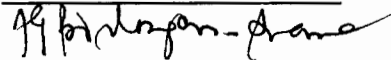


G.R. No. 194192 – DAVAO CITY WATER DISTRICT represented by its General Manager, Rodora N. Gamboa, *Petitioner*, v. RODRIGO L. ARANQUEZ, *et al.*, Respondents.

Promulgated:

June 16, 2015



X-----X

CONCURRING AND DISSENTING OPINION

JARDELEZA, J.:

I agree with the *ponencia* that the Petition for Review on *Certiorari* filed by Davao City Water District (“**DCWD**”) should be denied for lack of merit.

DCWD charged respondents as follows:¹ first, all respondent members and officers of *Nakahiusang Mamumuo sa DCWD* (“**NAMADACWAD**”) for wearing shirts with the inscription “**CNA INCENTIVE IHATAG NA, DIRECTOR BRAGANZA PAHAWA NA!**” during DCWD’s 34th anniversary celebration in violation of Civil Service Commission (“**CSC**”) Resolution No. 021316 and Memorandum Circular No. 33;² and second, respondent union officer Gregorio S. Cagula (“**Cagula**”) and all other **NAMADACWAD** union officers for allegedly attaching on the same date union posters with the same inscription outside designated areas in violation of DCWD’s Office Memorandum dated 8 February 1996 (“**Office Memorandum**”) pursuant to Memorandum Circular No. 33.

I submit that Cagula and all other respondent union officers should be exonerated from the second charge. There is no evidence of record to support the finding of fact of the DCWD, as accepted by the CSC and the Court of Appeals (“**CA**”),³ that Cagula with the help of some **NAMADACWAD** members allegedly attached union posters outside the areas designated by DCWD’s Office Memorandum.



¹ Rollo, pp. 223-226.

² *Rules to Govern Posting and Hanging of Posters, Placards, Streamers and Other Similar Materials* (1994).

³ Rollo, p. 83.

Exception to the general rule that only questions of law may be reviewed under Rule 45 of the Rules of Court

Questions of fact are not reviewable in petitions for review under Rule 45 of the Rules of Court because the Court is not a trier of facts. However, there are exceptions⁴ to this rule, which are present in this case, among them, the lack of sufficient support in evidence of the lower courts' judgment⁵ and when the conclusion arrived upon by the lower courts are based on speculation, surmises and conjectures.

Furthermore, although DCWD did not raise in its petition this factual issue, Section 8, Rule 51 of the Rules of Court⁶ and jurisprudence⁷ permit us to review matters not assigned as errors on appeal, provided, among others, that consideration of the error is necessary in arriving at a just decision and a complete resolution of the case, or the error is closely related to an error assigned.

DCWD in its petition raised the issue of whether or not Cagula and the other NAMADACWAD officers violated Memorandum Circular No. 33.⁸ Thus, we can resolve the factual question of whether or not Cagula and the other NAMADACWAD members indeed attached the union posters outside the allowed areas.

⁴ (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
(2) When the inference made is manifestly mistaken, absurd or impossible;
(3) Where there is a grave abuse of discretion;
(4) When the judgment is based on a misapprehension of facts;
(5) When the findings of fact are conflicting;
(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
(7) When the findings are contrary to those of the trial court;
(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents;
(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record; and
(11) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.
[*Cirtek Employees Labor Union v. Cirtek Electronics, Inc.*, G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660; *Andrada v. Pilhino Sales Corporation*, G.R. No. 156448, February 23, 2011, 644 SCRA 1, 10]

⁵ *Co v. Yeung*, G.R. No. 212705, September 10, 2014.

⁶ Section 8. Questions that may be decided. — No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.
(7a)

⁷ *Martires v. Chua*, G.R. No. 174240, March 20, 2013, 694 SCRA 38, 54.

⁸ *Rollo*, p. 26.

***Charge against respondent officers
for violation of Memorandum
Circular No. 33***

DCWD charged the officers of NAMADACWAD as follows:

On or about the same occasion, a NAMADACWAD official, respondent Gregorio S. Cagula, with the help of NAMADACWAD members attached some posters and/or similar materials bearing the inscription “CNA Incentives IHATAG NA! Director BRAGANZA PAHAWA NA!” to a post in the motorpool area; another poster of similar import was seen outside the guardhouse but inside the fence; both were situated within the premises of DCWD but outside the officially designated areas for posting. This act of respondent Gregorio S. Cagula appears to be an act of NAMADACWAD. As an organization, NAMADACWAD and its officials are responsible for an act of any of its officials or members committed in occasion and as a result of its duly approved concerted activity/mass action.

This is in violation of Civil Service Commission Memorandum Circular No. 33, Series of 1994, regarding the Rules to Govern Posting and Hanging of Posters, Placards, Streamers and other Similar Materials. This Memorandum Circular is reiterated in Section 13 of Civil Service Commission Resolution No. 021316.⁹ (Emphasis ours)

From the beginning of the case, NAMADACWAD disputed the factual allegation that Cagula or any of its members or officers attached the union posters:

Atty. Tumanda: Okay we take note of that, thank you counsel. Anyway, I would like to make a recap on the factual issues. As I see it, it would seem that the only factual issue to be resolved is the posting of banners inside the DCWD compound. All others, are you admitting the facts?

Atty. Lopez: Yes, your Honor only the posting of the banner is what we contest. All the facts in relation to the acts of the respondents here of wearing the union uniform as their understanding or interpretation of sports attire, we have no question on that matter your Honor. But on the fact of posting of banners, we are questioning and contesting on this your Honor.¹⁰

⁹ *Rollo*, pp. 224-225.

¹⁰ *Id.* at 229; underscoring omitted.

To support the charge against the union officers, DCWD presented photographs as physical evidence and the testimonies of two employees who took the photographs. The first set of photographs shows the posters already attached to the post in the motorpool area, with Cagula and other NAMADACWAD members standing nearby. The second set of photographs shows the posters already attached to a post inside the premises of DCWD but outside the designated areas.¹¹

DCWD finds, and the CSC and the CA affirm, that the photographs are substantial evidence to prove that Cagula and other NAMADACWAD members attached the union posters outside the designated areas. The DCWD Administrative Committee held:

The Committee sees the pictures unfolding a sequence of events. As shown, there were three (3) persons standing close to one another facing the post, with arms extended and holding some sort of white bond paper, one of them, Board Director of NAMADACWAD. When they left the post, it was shown that a white bond paper with inscriptions “CNA Incentive ihatag na! Director Braganza pahawa na!” was already attached to the post. All these show that there is substantial evidence to conclude that respondent Gregorio S. Cagula was responsible to the posting of banner.¹²

I disagree with this conclusion. Unfortunately, the photographs do not form part of the records for the Court to examine. However, based on DCWD’s holding in relation to the first set of photographs, one photograph allegedly shows Cagula with two other persons near a post holding a white bond paper. Another photograph shows a union poster already attached to the post. These photographs do not prove that Cagula or any NAMADACWAD member attached the union poster outside designated areas. The two sets of photographs were taken by two employees who testified for DCWD. Neither testified that they saw Cagula in the act of attaching the posters.

Ms. Jennife D.P. Dumalag (“*Dumalag*”) and Mr. Jerell J. Leonida (“*Leonida*”), the DCWD’s employees who took the pictures, testified that they did not see who attached the union posters outside the designated areas.¹³

¹¹ *Rollo*, p. 115, 127-128, 236, 250; *CA rollo*, pp. 12, 379.

¹² *Rollo*, p. 249.

¹³ *Id.* at 233-234.

Posters in the Motorpool area

Dumalag, the employee who took the pictures showing the posters in the motorpool area testified on cross-examination:

Atty. Lopez: Could you please read the wordings in the pictures you have taken? Particularly in Exhibit 34 “F-62”.

Ms. Dumalag: No to Privatization of Water District! Consumer Alert. CNA Incentive Ihatag Na! Dir. Braganza Pahawa Na!

x x x

Atty. Lopez: Okay, did you really see who posted these posters particularly in this Exhibit 34 “F-62”.

Ms. Dumalag: I could not really recall who posted those but the picture would tell.

Atty. Lopez: The picture would tell, but you did not see who really posted these posters?

Ms. Dumalag: To my recollection your Honor if I may review the picture, there could be but the way it was documented...

Atty. Lopez: But the question is, did you see somebody who posted those posters?

Ms. Dumalag: Those were posted already.

Atty. Lopez: Did you see who posted these?

Ms. Dumalag: I cannot recall, but...

Atty. Lopez: Okay, thank you. So you cannot recall and perhaps by your recollection as you have mentioned earlier that the pictures would tell. So you somehow presumed that somebody from those people you have taken pictures posted that posters?

Ms. Dumalag: I did.

x x x¹⁴
(Emphasis ours)

DCWD concluded that the photographs showed a “sequence of events” constituting “substantial evidence x x x that respondent Gregorio S. Cagula was responsible to the posting of banner.”¹⁵ This finding is erroneous

¹⁴ *Id.* at 233.

¹⁵ *Id.* at 249.

and contradicts the record. There is no showing what type of camera Dumalag used but she was on the scene. One photograph shows Cagula and two other persons “standing close to one another facing the post.” Another photograph shows that “after they left the post,” the poster was “already attached to the post.” Assuming the photographs were indeed taken in sequence and for some reason Dumalag was unable to take photographs of the actual posting, she was on the scene and should have witnessed who actually attached the poster. However, her testimony is that she cannot “recall,” as a result of which she merely presumed it was one of “those people,” meaning the three, among them Cagula.

Other Posters Inside DCWD’s Premises

Leonida, the other employee who took the pictures showing posters attached to a post inside the premises of DCWD but outside the designated areas, testified that he did not see who attached the union posters. Leonida testified on cross-examination:

Atty. Lopez: Na na’ay nakapilit sa poste na coupon bond, ikaw ba ng nagpicture ani (*That there was a coupon bond posted in the post?*)?

Mr. Leonida: Yes, Sir.

Atty. Lopez: Sa atoa pa, nakita ka kung kinsa ang nagbutang ana (*Or in other words, you saw who placed that?*)?

Mr. Leonida: Wala (*No*), Sir.

Atty. Lopez: So imoha lang gyud gi-pikturan na nakapilit na siya (*So you just purely took pictures when it was already posted?*)?

Mr. Leonida: Yes, Sir.

Atty. Lopez: Pero wala gyud ka nakakita kung kinsa gyud nagbutang ana (*But you actually did not see who placed that?*)?

Mr. Leonida: Yes, Sir.

x x x¹⁶

(Underscoring in the original)

The DCWD Administrative Committee itself found that no one saw who posted in this area.¹⁷ Like Dumalag, Leonida admitted that he only took

¹⁶ *Id.* at 234.

¹⁷ *Id.* at 250.

the pictures when the posters were already attached. For that matter, considering that there is no testimonial or physical evidence shown that Cagula or any other NAMADACWAD member attached the union posters outside designated areas, there is no basis to hold them liable in violation of Memorandum Circular No. 33.

***Individual liability for unlawful acts
in a mass action***

Even assuming for the sake of argument that Cagula or any other NAMADACWAD member indeed attached the union posters outside the designated areas, the conclusion that “NAMADACWAD and its officials are responsible for an act of any of its officials or members”¹⁸ is wrong as a matter of law.

Liability for unlawful or prohibited acts committed in a strike or other concerted mass action is legally determined *individually*, not collectively.¹⁹ Article 277²⁰ of the Labor Code does not hold the officers of a union responsible for an illegal act of another officer:

Art. 277. Prohibited activities.

(a) No labor organization or employer shall declare a strike or lockout without first having bargained collectively in accordance with Title VII of this Book or without first having filed the notice required in the preceding Article or without the necessary strike or lockout vote first having been obtained and reported to the Ministry.

No strike or lockout shall be declared after assumption of jurisdiction by the President or the Minister or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout.

Any worker whose employment has been terminated as a consequence of any unlawful lockout shall be entitled to reinstatement with full backwages. Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his

¹⁸ *Id.* at 224-225.

¹⁹ *Shell Oil Workers' Union v. Shell Company of the Philippines, Ltd.*, G.R. No. L-28607, May 31, 1971, 39 SCRA 276; *A. Soriano Aviation v. Employees Association of A. Soriano Aviation, et al.*, G.R. No. 166879, August 14, 2009, 596 SCRA 189.

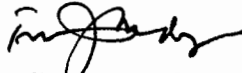
²⁰ Previously Art. 264 of the Labor Code.

employment, even if a replacement had been hired by the employer during such lawful strike. (Emphasis ours)

A strike or mass action which is legal does not become illegal merely because it is tainted by prohibited acts.²¹ Here, there was no prohibited mass action, and thus the union officers who wore shirts with the inscription were not held liable. Further, the alleged prohibited act of posting is not proven.

A reprimand is a public and formal censure or severe reproof administered to a person at fault by his superior officer or a body to which he belongs.²² Although a reprimand may be a slight form of penalty, it still goes into the record of the employee. It is unjust to impose even the slightest form of penalty to an employee, whether or not in the government, where the alleged infraction is not proven with substantial evidence.

Accordingly, I vote to DISMISS the petition. For the reasons stated, I respectfully submit that we exonerate respondent Cagula and all other respondent union officers from the charge of attaching the union posters outside the designated areas.



FRANCIS H. JARDELEZA
Associate Justice

²¹ *Shell Oil Workers' Union v. Shell Company of the Philippines, Ltd.*, G.R. No. L-28607, May 31, 1971, 39 SCRA 276

²² *Tobias v. Hon. Veloso*, G.R. No. L-40224, September 23, 1990, 100 SCRA 177.