

**ANVIL ENSEMBLES GARMENT, PETITIONER, VS. COURT OF APPEALS (FORMER SEVENTEENTH DIVISION), NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), HON. CRESENCIO RAMOS, JR., IN HIS...***G.R. NO. 155037. April 29, 2005*

Ponente: CALLEJO, SR., J.

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Before the Court is the petition for review on certiorari filed by Anvil Ensembles Garment of the Decision[1] dated January 18, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 58301. The assailed decision affirmed with modification that of the National Labor Relations Commission (NLRC) finding the petitioner guilty of unlawfully terminating the employment of respondent Melecio[2] Bonabon. Likewise sought to be reversed and set aside is the appellate court's Resolution dated August 23, 2002 denying the petitioner's motion for reconsideration.

The case arose from the following factual and procedural antecedents:

On January 7, 1997, petitioner Anvil Ensembles Garment engaged the services of respondent Melecio Bonabon as its company driver on probationary basis. He received a monthly salary of P4,500.00. On March 25, 1997, however, the petitioner advised the respondent not to report for work anymore. The petitioner did not offer any explanation for its action. The respondent pleaded that he be allowed to keep his job as jobs were scarce but his plea went unheeded. Consequently, on September 3, 1997, he filed a Complaint for Illegal Dismissal against the petitioner. The case was docketed as NLRC Case No. RAB-IV-9-9316-97-RI.

In lieu of a position paper, the petitioner submitted to the Labor Arbiter a joint affidavit of its employees, namely, Sally Duquila and Marivic Santos. In the said affidavit, Duquila and Santos averred that sometime in February 1997, the respondent and a certain Sarrah Pagaduan were instructed to pick up a cutting machine from Le Trish Enterprise to be brought or delivered to the petitioner's premises. Due allegedly to the respondent's negligence in handling it, the cutting machine was extensively damaged. As a result, the petitioner incurred an expense of P8,000.00 for the repair thereof. The respondent was allegedly dismissed for the said negligence.

In the Decision dated July 31, 1998, the Labor Arbiter rendered judgment declaring the petitioner guilty of illegal dismissal. The Labor Arbiter ruled that the petitioner miserably failed to substantiate its charge that the respondent was negligent in the handling of the cutting machine resulting in its destruction. Moreover, the Labor Arbiter found that the respondent was not afforded procedural due process when his employment was terminated by the petitioner. The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered declaring the complainant's dismissal from employment as illegal.

Accordingly, respondent is hereby directed to reinstate complainant to his former position and to pay him his

full backwages in the amount of P72,900.00, plus ten percent (10%) of the total amount due, or the sum of P7,290.00 as and by way of attorney's fees.

SO ORDERED.[3]

The petitioner filed its appeal with the NLRC. In the Resolution dated November 23, 1999, the NLRC affirmed in toto the decision of the Labor Arbiter. The petitioner sought the reconsideration thereof but its motion was denied by the NLRC.

Thereafter, the petitioner elevated the case to the CA by way of a petition for certiorari alleging grave abuse of discretion on the part of the NLRC when it affirmed the Labor Arbiter's decision finding the petitioner guilty of unlawfully terminating the respondent's employment. The petitioner, likewise, assailed that portion of the NLRC decision sustaining the award of attorney's fees in favor of the respondent.

In the Decision dated January 18, 2002, the appellate court dismissed the petition for certiorari as it applied the general rule that factual findings of the NLRC, particularly when they coincide with that of the Labor Arbiter, are accorded respect. Both the NLRC and Labor Arbiter found no substantial evidence demonstrating that the petitioner had a valid and just cause to effect the respondent's dismissal. The petitioner's evidence consisting of the joint affidavit of its employees did not give the details of the respondent's acts or omissions allegedly constituting negligence. Further, the respondent was not afforded procedural due process since the petitioner did not give him any notice, whether written or oral, to apprise him of the acts or omission for which he was dismissed.

The appellate court thus affirmed the decision of the NLRC finding the petitioner guilty of unlawfully terminating the respondent's employment. However, it deleted the award of attorney's fees in favor of the respondent as it ruled that the basis therefor was not stated in the decision of the Labor Arbiter or that of the NLRC. The dispositive portion of the assailed CA decision reads:

WHEREFORE, the decision dated November 23, 1999 of the National Labor Relations Commission is AFFIRMED with the MODIFICATION that the award of attorney's fees is DELETED.

SO ORDERED.[4]

In the assailed Resolution dated August 23, 2002, the appellate court denied the petitioner's motion for reconsideration holding as follows:

The arguments in support of petitioner's partial motion for reconsideration of the decision dated January 18, 2002 are mere reiteration of those presented in its petition and memorandum, and were already considered and passed upon in said decision. No new and/or substantial reasons were adduced as would warrant reconsideration of that decision.

WHEREFORE, for lack of merit, the motion for reconsideration is DENIED.

SO ORDERED.[5]

Undaunted, the petitioner now comes to the Court alleging that:

BY PROMULGATING THE ASSAILED 18 JANUARY 2002 DECISION AND 23 AUGUST 2002 RESOLUTION, WHICH AFFIRMED THE RULING OF THE NATIONAL LABOR RELATIONS COMMISSION, THE COURT OF APPEALS COMMITTED ERRORS OF JUDGMENT CONTRARY TO LAWS AS WELL AS EXISTING JURISPRUDENCE MERITING THE REVIEW OF THIS HONORABLE COURT.[6]

The petitioner insists that it had discharged its onus of proving that there was a valid ground for the respondent's

dismissal maintaining that the joint affidavit executed by its employees constituted substantial evidence. Moreover, the petitioner avers that even granting that it failed to comply with procedural due process requirements in effecting the respondent's dismissal, this lapse did not render the dismissal illegal but merely defective. As such, the appellate court should have only imposed a penalty on the petitioner and not declare it to have been guilty of illegal dismissal.

The petition is bereft of merit.

As correctly pointed out by the appellate court, the issue as to whether there was a valid ground for the respondent's dismissal is factual in nature. And it is axiomatic that findings of fact of quasi-judicial agencies, like the NLRC, are accorded not only respect but at times even finality if such findings are supported by substantial evidence.[7] This is especially so in this case, where the findings of the NLRC were affirmed by the appellate court. The findings of facts made therein can only be set aside upon showing of grave abuse of discretion, fraud or error of law.[8] None has been shown in this case.

Indeed, as unanimously found by the Labor Arbiter, NLRC and CA, the petitioner has miserably failed to substantiate its claim that the respondent was guilty of negligence. The sole evidence proffered by the petitioner to show the respondent's alleged negligence was the joint affidavit of its employees Sally Duquila and Marivic Santos stating:

- That, WE are the regular employees of ANVIL ENSEMBLES an importer/exporter garment firm with postal address at No. 9, Velasquez St., Bangiad, Taytay, Rizal.
- That, during the month of February, Melencio Bonabon and Sarrah Pagaduan were advised to pick-up the cutting machines to Le Trish Enterprise located at Cainta, Rizal, to be deliver (sic) at ANVIL ENSEMBLES.
- That, Ms. Sarrah advised Mr. Bonabon to arrange the cutting machine properly at the back of the "TAMARAW FIERA" to avoid any damage of the cutting machine on their way home to the factory of ANVIL ENSEMBLES.
- That, when they arrived at the factory the said cutting machine was totally damage[d] that needs to repair (sic) costing P8,000.00 pesos.
- That, because of that incident, he was terminated last March 22, 1997 for the act of negligence.
- That, his salary amounting to P891.25 was held pending because of that damages (sic).
- That, WE are executing this Affidavit for all legal purposes that it may serve.[9]

A careful perusal of this affidavit shows that, except for the bare allegation that the respondent was dismissed on March 22, 1997 "for the act of negligence," it failed to give the details or particulars of the acts or omission of the respondent that constituted negligence. Moreover, Article 282 of the Labor Code provides that the following grounds justify the dismissal of an employee:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of the 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 of any immediate member of his family or his duly-authorized representative; and

(e) Other causes analogous to the foregoing.

Thus, under the Labor Code, to be a valid ground for dismissal, the negligence must be gross and habitual. Gross negligence has been defined as the want or absence of even slight care or diligence as to amount to a reckless disregard of the safety of the person or property.[10] It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[11] Put differently, gross negligence is characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected.[12] In this case, contrary to its claim, the petitioner utterly failed to show that the respondent committed gross negligence as to warrant his dismissal.

While the respondent is only a probationary employee and does not enjoy permanent status, nonetheless, he is entitled to constitutional protection of security of tenure.[13] His employment may only be terminated for a valid and just cause or if he fails to qualify as a regular employee in accordance with the reasonable standards made known to him by the employer at the time of engagement and after due process.[14] Since neither circumstance attended the petitioner's termination of the respondent's employment, the appellate court correctly affirmed the decision of the NLRC finding the petitioner guilty of illegal dismissal.

WHEREFORE, the petition is DENIED for lack of merit. The Decision dated January 18, 2002 and Resolution dated August 23, 2002 of the Court of Appeals in CA-G.R. SP No. 58301 are AFFIRMED in toto.

**SO ORDERED.**

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Hilarion L. Aquino (retired) and Amelita G. Tolentino, concurring.

[2] Melencio in some pleadings.

[3] CA Rollo, p. 27.

[4] Rollo, p. 33.

[5] Rollo, p. 26.

[6] Id. at 15.

[7] Rosario v. Victory Ricemill, G.R. No. 147572, 19 February 2003, 397 SCRA 760.

[8] Id. at 766.

[9] CA Rollo, p. 51.

[10] Mitsubishi Motors Philippines Corporation v. Chrysler Philippines Labor Union, G.R. No. 148738, 29 June 2004, 433 SCRA 206.

[11] Ibid.

[12] Tres Reyes v. Maxim's Tea House, G.R. No. 140853, 27 February 2003, 398 SCRA 288.

[13] Cebu Marine Beach Resort v. National Labor Relations Commission, G.R. No. 143252, 23 October 2003, 414 SCRA 173.

[14] Id. at 177.

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