

CENTRAL PHILIPPINES BANDAG RETREADERS, INC., PETITIONER, VS. PRUDENCIO J. DIASNES, RESPONDENT.

G.R. No. 163607. July 14, 2008

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

Respondent Prudencio J. Diasnes was initially hired by petitioner Central Philippines Bandag Retreaders, Inc. (Bandag) as technical service representative for the Visayas and Bicol areas. In the course of his employment with Bandag, Diasnes was able to show his strengths and received numerous awards and citations. In 1995, Diasnes received a promotional appointment as sales manager/officer-in-charge and was assigned to manage Eastern Visayas Retreaders, Inc. based in Tacloban City, with a service area covering the whole of Region VIII.

It was at this latest posting that Diasnes' work performance started to deteriorate. From July to September in 1995, six (6) company-issued checks were dishonored for causes attributable to Diasnes and for which he was suspended for six (6) days. It was also during this two-month stretch that his absences and tardiness became more frequent.

On January 2, 1996, Diasnes received a memorandum from his supervisor, Loreto C. Rico, relieving him from his duties as sales manager of Region VIII. Two days after, Diasnes received a notice to appear before the Employee Adjudication Committee on January 9, 1996 to resolve the matter of his relief. After the meeting, the committee issued the following report and recommendations:

Therefore, the committee unanimously agreed that SM-OIC Prudencio Diasnes be: Relieved for three (3) months. This will give him enough time to help his wife's problem; After the period lapsed he may return to work, but with another position or function; if he desire[s] to retire from the company separation/retirement pay may be granted to him.[1]

Diasnes, however, did not avail himself of any of the options set forth in the committee's report and recommendations, but requested a Cebu City assignment which his employer granted. In Cebu City, Diasnes' performance as sales supervisor was far from encouraging. His attendance and punctuality were likewise very poor. To top it all, Diasnes did not at all report for work from October 12, 1996 to November 11, 1996.

Thereafter, on October 31, 1996, Bandag, through supervisor Rico, addressed a show-cause letter-memorandum to Diasnes, which reads as follows:

SUBJECT: Habitual tardiness and Absenteeism

Your attendance records from Sept. 1 to Oct. 31, 1996, show that of the 50 working days, you report[ed for work] only for 25 days. Of the 25 days that you report[ed] for work, you never had any instance that you're on time - official reporting time is at 8:00 O'clock A.M.

During this period, you have not reported to work for 25 working days and these are all absences without official leave. This shows that your absences [amounted to] 50% [of the official work days] and [you were

tardy] 100% [of the] period referred [to].

You have committed an act unbecoming of an officer and a breach of our policy on attendance. Habitual absenteeism and tardiness are cause for suspension and/or termination from employment.

You are therefore required to submit your written explanation within 48 hrs. from receipt of this memo and present yourself to the employees adjudication committee.

The Adjudication committee will convene immediately upon receipt of your reply. This consultation is of a substance to assure you that the management prerogative to discipline employees is not exercised in an arbitrary manner.

For your information and strict compliance.

L.C. RICO[2]

Apparently finding Diasnes' explanation to be insufficient, Bandag dismissed Diasnes from the service effective November 11, 1996 on the grounds stated in the termination letter which reads as follows:

TO : P.J. DIASNES

DATE : NOVEMBER 11, 1996

SUBJECT: TERMINATION OF EMPLOYMENT

You had been notified for gross and habitual neglect of your duty and had been given enough time to be heard by an employees adjudication committee[.] Again, you [had been apprised] that the consultation is of a substance to assure you that the management prerogative to discipline employees is not exercise[d] in [an] arbitrary manner.

A number of company representatives had been sent to your residence but all failed to see you in person. A verification with the company Doctor, yield[ed] negative report of any health related consultation. All those that has been done is indicative of the management's concern of employees.

The termination of your employment is base[d] on the following:

- HABITUAL TARDINESS FROM SEPT. 1, 1996 TO OCT. 11, 1996.
- ABSENCES WITHOUT OFFICIAL LEAVE DURING THE SAME PERIOD.
- FAILURE TO REPORT FOR WORK FROM OCTOBER 12, 1996 TO NOVEMBER 11, 1996.

This is a willful breach of trust given to you as officer of the company and serious misconduct of an employee. And it is our belief, that you have put an end to the employer-employee relationship without serving any written notice to the company.

Therefore, your employment is terminated effective November 11, 1996. You are requested to return all company assets in your [possession] to the company representative who will be authorized to retrieve them.

(Sgd.) Loreto C. Rico

General Manager[3]

To contest his dismissal from the service, Diasnes filed a complaint with the Regional Arbitration Branch of the National Labor Relations Commission (NLRC) for illegal dismissal, non-payment of salaries and allowances, 13th month pay, and other benefits against Bandag, Sarmiento Management Group, and Rico, docketed as NLRC RAB VII-1492-96.

On October 15, 1997, Labor Arbiter Ernesto F. Carreon rendered a decision which, while holding Diasnes to have been legally dismissed from the service, directed payment of separation pay in the amount of PhP 278,965.50 and 13th month pay in the amount of PhP 14,652.74. Dispositively, the labor arbiter's decision reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent Central Philippines Bandag Retreaders, Inc. to pay the complainant Prudencio J. Diasnes Separation Pay in the amount of P278,965.50 and proportionate 13[th] month pay in the amount of P14,652.74.

The case against respondents Sarmiento Management Corporation and Loreto Rico and the other claims are dismissed for lack of merit.

SO ORDERED.

Therefrom, both parties appealed to the NLRC, Diasnes assailing the labor arbiter's finding on the validity of his dismissal, while Bandag impugning the labor arbiter's decision insofar as the award of separation pay was concerned.

Thereafter, on January 12, 1999, the NLRC rendered a Decision,[4] dismissing the separate appeals of both parties and thus effectively affirming the decision of the labor arbiter.

Aggrieved, Bandag filed a motion to reconsider the decision of the NLRC.

By Resolution dated October 29, 1999, the NLRC partially granted reconsideration and deleted the award for separation pay, Diasnes having failed to establish that Bandag has an established policy of granting separation pay of one and a half (1 ½) month for every year of service to separated employees. The fallo of the NLRC's resolution reads:

WHEREFORE, premises considered, the Motion for Reconsideration filed by respondent Central Philippines Bandag Retreaders, Inc., is PARTIALLY GRANTED. The Decision promulgated on 12 January 1999 is ABANDONED and a new one is entered ordering respondent Central Philippines Bandag Retreaders, Inc. to pay complainant Prudencio J. [Diasnes] the amount of P14,652.74 representing [his] proportionate 13[th] month pay.

SO ORDERED.

Unsatisfied with the turn of events, Diasnes filed with the Court of Appeals (CA) a petition for certiorari and prohibition with prayer for injunctive relief. Docketed as CA-G.R. SP No. 58916, the petition sought the reinstatement of the NLRC's Decision dated January 12, 1999.

On June 18, 2003, the CA issued a Decision[5] that granted the petition and effectively reinstated the NLRC's Decision of January 12, 1999, thus restoring the award of separation pay. The CA ratiocinated that separation pay is proper in view of the following main considerations: the Employee Adjudication Committee's recommendation, the imperatives of social justice, and Diasnes' exemplary performance for more than ten (10) years.

In time, Bandag filed a motion for reconsideration, but the CA, by Resolution[6] dated April 1, 2004, denied the motion.

Bandag now comes before this Court with the present petition under Rule 45 raising the sole issue for resolution, rephrased as follows:

WHETHER OR NOT A VALIDLY AND LEGALLY SEPARATED EMPLOYEE MAY BE ENTITLED TO SEPARATION PAY.

The Court's Ruling

The labor arbiter resolved the issue in the affirmative, basing his award of separation pay mainly on the recommendation of the Employee Adjudication Committee and on the finding that Diasnes' dismissal was for a cause not constituting serious misconduct or reflective of his moral character. This ruling, as earlier recited, was eventually reversed by the NLRC, but was subsequently reinstated by the CA.

Bandag excepts, claiming that separation pay could not and should not be granted based solely on the recommendation made by its adjudication committee. As Bandag explains, the recommendation was merely an offer which Diasnes did not accept, much less avail himself of. Alternatively, Bandag argues that the formula used by the labor arbiter to compute the separation pay, i.e., 1 ½ month's pay per year of service instead of only one month's pay per year of service, is wrong.

Diasnes, arguing for the propriety of the grant of separation pay, states that, given his exemplary service with the company for ten (10) years, the ends of social and compassionate justice would best be served if he is awarded separation pay or financial assistance. Diasnes further states that other legally separated employees were also granted separation pay at the rate of 1 ½ month's salary per year of service.

The petition has merit.

We agree with Bandag that the report of its Employee Adjudication Committee recommending the grant to Diasnes of separation pay in case he opts to retire or voluntarily leave the company was merely in the nature of an offer. Contrary to the perception of the labor arbiter and the CA, the offer was not an open-ended arrangement which Diasnes was free to accept or reject when convenient.

As may be recalled, sometime in January 1996, Diasnes was asked by his superior to appear before the Employee Adjudication Committee to assess his performance during his tenure as the sales manager of Region VIII. It was at this time that the committee came up with the following recommendations: first, that Diasnes be relieved from his post as sales manager for three months, after which he may return to work with another position or function; and second, that if Diasnes would want to retire instead of availing himself of the first option, he would be granted retirement or separation pay. None of these recommendations, however, was availed of by Diasnes, as he instead asked to be transferred to Cebu City and was accommodated. It was some 11 months after the committee made its recommendation and Bandag acceded to the request for transfer that Diasnes was dismissed from the service. It is fairly obvious that the committee's recommendations were superseded by Bandag's approval of Diasnes' request for transfer. Just as it is fairly obvious that the tender of separation was conditional on Diasnes severing his official relationship with the company on voluntary basis. In fine, what amounted to Bandag's offer for Diasnes to resign with separation pay was no longer open and effective at the time of his dismissal from service. Thus, the labor arbiter erred in invoking the committee's recommendation as basis for an award of separation pay.

We also agree with the NLRC's October 29, 1999 Decision where it held that Diasnes failed to prove that Bandag regularly grants separation pay to dismissed employees, as a policy, and without regard as to the cause of dismissal. Absent substantial proof to the contrary, we refuse to disturb the factual findings of the NLRC.

The labor arbiter also erred in awarding separation pay based on social justice.

Gabuay v. Oversea Paper Supply[7] defines separation pay as the amount that an employee receives at the time of his severance and is designed to provide the employee with the wherewithal during the period he is looking for another employment. In San Miguel Corporation v. Lao,[8] the Court held that the award of separation pay is authorized in the situations dealt with in Article 283 and Art. 284 of the Labor Code, but not in terminations of employment based on instances enumerated in Art. 282.[9] In Eastern Paper Mills, Inc. v. NLRC, this Court held that:

The only cases when separation pay shall be paid, although the employee was lawfully dismissed, are when the cause of termination was not attributable to the employee's fault but due to: (1) the installation of labor saving devices, (2) redundancy, (3) retrenchment, (4) cessation of employer's business, or (5) when the employee is suffering from a disease and his continued employment is prohibited by law or is prejudicial to his health and to the health of his co-employees (Articles 283 and 284, Labor Code.) Other than these cases, an employee who is dismissed for a just and lawful cause is not entitled to separation pay even if the award were to be called by another name.[10]

Separation pay is likewise awarded in lieu of reinstatement if reinstatement is no longer feasible, as when the relationship between the employer and employee has become strained.[11] Still, in some cases, separation pay or financial assistance may be extended as a measure of social justice. *PLDT v. NLRC* settled the matter on the award and amount of financial assistance or separation pay that may be awarded a legally separated employee based on social or compassionate justice. This Court held:

There should be no question that where it comes to such valid but not iniquitous causes as failure to comply with work standards, the grant of separation pay to the dismissed employee may be both just and compassionate, particularly if he has worked for some time with the company. For example, a subordinate who has irreconcilable policy or personal differences with his employer may be validly dismissed for demonstrated loss of confidence, which is an allowable ground. A working mother who has to be frequently absent because she also has to take care of her child may also be removed because of her poor attendance, this being another authorized ground. x x x Under these and similar circumstances, however, the award to the employee of separation pay would be sustainable under the social justice policy even if the separation is for cause.

But where the cause of the separation is more serious than mere inefficiency, the generosity of the law must be more discerning. There is no doubt it is compassionate to give separation pay to a salesman if he is dismissed for his inability to fill his quota but surely he does not deserve such generosity if his offense is misappropriation of the receipts of his sales. This is no longer mere incompetence but clear dishonesty. A security guard found sleeping on the job is doubtless subject to dismissal but may be allowed separation pay since his conduct, while inept, is not depraved. But if he was in fact not really sleeping but sleeping with a prostitute during his tour of duty and in the company premises, the situation is changed completely. This is not only inefficiency but immorality and the grant of separation pay would be entirely unjustified.

We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.[12]

As may noted, *PLDT* declared that separation pay or financial assistance should be denied a legally separated employee when the cause for dismissal is for an act constituting serious misconduct or that reflects on the employee's moral character. *PLDT*, however, did not go further to state that the grant or award of separation pay or financial assistance is automatically awarded when the dismissal is for a cause other than that contemplated in said case. This *PLDT* doctrine was later expanded in *Toyota Motors Phils. Corp. Workers Association v. National Labor Relations Commission (Toyota)*, where we held that:

In all of the foregoing situations, the Court declined to grant termination pay because the causes for dismissal recognized under Art. 282 of the Labor Code were serious or grave in nature and attended by willful or wrongful intent or they reflected adversely on the moral character of the employees. We, therefore, find that in addition to serious misconduct, in dismissals based on other grounds under Art. 282, like willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, and commission of a crime against the

employer or his family, separation pay should not be conceded to the dismissed employee.

In analogous causes for termination, like inefficiency, drug use, and others, the NLRC or the courts may opt to grant separation pay anchored on social justice in consideration of length of service of the employee, the amount involved, whether the act is the first offense, the performance of the employee and the like, using guideposts enunciated in PLDT on the propriety of the award of separation pay.[13] (Emphasis added.)

To reiterate our ruling in *Toyota*, labor adjudicatory officials and the CA must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; gross and habitual neglect of duty; fraud or willful breach of trust; or commission of a crime against the person of the employer or his immediate family--grounds under Art. 282[14] of the Labor Code that sanction dismissals of employees. They must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautious in awarding financial assistance to the undeserving and those who are unworthy of the liberality of the law.

The attendant circumstances in the present case considered, we are constrained to deny Diasnes separation pay since the cause for the termination of his employment amounts to gross and habitual neglect of his duties. His repeated and continuous absences without prior leave and his frequent tardiness within the last two months prior to his dismissal exemplify his utter disregard for his employment and his employer's interest. Diasnes' character is also put into question if we take into consideration that he should have been dismissed as early as January 1996, if not for Bandag's benevolence and goodwill. It is unthinkable to award separation pay or financial assistance to an unworthy employee who exploited and took advantage of his employer's past generosity and accommodation.

WHEREFORE, the assailed Decision dated June 18, 2003 of the CA in CA-G.R. SP No. 58916 is hereby REVERSED and SET ASIDE and the Resolution dated October 29, 1999 of the NLRC is hereby REINSTATED.

No costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Brion, JJ., concur.

[1] Rollo, p. 38.

[2] Id. at 147.

[3] Id. at 148.

[4] Id. at 142-150. Penned by Commissioner Amorito V. Cañete and concurred in by Commissioners Irene R. Ceniza and Bernabe S. Batuhan.

[5] Id. at 36-42. Penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Mercedes Gozo-Dadole and Rosmari D. Carandang.

[6] Id. at 44.

[7] G.R. No. 148837, August 13, 2004, 436 SCRA 514, 519-520.

[8] G.R. Nos. 143136-37, July 11, 2002, 384 SCRA 504, 509-510.

[9] (a) Serious misconduct or willful disobedience of the lawful orders of the employer in connection with the employee's work; (b) Gross and habitual neglect; (c) Fraud or willful breach; (d) Commission of a crime by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (e) Other analogous cases.

[10] G.R. No. 85497, February 24, 1989, 170 SCRA 595, 597-598.

[11] *Gabuay v. Oversea Paper Supply, Inc.*, G.R. No. 148837, August 13, 2004, 436 SCRA 514, 520.

[12] No. L-80609, August 23, 1988, 164 SCRA 671, 681-682.

[13] G.R. Nos. 158798-99, October 19, 2007, 537 SCRA 172, 223.

[14] *Supra* note 9.

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