

Republic of the Philippines  
**Supreme Court**  
 Manila

**FIRST DIVISION**

**GIL SAMBU JARABELO,**  
 Petitioner,

**G.R. No. 223163**

Present:

- versus -

PERALTA, C.J., Chairperson,  
 CAGUIOA,  
 CARANDANG,  
 ZALAMEDA, and  
 GAERLAN, JJ.

**HOUSEHOLD GOODS PATRONS,  
 INC. and SUSAN DULALIA,**  
 Respondents.

Promulgated:

**DEC 02 2020** *mtf/abul*

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**DECISION**

**CAGUIOA, J.:**

Before the Court is a Petition for Review on *Certiorari*<sup>1</sup> (Petition) under Rule 45 of the Rules of Court assailing the Decision<sup>2</sup> dated September 8, 2015 and Resolution<sup>3</sup> dated February 16, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 138115. The CA affirmed the National Labor Relations Commission's (NLRC) ruling that petitioner Gil Sambu Jarabelo (Jarabelo) was not illegally dismissed.

*Facts*

Jarabelo was the booking salesman for respondent Household Goods Patrons, Inc. (Household Goods) since July 2007.<sup>4</sup> He worked from 8:00 A.M. to 6:00 P.M., from Monday to Friday, with a daily salary of ₱456.00.<sup>5</sup> As a booking salesman, his duties and responsibilities were: (a) getting orders from customers of Household Goods; (b) collecting payments from the customers (in cash or check), which he was required to remit to the office within the day; and (c) checking of oil, gasoline, water, and tools assigned to him.<sup>6</sup>

<sup>1</sup> *Rollo*, pp. 11-31, excluding Annexes.

<sup>2</sup> *Id.* at 33-46. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Ramon A. Cruz and Myra V. Garcia-Fernandez.

<sup>3</sup> *Id.* at 48-49.

<sup>4</sup> *Id.* at 33-34.

<sup>5</sup> *Id.* at 34.

<sup>6</sup> *Id.*

From May 2012 to August 2013, Jarabelo was subject of several disciplinary proceedings because of unaccounted amounts,<sup>7</sup> low sales output,<sup>8</sup> unremitted collections, "Poor Performance" rating during evaluation for failing to meet sales target,<sup>9</sup> and late remittance of sales proceeds.<sup>10</sup>

The disputed events, which led to Jarabelo's filing of a complaint for illegal dismissal before the Labor Arbiter (LA), are as follows:

On August 29, 2013, Jarabelo claims that respondent Susan Dulalia (Dulalia) directed him to report to her office and to his surprise told him: "*Mr. Jarabelo, magresign [ka na], magsubmit ka na ng resignation letter sapagkat ikaw ang isa sa mga nagpabagsak ng kumpanya! Wala kang ginawa kundi maghi[n]tay ng sahod.*"<sup>11</sup> Jarabelo denied the accusation claiming that in the past he was even awarded Salesman of the Year. This made Dulalia angrier and ordered Jarabelo to leave her office.<sup>12</sup>

The following day, Jarabelo claims that he was confronted by HR/Audit Supervisor Susan Soriano (Soriano) for his resignation letter as ordered by Dulalia. Jarabelo was presented with the computation of his final pay. He opposed the decision but it proved futile and he was ordered to surrender all documents and properties the following day.<sup>13</sup>

Respondents, on the other hand, claim that Jarabelo was not dismissed.<sup>14</sup> According to respondents, Dulalia talked to Jarabelo on September 1, 2013 about the latter's shortages and poor performance. Dulalia informed Jarabelo that the shortages are considered as theft, which is a valid ground for his immediate termination.<sup>15</sup> But considering his prior good sales performance and the stigma of being terminated from employment, Dulalia offered the option for Jarabelo to just resign and the management would not file a criminal charge against him for the unremitted amounts. After this conversation, respondents claim that Jarabelo never returned to work.<sup>16</sup>

### **LA Decision**

In a Decision<sup>17</sup> dated March 31, 2014, the LA ruled that Jarabelo was illegally dismissed when he was abruptly told not to report for work anymore and file a resignation letter.<sup>18</sup> The LA further ruled that respondents failed to prove that Jarabelo abandoned his work. The LA granted Jarabelo's prayer for

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<sup>7</sup> See id.

<sup>8</sup> See id.

<sup>9</sup> Id. at 34-35.

<sup>10</sup> Id. at 35.

<sup>11</sup> Id. at 35-36.

<sup>12</sup> Id. at 36.

<sup>13</sup> Id.

<sup>14</sup> Id. at 37.

<sup>15</sup> Id. at 36-37.

<sup>16</sup> Id. at 37.

<sup>17</sup> Id. at 179-185. Penned by Labor Arbiter J. Potenciano F. Napenas, Jr.

<sup>18</sup> Id. at 37, 183.



separation pay in lieu of reinstatement and backwages, service incentive leave pay, unpaid salary, and 13<sup>th</sup> month pay.<sup>19</sup>

### NLRC Decision

Aggrieved, respondents appealed to the NLRC, which partly granted respondents' appeal. The dispositive portion of the NLRC Decision<sup>20</sup> states:

**WHEREFORE**, premises considered, the instant appeal is **PARTLY GRANTED**. The assailed decision dated March 31, 2014 is hereby **AFFIRMED WITH MODIFICATION** in that complainant was not dismissed. Consequently, the award for separation pay and backwages is **DELETED**. In addition, the award for unpaid salary for June 23 - July 8, 2013 and SILP is, likewise, **DELETED**. Respondent Household Goods [Patrons,] Inc. is ordered to pay complainant Gil Jarabelo a proportionate 13<sup>th</sup> month pay amounting to **P7,007.51**.

**SO ORDERED.**<sup>21</sup>

The NLRC ruled that Jarabelo failed to establish the fact of his dismissal by substantial evidence and that his allegations were not supported by corroborative evidence.<sup>22</sup> Jarabelo filed a motion for reconsideration but this was denied.<sup>23</sup> Jarabelo then filed a petition for *certiorari* before the CA.

### CA Decision

In the assailed Decision, the CA affirmed the NLRC. The dispositive portion of the CA Decision states:

**WHEREFORE**, premises considered, the instant petition is hereby **DENIED**. The Decision promulgated on July 31, 2014 and the Resolution dated September 17, 2014 of public respondent NLRC in NLRC LAC NO. 07-001631-14(8) NLRC NCR CN. 1013502-13 are **AFFIRMED**.<sup>24</sup>

The CA ruled that it was incumbent on Jarabelo to prove the fact of dismissal.<sup>25</sup> The CA, after reviewing the evidence of the parties given the variance between the factual findings of the LA and the NLRC, found that Jarabelo failed to present any evidence of Household Goods' categorical intention to discontinue his employment or that he was prevented to work or otherwise deprived of any work assignment.<sup>26</sup> In fact, the CA found that the records were replete with instances where Jarabelo failed to meet sales quota, and was even short on remitting sales proceeds.<sup>27</sup>

<sup>19</sup> Id. at 37-38, 183-185.

<sup>20</sup> Id. at 71-84. Decision dated July 31, 2014; penned by Commissioner Gregorio O. Bilog, III and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr.

<sup>21</sup> Id. at 83.

<sup>22</sup> Id. at 39, 79-80.

<sup>23</sup> See Resolution dated September 17, 2014, id. at 86-87.

<sup>24</sup> *Rollo*, p. 45.

<sup>25</sup> See id. at 41.

<sup>26</sup> Id. at 42.

<sup>27</sup> Id. at 43.



The CA believed respondents' version that Dulalia talked to Jarabelo and gave him the option of resigning instead of being dismissed for cause.<sup>28</sup> The CA also ruled that unlike Jarabelo's bare assertions, respondents submitted the affidavit of Soriano who denied Jarabelo's claim that she talked to him about his submission of the resignation letter.<sup>29</sup> For the CA, it was a valid exercise of management prerogative for Dulalia to give Jarabelo the option of resigning.<sup>30</sup>

The CA also found that the NLRC was correct in ruling that Jarabelo was already paid his unpaid salary for June 23 to July 8, 2013 and his service incentive leave pay as the record was replete with evidence supporting this conclusion.<sup>31</sup> Since the NLRC Decision was supported by evidence and in accordance with law, the CA ruled that the NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>32</sup>

Jarabelo moved for reconsideration, but this was denied.

Hence, this Petition.

### *Issues*

Jarabelo reiterates the same issues he raised before the CA, as follows:

"I.

WHETHER THE PUBLIC RESPONDENT COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT THE PETITIONER FAILED TO PROVE THE FACT OF HIS DISMISSAL.

II.

WHETHER THE PUBLIC RESPONDENT COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DELETING THE SEPARATION PAY, BACKWAGES, AND SERVICE INCENTIVE LEAVE PAY AWARDED BY THE LABOR ARBITER TO THE PETITIONER."<sup>33</sup> x x x

### *The Court's Ruling*

The Petition is denied.

As a general rule, in a Rule 45 petition assailing a decision in a petition for *certiorari* under Rule 65, as is usually the case in labor cases before the

<sup>28</sup> Id.

<sup>29</sup> Id. at 42.

<sup>30</sup> Id. at 43.

<sup>31</sup> Id. at 43-44.

<sup>32</sup> Id. at 44-45.

<sup>33</sup> Id. at 16.

Court, the Court cannot address questions of facts.<sup>34</sup> Only questions of law may be raised against the CA decision and such decision will be examined using the prism of whether the CA correctly determined the existence of grave abuse of discretion.<sup>35</sup>

As the Court explained in *San Fernando Coca-Cola Rank-and-File Union (SACORU) v. Coca-Cola Bottlers Philippines, Inc. (CCBPI)*:<sup>36</sup>

“[G]rave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence.” The Court further held in *Banal III v. Panganiban* that:

By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

The reason for this limited review is anchored on the fact that the petition before the CA was a *certiorari* petition under Rule 65; thus, even the CA did not have to assess and weigh the sufficiency of evidence on which the NLRC based its decision. The CA only had to determine the existence of grave abuse of discretion. As the Court held in *Soriano, Jr. v. National Labor Relations Commission*:

As a general rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence.<sup>37</sup> (Citations omitted)

Here, the Court finds that the CA was correct in ruling that the NLRC did not commit grave abuse of discretion amounting to lack or excess in jurisdiction.

***The CA was correct that there was no proof of dismissal***

It is settled that “[i]n illegal dismissal cases, before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service.”<sup>38</sup>

<sup>34</sup> *Rodriguez v. Sintron Systems, Inc.*, G.R. No. 240254, July 24, 2019, 910 SCRA 498, 509.

<sup>35</sup> See *San Fernando Coca-Cola Rank-and-File Union (SACORU) v. Coca-Cola Bottlers Philippines, Inc. (CCBPI)*, G.R. No. 200499, October 4, 2017, 842 SCRA 1, 10.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 10-11.

<sup>38</sup> *Rodriguez v. Sintron Systems, Inc.*, supra note 34, at 510.

In *Rodriguez v. Sintron Systems, Inc.*<sup>39</sup> (*Rodriguez*), the Court ruled that the petitioner failed to prove she was constructively dismissed because she failed to present any evidence that the President of the company shouted invectives at her and that she was mistreated. The Court ruled in *Rodriguez*:

x x x Obviously, if there is no dismissal, then there can be no question as to its legality or illegality. As an allegation is not evidence, it is elementary that a party alleging a critical fact must support his allegation with substantial evidence. Bare allegations of dismissal, when uncorroborated by the evidence on record, cannot be given credence. Moreover, the evidence to prove the fact of dismissal must be clear, positive and convincing.<sup>40</sup> (Citations omitted)

*Rodriguez* applies here. Other than his allegation, Jarabelo failed to present any proof that he was dismissed from employment. He failed to present any proof of dismissal or that he was prohibited from returning to work. On the other hand, respondents were able to show that Jarabelo was not dismissed from work. Given his poor performance, he was given the option to resign instead of being dismissed. And the CA correctly ruled that giving such an option may be done at the discretion of the employer. As the Court ruled in *Willi Hahn Enterprises v. Maghuyop*.<sup>41</sup>

The failure of petitioner to pursue the termination proceedings against respondent and to make her pay for the shortage incurred did not cast doubt on the voluntary nature of her resignation. A decision to give a graceful exit to an employee rather than to file an action for redress is perfectly within the discretion of an employer. It is not uncommon that an employee is permitted to resign to save face after the exposure of her malfeasance. Under the circumstances, the failure of petitioner to file action against the respondent should be considered as an act of compassion for one who used to be a trusted employee and a close member of the household.<sup>42</sup>

The CA was correct in ruling that giving the option to gracefully exit considering his prior good sales performance and out of compassion did not constitute dismissal, legal or illegal. Jarabelo, however, did not resign and take the separation pay offered to him, but neither did Household Goods initiate disciplinary proceedings to terminate his employment.

### ***Separation pay awarded***

Given the foregoing, generally, when there is no dismissal, “the Court merely declares that the employee may go back to his work and the employer must then accept him because the employment relationship between them was never actually severed.”<sup>43</sup>

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<sup>39</sup> Supra note 34.

<sup>40</sup> Id. at 510.

<sup>41</sup> G.R. No. 160348, December 17, 2004, 447 SCRA 349.

<sup>42</sup> Id. at 354.

<sup>43</sup> *Rodriguez v. Sintron Systems, Inc.*, supra note 34, at 515.

There have been instances, however, where the Court directed the payment of separation pay even if there was no dismissal of the employee instead of a directive for the employee to return to work and for the employer to accept him.

In *Nightowl Watchman & Security Agency, Inc. v. Lumahan*<sup>44</sup> (*Nightowl*), the Court directed the payment of separation pay even if it found that no dismissal took place considering that more than 10 years had already passed since the employee stopped reporting for work. In *Dee Jay's Inn and Café v. Rañeses*<sup>45</sup> (*Dee Jay's Inn*), the Court likewise found that the employee was not dismissed nor did she abandon her work, but citing *Nightowl*, and also considering the more than 10 years that had passed since the employee reported for work, the Court directed the payment of separation pay. Also, in *Doctor v. NII Enterprises*,<sup>46</sup> the Court found that there was no dismissal and no abandonment but instead of directing the return to work of the employee, the Court, citing *Dee Jay's Inn*, awarded separation pay considering that more than 10 years had also passed since the employee reported for work and the manifestation of the employer that the employee no longer had any place in the business due to reduced workforce. In these cases, separation pay was computed at one month salary for every year of service.

Here, considering that Household Goods had from the outset offered to pay separation pay to Jarabelo, and which even Jarabelo himself does not dispute, and that more than seven years had passed since Jarabelo reported for work on September 1, 2013, the Court deems it just to award separation pay in lieu of the directive for him to return to work and for Household Goods to accept him.

As to the other claims of Jarabelo, the Court finds no reason to disturb the factual findings of the NLRC as affirmed by the CA, the same being supported by substantial evidence.

**WHEREFORE**, premises considered, the Petition is **DENIED**. The Decision dated September 8, 2015 and Resolution dated February 16, 2016 of the Court of Appeals in CA-G.R. SP No. 138115 are **AFFIRMED** with **MODIFICATION** that respondent Household Goods Patrons, Inc. is **DIRECTED** to pay petitioner Gil Sambu Jarabelo separation pay equivalent to one month salary for every year of service, computed up to the time he stopped working, or until September 1, 2013. This monetary award shall earn interest at six percent (6%) *per annum* from finality of this Decision until full payment.

<sup>44</sup> G.R. No. 212096, October 14, 2015, 772 SCRA 638.

<sup>45</sup> G.R. No. 191823, October 5, 2016, 805 SCRA 143.

<sup>46</sup> G.R. No. 194001, November 22, 2017, 846 SCRA 53.

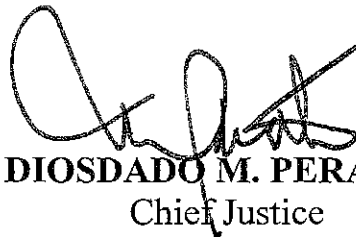


**SO ORDERED.**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

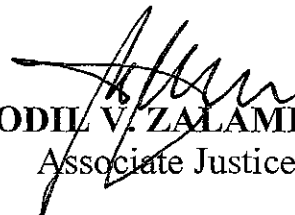
**WE CONCUR:**



**DIOSDADO M. PERALTA**  
Chief Justice  
Chairperson



**ROSMARI D. CARANDANG**  
Associate Justice



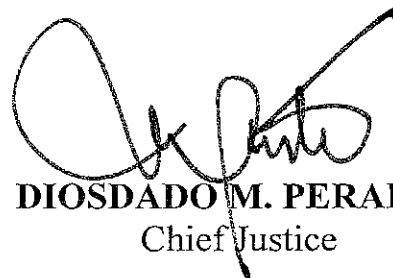
**RODIL V. ZALAMEDA**  
Associate Justice



**SAMUEL H. GAERLAN**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.



**DIOSDADO M. PERALTA**  
Chief Justice