

BIENVENIDO C. GILLES, PETITIONER, VS. COURT OF APPEALS, SCHEMA KONSULT, AND EDGARDO ABORES, RESPONDENTS.

G.R. No. 149273. June 05, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for certiorari under Rule 65 of the Rules of Court assailing the Decision^[1] dated January 29, 2001 and the Resolution dated June 14, 2001 of the Court of Appeals (CA) in CA-G.R. SP No. 58467.

The Facts

The antecedents of the case are as follows:

Respondent Schema Konsult, Inc. (SKI) is a company engaged in all phases of project consulting, management, and supervision of services, including investment studies, feasibility studies, micro-processing analysis, and detailed scheme formulation, for all types of industrial plants, and installation, infrastructure, and development projects.^[2] Respondent Edgardo C. Abores (Abores) was the President of SKI at the time material to the case.^[3] On the other hand, petitioner Bienvenido C. Gilles (Gilles) was an incorporator, stockholder, and member of the Board of Directors from 1987 to March 1993, Vice-President for Finance and Administration from 1992 to 1993 and Principal Engineer of SKI from 1987 to March 1993.^[4]

In 1993, SKI entered into an Agreement Regarding Staff Provision^[5] (Agreement) with Carl Bro International (CBI), a corporation organized under the laws of Denmark. CBI entered into a joint venture with Aquatic Farms, Ltd., a foreign corporation under contract with the government of India for the provision of consultancy assistance on the "Shrimp and Fish Culture Project" (Project).^[6] The Project involved the development of shrimp farms in different parts of India, funded from a loan extended to the Government of India, particularly its Ministry of Agriculture, by the International Bank for Reconstruction and Development.^[7] The Ministry of Agriculture signed a contract with Aquatic Farms, Ltd., in association with CBI, for provision of consultancy assistance to the Project. CBI contracted SKI to provide a qualified aquaculture engineer for the Project.^[8]

Gilles applied for, and was accepted as, Water Systems/Irrigation Engineer of the Project for a period of two (2) years, commencing on January 24, 1993.^[9] The Agreement provided that: (1) CBI would pay SKI a monthly fee of US\$4,000.00; (2) Gilles' basic salary of US\$2,500.00 would be taken from the said fee; and (3) during Gilles' first sixty (60) days in India, he would receive a subsistence allowance of US\$87.00 per calendar day to defray his expenses for accommodation, board and lodging, and hotel room accommodation during project travels away from the duty station.^[10] For the duration of Gilles' assignment in India, he would be considered as a regular employee of SKI, but all the conditions in the Agreement between SKI and CBI would apply.^[11]

In January 1993, prior to Gilles' departure for India, he received US\$5,000.00 from SKI as an advance of his subsistence allowance to sustain him during his initial months in India.^[12] While in India, he twice received 43,000 Indian Rupees (INR), equivalent to Php43,000.00, to cover his expenses from April 1-30, 1993 and from

May 1-15, 1993.[13]

On May 10, 1993, Gilles tendered his Resignation Letter[14] to Mr. Torben R. Schou (Schou) of CBI. The pertinent portions of the letter read:

For the past several weeks, I have been burdened by serious personal and financial problems. I have tried to put these problems out of my mind but they still keep on bothering me that my physical condition and capacity to concentrate with my work are affected. Because of these, I have decided to go back to the Philippines and face these problems.

It is, therefore, with deep regret that I should tender my irrevocable resignation effective 15 May 1993.

Thank you for giving me the opportunity to work with a great team.

On May 11, 1993, Gilles left India.[15]

On May 14, 1993, Schou faxed a Letter[16] to Abores, informing him of the abrupt departure of Gilles from the Project and its attendant consequences. The letter reads:

We have on 10 May 1993 received Mr. Gilles' resignation, dated 5 May 1993, which was incorrectly addressed to us, and we understand that he left India on 11 May 1993. We regret that his personal problems caused this to happen.

His decision has resulted in a very serious and critical situation as regards our contractual obligations towards the Min. of Agric. in India, and Aquatic Farms Ltd. (AFL) has informed that Bien's work has been very unsatisfactory for several weeks before his departure. In order to ensure that we meet the deadlines for design, AFL has brought in a temporary substitute for Bien, but this substitute is not billable to the project.

You are kindly requested to inform what actions you propose to take regarding replacement of Bien.

An Inter-Office Memorandum,[17] dated May 18, 1993, was sent to Gilles requesting him to attend the Board of Directors meeting scheduled on May 19, 1993 at 2:00 p.m., at which the matter of his resignation would be discussed.

At the board meeting on May 19, 1993, Abores explained that the meeting was called precisely to discuss the resignation of Gilles from his assignment in India. Abores read before the Members of the Board the Letter[18] of Gilles dated May 15, 1993, pertinent portions of which state:

Resigning from my assignment in India as a Carl Bro employee was one of the most difficult and painful decisions I made in my life. I did not only give up the chance to be better off financially but most of all end my career as a consultant.

The following has created a very discouraging and depressing working environment for me in India which pushed me to make such decision.

1)

In our contract with Carl Bro (page 3/6, Annex 1 which is the same Annex in the contract between Aquatic Farms and the Indian Government), it is stated that design works for the 13 proposed prawn farms are to be undertaken from the 5[th] month (May 1993) to the 27[th] month. The attached memorandum of Mr. Clyde Simon supported the aforementioned schedule by recommending that construction of only three farms be started this year. In this memorandum, Mr. Clyde emphasized that quality of work should never be compromised.

In our initial review of the design undertaken by CICEF on all 13 proposed farms (the design costs the Indian

Government approximately 8.0 million Rupees), we found that major changes on the design criteria should be made (pages 12 to 18 of the Inception Report). Although these changes necessitate redesign for all proposed farms, the original work schedule can still be made applicable with only slight modifications.

However, on April 1 during a meeting in Delhi attended by our Project Advisor, he committed the completion of the design (including construction drawings, cost estimates, feasibility and design reports, technical specifications and other documents necessary for tendering) of three proposed farms by the end of May and the completion of the design for the other 10 sites by the end of 1993. This means that we have to finish the design for 1.5 sites per month (the farm area ranges from 52 to 1,671 ha.) This commitment was made by our Senior Project Advisor to the World Bank, India's Central Government and State Officials.

Since I was the water systems engineer in the group, much of the pressure of keeping up with our Senior Project Advisor's commitment was passed on to me. I had to work 18 hours on the average every day seven days a week.

x x x x

4)

I was made to expect when I left for this assignment that I will be better off financially. However, for the last three and a half months now, Carl Bro has not paid my salary (3.5 months) and my subsistence allowance for my first 60 days stay in Bangalore. How could I be expected to fulfill my financial obligations here in the Philippines? I have an 80-year old mother to support, loans to amortize, relatives to help with their medical expenses, etc. Although, SCHEMA was kind to have given me an advance of US\$5,000. During my first sixty days in Bangalore, as consultants, we were made to stay in five star hotel. I spent on the average US\$70 per day for a total of US\$4,200 in 60 days.

Several times I have made personal long distance calls to SCHEMA to follow-up on my salary and to talk to management about the other items mentioned above. RMS, EEA and EAV were so kind to listen to my problems as well as do something within the limits of their positions. However, the person who could have helped me most refused to talk to me. I felt that I was abandoned by SCHEMA management.

I was already in a very discouraged, depressed, exhausted and dejected state hence, I decided to leave Bangalore before my replacement was found.

I wrote this letter to explain the reasons why I left my post in India before my replacement was found. This is not intended to ask management for reconsideration on its decision of terminating my services with SCHEMA. My request to management is to be kind enough to grant me separation benefits of one month per year of service and other benefits normally given to leaving employees. I am also requesting management to facilitate the payment of my 3.5 months salary by Carl Bro. I can claim, with a clear conscience, that I have earned, up to the last cent, my wage in India.

As I have already mentioned in the earlier part of this letter that my resignation from my assignment in India has ended my career as a consultant. Hence, the granting of my aforementioned request would help me in venturing into new sources of livelihood.

Abores explained that the management was unaware of the difficulties encountered by Gilles in India, as no communication, official or otherwise, was received from Gilles. He said that Gilles never submitted any written progress report on the Project, contrary to the company's standard operating procedures.[19] The Board of Directors then decided to terminate the services of Gilles effective June 7, 1993,[20] and a notice of termination was sent to him.[21]

On September 6, 1993, Gilles filed a complaint for illegal dismissal against respondents, seeking reinstatement, moral damages, and other monetary claims.[22]

Gilles alleged that there was a deliberate scheme to ease him out of the Project and ultimately out of SKI. He believed that Abores was behind it. He said that while he was in India, his salary from the Project was not given to him on time. He claimed that he tried to communicate with SKI representatives, particularly with Abores, relative to the difficulties he encountered in India, but his calls were ignored. Moreover, the March 20, 1993 election of officers of SKI was not relayed to him on time, which resulted in his failure to attend the meeting or to send a proxy and, thus, was not elected officer of the company, a position that he consistently held in the past.[23] He also challenged the May 19, 1993 Board of Directors meeting as a hoax. He alleged that the meeting did not take place. He claimed that he talked to two (2) or three (3) members of the Board of Directors and they confirmed to him that his termination from employment was not the subject of the said meeting. However, to his disbelief, Abores was able to produce minutes of the alleged meeting where his termination by the Board was the principal item in the agenda.[24]

On the other hand, SKI dismissed the allegations of Gilles as mere fabrication. SKI averred that Gilles was well provided in India; that his resignation from CBI and his departure from India were not known nor approved by SKI; that the May 19, 1993 board meeting was real and Gilles was informed of such meeting at which his side was heard, but he was asked to step out of the meeting for displaying a temper; that the proceedings were properly recorded in the minutes; that the Board of Directors decided to terminate Gilles' services effective June 7, 1993; and that SKI paid Gilles what was due him from the Project in India even if CBI had yet to pay the consultancy fees.[25]

On July 10, 1997, the Labor Arbiter rendered a Decision,[26] the dispositive portion of which reads:

WHEREFORE, the respondents are hereby ordered, jointly and severally:

1.) To reinstate the complainant to his former position as Vice-President for Finance/Administration, with full backwages from the date his salary was withheld until he is actually reinstated which as of date has reached P1,274,000.00. If reinstatement should become improbable, then, the complainant should be paid separation pay equivalent to one-half month salary for every year of service rendered in addition to the grant of backwages; [and]

2.) To pay the complainant the sum of P500,000.00 as moral damages.

The respondents are, likewise, assessed the sum of P127,400.00 representing 10% of the benefits awarded as attorney's fees.

SO ORDERED.[27]

On appeal, the National Labor Relations Commission (NLRC) affirmed the decision of the Labor Arbiter with modification in a Resolution[28] dated November 29, 1999. The fallo of the resolution reads:

WHEREFORE, the decision appealed from is AFFIRMED, with modification deleting the award of attorney's fee and reducing the award of moral damages to P100,000.00.

SO ORDERED.[29]

SKI moved for reconsideration. The motion was denied in a Resolution dated January 31, 2000.[30] Unsatisfied, SKI filed a petition for certiorari and prohibition under Rule 65 of the Rules of Court before the CA, raising the following issues: (a) the controversy was an intra-corporate dispute exclusively cognizable by the Securities and Exchange Commission (SEC), and beyond the jurisdiction of the NLRC; and (b) the finding of the Labor Arbiter that Gilles was illegally dismissed was bereft of merit.

On January 29, 2001, the CA rendered a Decision granting the petition of SKI,[31] disposing, as follows:

WHEREFORE, foregoing premises considered, the petition having merit, in fact and in law, is hereby GIVEN DUE COURSE. ACCORDINGLY, the decision/judgment of the Labor Arbiter and public respondent National Labor Relations Commission (3rd Division), are hereby SET ASIDE and ANNULLED for having been rendered without jurisdiction, and the complaint of private respondent ordered DISMISSED. Public respondents or any of their agent/s are hereby permanently enjoined/restrained from executing their judgment. No costs.

SO ORDERED.[32]

The CA ratiocinated that the removal of Gilles as Vice-President of SKI was an intra-corporate controversy that was within the jurisdiction of the SEC. Furthermore, Gilles was not illegally dismissed from service, considering that he resigned from his assignment in India even before a replacement was found.[33]

Gilles filed a motion for reconsideration. On June 14, 2001, the CA issued a Resolution dismissing the motion.

Hence, this petition.

The Issues

Gilles raises the following issues for our resolution:

I

WHETHER [OR] NOT THE RESPONDENT COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE LABOR ARBITER HAS NO JURISDICTION OVER THE ILLEGAL DISMISSAL CASE OF HEREIN PETITIONER?

II

WHETHER OR NOT THE DISPOSITIVE PORTION OF THE LABOR ARBITER'S DECISION CONTAINING REINSTATEMENT FOR THE POSITION OF VICE-PRESIDENT INSTEAD OF HIS REGULAR EMPLOYMENT AS PRINCIPAL ENGINEER WOULD DIVEST THE JURISDICTION OF NLRC OVER THE ILLEGAL DISMISSAL CASE OF HEREIN PETITIONER?

III

WHETHER OR NOT THE RESPONDENT COURT OF APPEALS ACTED WITH GRAVE ABUSE IN DISTURBING THE FINDING OF THE LABOR ARBITER AND AFFIRMED BY THE NATIONAL LABOR RELATIONS COMMISSION (3rd DIVISION) THAT THE PETITIONER WAS ILLEGALLY DISMISSED FROM HIS REGULAR EMPLOYMENT?[34]

These issues may be reduced to the following: (1) whether the NLRC has jurisdiction over the illegal dismissal case; and (2) whether Gilles was illegally dismissed from employment.

The Ruling of the Court

Article 217 of the Labor Code vests in Labor Arbiters and the NLRC exclusive jurisdiction to hear and decide cases involving termination disputes and all other cases arising from employer-employee relations, as it provides:

ART. 217. JURISDICTION OF LABOR ARBITERS AND THE COMMISSION.

(a) Except as otherwise provided under this Code the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

- Unfair labor practice cases;
- Termination disputes;
- If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
- Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
- Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; [and]
- Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation [or implementation] of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

Based on this provision, the NLRC has jurisdiction over the illegal dismissal case filed by Gilles. Contrary to the stance of SKI, the case is not an intra-corporate dispute but a labor controversy. Gilles sought reinstatement; he wanted to recover his position as Principal Engineer of SKI. He also prayed for backwages, moral damages, and attorney's fees.

However, the Labor Arbiter committed an error when, in the dispositive portion of the July 10, 1997 Decision, he ordered the reinstatement of Gilles to his former position as Vice-President for Finance of SKI. That ruling finds no legal support in the ratio decidendi of the Decision itself, which reads:

Respondents, through counsel, moved for the dismissal of the case on the ground that this Office lacks the jurisdiction to arbitrate the same. It is argued that the complainant is not an ordinary employee, being the Vice-President for Finance/Administration and Treasurer, in addition to his job position as Principal Engineer. It is[,] likewise[,] claimed that the issue involved is an intra-corporate controversy which falls under the exclusive jurisdiction of the Securities and Exchange Commission.

The motion must be denied. The complainant lost his position as VP-Finance/Administration and Treasurer when he was not voted in the 20 March 1993 stockholders' meeting. His remaining relationship with the respondent firm after that date was his job position of Principal Engineer.

Moreover, the issue here is one of termination of employment, arising from circumstances on complainant's assignment in India. No incident of intra-corporate character has been linked to the employment issue. It appears, therefore, that the element of intra-corporate controversy is absent [in the case which gives this Office the jurisdiction] to arbitrate the termination issue.[35]

Based on the records of the case, Gilles never sought to regain his seat in the Board of Directors; he actually claimed reinstatement as Principal Engineer of SKI. The Labor Arbiter's decision was muddled with a lengthy discussion on the Board of Directors positions that Gilles held in the past, his failure to participate in the March 19, 1993 SKI Board of Directors elections due to the delayed receipt of the notice of the meeting, and the circumstances which led him to believe that there was an overt plan to oust him from the company.

Nonetheless, despite the tangled web of premises in the Labor Arbiter's disquisition, what emerges is a clear case of a labor dispute, properly cognizable by the NLRC.

II

Employment may be severed either by the employee or by the employer. An employer-initiated termination must be based on just or authorized causes enumerated in Articles 282, 283,[36] 284,[37] and 287[38] of the Labor Code. On the other hand, an employee may terminate his employment with or without just cause for any of the grounds enumerated under Article 285[39] of the Labor Code.

A valid termination of employment by the employer must comply with two requisites, namely: (1) the dismissal must be for any of the causes provided under Article 282 of the Labor Code; and (2) the employee must be afforded an opportunity to be heard and to defend himself. Substantively, the employer can terminate the services of an employee for just and valid causes, which must be supported by clear and convincing evidence; and procedurally, the employee must be given notice and an adequate opportunity to be heard before his actual dismissal for cause.[40]

In this case, Gilles questions the validity of his dismissal as the Principal Engineer of SKI. He contends that he only resigned as a consultant for the Project in India and not as a regular employee of SKI. Furthermore, he contests the genuineness of the May 19, 1993 board meeting and denies that he was given the opportunity to explain his side.

SKI maintains that Gilles was terminated for willful disobedience and gross neglect of his duties, just causes recognized in Article 282 of the Labor Code, viz.:

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.

Willful disobedience of the employer's lawful orders, as a just cause for dismissal of an employee, requires the concurrence of two (2) elements: (1) the employee's assailed conduct must have been willful, i.e., 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.[41]

Gilles' resignation from CBI and sudden departure from India was not approved by SKI. When he asked the company's permission to return to Manila, the management instructed him to stay in India until a suitable replacement was found.[42] He knew of the critical stage of the Project due to the accelerated period of its completion.[43] Thus, when he left the Project, despite the clear and lawful instructions of the management for him to stay, his act constituted willful disobedience and gross neglect of duty under Article 282 of the Labor Code.

But SKI was guilty of violating Article 103 of the Labor Code. SKI was remiss in paying the compensation of Gilles as Aquaculture Engineer of the Project on time. Based on the findings of fact of the Labor Arbiter, as confirmed by the NLRC, Gilles was not paid his salaries for the three and half (3½) months of his stay in India. Article 103 of the Labor Code mandates that wages shall be paid at least once every two (2) weeks or twice a month at intervals not exceeding sixteen (16) days and that no employer shall make payment with less frequency than once a month.

Gilles' departure from India, despite the instruction of SKI for him to stay, was impelled by the financial difficulties he encountered thereat. The money given to him before he left for India was already spent. Rickie Sarque, the Chief Accountant of SKI, admitted on the witness stand that Gilles was paid his salaries for the 3 ½ months when he was already back in Manila.[44] Added to this were the problems he encountered due to the acceleration of the job completion period, the obligations he had to meet at home for his aged mother at that time, now deceased, and the relatives who needed his financial support. Clearly, Gilles had a valid reason to leave India.

It should be noted that all the time Gilles was employed as Aquaculture Engineer of the Project, he remained a regular employee of SKI.[45] This is borne out by the Agreement which pertinently reads:

Based on these TOR [Terms of Reference], SK [Schema Konsult, Inc.] has selected Mr. Bienvenido C. Gilles as the qualified Aquaculture (Water Systems) Engineer, and [the] MOA [Ministry of Agriculture] has accepted his assignment as a member of the AFL/CBI [Aquatic Farms Ltd./Carl Bro International] team. B.C. Gilles shall be employed by SK.[46]

SKI, as the principal employer of Gilles, had the responsibility to pay Gilles his salaries and to defray his expenses while he was engaged in the Project in India. Again, the Agreement explicitly covers this obligation, viz.:

4. Remuneration and Expenses

During the period of assignment, CBI shall pay to SK a total monthly rate of USD4,000.00, broken down as follows:

USD

Basic Salary to B.C. Gilles

2,500.00

SK Office overhead and profit

1,500.00

Total monthly rate

4,000.00

=====

In case B.C. Gilles' assignment commences or terminates during a month, a daily rate of USD 140.00/per working day shall be used for calculating the payment to SK.

The total monthly or daily rate is the full remuneration to SK for the services of B.C. Gilles, and includes:

Salary to B.C. Gilles

Social charges

All personal insurances, including:

Health insurance

Travel insurance

Personal belongings insurance

Accident and life insurance

Employer's liability and workers compensation insurance

Leave pay and sick leave pay

Leave on official Indian Holidays and on non-Indian holidays

Taxes and duties

Relocation costs

All living expenses beyond the subsistence allowance

Third party motor vehicle liability insurance

x x x x

The total monthly rate, the USD subsistence allowance, the international travel per diem and expenses to be reimbursed by CBI shall be invoiced monthly and paid by CBI to SK not later than 30 days after CBI's receipt from SK of invoice and documentation acceptable to CBI including copies of receipts and filled in timesheets approved by the AFL/CBI SPA. Payment shall be effected by a bank transfer to a bank account informed by SK. CBI shall pay only for the bank charges payable to CBI's bank.

Reimbursement of eligible expenses in INR shall be effected directly to B.C. Gilles in India by the AFL/CBI SPA on behalf of CBI against presentation of receipts.[47]

SKI's failure to pay Gilles' salary on time was intolerable. For neglecting its duties as an employer, SKI may, thus, be considered to have acted in bad faith. It may be deemed as utter disregard by SKI of the welfare and well-being of its employee, especially at a time when he was far away from home.

We, therefore, find that Gilles was constructively dismissed from employment. Constructive dismissal exists when the employee involuntarily resigns due to the harsh, hostile, and unfavorable conditions set by the employer. It arises when there is clear discrimination, insensibility, or disdain by an employer and this becomes unbearable to the employee.[48]

Invariably, the law recognizes and resolves such a situation in favor of the employees in order to protect their rights from the coercive acts of the employer. Resignation contemplates a voluntary act; thus, an employee who is forced to relinquish his position due to the employer's unfair or unreasonable treatment is deemed to have been illegally terminated or discharged. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances.[49]

The disobedience committed by Gilles cannot be characterized as wrongful or perverse per se, given the conditions he was subjected to while in India. He left the Project primarily because of the financial difficulties he encountered, owing to his failure to receive his salary and because of the adverse working conditions in India.[50] The Senior Project Advisor accelerated the time schedule of the Project, and Gilles had to work on the job at an average of eighteen (18) hours daily.[51]

Further, SKI alleges neglect of duty as a ground for dismissing Gilles, saying Gilles' unceremonious return to the Philippines constituted abandonment. The contention is untenable. As a just cause for an employee's dismissal, neglect of duty must not only be gross but also habitual. A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee. Prior to his abrupt departure from India, Gilles had no derogatory record in the company. Besides, if it was true that the performance of Gilles was unsatisfactory or if he habitually neglected his duties, SKI or CBI should have initiated his removal prior to his departure from India. The Agreement[52] contains an adequate provision for the removal or replacement of Gilles if the employers are dissatisfied with his performance. The said provision reads:

15. Removal and/or Replacement of Personnel

If CBI (i) finds that B.C. Gilles has conducted serious misconduct or has been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of B.C. Gilles, then SK shall, at CBI's written request specifying the ground thereof, forthwith provide a replacement with qualifications and experience similar to B.C. Gilles or better and acceptable to CBI, AFL and MOA.[53]

Article 279 of the Labor Code mandates that an employee who was unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, as well as to other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of his actual reinstatement. Since the circumstances obtaining in this case do not warrant Gilles' reinstatement due to his strained relations with the company, an award of separation pay, in lieu of reinstatement, equivalent to one month pay for every year of service, in addition to full backwages, allowances, and other benefits or the monetary equivalent thereof, is in order.

As to the liability of Abores as President of SKI, it is basic that a corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, while acting as corporate agents, are not their personal liability but the direct accountability of the corporation they represent. As a rule, they are only solidarily liable with the corporation for the termination of employees if they acted with malice or bad faith.[54] In the case at bar, malice or bad faith on the part of Abores in the constructive dismissal of Gilles was not sufficiently proven to justify holding him solidarily liable with SKI.

WHEREFORE, the assailed Decision dated January 29, 2001 and Resolution dated June 14, 2001 of the Court of Appeals in CA-G.R. SP No. 58467 are hereby SET ASIDE. Petitioner Bienvenido C. Gilles is awarded separation pay equivalent to one month pay for every year of service and full backwages, other privileges and benefits, or the monetary equivalent thereof, computed from the date of his illegal dismissal on June 7, 1993 until the finality of this decision. Respondent Edgardo C. Abores is ABSOLVED from any liability adjudged against co-respondent Schema Konsult, Inc. Respondent Schema Konsult, Inc. is likewise ORDERED to pay Gilles One Hundred

Thousand Pesos (Php100,000.00) as moral damages.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio, Corona, and Peralta, JJ., concur.

[*] Additional member in lieu of Associate Justice Conchita Carpio Morales per Special Order No. 646 dated May 15, 2009.

[**] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 631 dated April 29, 2009.

[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Hilarion L. Aquino and Wenceslao I. Aguir, Jr., concurring; rollo, pp. 44- 53.

[2] Rollo, pp. 100, 228.

[3] Id. at 100, 227.

[4] Id. at 100.

[5] Records, pp. 49-55.

[6] Appears in other parts of the records as "Fish and Prawn Culture Project."

[7] Rollo, pp. 45, 89-90, 100, 231; records, pp. 49-55.

[8] Id.

[9] Records, p. 62.

[10] Rollo, pp. 45, 90, 100.

[11] Records, p. 62.

[12] Rollo, p. 46.

[13] Id. at 101.

[14] Records, p. 43.

[15] Rollo, pp. 45, 90, 100.

[16] Records, p. 44.

[17] Id. at 45.

[18] Id. at 182-184.

[19] Id. at 197.

[20] Id. at 198.

[21] Id. at 46.

[22] Rollo, p. 101; records, pp. 5-7.

[23] Rollo, pp. 90-91.

[24] Id. at 47.

[25] Id. at 92-93.

[26] Penned by Labor Arbiter Manuel P. Asuncion; rollo, pp. 89-97.

[27] Id. at 96-97.

[28] Penned by Commissioner Ireneo B. Bernardo, with Presiding Commissioner Lourdes C. Javier, concurring; rollo, pp. 99-106.

[29] Rollo, pp. 105-106.

[30] Id. at 108-109.

[31] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Hilarion L. Aquino and Wenceslao I. Agnir, Jr., concurring; id. at 44-53.

[32] Id. at 52.

[33] Id. at 44-53.

[34] Id. at 201.

[35] Id. at 202-203.

[36] Art. 283. CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL

The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, x x x.

[37] Art. 284. DISEASE AS GROUND FOR TERMINATION

An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: x x x.

[38] Art. 287. RETIREMENT

Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

[39] Art. 285. Termination by employee

(a) An employee may terminate without just cause the employee-employer relationship by serving a written notice on the employer at least one (1) month in advance. The employer upon whom no such notice was served may hold the employee liable for damages.

(b) An employee may put an end to the relationship without serving any notice on the employer for any of the following just causes:

- Serious insult by the employer or his representative on the honor and person of the employee;
- Inhuman and unbearable treatment accorded the employee by the employer or his representative;
- Commission of a crime or offense by the employer or his representative against the person of the employee or

any of the immediate members of his family; and

- Other causes analogous to any of the foregoing.

[40] Solid Development Corporation Workers Association (SDCWA-UWP) v. Solid Development Corporation, G.R. No. 165995, August 14, 2007, 530 SCRA 132.

[41] ePacific Global Contact Center, Inc. v. Cabansay, G.R. No. 167345, November 23, 2007, 538 SCRA 498, 513; EDI-Staffbuilders International, Inc. v. National Labor Relations Commission, G.R. No. 145587, October 26, 2007, 537 SCRA 409, 433; *id.* at 139-140; Sadagnot v. Reinier Pacific International Shipping, Inc., G.R. No. 152636, August 8, 2007, 529 SCRA 413, 423.

[42] Rollo, pp. 50, 93, 102.

[43] *Id.* at 95.

[44] *Id.* at 96, 104-105.

[45] Records, p. 62.

[46] *Id.* at 49. (Emphasis supplied.)

[47] *Id.* at 50-51.

[48] Aguilar v. Burger Machine Holdings Corporation, G.R. No. 172062, October 30, 2006, 506 SCRA 266, 273; Suldao v. Cimech System Construction, Inc., G.R. No. 171392, October 30, 2006, 506 SCRA 256, 260-261.

[49] *Id.*

[50] Records, pp. 89-95.

[51] *Id.*

[52] *Id.* at 49-55.

[53] *Id.* at 54-55.

[54] MAM Realty Devt. Corp. v. NLRC, 314 Phil. 838, 844 (1995).

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