

NISSAN NORTH EDSA BALINTAWAK, QUEZON CITY, PETITIONER, VS. ANGELITO SERRANO, JR. AND EDWIN TAGULAO, RESPONDENTS.*G.R. No. 162538. June 04, 2009*

Ponente: CARPIO, J.

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This is a petition for review on certiorari[1] assailing the Decision[2] dated 21 March 2003 and the Resolution[3] dated 13 February 2004 of the Court of Appeals (appellate court) in CA-G.R. SP No. 67662. The appellate court reinstated the Decision[4] dated 6 June 2000 of Labor Arbiter Melquiades Sol D. Del Rosario (Arbiter Del Rosario) in NLRC NCR Case No. 00-03-02755-99, holding petitioner Nissan North EDSA Balintawak (Nissan) of Quezon City liable for the illegal dismissal of respondents Angelito Serrano, Jr. (Serrano) and Edwin Tagulao (Tagulao).

The Facts

Nissan hired Serrano on 2 August 1995 as driver in the Parts Department and assigned him to drive a pick-up vehicle. Serrano's daily load was valued between P200,000 to P400,000. Serrano twice received merit increases in 1996 for his satisfactory work performance. Nissan hired Tagulao on 1 July 1996 also as driver in the Parts Department, but assigned him to drive a motorcycle. The value of Tagulao's daily load did not fall below P20,000. Tagulao twice received merit increases in 1997.

Nissan claimed that Serrano and Tagulao were responsible for the non-delivery of two rolls of tint on 9 July 1998. Serrano and Tagulao allegedly picked up the rolls from Joan Sokua of Sarao corner T. Yap Streets, Corinthian Gardens, Edsa, Mandaluyong City. On 3 September 1998, George Geronimo (Geronimo), head of the Parts and Accessories Department, issued a memorandum to Tagulao asking for a written explanation for the non-delivery of the two rolls of tint. Tagulao submitted his written explanation on 8 September 1998 and stated that he picked up two rolls of tint on 21 July 1998 and not on 9 July. Tagulao unloaded the rolls on 22 July 1998 and notified Teresa Catudio (Catudio) and Mon Espie of the Parts and Accessories Department. The next day, Catudio issued a memorandum which stated that she never received the delivery referred to in Tagulao's written explanation. For his part, Serrano submitted his written explanation on 26 September 1998. Serrano stated that he and Tagulao picked up two rolls of tint on 9 July 1998 but had no knowledge of actual delivery as he had already left the office by then. Tagulao submitted another written explanation on 26 September 1998, insisting that the two rolls of tint were picked up on 21, not 9, July 1998.

Steve G. Chu (Chu), Vice-President for Parts and Services, instructed Geronimo to finish the investigation and submit his report with recommendations. Nathaniel Ballares, Personnel and Administrative Manager, wrote a memorandum dated 21 October 1998 to ask Tagulao and Serrano for yet another written explanation. Tagulao and Serrano stated that they picked up two rolls of tint, endorsed the same to a Mr. David of the Accessories Department, yet could not recall the exact date.

Nissan served Tagulao and Serrano a Notice of Termination dated 3 November 1998 and severed their employment after 30 days from receipt of notice. Tagulao and Serrano filed a joint complaint for illegal dismissal and separation pay plus backwages, non-payment of salaries, service incentive leave pay, 13th month pay, overtime pay, damages, and attorney's fees before the Labor Arbiter. Their complaint was docketed as NLRC NCR Case No. 00-03-02755-99.

The Ruling of the Labor Arbiter

In his Decision dated 6 June 2000, Arbiter Del Rosario found that Tagulao and Serrano's dismissals were indeed illegal. From the memo documents, Arbiter Del Rosario inferred that Chu wanted to make it appear that despite Tagulao and Serrano's receipt of two rolls of tint, Tagulao and Serrano failed to deliver the rolls to Nissan. Chu had Catudio antedate a 28 July 1998 delivery to 9 July 1998. There was really no pick up of two rolls of tint on the questioned 9 July 1998 date. Tagulao and Serrano picked up ten rolls of tint on 28 July 1998 and delivered them to Nissan on the same day. Because of these factual findings, Nissan failed to establish by substantial evidence the charge of asportation upon which it based Tagulao and Serrano's dismissals. The consequences of Arbiter Del Rosario's findings weighed heavily against Nissan, as shown below:

For [Nissan's] failure to establish a valid cause to dismiss [Tagulao and Serrano], their termination from work is invalid and illegal. Consequently, they should be paid their backwages reckoned from December 3, 1998 (Annex J complainant's position paper) as the memorandum of termination is dated November 3, 1998 and it is to [take] effect 30 days thereafter.

As of May 3, 2000 at P5,270.88 a month, Angelito Serrano, Jr.'s backwages in addition to the payment of his separation pay at one (1) month pay per year of service, a fraction of six (6) months being considered one whole year, has amounted to P94,875.84.

With regard to Edwin Tagulao, as he was [last] receiving the monthly salary of P5,477.88, his accumulated backwages as of May 3, 2000 is also P98,601.84 in addition to his separation pay of one (1) month per year of service, a fraction of six (6) months being considered as one whole year.

Both complainant[s] should likewise received [sic] their half[-]month pay for services rendered. For Serrano, Jr., the sum of P2,635.44; and for Tagulao the sum of P2,738.94.

As regards overtime pay, there is nothing on record to support this claim[.] [N]ot only does the law require the claimant to prove by substantial evidence his entitlement thereto but this claim must be denied because by being drivers (not purchasers [as] claimed by [Nissan]) complainants are considered field workers who are not entitled to overtime pay.

As to SIL and 13th month pay, [Nissan] admits that these benefits were not paid because of the complainants' failure to [have] their clearances processed. They are therefore entitled to proportionate reliefs.

As to the claim for moral and actual damages, complainants indicated as party respondent only Nissan North EDSA Balintawak (QC) and not the persons responsible for their problems. [Nissan] being a corporate person could not be liable for the individual acts of the employees working for the company and hence could not be sentenced to pay damages.

Since [Tagulao and Serrano] were assisted by counsel de parte, attorney's fees equivalent to 10% of the awarded money claims must be paid by [Nissan].

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding [Tagulao and Serrano's] dismissals to be illegal. Consequently, they should be paid backwages reckoned from their dismissal on December 3, 1998 and which as of May 3, 2000 has accumulated in the sum of P94,875.84 for Angelito Serrano, Jr., and P98,601.84 for Edwin Tagulao plus separation pay at one (1) month per year of service, a

fraction of six (6) months being considered as one (1) whole year.
[Nissan] should further pay complainants as follows:

Angelito Serrano, Jr.

- a) P 878.50 SIL;
- b) P4,421.57 13th month pay (proportionate);
- c) P2,635.44 unpaid wages; [and]
- d) 10% as attorney's fees.

Edwin Tagulao

- a) P 913.00 SIL;
- b) P4,595.33 13th month pay (proportionate);
- c) P2,738.94 unpaid wages; [and]
- d) 10% as attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.[5]

The Ruling of the NLRC

In its Decision[6] promulgated on 25 June 2001, the NLRC affirmed the decision of the Labor Arbiter but deleted the award of backwages and separation pay for lack of legal basis. The NLRC ruled that Arbiter Del Rosario's award of backwages to Tagulao and Serrano violated Section 3, Rule V of the NLRC Rules of Procedure. The NLRC agreed with Nissan's assertion that Arbiter Del Rosario gravely abused his discretion amounting to lack of jurisdiction when he awarded backwages to Tagulao and Serrano even if the award of backwages was not prayed for in the complaint. The ratio for the NLRC's decision reads as follows:

The NLRC Rules of Procedure (Section 3, Rule V) clearly state, among others, that the verified position papers of the parties shall cover only those claims and causes of action raised in the complaint, and the parties shall thereafter not be allowed to allege, or present evidence to prove, facts not referred to and any cause or causes of action not included in the complaint. In the case at bar, the complaint of complainants never state "illegal dismissal" as one of their causes of action, as well as, "reinstatement" or "payment of backwages" as among the reliefs prayed for. Instead, they claimed for payment of "separation pay" However, the Labor Arbiter below proceeded in granting payment of backwages to complainants plus separation pay.

Respondent-appellant's contention that the cause or causes of action not stated in the complaint must not be entertained and cannot be given due course, is well-taken. Since the complainants asked only for payment of separation pay in their complaint and never prayed for reinstatement with backwages, then the ruling of the Labor Arbiter below awarding backwages to complainants is in violation of the Revised NLRC Rules of Procedure above-cited. In general, the remedy for illegal dismissal is the reinstatement of the employee to his former position without loss of seniority rights and the payment to him of backwages [Santos v. NLRC, 154 SCRA 166 (1987)]. But, there may be instances where reinstatement is not a viable remedy or where the relations between the employer and employee have been so severely strained that it is not advisable to order reinstatement [Asiaworld Publishing House, Inc. v. Ople, 152 SCRA 219 (1987)], or where the employee decides not to be reinstated [Starlite Plastic Industrial Corp. v. NLRC, 171 SCRA 315, 326 (1989)]. In such events, the employer will instead be ordered to pay separation pay. Considering the fact that the herein complainants never decide to be reinstated as evidenced by their failure or non-inclusion of the same in the reliefs they prayed for in their complaint, it is error on the part of the Labor Arbiter to award backwages in the absence of any prayer for reinstatement. For, where the employee has manifested that he is not anymore interested in reinstatement, award of backwages is improper (International Travel Corp. v. NLRC, G.R. No.

70859, Dec. 12, 1986). Hence, the award of backwages made by the Labor Arbiter to the complainants is null and void it having been issued in grave abuse of discretion amounting to lack of jurisdiction.

SO ORDERED.[7]

The Ruling of the Appellate Court

In its Decision[8] promulgated on 21 March 2003, the appellate court set aside the decision of the NLRC and reinstated the decision of Arbiter Del Rosario.

The appellate court found that a mere cursory look at the pro-forma complaint form of Tagulao and Serrano shows that they marked the following causes of action: illegal dismissal, non-payment of 15 days salary, overtime pay, separation pay, service incentive leave, moral and exemplary damages, and attorney's fees. Tagulao and Serrano prayed for reinstatement and the payment of unpaid salaries and wages for 15 days, service incentive leave, overtime pay, proportionate 13[th] month pay, moral and exemplary damages, and attorney's fees. The appellate court declared that the NLRC "overlooked the fact that 'illegal dismissal' was one of the causes of action and 'reinstatement' was one of the reliefs prayed for. The complaint itself was clearly very obvious. *Res ipsa loquitur*." Although the relief of backwages was not in the complaint, backwages was one of the reliefs prayed for in Tagulao and Serrano's position paper. Section 3, Rule V of the NLRC's New Rules of Procedure allows claims asserted in the position paper.

The appellate court also declared that Tagulao and Serrano's dismissals were illegal because Nissan failed to prove by substantial evidence the charge of asportation of company property by Tagulao and Serrano.

The dispositive portion of the appellate court's decision reads as follows:

WHEREOF, premises considered, the decision of the NLRC dated 25 June 2001 and the Minute Resolution dated 30 July 2001 are hereby REVERSED and SET ASIDE. The decision of Labor Arbiter Melquiades Sol D. Del Rosario dated 6 June 2000 is REINSTATED.

SO ORDERED.[9]

The appellate court denied Nissan's motion for reconsideration in a Resolution promulgated on 13 February 2004.[10]

The Issues

Nissan raises two issues before this Court. First, Nissan questions the appellate court's ruling that Nissan failed to establish the charge of asportation of company property against Tagulao and Serrano. Nissan alleges that the termination of Tagulao and Serrano is clearly supported by evidence of asportation. Second, Nissan claims that, contrary to the appellate court's ruling, Tagulao and Serrano are not entitled to backwages and separation pay.

The Ruling of the Court

The petition has no merit.

We see no reason to overturn the findings of fact of Arbiter Del Rosario, the NLRC, and the appellate court. Nissan failed to prove that Tagulao and Serrano were responsible for the loss of two rolls of tint. The records of the case show that there was a discrepancy between the dates of pick up and delivery as alleged by Nissan and as alleged by Tagulao and Serrano. Even Catudio, Nissan's employee, stated that she changed the dates on the delivery receipt of the two rolls of tint on the instruction of her boss.

Loss of trust and confidence, to be a valid ground for an employee's dismissal, must be based on a willful breach and founded on clearly established facts. The burden of proof of dismissal rests entirely upon the employer. In the

present case, Nissan illegally dismissed Tagulao and Serrano because Nissan failed to prove that Tagulao and Serrano were terminated for a valid cause. Tagulao and Serrano are thus entitled to reinstatement and to receive backwages.

The NLRC's decision limited itself as to whether Tagulao and Serrano prayed for reinstatement with backwages. The appellate court's decision emphasized that Tagulao and Serrano indeed asked for these reliefs in their complaint and in their position paper. The appellate court's ruling is supported by Section 2, Rule V of The New Rules of Procedure of the NLRC which reads:

Submission of Position Papers/Memorandum. -- Should the parties fail to agree upon an amicable settlement, either in whole or in part, during the conferences, the Labor Arbiter shall issue an order stating therein the matters taken up and agreed upon during the conferences and directing the parties to simultaneously file their respective verified position papers.

These verified position papers shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony. The parties shall thereafter not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents. Unless otherwise requested in writing by both parties, the Labor Arbiter shall direct both parties to submit simultaneously their position papers/memorandum with the supporting documents and affidavits within fifteen (15) calendar days from the date of the last conference, with proof of having furnished each other with copies thereof.

Article 279 of the Labor Code provides that "[a]n 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." Since, in the present case, reinstatement is no longer practicable or feasible, separation pay may be awarded in lieu of reinstatement. Moreover, the awards of separation pay and backwages are not mutually exclusive and both may be given to Tagulao and Serrano.

The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and, secondly, the payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement. The statutory intent on this matter is clearly discernible. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his status quo ante dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies —reinstatement and payment of backwages — make the dismissed employee whole who can then look forward to continued employment. Thus do these two remedies give meaning and substance to the constitutional right of labor to security of tenure. The two forms of relief are distinct and separate, one from the other. Though the grant of reinstatement commonly carries with it an award of backwages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non-availability of the other. x x x As the term suggests, separation pay is the amount that an employee receives at the time of his severance from the service and x x x is designed to provide the employee with "the wherewithal during the period that he is looking for another employment." In the instant case, the grant of separation pay was a substitute for immediate and continued re-employment with the private respondent Bank. The grant of separation pay did not redress the injury that is intended to be relieved by the second remedy of backwages, that is, the loss of earnings that would have accrued to the dismissed employee during the period between dismissal and reinstatement. Put a little differently, payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal; separation pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before

locating a replacement job. x x x The grant of separation pay was a proper substitute only for reinstatement; it could not be an adequate substitute both for reinstatement and for backwages.[11] (Emphasis added)

WHEREFORE, we DENY the petition. We AFFIRM the Decision dated 21 March 2003 and the Resolution dated 13 February 2004 of the Court of Appeals in CA-G.R. SP No. 67662.

SO ORDERED.

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

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 33-46. Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Romeo A. Brawner and Danilo B. Pine, concurring.

[3] Id. at 48-49.

[4] Id. at 59-71.

[5] Id. at 69-71.

[6] Id. at 72-79. Penned by Commissioner Victoriano R. Calaycay with Commissioners Raul T. Aquino and Angelita A. Gacutan, concurring.

[7] Id. at 76-79.

[8] Id. at 33-46.

[9] Id. at 46.

[10] Id. at 48-49.

[11] Santos v. National Labor Relations Commission, 238 Phil. 161, 166-168 (1987).

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