SUPREME COURT
SECOND DIVISION

ERNESTO PONCE AND MANUEL C. BALIGNASAY,
***Petitioners*,**

-versus-

G.R. No. 158244
August 9, 2005

NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), INNODATA PHILIPPINES CORP., INNODATA PROCESSING CORP. (INNODATA CORPORATION) and TODD SOLOMON,
***Respondents*.**
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D E C I S I O N

CHICO-NAZARIO, *J.*:

Petitioners impugn in the instant Petition for Review the Decision[1] and the Resolution, dated 14 November 2002 and 12 May 2003, respectively, of the Court of Appeals in CA-G.R. SP No. 69811, affirming the judgment of the National Labor Relations Commission (NLRC) which reversed the Decision of the Labor Arbiter, and found petitioners to have committed willful neglect of duties as a result of

their absences, but awarded financial assistance to petitioners in the amount of one-half (1/2) month salary for every year of service.

The factual antecedents were synthesized by the Court of Appeals in its decision.

Innodata Philippines Corporation (Innodata) is a corporation engaged in the business of data processing wherein raw data supplied by its clients are fed into computers to process the same into data suitable for computer use, while Todd Solomon is its President. Innodata offered, among other services, encoding, typesetting, indexing, and abstracting data. Data encoding includes pre-encoding, encoding, editing, proofreading and scanning. All job orders or projects of Innodata come from its foreign clientele. In order to assure continuous flow of job orders/projects, it is essential for the company to guarantee its clients that it could faithfully fulfill its commitments within the agreed period and with attention to quality.[2]

All throughout its years of operations, Innodata has been continually beset with the perennial problem of incurring delays in accomplishing its data processing projects. To solve its quandary, Innodata engaged additional manpower, in the process incurring additional cost in the form of overtime pay to ensure that the job orders and projects would be finished promptly. But the work backlog persisted prompting the company to investigate and commission a study as to the cause of the crisis. The study revealed that the problem was attributable to the habitual tardiness and absenteeism of its employees. As a result, Innodata revised its policy on tardiness and absenteeism and came out with the Revised 1998 Absenteeism and Tardiness Policy (1998 Revised Policy), which took effect on 01 January 1998.[3]

The 1998 Revised Policy lessened the number of allowable absences and tardiness in a month and increased the penalties imposed upon the employees for such. For that reason, the union and employees of Innodata challenged the same through its Grievance Machinery under the National Conciliation and Mediation Board. After exhausting the remedies available in the existing Grievance Machinery, the Innodata Employees Association and respondent Innodata agreed on 18 May

1998, to submit the issue to voluntary arbitration as gleaned from the parties' Submission Agreement.[4]

Pending resolution by the Voluntary Arbitrator of the issue on the validity of the 1998 Revised Policy, Innodata terminated the services of petitioner Ernesto Ponce on 03 August 1998.[5]

On 21 August 1998, the Voluntary Arbitrator declared the 1998 Revised Policy as null and void for lack of consultation with the employees prior to its adoption and for being diminutive of the vested rights of the employees inasmuch as it reduced the number of unexcused absences in a month that an employee can avail of without sanction.[6] On this date, Manuel Balignasay's services were also terminated for absenteeism, under the 1998 Revised Policy. The Court of Appeals, however, reversed the ruling of the Voluntary Arbitrator and affirmed the validity of the 1998 Revised Policy on the ground that it was a valid exercise of management prerogative. On appeal, this Court affirmed with finality the Court of Appeals' decision on 27 June 2001.[7]

Both petitioners Ponce and Balignasay filed a complaint for illegal dismissal against Innodata protesting that they were dismissed by the latter sans just cause and in violation of their right to security of tenure.[8] According to petitioners, their dismissal was illegal considering that the 1998 Revised Policy under which their dismissal from employment was based was, at that time, still subject of voluntary arbitration and which in fact was later nullified by Voluntary Arbitrator Francisco Sobreviñas in his Decision dated 21 August 1998. Finally, petitioners bemoaned that the 1998 Revised Policy is unreasonable and that the penalty of dismissal is too harsh a penalty, not commensurate to the supposed offense of a few days' absences.[9]

In contrast, Innodata argued in its Reply that the 1998 Revised Policy on absenteeism was a valid exercise of management prerogative and necessary to its self-preservation. On petitioners' dismissal, Innodata unfalteringly asserted that petitioners were guilty of serious misconduct, willful disobedience to the lawful order of their employer, violation of the rules and regulations of the company and gross neglect of duty. And pursuant to Article 282 of the Labor

Code,[10] as amended, the termination from employment of Ponce and Balignasay was based on just causes.[11]

On 29 December 1999, Labor Arbiter Jovencio Mayor, Jr., rendered a decision favoring the petitioners. In the arbiter's rationale, the dismissal of petitioners was illegal because the 1998 Revised Policy under which their dismissal from employment was founded was, at that time, still subject of voluntary arbitration as agreed upon by the Innodata Employees Association and Innodata. This being the case, the Labor Arbiter was of the view that the implementation of said 1998 Revised Policy should have been suspended until the Voluntary Arbitrator shall have ruled on the validity thereof.

The Labor Arbiter thus ordered the reinstatement of petitioners with full back wages, the dispositive portion of which reads as follows:

> WHEREFORE, in view of all the foregoing, respondents are hereby ordered to reinstate complainants to their former positions without loss of seniority rights and other privileges and benefits with full back wages computed from the time of their illegal dismissal up to their actual reinstatement which up to this promulgation already amounted to, to wit:
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> | | |
> |---|---|
> | ERNESTO PONCE | PhP 122,184.44 |
> | MANUEL BALIGNASAY | 112,060.00 |
> | | PhP 234,244.48 |
> | | ========== |
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> plus attorney's fees in the amount of TWENTY-THREE THOUSAND FOUR HUNDRED TWENTY-FOUR (Php23, 424.44) PESOS AND 44/100.[12]

In a Decision[13] dated 28 September 2001, the Second Division of the NLRC reversed the arbiter's decision and held that petitioners were validly terminated for having exceeded the maximum allowable absences as provided in the 1998 Revised Policy, the legality of which was upheld by the Supreme Court. The NLRC found that despite being apprised of the implementation of the 1998 Revised Policy effective 01 January 1998, each of the petitioners still incurred a total of 35 unexcused absences for the year 1998 prior to their removal in

August of that year. Nonetheless, as an act of justice following case precedents, they were awarded financial assistance equivalent to one-half (1/2) month's salary for every year of service. The NLRC disposed as follows:

> Wherefore, premises considered, the assailed Decision dated 29 December 1999, is hereby REVERSED and SET ASIDE and a new one entered DISMISSING the instant case for lack of merit. However, respondents are hereby ordered to pay complainants financial assistance in the amount of one-half month pay for every year of service.[14]

Both parties moved to reconsider the NLRC Decision. It appears, however, that the NLRC had, for reasons unknown, overlooked the motion for reconsideration[15] filed by petitioners and received by the NLRC on 17 October 2001 because, on 20 November 2001, the NLRC denied only the motion for reconsideration filed by Innodata, without any mention as to that of petitioners. The Resolution reads:

After due consideration of the Motion for Reconsideration filed by respondent on October 22, 2001, from the Decision of September 28, 2001, the Commission (Second Division) resolved to deny the same for lack of merit. (Emphasis supplied)[16]

Within the reglementary period to file an appeal, Innodata proceeded to file a petition for certiorari with the Court of Appeals. In their Comment to Innodata's petition for certiorari before the Court of Appeals, however, petitioners argued that the petition was prematurely filed as their motion for reconsideration was still pending with the NLRC. Petitioners reiterated that they were illegally dismissed and prayed for the dismissal of the petition and for other equitable reliefs.[17]

The Court of Appeals did not dwell on the prematurity issue and proceeded to rule on the merits of the petition. On 14 November 2002, the appellate court affirmed the decision of the NLRC, disposing as follows-

> WHEREFORE, in view of the foregoing, the instant petition for certiorari is hereby DISMISSED for lack of merit, and the

> decision of the NLRC dated September 28, 2001 is AFFIRMED.[18]

Petitioners moved for reconsideration but it was denied in the Resolution[19] dated 12 May 2003. Hence, this appeal via a petition for review where petitioners assign the following single error to the Court of Appeals, viz:

> The honorable court of appeals erred in affirming the assailed Decision of the NLRC while there is still a pending motion for reconsideration before the national labor relations commission. The decision of November 14, 2002 is null and void.[20]

The lone issue before the Court thus focuses on whether or not the Court of Appeals can take cognizance of the petition for certiorari filed by Innodata assailing solely the portion of the NLRC's Decision awarding financial assistance to the petitioners while the latter's motion for reconsideration of the NLRC Decision remained unresolved by the said Commission.

Petitioners decry the Court of Appeals' rendition of the Decision despite the fact that the NLRC had yet to rule on their motion for reconsideration. For this reason, they bellyache that the Court of Appeals lacked the jurisdiction to review the NLRC Decision which had not yet attained finality, thus, the petition filed by Innodata before the Court of Appeals was vulnerable to dismissal for being prematurely filed. Given the foregoing premises, petitioners pray that this Court set aside the assailed Decision and Resolution of the Court of Appeals and a new judgment be entered remanding the case to the NLRC and ordering the said Commission to resolve the petitioners' motion for reconsideration which petitioners say had been pending for almost two years at the time of filing of this petition.[21]

A contrario, in its Comment, the Office of the Solicitor General (OSG), in behalf of Innodata, grouses that petitioners have waived their motion for reconsideration with the NLRC when they actively participated in the proceedings before the Court of Appeals and when they raised the issue of the legality of the dismissal in the same forum. The Court of Appeals, therefore, correctly assumed jurisdiction over the petition for certiorari filed by Innodata, says the OSG.[22]

In its memorandum,[23] Innodata is of the same mind as the OSG and entreats this Court to dismiss the present petition for utter want of merit.

Much as we commiserate with the plight of the working class in general, the arguments raised by petitioners in their six-page petition are, to our mind, simply vacuous and lacking in persuasive force.

Preliminarily, we take this occasion to strike a chord that in a petition for review on certiorari, our jurisdiction, as set forth in Rule 45, Section 1, of the 1997 Rules of Court, is limited to "questions of law which must be distinctly set forth," to wit:

> Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (Italics supplied)

In the case at bar, petitioners having specifically raised a single procedural issue on the alleged prematurity of the Court of Appeals' Decision, we shall limit our discussion to this lone assignment of error.

We agree in the stand of the OSG that the Court of Appeals correctly assumed jurisdiction over the petition for certiorari filed by Innodata notwithstanding the pendency of the petitioners' motion for reconsideration before the NLRC. As intoned by the OSG, note that instead of moving for the dismissal of the petition filed by Innodata before the Court of Appeals in this case, petitioners, in their Comment to said petition, did not limit their arguments to the alleged prematurity of said petition, but rather zealously argued the illegality of their dismissal as well. Likewise, petitioners in their prayer to their Comment sought not only the dismissal of the said petition but other reliefs too. Patently, petitioners had of their own accord submitted the entire case to the jurisdiction of the Court of Appeals, which

jurisdiction they cannot now conveniently assail as estoppel had already set in.[24]

As has been held in M. Ramirez Industries vs. The Hon. Secretary of Labor and Employment:

> A party can not invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction.
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> It was further said that the question whether the court had jurisdiction either of the subject-matter of the action or of the parties is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice can not be tolerated obviously for reasons of public policy.
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> Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court. And in Littleton vs. Burges, 16 Wyo, 58, the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.[25]

We hasten to add that at the time Innodata filed the petition for certiorari with the Court of Appeals, the NLRC had already denied its motion for reconsideration. As such, it is reasonable for Innodata to believe that with the denial of its motion for reconsideration by the NLRC, its business with said Commission is finished and the next logical move is to appeal in due time the NLRC's Decision to the Court of Appeals.

Then, too, implicit to the denial of Innodata's motion for reconsideration is the obvious fact that the NLRC preserved in toto its 28 September 2001 Decision which held petitioners to have been validly dismissed, but with award of financial assistance to them. Indeed, the NLRC need not state the obvious that nothing, not even

petitioners' motion for reconsideration, had changed the NLRC's mind as to the course of its 28 September 2001 Decision.

In other words, although the 20 November 2001 Resolution of the NLRC tackled solely Innodata's motion for reconsideration questioning the award of financial assistance to petitioners, common sense and logic dictate that such a denial carries the effect of denying petitioners' motion for reconsideration as well for how can the NLRC, on one hand, preserve in its 20 November 2001 resolution its ruling that petitioners were legally dismissed (although awarded with financial assistance) and, on another hand, hold that they were not, if it grants petitioners' motion for reconsideration?

In fine, ours is not a perfect system of procedural rules as it does not encompass deviations such as the NLRC's oversight in the case at bar. But what is missing in the rules may be found in the general principles of logic, justice and equity.[26]

As a postscript, the NLRC's Second Division had resolved the pending motion for reconsideration of the petitioners in its Resolution[27] dated 12 August 2004 possibly after the NLRC was apprised of its oversight when it was made a respondent in the case at bar. With this belated development, petitioners' prayer[28] for this Court to order the NLRC to resolve their pending motion for reconsideration has, in point of fact, become a vapid entreaty.

WHEREFORE, the present petition is hereby **DENIED**. Accordingly, the Decision and the Resolution, dated 14 November 2002 and 12 May 2003, respectively, of the Court of Appeals are hereby **AFFIRMED**. No costs.

SO ORDERED.

Puno, *J.*, *(Chairman)*, Austria-Martinez, Callejo, Sr., and Tinga, *JJ.*, concur.

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[1] CA Rollo, pp. 373-380. Penned by Associate Justice Perlita J. Tria Tirona with Associate Justices Roberto A. Barrios and Edgardo F. Sundiam concurring.

[2] Rollo, p. 21.
[3] Rollo, p. 21.
[4] CA Rollo, p. 56.
[5] Rollo, p. 21.
[6] CA Rollo, pp. 57-67.
[7] Rollo, p. 41.
[8] CA Rollo, p. 42.
[9] CA Rollo, p. 42.
[10] ART. 282. Termination by employer. – An employer may terminate an employment for any of the following causes:
(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
(d) Commission of the crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
(e) Other causes analogous to the foregoing.
[11] CA Rollo, pp. 72-88.
[12] CA Rollo, pp. 161-162.
[13] Penned by Presiding Commissioner Raul T. Aquino with Commissioners Victoria R. Calaycay and Angelita A. Gacutan, concurring. CA Rollo, p. 248.
[14] CA Rollo, p. 247.
[15] Rollo, p. 30.
[16] CA Rollo, p. 278.
[17] Rollo, p. 38.
[18] Rollo, p. 27.
[19] Rollo, p. 29.
[20] Rollo, p. 11.
[21] Rollo, p. 16.
[22] Rollo, pp. 68-78.
[23] Rollo, pp. 142-148.
[24] ABS-CBN Supervisors Employees Union Members vs. ABS-CBN Broadcasting Corporation, G.R. No. 106518, 11 March 1999, 304 SCRA 489, citing Marquez vs. Secretary of Labor, G.R. No. 80685, 16 March 1989, 171 SCRA 337, 346; Alday vs. FGU Insurance Corporation, G.R. No. 138822, 23 January 2001, 350 SCRA 113; Ceroferr Realty Corporation vs. Court of Appeals, G.R. No. 139539, 05 February 2002, 376 SCRA 144, citing National Steel Corp. vs. Court of Appeals, 362 Phil. 150, 160 (1999), citing Martinez vs. De la Merced, G.R. No. 82039, 20 June 1989, 174 SCRA 182.
[25] G.R. No. 89894, 03 January 1997, 266 SCRA 111, 128-129, citing Tijam vs. Sibonghanoy, G.R. No. L-21450, 15 April 1968, 23 SCRA 29, 35; Accord, Quimpo vs. Dela Victoria, G.R. No. L-31822, 31 July 1972, 46 SCRA 139. See also Salva vs. Court of Appeals, G.R. No. 132250, 11 March 1999, 304 SCRA 632.

[26] International Hardwood vs. Pangil Federation of Labor, 70 Phil. 602 (1940). See also Articles 9 and 10 of the New Civil Code.

Art. 9. No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws.

Art. 10. In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail.

[27] Penned by Presiding Commissioner Raul T. Aquino with Commissioners Victoria R. Calaycay and Angelita A. Gacutan, concurring. Rollo, pp. 122-126.

[28] Rollo, p. 16.