

**MICRO SALES OPERATION NETWORK AND WILLY BENDOL,
PETITIONERS, VS. THE NATIONAL LABOR RELATIONS COMMISSION
(SECOND DIVISION), LARRY HERMOSA, LEONARDO G. DE CASTRO
AND RAMIL BASINI...**

G.R. NO. 155279. October 11, 2005

Ponente: QUISUMBING, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-155279/>

QUISUMBING, J.:

For review on certiorari are the Resolutions[1] dated November 28, 2001 and September 3, 2002, respectively, of the Court of Appeals, in CA-G.R. SP No. 67755. The said Resolutions dismissed petitioners' special civil action for certiorari against the National Labor Relations Commission (NLRC) Resolution,[2] which affirmed the Labor Arbiter's Decision[3] finding petitioners herein liable for illegal dismissal.

The antecedent facts are as follows:

Petitioner Micro Sales Operation Network ("company" for brevity) is a domestic corporation engaged in local transportation of goods by land. Petitioner Willy[4] Bendol was the company's operations manager at the time of the controversy.

Private respondents Larry Hermosa, Leonardo de Castro, and Ramil Basinillo were employed by the company as driver, warehouseman, and helper, respectively. Hermosa was hired on November 17, 1997, de Castro on February 1, 1996, and Basinillo on February 4, 1998.

Hermosa failed to promptly surrender the ignition key of the company's vehicle after discharging his duties. Such failure was allegedly contrary to the company's standard operating procedure. Thus, he was asked to explain within 24 hours why disciplinary action should not be meted on him. He explained that he kept the ignition key because the vehicle was stalled when its battery broke down.[5] Unsatisfied with Hermosa's explanation, the company dismissed him on January 9, 1999.

De Castro was suspected of firing a gun during the blessing of the company's warehouse on December 10, 1998. The next day, he was placed under preventive suspension and temporarily banned from entering the company's premises. He was also asked to explain within 24 hours why he should not be terminated. He explained that he had no knowledge of the said incident.[6] As his suspension was indefinite and he received no recall order from petitioners, he no longer reported for work.

Basinillo alleged that sometime in September 1998, the company's security guard scolded him for not wearing the employee ID. On October 17, 1998, he was dismissed.

Thus, on February 10, 1999, Hermosa, de Castro, and Basinillo collectively filed a Complaint[7] for illegal dismissal before the Regional Arbitration Branch No. IV, docketed as NLRC Case No. RAB-IV-2-10765-99-C.

In his Decision[8] dated February 21, 2000, Labor Arbiter Antonio R. Macam found that private respondents were

illegally dismissed. The fallo of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of all complainants herein illegal and ordering respondents to reinstate them to their former or equivalent positions and to pay them full backwages, plus ten percent (10%) attorney's fees, computed as follows:

LARRY HERMOSA

From January 9, 1999 to Feb. 21, 2000

= 1 yr. 1 mo. & 12 days or 13.36 mos.

P220.00 x 26 x 13.36

=

P76,419.20

P76,419.20/12

=

6,368.27

P220.00 x 5

=

1,100.00

P83,887.47

LEONARDO DE CASTRO

From Dec. 12, 1998 to Feb. 21, 2000

= 1 yr. 2 mos. & 9 days or 14.30 mos.

P7,280.00 x 14.30

=

P104,104.00

P104,104.00/12

=

8,675.33

P7,280.00/26 x 5

=

1,400.00

P114,179.33

RAMIL BASINILLO

From Oct. 17, 1998 to Feb. 21, 2000
= 1 yr., 4 mos. & 4 days or 16.13 mos.

P200.00 x 26 x 16.13

=

P83,876.00

P83,876.00/12

=

6,989.67

P200.00 x 5

=

1,000.00

P 91,865.67

Total Full Backwages

=

P289,932.47

Plus 10% Attorney's Fees

=

28,993.25

GRAND TOTAL

P318,925.72

SO ORDERED.[9]

On appeal, the NLRC affirmed the Labor Arbiter's decision. It also denied petitioners' motion for reconsideration.

Undaunted, petitioners filed with the Court of Appeals a special civil action for certiorari. However, the appellate court dismissed the petition for being defective in form. It found that only the company signed the verification and certification on non-forum shopping. Petitioner Willy Bendol did not sign the same.

Petitioners' motion for reconsideration was denied. The appellate court reasoned that even if petitioner Willy Bendol was not impleaded as a real party in interest, records showed that he was impleaded as a co-respondent before the Labor Arbiter. Thus, the appellate court ruled, his failure to sign the verification and certification on non-forum shopping is a ground for the dismissal of the petition.

Hence, the instant petition anchored on the following grounds:

A. THE HONORABLE COURT OF APPEALS PLAINLY ERRED AND ACTED CONTRARY TO EXISTING LAW AND JURISPRUDENCE IN DISMISSING THE PETITION FOR CERTIORARI ON A MERE TECHNICALITY CONSIDERING THAT WILLY BENDOL WAS JOINED MERELY AS A NOMINAL PARTY TO THE PETITION.

B. MORE IMPORTANTLY, JUSTICE WOULD BE BEST SERVED IF THE PETITION WAS GIVEN DUE COURSE CONSIDERING THAT THE PUBLIC RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE DECISION OF LABOR ARBITER MACAM CONSIDERING THAT:

- THERE IS NO FACTUAL OR EVIDENTIARY BASIS TO SUPPORT THE FINDING OF ILLEGAL DISMISSAL. DUE PROCESS AND FAIR PLAY DICTATE THAT THE PUBLIC RESPONDENT COMMISSION POINT OUT THE PARTICULAR FACTUAL FINDING OF THE LABOR ARBITER WHICH JUSTIFIED THE FINDING OF ILLEGAL DISMISSAL.

- THE PUBLIC RESPONDENT COMMISSION IGNORED THE FACT THAT THE LABOR ARBITER'S FINDING OF ILLEGAL DISMISSAL RESTS ON PURE SPECULATION, CONJECTURE AND SURMISES.

- PRIVATE RESPONDENT BASINILLO HIMSELF DENIED THAT HE WAS DISMISSED BY PETITIONERS.

- THE ACTS OF HERMOSA CONSTITUTE WILLFUL DISOBEDIENCE JUSTIFYING HIS DISMISSAL.

- THE HONORABLE COMMISSION COMPLETELY IGNORED THE FACT THAT PRIVATE RESPONDENTS' SINGULAR CAUSE OF ACTION IS THAT FOR ILLEGAL DISMISSAL. THUS, THE LABOR ARBITER'S AWARD OF SEPARATION PAY AND ATTORNEY'S FEES WAS UTTERLY WITHOUT BASIS.[10]

Petitioners insist Willy Bendol was impleaded merely because he was the immediate supervisor of private respondents. They argue that the real party in interest in this case is the company. In any case, petitioners point out that Bendol was no longer connected with the company when the special civil action for certiorari was filed.

Private respondents, however, maintain that formal requirements must be strictly complied with. Thus, they posit, the Court of Appeals correctly dismissed the petition for failure of one of the petitioners to sign the verification and certification on non-forum shopping.

Further, petitioners contend that Hermosa's omission constituted willful disobedience justifying his dismissal. With respect to de Castro, petitioners claim that he was merely suspended. As for Basinillo, petitioners point to an unsworn statement,[11] where he denied filing any complaint for illegal dismissal against the company.

Private respondents, however, counter that petitioners failed to prove willful disobedience as a just cause for Hermosa's termination. Moreover, they posit that de Castro's preventive suspension constituted constructive

dismissal because it was for an indefinite period and no recall order was issued by the company. Private respondents also argue that Basinillo's purported unsworn statement has no probative value.

Lastly, petitioners contend the Labor Arbiter erroneously awarded separation pay and attorney's fees not prayed for. On this point, private respondents quickly point out that, contrary to petitioners' claim, separation pay was not awarded at all. They also claim that the award of attorney's fees was in accordance with law.

We resolve to give due course to the petition.

The requirement regarding verification of a pleading is not jurisdictional. Such requirement is simply a condition affecting the form of the pleading, non-compliance with which does not necessarily render the pleading fatally defective.[12]

The Court of Appeals relied on *Loquias v. Office of the Ombudsman*,[13] which held that a certification on non-forum shopping signed by only one of two or more petitioners is defective, unless he was duly authorized by his co-petitioner. However, the said ruling applies when the co-parties are being sued in their individual capacities. Note that the petitioners in *Loquias*[14] are the mayor, vice-mayor, and three members of the municipal board of San Miguel, Zamboanga del Sur. The said co-parties were charged with violation of Republic Act No. 3019[15] in their various capacities.

In the instant case, the petitioners are the company and its operations manager, Willy Bendol. The latter was impleaded simply because he was a co-respondent in the illegal dismissal complaint. He has no interest in this case separate and distinct from the company, which was the direct employer of private respondents. Any award of reinstatement, backwages, and attorney's fees in favor of private respondents will be enforced against the company as the real party in interest in an illegal dismissal case. Petitioner Bendol is clearly a mere nominal party in the case. His failure to sign the verification and certification on non-forum shopping is not a ground for the dismissal of the petition. The appellate court erred in dismissing outright petitioners' special civil action for certiorari solely on that ground.

The logical course of action now is to direct the Court of Appeals to give due course to the special civil action for certiorari. However, to obviate further delay in the resolution of this case, we shall bring the present controversy to rest.

After weighing the parties' arguments and carefully reviewing the records of this case, we agree with the findings and conclusions of the Labor Arbiter as affirmed by the NLRC.

Hermosa was unjustly dismissed. For willful disobedience to be a valid cause for dismissal, the following twin elements must concur: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[16]

Both elements are lacking. We find no hint of perverse attitude in Hermosa's written explanation.[17] On the contrary, it appears that the alleged company procedure for leaving the ignition key of the company's vehicles within office premises was not even made known to him.[18] Petitioners failed to prove Hermosa willfully disobeyed the said company procedure. At any rate, dismissal was too harsh a penalty for the omission imputed to him.

De Castro was likewise unlawfully terminated. Contrary to petitioner's claim, records show that de Castro was not merely suspended. He was dismissed for alleged abandonment of work.[19] To constitute abandonment as a just cause for dismissal, there must be: (a) absence without justifiable reason; and (b) a clear intention, as manifested

by some overt act, to sever the employer-employee relationship.[20]

Petitioners failed to prove that de Castro abandoned his job. A clear intention to end the employer-employee relationship is missing. He did not report for work simply because he was indefinitely suspended. Moreover, the fact that de Castro filed a case for illegal dismissal against petitioners belies abandonment.[21]

In the case of Basinillo, petitioners rely solely on his purported unsworn statement alleging he was never dismissed. However, not having been sworn to, the said document has no probative value. While the Court is liberal in the conduct of proceedings for labor cases, proof of authenticity as a condition for the admission of documents is nonetheless required.[22]

Petitioners failed to present evidence of Basinillo's continuous contribution to SSS or uninterrupted pay slips to prove he remained under the company's employ. Hence, the complaint[23] for illegal dismissal filed by Basinillo stands and speaks for itself. Once a case for illegal dismissal is filed, the burden is on the employer to prove that the termination was for valid cause.[24] Petitioners failed to discharge this burden persuasively.

Finally, petitioners lament that the Labor Arbiter erred in granting respondents separation pay and attorney's fees. We note, however, that separation pay was not awarded at all; thus, any discussion on this matter would be futile. On the other hand, the award of attorneys' fees, though not prayed for, is sanctioned by law[25] and must be upheld.

WHEREFORE, the assailed Resolutions dated November 28, 2001 and September 3, 2002, respectively, of the Court of Appeals, in CA-G.R. SP No. 67755, are SET ASIDE. The NLRC Resolution affirming the Labor Arbiter's Decision, finding petitioners liable for illegal dismissal, is AFFIRMED. Costs against petitioners.

SO ORDERED.

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

[1] Rollo, pp. 44-45 and 47-48. Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Andres B. Reyes, Jr., and Amelita G. Tolentino concurring.

[2] Id. at 132-139.

[3] Id. at 99-106.

[4] Sometimes "Wilfredo" in some parts of the records.

[5] Records, p. 80.

[6] Id. at 253.

[7] Id. at 1-2.

[8] Rollo, pp. 99-106.

[9] Id. at 105-106.

[10] Id. at 22-23.

[11] Id. at 63.

[12] *Shipside Incorporated v. Court of Appeals*, G.R. No. 143377, 20 February 2001, 352 SCRA 334, 345-346.

[13] G.R. No. 139396, 15 August 2000, 338 SCRA 62, 68.

[14] Ibid.

[15] Otherwise known as the "Anti-Graft and Corrupt Practices Act."

[16] *Bascon v. Court of Appeals*, G.R. No. 144899, 5 February 2004, 422 SCRA 122, 131.

[17] Records, p. 80.

[18] Id. at 81.

[19] Id. at 254.

[20] *Globe Telecom, Inc. v. Florendo-Flores*, G.R. No. 150092, 27 September 2002, 390 SCRA 201, 212.

[21] *Hyatt Taxi Services, Inc. v. Catinoy*, G.R. No. 143204, 26 June 2001, 359 SCRA 686, 695.

[22] *Asuncion v. National Labor Relations Commission*, G.R. No. 129329, 31 July 2001, 362 SCRA 56, 63-64.

[23] Records, pp. 1-2.

[24] *Sy v. Court of Appeals*, G.R. No. 142293, 27 February 2003, 398 SCRA 301, 310.

[25] Civil Code, Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

...

(7) In actions for the recovery of wages of ... laborers and skilled workers;

...

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.