just cause for dismissal, the following elements must concur: (a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer;[32] and (c) it must have been performed with wrongful intent.

The respondents' infraction amounts to serious misconduct within the terms of Article 282 (now Article 296) of the Labor Code justifying their dismissal

Dismissal situations (on the ground of serious misconduct) involving sexual acts, particularly sexual intercourse committed by employees inside company premises and during work hours, are not usual violations[33] and are not found in abundance under jurisprudence. Thus, in resolving the present petition, we are largely guided by the principles we discussed above, as applied to the totality of the circumstances that surrounded the petitioners' dismissal.

In other words, we view the petitioners' act from the prism of the elements that must concur for an act to constitute serious misconduct, analyzed and understood within the context of the overall circumstances of the case. In taking this approach, we are guided, too, by the jurisdictional limitations that a Rule 45 review of the CA's Rule 65 decision in labor cases imposes on our discretion.[34]

In addressing the situation that we are faced with in this petition, we determine whether Imasen validly exercised its prerogative as employer to dismiss the respondents-employees who, within company premises and during work hours, engaged in sexual intercourse. As framed within our limited Rule 45 jurisdiction, the question that we ask is: *whether the NLRC committed grave abuse of discretion in finding that the respondents' act amounted to what Article 282 of the Labor Code textually considers as serious misconduct to warrant their dismissal*.

After due consideration, we find the NLRC legally correct and well within its jurisdiction when it affirmed the validity of the respondents' dismissal on the ground of serious misconduct.

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30 *Tomada, Sr. v. RFM Corporation-Bakery Flour Division, supra* note 28, at 391.

31 See *Echeverria v. Venutek Medika, Inc.,* 544 Phil. 763, 770 (2007).

32 *Yabut v. Manila Electric Company, supra* note 28, at 105; *Tomada, Sr. v. RFM Corporation-Bakery Flour Division, supra* note 28, at 391; *Nagkakaisang Lakas ng Manggagawa sa Keihin (NLMK-OLALIA-KMU) v. Keihin Philippines Corporation,* G.R. No. 171115, August 9, 2010, 627 SCRA 179, 188.

33 See *Stanford Microsystems, Inc. v. National Labor Relations Commission,* 241 Phil. 426 (1988).

34 See *Montoya v. Transmed,* G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342-343.

Sexual acts and intimacies between two consenting adults belong, as a principled ideal, to the realm of purely private relations. Whether aroused by lust or inflamed by sincere affection, sexual acts should be carried out at such place, time and circumstance that, by the generally accepted norms of conduct, will not offend public decency nor disturb the generally held or accepted social morals. Under these parameters, sexual acts between two consenting adults do not have a place in the work environment.

Indisputably, the respondents engaged in sexual intercourse ***inside company premises*** and ***during work hours***. These circumstances, by themselves, are already punishable misconduct. Added to these considerations, however, is the implication that the respondents did not only disregard company rules but flaunted their disregard in a manner that could reflect adversely on the status of ethics and morality in the company.

Additionally, the respondents engaged in sexual intercourse in an area where co-employees or other company personnel have ready and available access. The respondents likewise committed their act at a time when the employees were expected to be and had, in fact, been at their respective posts, and when they themselves were supposed to be, as all other employees had in fact been, working.

Under these factual premises and in the context of legal parameters we discussed, we cannot help but consider the respondents' misconduct to be of grave and aggravated character so that the company was justified in imposing the highest penalty available — dismissal. Their infraction transgressed the bounds of socially and morally accepted human public behavior, and at the same time showed brazen disregard for the respect that their employer expected of them as employees. By their misconduct, the respondents, in effect, issued an open invitation for others to commit the same infraction, with like disregard for their employer's rules, for the respect owed to their employer, and for their co-employees' sensitivities. Taken together, these considerations reveal a depraved disposition that the Court cannot but consider as a valid cause for dismissal.

In ruling as we do now, we considered the balancing between the respondents' tenurial rights and the petitioner's interests – the need to defend their management prerogative and to maintain as well a high standard of ethics and morality in the workplace. Unfortunately for the respondents, in this balancing under the circumstances of the case, we have to rule against their tenurial rights in favor of the employer's management rights.

All told, the respondents' misconduct, under the circumstances of this case, fell within the terms of Article 282 (now Article 296) of the Labor Code. Consequently, we reverse the CA's decision for its failure to recognize that no grave abuse of discretion attended the NLRC's decision to support the respondents' dismissal for serious misconduct.

WHEREFORE, in light of these considerations, we hereby **GRANT** the petition. We **REVERSE** the decision dated June 9, 2010 and the resolution dated December 22, 2010 of the Court of Appeals in CA-G.R. SP No. 110327 and **REINSTATE** the decision dated December 24, 2008 of the National Labor Relations Commission in NLRC CA No. 043915-05 (NLRC Case No. RAB IV-12-1661-02-L).

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
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.

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