

ACESITE CORPORATION, HOLIDAY INN, JOHANN ANGERBAUER AND PHIL KENNEDY, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION) AND LEO A. GONZALES, RESPONDENTS.

G.R. NO. 152308. January 26, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Before this Court are two consolidated petitions for review on certiorari challenging the Court of Appeals Decision of October 12, 2001 and Resolution of February 19, 2002 in CA-G.R. SP No. 65406, “Acesite (Philippines) Hotel Corporation, Holiday Inn Manila, Johann Angerbauer and Phil Kennedy v. National Labor Relations Commission and Leo A. Gonzales.”

The antecedents of the case are as follows:

Leo A. Gonzales (Gonzales) was hired on October 18, 1993 as Chief of Security of Manila Pavillion Hotel.[1] On January 1, 1995, Acesite Corporation (Acesite) took over the operations of Manila Pavillion and renamed it Holiday Inn Manila (the hotel). Acesite retained Gonzales as Chief of Security of the hotel.

On March 25, 1998, Gonzales took a 4-day sick leave and took emergency leave on March 30, 1998. On April 16-29, 1998, he again took a 12-day vacation leave, thereby using up all leaves that he was entitled for the year.

Before the expiration of his 12-day vacation leave or on April 23, 1998, Gonzales filed an application[2] for emergency leave for 10 days commencing on April 30 up to May 13, 1998. The application was not, however, approved. By Acesite’s claim, he received a telegram[3] informing him of the disapproval and asking him to report back for work on April 30, 1998.

Gonzales did not report for work on April 30, 1998. On even date, he received a telegram[4] from Acesite advising him that he was on unauthorized leave and asking him to provide a written explanation within the next 24 hours why he was not reporting for work. At the same time, he was required to report for work the following day or on May 1, 1998.

On May 2, 1998, Gonzales’ father Anacleto sent a telegram[5] to Acesite stating that he was still recovering from severe stomach disorder and would report back for work on May 4, 1998. A medical certificate[6] dated May 3, 1998 issued by a Dr. Laureano C. Gonzales, Jr. stating that Gonzales was under his care from April 30 – May 3, 1998 was presented to prove that he indeed was treated from such sickness.

On May 4, 1998, around lunchtime, Gonzales reported for work and presented himself to Johann Angerbauer, then Resident Manager of the hotel. Angerbauer claims that when Gonzales went to him, he asked him to explain why he had been absent despite orders for him to report back for work to which he (Gonzales) replied that it was necessary for him to go home to his province in Abra.

Gonzales, on the other hand, claims that when he conferred with Angerbauer, he requested for leave without pay from May 5-9, 1998 which was provisionally approved on condition that he (Gonzales) would be sending his explanation through e-mail behind his absences on April 30, 1998 and May 2, 1998 so that Angerbauer could send it to the hotel General Manager Phil Kennedy who was then out of the country.

Around 5:33 pm of May 4, 1998, Gonzales sent his explanation[7] to Angerbauer through e-mail, to wit, quoted verbatim:

This has reference with your verbal instruction that I will submit my written explanation regarding my absences on April 30, 1998 and May 2, 1998.

At the outset, my profound apologies for the above-stated absences. As you are fully aware of, on April 27, 1998, I formally requested your office that my official leave [which] will expire on April 29, 1998 shall be extended up to May 15, 1998. Inasmuch that I was in the province (ABRA) at that time, I was not aware that my request was disapproved until such time that I received your telegram two days later. Likewise, when I received your telegram, I was sick at that time and this was duly communicated to your office thru telegram. This was the reason I failed to report for work also on May 2, 1998.

As exhaustively discussed to you today, there is a great necessity for me to go home tonight in the province. Once again, I am asking your kind understanding that I shall be allowed to go on leave effective tomorrow and rest assured that I will report for work after the election. At any rate, the training of our new guards will start on May 18, 1998.

Thank you for this and for the past favors.

In the evening Gonzales left for Abra.

Also on May 4, 1998 Angerbauer sent the following inter-office memo[8] to Gonzales, allegedly received at around 7:55 pm by the security staff:

As discussed during our meeting, you are advised to submit an explanation within 24 hours why you did not report to work 1st May 1998? And why you came in late today 4th of May 1998, as we had a 10:30 AM scheduled communication meeting with the incoming Security Agency.

We will be having another meeting tomorrow regarding the turnover of the outgoing Security Agency. I will be expecting your presence during the said meeting.

For your compliance.

Gonzales claims that he got hold of a copy of the above-quoted memo only on May 8, 1998.

Gonzales not having reported for work on May 5, 1998, Angerbauer sent him on even date the following telegram[9] at his provincial address in Abra:

THIS IS TO REITERATE OUR ADVICE FOR YOU TO REPORT BACK TO WORK IMMEDIATELY UPON RECEIPT OF THIS NOTICE DUE TO VERY URGENT MATTERS INVOLVING SECURITY DEPARTMENT'S CONCERNS WHICH IMPERATIVELY REQUIRE YOUR PERSONAL ATTENTION. PLEASE CONSIDER THIS AS OUR FINAL ADVICE.

Gonzales, who claims to have received the May 5, 1998 telegram only in the afternoon of May 7, 1998, immediately repaired back to Manila on May 8, 1998 only to be "humiliatingly and ignominiously barred by the guard (a subordinate of [Gonzales]) from entering the premises."

It appears that on May 7, 1998, Angerbauer issued the following Notice of Termination[10] through an inter-office memo:

As you continuously disregard our several advices for you to report back to work to attend to very urgent matters involving Security Department's concerns which, as categorically made clear to you, imperatively required your personal presence and attention considering that you are its Department Head, thus adversely affecting the operations of said department, we are left with no recourse but to terminate your services from the Hotel effective immediately for violations of rule no. 27, Type C, of the House Code of Discipline – "Acts of gross disobedience or insubordination" and provisions of the Labor Code, specifically Art. 282. Termination by Employer, par. (a) x x x willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work.

Please be guided accordingly. (Emphasis and underscoring supplied)

Gonzales thus filed on May 27, 1998 a complaint[11] against Acesite, Angerbauer and Kennedy for illegal dismissal with prayer for reinstatement and payment of full backwages, service incentive leave, 13th month pay, moral and exemplary damages and attorney's fees. Gonzales, however, failed to appear in 2 consecutive hearings despite notice, meriting the dismissal by the Labor Arbiter of his complaint by Order[12] of September 17, 1998.

Gonzales refiled on July 13, 1999 his complaint for illegal dismissal[13] against Angerbauer and Kennedy, which he amended[14] on September 20, 1999, by impleading Acesite as respondent.

After the filing of their respective position papers, pleadings and documentary evidence, the Labor Arbiter, by Decision of February 7, 2000, dismissed the complaint for lack of merit, it holding that Gonzales was dismissed for just cause and was not denied of due process.

Gonzales appealed to the National Labor Relations Commission (NLRC), he faulting the Labor Arbiter as follows:

I

The Labor Arbiter committed grave abuse of discretion in dismissing the complaint for lack of merit.

II

The Labor Arbiter seriously erred in the finding of facts, which caused grave or irreparable damage or injury to the complainant/appellant.

III

The Labor Arbiter seriously erred in the finding that there was absence of due process in the dismissal of the complaint.[15]

By Decision[16] of December 29, 2000, the NLRC reversed that of the Labor Arbiter, the dispositive portion of which is quoted verbatim:

WHEREFORE, PREMISES CONSIDERED, the decision of Labor Arbiter Geobel A. Bartolabac dated February 7, 2000 is hereby, REVERSED. Respondents are hereby ordered:

- 1) to immediately reinstate complainant to his former position without loss of seniority rights;
- 2) to pay complainant backwages beginning for the period May 16, 1998, until he is actually reinstated, inclusive of all his other fringe benefits or their monetary equivalent;
- 3) to pay complainant the sum of P800,000.00 pesos as moral damages and the equal amount of P800,000.00 as and for exemplary damages;
- 4) to pay ten (10) per cent attorney's fees. (Underscoring supplied)

Acesite thereupon filed a petition for certiorari before the Court of Appeals anchored on the following grounds:

- THE NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT REVERSED THE FINDING OF THE LABOR ARBITER THAT THE RESPONDENT WAS LEGALLY DISMISSED FOR JUST CAUSE[.]
- THE NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT REVERSED THE FINDING OF THE LABOR ARBITER THAT THE RESPONDENT WAS AFFORDED PROCEDURAL DUE PROCESS[.]
- THE NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT REVERSED THE FINDING OF THE LABOR ARBITER THAT THE RESPONDENT IS NOT ENTITLED TO HIS MONEY CLAIMS[.]
- THE NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT INCLUDED PETITIONERS PHIL KENNEDY AND JOHANN ANGERBAUER LIABLE TO THE RESPONDENT NOTWITHSTANDING THE FACT THEY ARE MERE EMPLOYEES OF THE HOTEL[.][17]

By Decision[18] of October 12, 2001, the Court of Appeals, finding that Gonzales was illegally dismissed, affirmed with modification the NLRC decision:

After a careful study of the evidence on record and of the allegations of both parties, this Court is convinced that private respondent Gonzales was illegally dismissed.

The parties hereto contest the receipt by private respondent Gonzales of the first telegram sent by petitioner Angerbauer. Since the evidence of petitioners is merely a piece of paper supposedly containing the contents of the telegram sent to the former, We cannot accept the same as proof that indeed a telegram was sent and was thereafter received by private respondent Gonzales. The burden of proof is upon petitioners to show that indeed the latter received the same.

Insofar as private respondent Gonzales' failure to report for work on May 1, 1998, we give credence to the medical certificate he submitted to prove that he was indeed indisposed during the period in controversy especially in the light of the fact that the same was issued by his rival in the political arena, Dr. Laureano C. Gonzales, Jr., We do not think Dr. Gonzales who likewise ran for the same elective position as herein private respondent Gonzales would help him cover up his absences if he really did not treat the latter and had him under his care. Thus, his failure to report for work on May 1, 1998 was justified.

As to the third telegram, the final notice by petitioners to private respondent Gonzales, which directed him to report for work immediately upon receipt thereof, was complied with by the latter when he reported to the hotel on May 8, 1998 but was refused entry. Petitioners insist that he did not report to work. Private respondent Gonzales however submitted an official receipt of his diesel purchase to evidence the fact that he went to Manila on said date.

And even granting *arguendo* that private respondent Gonzales did not heed the same, his immediate termination was still unwarranted despite the provision on petitioner's House Code of Discipline.

Article 277 of the Labor Code, as amended, provides:

ART. 277. Miscellaneous provisions. – (a) x x x.

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment.

Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The Secretary of the Department of Labor and Employment may certify the dispute in the event of a prima facie finding by the appropriate official of the Department of Labor and Employment before whom such dispute pending that the termination may cause a serious labor dispute or is in implementation of a mass lay-off.

x x x

In the present case, the records do not show compliance by petitioners with the two (2)-notice rule prescribed in the above provision of law. Although several telegrams were sent to private respondent Gonzales, there is not one (1) telegram which contains a statement of the cause for his termination. The telegram and the meeting held on May 4, 1998 requiring him to submit a written explanation as to his absences did not apprise him that he was being considered for termination. Moreover, he was not informed that an investigation was being conducted vis-à-vis his continued absences and his non-disclosure of the fact that he was running for public office.

In other words, no notice was sent by petitioners to apprise private respondent Gonzales of the charges against him nor was he given ample opportunity to contest said charges with the assistance of counsel, if he so desired. What petitioners did was to send him a notice of termination on the premise that his immediate dismissal is authorized under their House Code of Discipline. While it is recognized that company policies and regulations, unless they are oppressive or contrary to law, are generally valid and binding on the parties and must be complied with, the same cannot be exercised for the purpose of defeating the rights of the employees under the law.

Unfortunately for petitioners, their employees are still entitled to the procedural requirements of notice and hearing despite provisions in their code of discipline purportedly giving them the right to immediately terminate their services. Employees cannot bargain away this right notwithstanding their acquiescence to the employer's rules.

As to petitioners' claim that private respondent willfully disobeyed their orders, the Supreme Court in the case of *Lagatic vs. NLRC* held:

In order that an employer may dismiss an employee on the ground of willful disobedience, there must be concurrence of at least two (2) requisites: the employee's assailed conduct must have been willful or intentional, the willingness being characterized by a wrongful and perverse attitude; and that 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.

The present case does not show the presence of the first requisite. As private respondent Gonzales' failure to comply with petitioners' orders were not characterized by a perverse attitude. At most he can only be suspended from service for assuming that his leaves of absence would be approved by management. The penalty of dismissal is too harsh considering that private respondent Gonzales has been with the company for almost five (5) years and has rendered unblemished service until the period in controversy. For his unauthorized absences, We hereby rule that a suspension of one (1) week is commensurate to his violation of Type C, House Code of Discipline rule on unauthorized absences.

Anent the alleged willful non-disclosure by private respondent Gonzales of his candidacy for public office, We find the same to be unsupported by evidence. The tenor of private respondent Gonzales' internal email to petitioner Angerbauer reveals that the latter was aware that the reason for the former's prolonged absences was his ongoing campaign as Board Member of the Province of Abra. Considering the same, We are inclined to

believe private respondent Gonzales' version of the story.

Going now to the propriety of the monetary awards to private respondent Gonzales, We find the amount P800,000.00 each as moral and exemplary damages unwarranted. The collective amount of P100,000.00 as moral and exemplary damages is just under the circumstances. Public respondent NLRC's award of ten (10) per cent attorney's fees is affirmed.

WHEREFORE, premises considered, the Decision dated December 29, 2000 of public respondent National Labor Relations Commission is hereby MODIFIED as follows:

Petitioners are hereby ordered:

1. to reinstate private respondent Leo A. Gonzales to his former position without loss of seniority rights or privileges. If reinstatement is no longer feasible, then payment of separation pay equivalent to ½ month pay for every year of service is hereby ordered;
2. to pay private respondent Leo A. Gonzales his full back wages commencing on 14 May 1998 in view of his one (1) week suspension until he is actually reinstated;
3. to pay P100,000.00 as moral and exemplary damages; and
4. to pay 10% of the total monetary award as and for attorney's fees.

With costs against the petitioners.[19] (Emphasis and underscoring supplied)

Hence, the two separate petitions of Acesite and Gonzales.

In its petition, Acesite contends that:

I

THE COURT OF APPEALS GRAVELY ERRED WHEN IT DID NOT AFFIRM THE FINDING OF THE LABOR ARBITER THAT THE RESPONDENT WAS LEGALLY DISMISSED FOR JUST CAUSE.

II

THE COURT OF APPEALS GRAVELY ERRED WHEN IT REVERSED THE FINDING OF THE LABOR ARBITER THAT RESPONDENT WAS AFFORDED PROCEDURAL DUE PROCESS.

III

THE COURT OF APPEALS GRAVELY ERRED WHEN IT REVERSED THE FINDING OF THE LABOR ARBITER THAT THE RESPONDENT IS NOT ENTITLED TO HIS MONEY CLAIMS.[20]

Gonzales, on the other hand, posits in his petition that:

I

[THE COURT OF APPEALS] GRAVELY ERRED IN DELETING THE AWARDS OF FRINGE BENEFITS OR THEIR MONETARY EQUIVALENTS WHICH THE NLRC ORDERED TO BE GIVEN TO THE PETITIONER FROM THE TIME HE WAS ILLEGALLY DISMISSED UP TO HIS ACTUAL REINSTATEMENT.

II

[THE COURT OF APPEALS] SERIOUSLY ERRED IN BESTOWING TO THE PRIVATE RESPONDENTS THE OPTION WHETHER TO REINSTATE THE PETITIONER OR NOT.

III

[THE COURT OF APPEALS] ERRED IN SUBSTANTIALLY REDUCING THE AMOUNT OF AWARDS OF MORAL AND EXEMPLARY DAMAGES WHICH THE NLRC DESERVINGLY ADJUDGED TO BE ACCORDED TO THE PETITIONER.[21]

Acesite argues that there was just cause for Gonzales' termination under Article 282 of the Labor Code, the pertinent provision of which reads:

ART. 282 TERMINATION BY EMPLOYER. – An employer may terminate an employment for any of the following causes:

- (a) Serious Misconduct of 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;

x x x

For, so Acesite claims, Gonzales "showed no respect for x x x [the] lawful orders for him to report back to work and repeatedly ignored all telegrams sent to him,"[22] and it merely exercised its legal right to dismiss him under the House Code of Discipline which imposes dismissal as penalty for a violation of Rule 27 thereof.

Acesite further claims that Gonzales cannot feign ignorance of said rule because it is part of his job to implement it;[23] and the medical certificate accomplished by a Dr. Gonzales who "could very well be a relative," was issued in Quezon City on May 3, 1998 whereas it stated that Gonzales was under the physician's care in Abra from April 30 to May 3, 1998.

Acesite furthermore claims that, as correctly ruled by the Labor Arbiter, the facts by any standard suffice to cause it to lose its trust and confidence in Gonzales especially his concealment that he was seeking an elective post in Abra during the 1998 elections which would explain why he did not report for work as directed;[24] and that Gonzales was afforded procedural due process as the twin requirements of notice and hearing were complied with through the numerous telegrams sent to both Gonzales' city and provincial addresses asking him to report for work and explain his unauthorized absences.[25]

This Court finds no reason to depart from the findings of the Court of Appeals. Indeed, there appears to have been no just cause to dismiss Gonzales from employment. As correctly ruled by the Court of Appeals, Gonzales cannot be considered to have willfully disobeyed his employer. Willful disobedience entails the concurrence of at least two (2) requisites: the employee's assailed conduct has been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude;" and 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.[26]

In Gonzales' case, his assailed conduct has not been shown to have been characterized by a perverse attitude, hence, the first requisite is wanting. His receipt of the telegram disapproving his application for emergency leave starting April 30, 1998 has not been shown. And it cannot be said that he disobeyed the May 5, 1998 telegram since he received it only on May 7, 1998. On the contrary, that he immediately hied back to Manila upon receipt thereof negates a perverse attitude.

As to Gonzales' alleged concealment of his candidacy (for provincial board member) as a ground for Acesite's loss of trust and confidence in him, the same is not impressed with merit. It should be noted that Acesite's ground for terminating the services of Gonzales as stated in the Notice of Termination is his alleged acts of insubordination/disobedience. The concealment of candidacy angle harped upon by Acesite can only thus be

considered as mere afterthought to further justify his illegal dismissal.

With regards to Gonzales' perceived feigning of illness, the same is purely speculative.

If there is anything that Gonzales can be faulted for, it is his being too presumptuous that his application for leave would be approved. For his unauthorized absences, this Court finds that Gonzales violated paragraph 26, Rule 11 of Type B offenses of the Company's House Code of Discipline – unauthorized absence from work for three consecutive days[27] – which is punishable by a suspension of 3 days on the first offense – when he did not report for work from May 5-7, 1998.

As for Gonzales' petition before this Court, he argues that the Court of Appeals, absent any reason, modified the decision of the NLRC by deleting or eliminating the "other fringe benefits or their monetary equivalent;"[28] that the said court should not have given Acesite the option to reinstate him or not since the case at bar does not fall under circumstances for which reinstatement is no longer possible; that even assuming that his reinstatement is not in the interest of labor, the severance pay of ½ month pay ordered by the appellate court is not in accordance with law and jurisprudence; and that the reduction of the moral and exemplary damages awarded him by the NLRC was erroneous.

In illegal dismissal cases, reinstatement to an illegally dismissed employee's former position may be excused on the ground of "strained relations." This may be invoked against employees whose positions demand trust and confidence, or whose differences with their employer are of such nature or degree as to preclude reinstatement.[29] In the case at bar, Gonzales was Chief of Security, whose duty was to "manage the operation of the security areas of the hotel to provide and ensure the safety and security of the hotel guests, visitors, management, staff and their properties according to company policies and local laws." [30] It cannot be gainsaid that Gonzales' position is one of trust and confidence, he being in charge of the over-all security of said hotel. Thus, reinstatement is no longer possible. In lieu thereof, Acesite is liable to pay separation pay of 1 month for every year of service.

As to the award of moral and exemplary damages, this Court finds it unwarranted. Moral damages are recoverable only where the dismissal of the employees was attended by bad faith or fraud or constituted an act oppressive to labor or was done in a manner contrary to morals, good customs or public policy. Exemplary damages on the other hand may be awarded only if the dismissal was effected in a wanton, oppressive or malevolent manner.[31] Though these grounds have been alleged by Gonzales, they were not sufficiently proven.

The appellate court affirmed the NLRC ruling that Angerbauer and Kennedy are solidarily liable with Acesite. In the case of *Bogo-Medellin Sugarcane Planters Association, Inc. v. NLRC*, [32] this Court ruled:

Unless they have exceeded their authority, corporate officers are, as a general rule, not personally liable for their official acts, because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders and members. However, this fictional veil may be pierced whenever the corporate personality is used as a means of perpetuating fraud or an illegal act, evading an existing obligation, or confusing a legitimate issue. In cases of illegal dismissal, corporate directors and officers are solidarily liable with the corporation, where terminations of employment are done with malice or in bad faith. (Underscoring supplied, citations omitted)

In holding Angerbauer and Kennedy solidarily liable, the NLRC intended "to deter other foreign employer[s] from repeating the inhuman treatment of their Filipino employees who should be treated with equal respect especially in their own land and prevent further violation of their human rights as employees."

The records of the case do not, however, show any inhuman treatment of Gonzales. His superiors just happen to be foreigners. Moreover, as previously discussed, bad faith or malice was not proven. Angerbauer, acting on

behalf of Acesite, was, like Gonzales, perhaps also too presumptuous in thinking that the telegrams ordering the latter to report for work were all received on time, drawing him to hastily conclude that Gonzales intentionally disobeyed the orders contained therein.

As to the deletion of the “fringe benefits or their monetary equivalent,” this Court agrees with Gonzales that it is not in accord with law and jurisprudence. Article 279 of the Labor Code provides:

ART. 279 SECURITY OF TENURE. – In cases of regular employment, the employer shall not terminate the services of an employee except for just cause or when authorized by this Title. An employee who is 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, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (Emphasis and underscoring supplied)

As for the award of attorney’s fees, the same is in order, Gonzales having been forced to litigate and incur expenses to protect his rights and interest.[33] This Court, however, reduces the award to P10,000.00.

In fine, this Court affirms the assailed decision with modification in light of the foregoing discussions.

WHEREFORE, as modified, the decision reads as follows:

1) Acesite Corporation is hereby ordered to pay Leo A. Gonzales:

a) his full backwages, inclusive of allowances, and his other benefits or their monetary equivalent, to be computed from the time he was illegally dismissed until the finality of this Decision less 3 days in view of his suspension;

b) separation pay equivalent to his 1 month salary for every year of service computed from the time Gonzales was first employed by Acesite until the finality of this Decision;

c) P10,000.00 as attorney’s fees; and

2) The complaint against Johann Angerbauer and Phil Kennedy is hereby DISMISSED.

No pronouncement as to costs.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] G.R. No. 152308 Rollo at 9; G.R. No. 152321 Rollo at 14.

[2] Court of Appeals (CA) Rollo at 94.

[3] Id. at 95.

[4] Id. at 96.

[5] Id. at 97.

[6] Id. at 154.

[7] Id. at 99.

[8] Id. at 98.

[9] Id. at 100.

[10] Id. at 101.

[11] Id. at 103-104.

[12] Id. at 105.

[13] Id. at 63-64.

[14] Id. at 66.

[15] Id. at 168-169.

[16] Id. at 34-60.

[17] Id. at 10.

[18] G.R. No. 152308 Rollo at 36-44.

[19] Id. at 40-43.

[20] Id. at 16-28.

[21] G.R. No. 152321 Rollo at 19.

[22] G.R. No. 152308 Rollo at 17.

[23] Id. at 20.

[24] Id. at 22.

[25] Id. at 25.

[26] Procter and Gamble Phils. v. Bondesto, G.R. No. 139847, March 5, 2004 citing Gold City Integrated Port Services, Inc. v. NLRC, 189 SCRA 811 (1990).

[27] CA Rollo at 145.

[28] G.R. No. 152321 Rollo at 20-21.

[29] Maranaw Hotels and Resorts Corp. v. Court of Appeals, 215 SCRA 501, 507 (1992); Globe-Mackay Cable and Radio Corporation v. NLRC, 206 SCRA 701, 711-712 (1992); Asiaworld Publishing House, Inc. v. Ople, 152 SCRA, 219, 227 (1987).

[30] Policy Manual, Holiday Inn Manila at 7; CA Rollo at 138.

[31] Garcia v. National Labor Relations Commission, 234 SCRA 632, 638 (1994) (citations omitted).

[32] 296 SCRA 108, 126 (1998).

[33] Rasonable v. National Labor Relations Commission, 253 SCRA 815, 819 (1996).

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