ASIAN TERMINALS, INC. AND RODOLFO G. CORVITE, JR., PETITIONERS, VS. DANILO MARBELLA, RICARDO MELENDREZ AND FELOMINO MANGALUS, RESPONDENTS.

G.R. NO. 149074. August 10, 2006

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the Petition for Review on Certiorari challenging the Decision[1] of the Court of Appeals dated July 13, 2001 in CA-G.R. SP No. 50967, entitled "Asian Terminals, Inc. and Rodolfo G. Corvite, Jr., petitioners, versus National Labor Relations Commission, First Division, Ricardo Melendrez, et. al, respondents.

The facts are as follows:

Asian Terminals, Inc. (Asian Terminals) petitioner, is a domestic corporation and the exclusive provider of arrastre and stevedoring services at the Manila South Harbor. Rodolfo G. Corvite, Jr., also a petitioner, is its President.

Respondents are employees as stevedores of Asian Terminals.

It is not disputed that early in the evening of April 30, 1994, respondents and other stevedores, who formed one group, were assigned to unload the cargo of the M/V Huang Jin Shua. The work of the group could not be completed if one stevedore was absent.

The parties, however, have opposing versions of what transpired next.

According to Wilfredo Acay, the group's supervisor, one member, Reynaldo Adan, did not report for work. Wilfredo then directed the group to start unloading the cargo from the vessel while they were waiting for Reynaldo's replacement. However, they refused to work. Wilfredo then reported the matter to the head checker who stated that if respondents did not want to work, they should "knock off or leave." At around 10:00 p.m., Wilfredo woke up the group, but still they refused to work. On May 11, 1994, he executed a sworn statement narrating these incidents.

Respondents claimed that on that particular date and time, they were busy arranging and classifying cargoes by color scheme to be unloaded. Since they were undermanned, they could not move as fast as management wanted. Their supervisor, Wilfredo Acay, asked for a replacement but nobody came. Nonetheless, they continued to work. They only stopped when their supervisor told them to go home. Later, he charged them with refusal to work. On September 23, 1994, they received a Memorandum of Dismissal. Among the reasons cited therein were previous offenses committed while they were still employed in the Ocean Terminal Inc., their former employer.

Officer-in-charge R.F. Salazar of Asian Terminals Legal Department conducted an investigation of the incident. In his report[2] and investigation dated May 15, 1994, he found respondents liable for refusal to work penalized by dismissal from the service considering that they committed the same offense for the second time.

On September 23, 1994, respondents were dismissed from the service.

On December 14, 1994, respondents filed with the Arbitration Branch of the National Labor Relations Commission (NLRC) a complaint for illegal dismissal. Impleaded as respondents were herein petitioners.

On May 30, 1997, the Labor Arbiter rendered a Decision dismissing the complaint.

On appeal, the NLRC, in its Decision[3] dated November 26, 1997, reversed the Labor Arbiter's judgment. The NLRC found that respondents were denied due process and that they did not refuse to work. It was an officer of Asian Terminals who ordered respondents to stop working when no personnel could replace the absent employee.

Asian Terminals filed a motion for reconsideration, but it was denied by the NLRC.

Asian Terminals then seasonably filed a petition for certiorari with this Court. Pursuant to our ruling in St. Martin's Funeral Home v. National Labor Relations Commission,[4] the petition was referred to the Court of Appeals. On July 13, 2001, it rendered a Decision dismissing the petition and affirming the NLRC assailed judgment.

Hence, the instant Petition for Review on Certiorari raising the issue of whether the Court of Appeals erred when it ruled that the dismissal of respondents from employment is without just cause and due process.

The requisites of a valid dismissal for just causes are: (a) the dismissal must be for one of the causes stated in Article 282 of the Labor Code; and (b) the employee must have been accorded due process, basic of which is the opportunity to be heard and defend himself.[5] Article 282 of the Labor Code, provides:

> 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 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; and
>
> e) Other causes analogous to the foregoing.

Here, Asian Terminals cited as a just cause respondents' willful disobedience or refusal to work.

The offense of willful disobedience requires the concurrence of two (2) requisites: (1) the employee's assailed conduct must have been willful, that is characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[6]

Settled is the rule that in an illegal dismissal case, the onus probandi is on the employer to prove that the dismissal of an employee is for a valid cause.[7] In this case, we agree with the Court of Appeals that Asian Terminals failed to prove willful disobedience on the part of respondents. Its own Position Paper states that they did not refuse to work. It was their head checker who told them to stop working, thus:

> - That on or about 7:00 P.M. in the evening of April 30, 1994, the gangs assigned at Hatch No. 1 of M/V Huang Jin Shan, for which complainants Marbella, et. al belonged, started working with the aforesaid vessel

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> for discharging operations. Later, on or about 9:30 P.M. of the same date, foreman Wilfredo Huerto Acay noticed that the personnel assigned to Hatch No. 1 is missing and/or lacking. It was established and identified that the absent personnel is Mr. Reynaldo Adan with ID No. 02/NA-023-4. It was at this juncture that Mr. Wilfredo Acay called the attention of JOC and requested replacement. As there were no available personnel to replace the lacking person, the head checker decided to stop the operation and knock-off the gang at around 9:30 P.M. (Emphasis supplied).

It can be gleaned that on that particular date and time, respondents unloaded cargo from M/V Huang Jin Shan. They started working at 7:00 p.m. At around 9:30 p.m., their foreman, Wilfredo Acay, arrived to check their work. He noticed that one member of the group was absent. He then requested from his superiors that a replacement be made. When no one was available, the head checker ordered the group to stop the operation. Clearly, there is no showing whatsoever that respondents willfully and deliberately refused to obey an order to work.

On the procedural issue being raised by respondents, Section 2, Rule XXIII, Book V of the Implementing Rules of the Labor Code provides:

> SEC. 2. Standards of due process, requirements of notice. – In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> - For termination of employment based on just causes as defined in Article 282 of the Code:
>
> a) A written notice served on the employee specifying the ground or grounds for termination and giving to said employee reasonable opportunity within which to explain his side;
>
> b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and
>
> c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

Under the above Rule, no employee may be validly dismissed unless the employer has complied with the two notice requirements: (1) 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 so desires; and (2) and a written notice stating clearly the reason of the termination.[8] The procedure is mandatory and failure to comply with these procedural requirements for terminating employment taints the dismissal with illegality.[9]

In the instant case, the Court of Appeals found that while an investigation was conducted, however, both petitioners failed to send respondents the first notice required by the Rule.

Petitioners contend that the sworn statement of Wilfredo Acay, sent to respondents, stating the charges is a sufficient notice. This sworn statement can not be considered as the first notice required by the said Rule. If at all, it is a mere narration under oath, of what transpired in the evening of April 30, 1994; and that respondents were among the stevedores who disobeyed Wilfredo Acay's order to work.

In ACD Investigation Security Agency, Inc. v. Daquero,[10] we held that in order to constitute a valid dismissal, two requisites must concur: (a) the dismissal must be for any of the causes expressed in Article 282 of the Labor Code; and (b) the employee must be accorded due process, basic of which is the opportunity to be heard and defend himself.

Clearly, the first requisite is not present here.

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While respondents are entitled to reinstatement, however, it may no longer be a feasible option. In their Motion to Resolve dated December 6, 2004, they manifested that they are more than fifty (50) years old and want to go home to their respective provinces to retire. Moreover, their relationship with petitioners has been strained because of this case. Thus, in lieu of reinstatement, an award of separation pay is in order. Such award is equivalent to at least one month pay, or one month pay for every year of service, whichever is higher (with a fraction of at least six [6] months being considered as one [1] whole year), in addition to their full backwages, allowances, and other benefits, or their monetary equivalent, corresponding to the period from their dismissal up to their supposed reinstatement.[11]

WHEREFORE, we DENY the petition. The Decision of the Court of Appeals in CA-G.R. SP No. 50967 is AFFIRMED with MODIFICATION in that, in lieu of reinstatement, respondents are awarded separation pay equivalent to at least one month pay, or one month pay for every year of service, whichever is higher (with a fraction of at least six [6] months being considered as one [1] whole year) and their full backwages, allowances, and other benefits, or their monetary equivalent, corresponding to the period from the date of their dismissal to the date of their supposed actual reinstatement. Costs against petitioners.

SO ORDERED.

Puno, (Chairperson), Corona, Azcuna and Garcia, JJ., concur.

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[1] Rollo, pp. 29-37. Ponencia by Associate Justice B.A. Adefuin-De la Cruz (retired) with Associate Justice Andres B. Reyes, Jr. and Associate Justice Josefina Guevara-Salonga, concurring.

[2] Rollo, pp. 53-56.

[3] Id. pp. 62-69.

[4] G.R. No. 130866, September 16, 1998, 295 SCRA 494.

[5] Rodriguez, Jr. v. National Labor Relations Commission, G.R. No. 153947, December 5, 2002, 393 SCRA 511, 516, citing RDS Trucking v. National Labor Relations Commission, 294 SCRA 623 (1998).

[6] Bascon v. Court of Appeals, G.R. No. 144899, February 5, 2004, 422 SCRA 122, 131 citing Dimabayao v. National Labor Relations Commission, 363 Phil. 279 (1999).

[7] R.P. Dinglasan Construction, Inc. v. Atienza, G.R. No. 156104, June 29, 2004, 433 SCRA 263, 269, citing Columbus Phils. Bus Corp. v. National Labor Relations Commission, 364 SCRA 606 (2001).

[8] Rodriguez, Jr. v. National Labor Relations Commission, supra, p. 517, citing C & A Construction Co., Inc., v. National Labor Relations Commission, 318 SCRA 784 (1999), Kams International, Inc. v. National Labor Relations Commission, 315 SCRA 316 (1999); Arboleda v. National Labor Relations Commission, 303 SCRA 38 (1999).

[9] Santos v. San Miguel Corp., G.R. No. 149416, March 14, 2003, 399 SCRA 172, 184.

[10] G.R. No. 147473, March 3, 2004, 426 SCRA 494.

[11] Id.; Bolinao Security and Investigation Service, Inc. v. Toston, G.R. No. 139135, January 26, 2004, 421 SCRA 406, citing Cebu Marine Beach Resort v. National Labor Relations Commission, 414 SCRA 173 (2003).

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