

**HEAVYLIFT MANILA, INC. AND/OR JOSEPHINE EVANGELIO,
ADMINISTRATIVE & FINANCE MANAGER, AND CAPT. ROLANDO
TOLENTINO, PETITIONERS, VS. THE COURT OF APPEALS, MA.
DOTTIE GALAY AND THE...**

G.R. NO. 154410. October 20, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for certiorari assailing the Resolution[1] dated December 18, 2001 of the Court of Appeals in CA-G.R. SP No. 68072 denying the petition for failure to comply with procedural rules, as well as the Decision[2] dated August 30, 2001 and the Resolution[3] dated September 28, 2001 of the National Labor Relations Commission (NLRC) which affirmed the Labor Arbiter's decision finding petitioners guilty of illegal dismissal.

The factual antecedents of the case are as follows:

On February 23, 1999, petitioner Heavylift, a maritime agency, thru a letter signed by petitioner Josephine Evangelio, Administrative and Finance Manager of Heavylift, informed respondent Ma. Dottie Galay, Heavylift Insurance and Provisions Assistant, of her low performance rating and the negative feedback from her team members regarding her work attitude. The letter also notified her that she was being relieved of her other functions except the development of the new Access program.

Subsequently, on August 16, 1999, Galay was terminated for alleged loss of confidence. Thereafter, she filed with the Labor Arbiter a complaint for illegal dismissal and nonpayment of service incentive leave and 13th month pay against petitioners.

Before the labor arbiter, petitioners alleged that Galay had an attitude problem and did not get along with her co-employees for which she was constantly warned to improve. Petitioners aver that Galay's attitude resulted to the decline in the company's efficiency and productivity. Petitioners presented a letter[4] dated February 23, 1999 and a notice of termination[5] dated August 16, 1999.

The Labor Arbiter found that Galay was illegally terminated for petitioners' failure to prove that she violated any company regulation, and for failure to give the proper notice as required by law.[6]

Petitioner appealed to the NLRC. The latter, however, denied the appeal for lack of merit and affirmed the decision of the Labor Arbiter.[7] A motion for reconsideration was subsequently filed but which was likewise denied.[8]

Petitioner elevated the case by certiorari to the Court of Appeals. But, petitioners failed to: state the full names and actual addresses of all the petitioners; attach the copies of all pleadings and supporting documents; properly verify the petition; and certify against forum-shopping. For these procedural lapses, the petition was dismissed.[9]

Petitioners moved for reconsideration and attached a board resolution authorizing petitioner Tolentino to legally represent the company. Nonetheless, the Court of Appeals denied the motion for lack of justifying circumstances, and because the attached board resolution was issued after the petition was filed.[10]

Hence, the instant petition for certiorari alleging that

I. The Honorable Court of Appeals grossly erred in relying too much on form rather than on the merits of the petition thereby denying petitioners of right to due process.

II. The NLRC acted in a whimsical, arbitrary and despotic manner with grave abuse of discretion when it ruled that:

- Petitioners failed to submit substantial evidence that will prove petitioners had withdrawn their trust and confidence upon the respondent notwithstanding the admitted strained and irreconcilable relationship between respondent Galay and petitioners.

- The cause for terminating the employment of respondent by the petitioner appears foreign to the causes of terminating an employment either under loss of trust and confidence or under "analogous causes."

- The NLRC acted in a despotic manner when it ruled that complainant is entitled to service incentive pay and 13th month pay in the absence of any claim, prayer or evidence.

III. It is a grave abuse of discretion on the part of the NLRC when it made it to appear that the right of worker for security of tenure is absolute.[11]

Simply, the issues are (1) Were the petitioners denied due process with the Court of Appeal's dismissal of the petition on technical grounds? (2) Is "attitude problem" a valid ground for the termination of an employee? (3) If in the affirmative, was this sufficiently proved? (4) Were the procedural requirements for an effectual dismissal present? and (5) Were the awards of service incentive pay and 13th month pay proper?

Anent the first issue, petitioners posit that instead of denying outright their petition on technicalities, the Court of Appeals should have given it due course. Petitioners explain that only the name and address of petitioner Heavylift were stated in the petition because it was the real party in interest, while the rest were mere nominal parties. They also reasoned that it was not necessary to attach the pleadings submitted to the Labor Arbiter as the arguments asserted therein were sufficiently tackled and reiterated in the petition. Lastly, petitioners submit that petitioner Tolentino was authorized by the Board of Directors as the legal representative of the agency and its officers.

Respondent counters that strict adherence to the rules of procedure is required to promote efficiency and orderliness. It adds that petitioners did not present any persuasive reason for a liberal application of the Rules.

The Rules of Court require that the petition for certiorari shall be verified,[12] contain the full names and actual addresses of all the petitioners and respondents, accompanied by a certified true copy of the subject decision, order or resolution and other documents relevant or pertinent thereto, and be submitted with the certification of non-forum shopping signed by the principal.[13]

We likewise have enunciated that the Rules of Court are designed for the proper and prompt disposition of cases. In not a few instances, we relaxed the rigid application of the rules to afford the parties opportunity to fully ventilate their cases on the merits. In that way, the ends of justice would be better served.[14]

Additionally, verification of a pleading is a formal, not a jurisdictional requisite. It is intended to secure an assurance that what are alleged in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.[15]

The rule on certification against forum-shopping requires strict compliance. The requirement underscores its mandatory nature such that it cannot be altogether dispensed with. However, under justifiable circumstances, the Court does allow substantial compliance.[16]

Further, we accept petitioners' inadvertence to state the names and addresses of the other petitioners as a minor defect. We also accept their explanation on their failure to incorporate the Labor Arbiter's decision.

Thus, mindful that the greater interest of justice would be served if the petition is adjudicated on its merits,[17] we will proceed with the remaining issues, and discuss them jointly.

Was there just cause in the termination of Galay?

Petitioners assert that it terminated Galay because she had an attitude problem. This situation, according to petitioners, is analogous to loss of trust and confidence. They aver that respondent did not deny the strained and irreconcilable relationship between them, in effect, admitting the same. Further, petitioners aver that having lost their trust and confidence on Galay, they could no longer make her in-charge of the confidential Crew Information System which accounts for the personnel, management and professional records of all the employees of and seamen connected with the company. Lastly, petitioners maintain that because of Galay's attitude, the company's work atmosphere had become very strained and had gravely affected the workers and their outputs. Galay's dismissal, according to petitioners, was merely an act of self-preservation.

Petitioners explained that they sent Galay a letter of notice dated February 23, 1999, apprising her of her low performance and her attitude problem, before the letter of her termination dated August 16, 1999. Petitioners claim that the company waited for six months, to give Galay a chance to undergo counseling before dismissing her from the service.

Galay counters that petitioners failed to show a just and valid cause for her termination, and that letters of notice and termination did not comply with the twin requirement of notice and hearing. Galay argues that the letter dated February 23, 1999 neither informed her of her infraction of any company rule that warrants disciplinary action; nor required her to submit an explanation.

An employee who cannot get along with his co-employees is detrimental to the company for he can upset and strain the working environment. Without the necessary teamwork and synergy, the organization cannot function well. Thus, management has the prerogative to take the necessary action to correct the situation and protect its organization. When personal differences between employees and management affect the work environment, the peace of the company is affected. Thus, an employee's attitude problem is a valid ground for his termination.[18] It is a situation analogous to loss of trust and confidence that must be duly proved by the employer. Similarly, compliance with the twin requirement of notice and hearing must also be proven by the employer.

However, we are not convinced that in the present case, petitioners have shown sufficiently clear and convincing evidence to justify Galay's termination. Though they are correct in saying that in this case, proof beyond reasonable doubt is not required, still there must be substantial evidence to support the termination on the ground of attitude.[19] The mere mention of negative feedback from her team members, and the letter dated February 23, 1999, are not proof of her attitude problem. Likewise, her failure to refute petitioners' allegations of her negative attitude does not amount to admission. Technical rules of procedure are not binding in labor cases.[20] Besides, the burden of proof is not on the employee but on the employer who must affirmatively show adequate evidence that the dismissal was for justifiable cause.[21]

In our view, neither does the February 23, 1999 letter constitute the required notice. The letter did not inform her of the specific acts complained of and their corresponding penalty. The law requires the employer to give the

worker to be dismissed two written notices before terminating his employment, namely, (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him.[22] Additionally, the letter never gave respondent Galay an opportunity to explain herself, hence denying her due process.

In sum, we find that Galay was illegally dismissed, because petitioners failed to show adequately that a valid cause for terminating respondent exists, and because petitioners failed to comply with the twin requirement of notice and hearing.

Apropos the award of service incentive pay and 13th month pay, we find that they were properly prayed for by Galay. These were subsumed in the complaint and under the position paper's general prayer of "such other relief as are just and equitable under the law". Petitioners failed to present evidence that these benefits were already paid. Moreover, this issue involves a question of fact which is not proper in a petition for certiorari and the determinations of the Labor Arbiter and the NLRC are afforded great weight and respect by the courts on these matters, when these findings are supported by substantial evidence, and devoid of any unfairness or arbitrariness. [23] Hence, their findings must be sustained.

WHEREFORE, the Decision dated September 16, 2000 of the Labor Arbiter in NLRC NCR Case No. 00-08-08461-99 as well as Decision dated August 30, 2001 and the Resolution dated September 28, 2001 of the National Labor Relations Commission in NLRC NCR CA No. 026466-2000 are hereby AFFIRMED.

Costs against petitioners.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[*] Sometimes spelled as "Rolado" in some parts of the records.

[1]Rollo, pp. 89-90. Penned by Associate Justice Teodoro P. Regino, with Associate Justices Eugenio S. Labitoria, and Rebecca De Guia-Salvador concurring.

[2] Id. at 59-65.

[3]Id. at 71-72.

[4] Id. at 37.

[5] Id. at 38.

[6] Id. at 45-51.

[7] Id. at 59-65.

[8]Id. at 71-72.

[9] Id. at 89-90.

[10] Id. at 95-96.

[11] Id. at 8-9.

[12]RULE 65, SECTION 1. Petition for certiorari.-When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion

amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

[13] Rule 46, Section 3.

[14] *El Reyno Homes, Inc. v. Ong*, G.R. No. 142440, 17 February 2003, 397 SCRA 563, 570.

[15] *Pajuyo v. Court of Appeals*, G.R. No. 146364, 3 June 2004, 430 SCRA 492, 509.

[16] *Gudoy v. Guadalquiver*, G.R. No. 151136, 27 May 2004, 429 SCRA 722, 727.

[17] *Fiel v. Kris Security Systems, Inc.*, G.R. No. 155875, 3 April 2003, 400 SCRA 533, 536.

[18] *See Navarro III v. Damasco*, G.R. No. 101875, 14 July 1995, 246 SCRA 260, 265.

[19] *Midas Touch Food Corp. v. NLRC*, G.R. No. 111639, 29 July 1996, 259 SCRA 652, 660.

[20] Labor Code, Art. 221; *Sta. Catalina College v. National Labor Relations Commission*, G.R. No. 144483, 19 November 2003, 416 SCRA 233, 243.

[21] *Samarca v. Arc-Men Industries, Inc.*, G.R. No. 146118, 8 October 2003, 413 SCRA 162, 168.

[22] *ACD Investigation Security Agency, Inc. v. Daquera*, G.R. No. 147473, 30 March 2004, 426 SCRA 494, 500.

[23] *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, 10 June 2004, 431 SCRA 583, 594.

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