

REYNALDO MORALIDAD, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ASIAN TERMINALS, PROMULGATED: INC. AND/OR RICHARD BARCLAY, RESPONDENTS.

Ponente: BARRIOS, J.

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BARRIOS, J.:

This petition for certiorari was filed by Reynaldo Moralidad (hereafter Moralidad for brevity) assailing the Decision dated May 27, 2002 of the National Labor Relations Commission (or NLRC) favorable to the respondents Asian Terminals, Inc. (or ATI) and/or Richard Barclay, and the Resolution dated September 24, 2002 denying his motion for its reconsideration.

On November 11, 1998, Moralidad filed against the respondents a case for illegal dismissal, illegal deductions, payment of service incentive leave, damages and attorney's fees. He alleged that from May 20, 1990 until April 11, 1997 he was an employee of ATI and held the position of Supervisor III. Sometime in November 1996, he was summoned to a meeting by ATI to explain and give his side in an alleged anomaly in connection with their incentive pay report. Moralidad denied any knowledge or involvement in the anomaly. However, on April 11, 1997, Moralidad was dismissed from his employment by ATI by a termination letter. Moralidad claimed that there was no basis for his dismissal because he is innocent of the charges against him. He also maintained that he was not afforded due process because he was not given the opportunity to defend himself from the charges and to confront the witnesses against him.

In its traverse, ATI asserted that its officers uncovered several anomalies perpetrated by many of its employees. These anomalies include disloyalty to the company's welfare and interests, payroll padding, falsification, alteration of entries in company forms and records, inexcusable negligence in the performance of duty resulting to serious loss, deliberate non-disclosure of facts during official inquiry/investigation and other forms of deceit, in violation of well-established and defined company rules and regulations (vide: ATI's Position Paper, p. 26, rollo). ATI claimed that Moralidad was involved and actively participated in the anomaly involving the company's incentive pay. One Alberto Montevirgin (or Montevirgin), also employed in the company as a supervisor, testified about the involvement of Moralidad in the scam. ATI further claimed that Moralidad was afforded due process prior to his termination because he was apprised of his constitutional rights and given the opportunity to explain his side in the administrative investigation conducted by the company.

On March 20, 2001, the Labor Arbiter rendered a Decision, disposing that:

WHEREFORE, premises considered, complainant is herein declared to have been illegally dismissed. Respondent is directed to pay him, the following:

- Backwages = P367,003.35
- Separation pay = P42,792.42

The rest of the claims are dismissed.

SO ORDERED. (pp. 44-45, rollo)

ATI appealed to the NLRC which reversed this in the now assailed Decision dated May 27, 2002 where it was held that:

WHEREFORE, the decision of Labor Arbiter Gaudencio Demaisip dated March 20, 2001 is hereby REVERSED and SET ASIDE and a new one is rendered dismissing the complaint for lack of merit.

SO ORDERED. (p. 62, rollo)

The motion for its reconsideration was denied in the Resolution dated September 24, 2002.

Hence, this petition for certiorari with Moralidad raising the following issues for consideration:

I

WHETHER OR NOT THE UNSWORN STATEMENT OF WITNESS ALBERTO MONTEVIRGIN COULD BE USED AS EVIDENCE IN HOLDING THE DISMISSAL OF THE PETITIONER AS VALID.

II

WHETHER OR NOT THERE EXISTS A VALID GROUND FOR PETITIONER'S DISMISSAL. (pp. 10-11, rollo)

As his principal thrust, Moralidad ascribes grave abuse of discretion on the part of the NLRC in reversing the Decision of the Labor Arbiter and finding ATI not liable for illegal dismissal.

To begin with, in illegal dismissal cases like the present one, the onus of proving that the dismissal of the employee was for a valid and authorized cause rests on the employer and failure to discharge the same would mean that the dismissal is not justified and therefore illegal (*Azcor Manufacturing, Inc. vs. NLRC*, 303 SCRA 26). It was therefore incumbent upon ATI to prove by the quantum of evidence required by law, that the dismissal of Moralidad was not illegal.

It is notable that the evidence relied upon by the NLRC in upholding the legality of the dismissal was the statement of Montevirgin implicating Moralidad in the anomalous transaction involving the company's incentive pay. The NLRC also cited that the statement of Montevirgin was corroborated by other witnesses. But the records of the case show that ATI submitted only a plain photocopy of the unsworn and unnotarized statement of Montevirgin, nothing else and nothing more. This is insufficient and inadequate to uphold the dismissal of Moralidad. Thus the Labor Arbiter correctly held that the circumstances showing the alleged participation of Moralidad in the anomaly was not clearly proven and ATI's only witness made a mere sweeping allegation that the company's foremen were involved in the irregularities (vide: Decision, p. 44, rollo). It is also worthy to stress that while the rules of evidence prevailing in the courts of law or equity are not controlling in proceedings before the NLRC, the evidence presented before it must at least have a modicum of admissibility for it to be given some probative value (*Uichico vs. NLRC*, 273 SCRA 35).

Then too, two notices are required before an employee may be validly dismissed: (a) written notice containing a statement of the cause for termination, to afford the employee an opportunity to be heard and defend himself with the assistance of his representative, if he desires; and (b) if the employer decides to terminate the services of the employee, written notice must be given to the employee stating clearly the reason therefor (*Rodriguez, Jr. vs. NLRC*, 393 SCRA 511). The failure of ATI to serve the first required notice to Moralidad to apprise him of the particular acts or omissions for which his dismissal was sought, let alone the said lack of just cause for terminating his employment, rendered the dismissal illegal. In the light of this, the assailed NLRC decision was

issued with grave abuse of discretion correctible by writ of certiorari.

WHEREFORE, the petition is GIVEN DUE COURSE and GRANTED. The assailed Decision of the NLRC dated May 27, 2002, as well as its concomitant Resolution of September 24, 2002, are SET ASIDE and VACATED. Accordingly, the Decision of the Labor Arbiter dated March 20, 2001 is REINSTATED.

SO ORDERED.

Guariña III and Romilla-Lontok, JJ., concur.

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