

## **INDUSTRIAL & TRANSPORT EQUIPMENT, INC. AND/OR RAYMOND JARINA, PETITIONERS, VS. TOMAS TUGADE AND CRESENCIO TUGADE, RESPONDENTS.**

*G.R. No. 158539. January 15, 2009*

Ponente: AZCUNA, J.

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### **AZCUNA, J.:**

This is a petition for review on certiorari under Rule 45 of the Rules of Court, seeking to annul and set aside the Decision of the Court of Appeals dated March 14, 2003 which affirmed the decision of the National Labor Relations Commission (NLRC) finding petitioners liable for illegal dismissal and ordering the payment of backwages and separation pay to respondents, and the Resolution dated May 29, 2003 denying petitioners' motion for reconsideration.

As found by the Court of Appeals, the facts are as follows:

Petitioner is a corporation engaged in the business of motor vehicle repair. Private respondents, Tomas Tugade and his brother Cresencio Tugade, were hired on November 14, 1978 and on May 11, 1984, respectively, by petitioner corporation. Tomas was employed as a diesel mechanic, while Cresencio was the officer-in-charge at petitioner's shop on Visayas Avenue.

Private respondents' dismissal stemmed from an incident which took place on March 22, 1998, when Mr. Faustino Cabel, one of the regular customers of petitioner, arrived at the shop to have his vehicle repaired. On March 27, 1998, respondent Cresencio Tugade, after making the necessary verifications regarding the payment of the service made by Mr. Cabel, released the latter's vehicle.

On March 28, 1998, Felix P. Broqueza, petitioner's Personnel and Administration Manager issued a memorandum against Engr. Fernando Fabros and respondents Tomas and Cresencio Tugade, suspending them for ten (10) working days from March 30, 1998 to April 11, 1998 for disobedience, incompetence and gross negligence. The memorandum stated, among others, that the three employees released the vehicle to Mr. Cabel, despite the instructions made by the Company president not to release the same, unless and until he made full settlement of his obligation which remained unpaid since 1996.

After the lapse of ten (10) days suspension or on April 12, 1998, the Tugades allegedly did not report for work and were considered absent without leave. On April 13, 1998, another memorandum was issued by Felix Broqueza directing him to make the necessary explanation why he failed to report for work.

On April 16, 1996, however, the Tugades filed a complaint for illegal dismissal with prayer for payment of separation pay in lieu of reinstatement, backwages and damages against petitioner.[1]

On September 28, 1998, Labor Arbiter Potenciano S. Cañezares rendered his Decision, dismissing the complaint for lack of merit but awarding separation pay of P56,680, the dispositive portion of which reads:

WHEREFORE, the above-captioned case is hereby DISMISSED for lack of merit.

However, We find it in conformity with labor justice, considering the long services of the complainants, to award them separation pay equivalent to one-half month pay for every year of service, which as computed by Patricia B. Pangilinan of the Commission's NLRC NCR Branch are the following:

Separation Pay (1/2)

11/14/78-09/30/98

P218 x 13 x 20 yrs. P56,680.00

SO ORDERED.

Both parties appealed the decision of the Labor Arbiter to the NLRC which rendered a decision on July 30, 1999 that reversed the Labor Arbiter by ruling that respondents were illegally dismissed and ordering payment of backwages and separation pay. The motion for reconsideration filed by petitioners was also denied by the NLRC in a Resolution dated September 20, 1999.

The Court of Appeals, as stated, affirmed the NLRC decision.

On July 8, 2003, petitioners filed the present petition for review on certiorari with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction assailing the Decision and Resolution of the Court of Appeals.

In a Resolution dated March 10, 2004, this Court issued a temporary restraining order enjoining respondents from enforcing the assailed Decision and Resolution of the Court of Appeals.

Petitioners contend that:

I

THE COURT OF APPEALS SERIOUSLY ERRED IN DECLARING THAT RESPONDENTS WERE ILLEGALLY DISMISSED FROM EMPLOYMENT.

II

THE COURT OF APPEALS SERIOUSLY ERRED IN ORDERING THE PAYMENT OF BACKWAGES AND SEPARATION PAY TO RESPONDENTS.

Dismissal connotes a permanent severance or complete separation of the worker from the service on the initiative of the employer regardless of the reasons therefor.[2] Based on the foregoing, it can hardly be said that respondents were dismissed from employment rather than merely temporarily suspended. Nowhere in the proceedings or pleadings filed before the Labor Arbiter or the NLRC did respondents dispute that they were merely suspended from March 30, 1998 to April 11, 1998. As shown by the contents of the memorandum issued to respondents, they were not dismissed but merely suspended from employment:

xxx However, despite our President's direct and clear instruction you released the vehicle to Mr. Faustino Cabel without the necessary payment. This is a clear disobedience, incompetence and gross negligence of your duty as Supervisor.

In view thereof, we regret to inform you that you are being suspended for ten (10) working days without pay effective March 30 to April 11, 1998.

Repetition of the same offense will be dealt with accordingly in accordance with the labor law. (Annex "2" to Annex "F" to Annex "C" hereof)

This piece of evidence clearly disproves the finding of the Court of Appeals that respondents were terminated

from employment supposedly based on a memorandum prohibiting their entry into the company premises. A settled exception to the rule generally sustaining the factual determination of the Court of Appeals is when it disregards a vital evidence in reaching its finding. This obtains here.

There is also no dispute that petitioners instructed the respondents not to release the vehicle of Mr. Faustino Cabel unless and until the latter has completely settled his obligations with the company. However, despite the fact that Mr. Cabel failed to settle his obligations and in clear defiance of the petitioners' order, respondents released the car to Mr. Cabel. Petitioners were clearly acting within their rights in suspending respondents.

In numerous cases, this Court has sustained the right of employers to exercise their management prerogatives to discipline erring employees, thus:

However, petitioner loses sight off the fact that the right of an employer to regulate all aspects of employment is well settled. This right, aptly called management prerogative, gives employers the freedom to regulate, according to their discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. In general, management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations.[3]

Therefore, the complaint for illegal dismissal filed by respondents was premature, since even after the expiration of their suspension period, they refused, despite due notice, to report to work. In fact, in their Memorandum of Appeal, respondents admitted having received petitioners' return-to-work memorandum which, however, became futile because they hastily filed the complaint for illegal dismissal.

Since there was no dismissal to speak of, there is no basis to award any backwages to respondents. Under Article 279 of the Labor Code, an employee is entitled to reinstatement and backwages only if he was illegally dismissed.

The decision of the Labor Arbiter is, therefore, sustained, finding that respondents abandoned their positions by failing to return to work despite management directives to do so, and awarding separation pay of P56,680 each to respondents.

Nevertheless, this Court agrees with the Court of Appeals that petitioners failed to follow the requirements of notices after respondents abandoned their positions. Respondents are therefore entitled to an additional award of P30,000 each in accordance with the doctrine in the Agabon[4] case.

WHEREFORE, the Decision dated March 14, 2003 and the Resolution dated May 29, 2003 of the Court of Appeals are hereby MODIFIED. The decision of the National Labor Relations Commission dated July 30, 1999 is REVERSED and the Decision of the Labor Arbiter dated September 28, 1998 is REINSTATED with MODIFICATION, awarding separation pay to respondents in the amount of P56,680 each plus P30,000 each in accordance with the Agabon doctrine.

No costs.

### **SO ORDERED.**

Puno, C.J., (Chairperson), Carpio, Corona, and Leonardo-De Castro, JJ., concur.

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[1]See CA Decision, Annex "B" of Petition, pp. 44-45.

[2]Jo Cinema Corporation v. Abellana, G.R. No. 132837, June 28, 2001, 360 SCRA 142, 148.

[3] Deles, Jr. v. National Labor Relations Commission, G.R. No. 121348, March 9, 2000, 327 SCRA 540, 547-548.

[4] Agabon v. National Labor Relations Commission, G.R. No. 158693, November 17, 2004, 442 SCRA 573.

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