

MANTLE TRADING SERVICES, INCORPORATED AND/OR BOBBY DEL ROSARIO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND PABLO S. MADRIAGA, RESPONDENTS.

G.R. No. 166705. July 28, 2009

Ponente: PUNO, C.J.

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PUNO, C.J.:

This petition for review seeks to reverse the Decision[1] of the Court of Appeals in C.A.-G.R. SP No. 84796 which nullified and set aside the Decision[2] and Resolution of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 034291-03 which modified an earlier decision by the Labor Arbiter holding that respondent Pablo S. Madriaga (Madriaga) was illegally dismissed.

Petitioner company, Mantle Trading Services, Inc., is engaged in the fishing business.[3] Sometime in June 1989, Madriaga was hired by petitioner company as a "batilyo" or fish hauler. Subsequently, he became a "tagapuno" (someone who filled up tubs with fish). He worked from 6:00 p.m. up to 6:00 a.m. the following day with a daily pay of P150.00.

On August 10, 1999, Madriaga was reported by one Henry Gallos, a fish broker, to have received money from a fish trader, Mr. Edwin Alfaro. As consideration, Madriaga would put more fish in Alfaro's tubs. On August 25, 1999, Madriaga was again reported to have received money from Alfaro for the same illicit purpose. In both incidents, formal incident reports were submitted to the petitioner company.[4]

On September 11, 1999, Madriaga was allegedly barred by the payroll master, Mr. Charlie Baqued, from reporting for work. Petitioner company, on the other hand, alleged that Madriaga abandoned his work when he was about to be investigated for the two incident reports.

On February 7, 2001, Madriaga filed a complaint with the Regional Office of the Department of Labor and Employment (DOLE)--National Capital Region (NCR) against petitioners, for illegal dismissal, underpayment of wages and nonpayment of holiday pay, 13[th] month pay, overtime pay, service incentive leave pay and night shift differential pay.

On June 20, 2001, the DOLE-NCR Regional Office endorsed the complaint to the NCR Arbitration Branch. Petitioner company alleged, among others, that Madriaga was a seasonal employee and he was not dismissed. In a decision rendered on August 26, 2002, Labor Arbiter Melquiades Sol D. Del Rosario found Madriaga to be a regular employee who was illegally dismissed. The dispositive portion states, viz.:

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding complainant to have been illegally dismissed. Respondent Mantle Trading Services, Inc. is hereby ordered to pay complainant the sums computed in the body of this decision, which dispositions are made a part hereof.

SO ORDERED.[5]

The Labor Arbiter ruled that Madriaga was a regular employee because "the nature of [Madriaga's] work is filling tubs with fish everytime the fishing vessel would come to port, and that the business of respondent is the disposition of fish catch." [6] He found that since the signing of the employment agreement with petitioner company on August 1, 1996, Madriaga had been working as "tagapuno" continuously. [7] He held that Madriaga's work was necessary or desirable in the usual business or trade of the petitioner company. [8] The Labor Arbiter concluded that Madriaga could not have been a project worker as alleged by the petitioner company because there is no specific project that appeared on the contract and neither was there a statement as to the specific period of time when that the project will be completed.

The Labor Arbiter also faulted the petitioner company in failing to comply with the requirement of notice before dismissing an employee. He held that the employer must furnish the employee, sought to be dismissed, with two (2) written notices before termination can be legally effected: first, there must be a notice which apprises the employee of the particular acts or omissions for which the dismissal is sought; and second, a subsequent notice which informs the employee of the employer's decision to dismiss him. [9] The Labor Arbiter held that even if the ground of dismissal is abandonment of work, there must still be a notice to be served at the employee's last known address. [10]

The Labor Arbiter awarded Madriaga with backwages to be paid not from the date he was dismissed, on September 11, 1999, but on February 7, 2001 "as a matter of penalty for dilly-dallying in the filing of the case." [11] As of June 11, 2002, respondent's backwages amounted to P82,368.00. In addition, the Labor Arbiter awarded Madriaga P15,444.00 as separation pay, P24,240.00 for underpayment of wages, P1,980.00 for unpaid holiday pay, or the total amount of P124,032.00. [12]

Petitioner company appealed to the NLRC. It charged that the Labor Arbiter committed grave abuse of discretion in holding that: (1) Madriaga was a regular and not a contractual employee; (2) he was illegally dismissed; and (3) his money claims were granted.

On January 30, 2004, the NLRC modified the decision of the Labor Arbiter. It affirmed the Labor Arbiter's ruling that Madriaga was a regular employee but it held that Madriaga was not illegally dismissed, viz.:

As regards the second issue, respondent [Mantle] contends that [Madriaga] was not illegally dismissed because being a contractual/seasonal/project employee, his employment was terminated at the end of the undertaking or at the latest, at the end of the fishing season for 1999, hence, there was no need to comply with the two-notice requirement under the law. It claims that when the incidents of August 10 and August 25, 1999 were about to be investigated, complainant [Madriaga] disappeared from the fish port and abandoned his work, only to surface again when this complaint was heard. It avers that complainant committed serious misconduct since by the account of his co-workers, he received money from a fish trader to intentionally injure the interest of the respondent.

We find that complainant was neither dismissed by the respondent nor did he abandon his work. Based on the records, no notice of termination was sent to the complainant by the respondent company, much less was complainant verbally told by any officer of the respondent not to report for work. Complainant's allegation that he was barred by the payroll master from reporting for work has not been substantiated. In any case, even if it were true, the act of the payroll master in preventing the complainant from reporting for work cannot be deemed respondent's act in the absence of evidence that said payroll master had the authority to dismiss employees. What appears to have happened here is that complainant was not dismissed by the respondent company but the complainant without ascertaining the authority of the payroll master, heeded the latter's order for him not to report for work. [13]

The NLRC rejected petitioner company's contention that Madriaga abandoned his work. It ruled that mere

absence is not sufficient. There must be proof that there was deliberate and unjustified refusal on the part of the employee to resume his employment without any intention of returning.

Thus, the dispositive portion of the NLRC decision held:

Wherefore, the Decision dated August 26, 2002 is MODIFIED. Complainant is declared not illegally dismissed and directed to report for work. Respondent is directed to accept complainant back to work and to pay complainant the amount of twenty four thousand two hundred forty pesos (P24,240.00) as salary differentials, five thousand one hundred forty eight pesos (P5,148.00) as 13th month pay and one thousand nine hundred eighty pesos (P1,980.00) as holiday pay, or the aggregate sum of thirty one thousand three hundred twenty eight pesos (P31,328.00).

SO ORDERED.[14]

Both petitioner company and respondent filed their respective motions for reconsideration. Petitioner company contended that the NLRC erred when it found Madriaga to have been employed since 1989 and not 1999. It reiterated its argument that Madriaga was not a regular employee and that he abandoned his work. Respondent, on the other hand, insisted he was illegally dismissed. On March 31, 2004, their motions for reconsideration were denied for lack of merit.

Petitioner company sought recourse with the Court of Appeals through a Petition for Certiorari. It alleged that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that: (1) Madriaga was a regular employee; (2) his employment commenced in 1989 as testified to by the employee and not 1999 as stated in their employment contract; and (3) he did not abandon his work.

On August 31, 2004, the Court of Appeals affirmed the finding of the Labor Arbiter and the NLRC that Madriaga was a regular employee. It held that Madriaga's work as tagapuno may be likened to the work of a cargador which is directly related, necessary and vital to the operations of the employer's business.[15] It ruled that the distribution of the day's catch to the tubs of different fish traders has a reasonable connection to the fishing business of petitioner company.

The Court of Appeals also sustained the ruling that Madriaga began work in 1989 and not in 1999. It affirmed the joint finding of the Labor Arbiter and the NLRC based on the testimony of the employee that he began work in 1989 as opposed to the questionable employee contract dated 1999.

The Court of Appeals, however, reversed the Labor Arbiter and the NLRC on the issue of abandonment of work. It held that there was a causal connection between the charge against Madriaga of having received money from a fish trader and his failure to seek his immediate reinstatement. It ruled that Madriaga abandoned his work as it was only invoked two years after his alleged dismissal. However, despite the finding that Madriaga abandoned his work, the Court of Appeals held that "[c]onsidering that petitioner has not established the compliance with due process in terminating respondent's employment, it is still considered to have committed illegal dismissal." [16] The dispositive portion of its Decision held:

Wherefore, the Decision dated January 30, 2004 of the National Labor Relations Commission is ANNULLED and SET ASIDE. Accordingly, the Decision dated August 26, 2002 of the Labor Arbiter finding private respondent to have been illegally dismissed is REINSTATED.

SO ORDERED.[17]

Petitioner company filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration, which were both denied in a Resolution dated January 13, 2004.[18]

It now comes before this Court raising the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT WENT BEYOND THE SCOPE OF A WRIT OF CERTIORARI IN RESOLVING THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED ALTHOUGH SUCH ISSUE WAS NOT RAISED [IN] THE PETITION FOR CERTIORARI.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT HELD THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED BECAUSE PETITIONER DID NOT COMPLY WITH THE NOTICE REQUIREMENT DESPITE ITS FINDING OF ABANDONMENT OF WORK.

The first ground patently lacks merit. Petitioner company raised three (3) assignment of errors before the Court of Appeals, i.e., whether the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction: (1) in ruling that Madriaga is a regular employee; (2) in holding that Madriaga's employment commenced in 1989; and (3) in concluding that respondent did not abandon his work. All these issues cannot be divorced from the question of whether Madriaga was illegally dismissed by the petitioner company. More specifically, the issue of abandonment is inextricably linked with the issue of the validity of the dismissal.[19] Indeed, the illegal dismissal of Madriaga was the subject of his complaint that was resolved by the Labor Arbiter, the NLRC and the Court of Appeals. It is the heart of the case at bar.

We now come to the ruling of the Court of Appeals that Madriaga who abandoned his work was nevertheless illegally dismissed for non-compliance by the petitioner company with the notice requirement. It is settled that to effect a valid dismissal, the law requires that a) there be just and valid cause as provided under Article 282 of the Labor Code; and b) the employee be afforded an opportunity to be heard and to defend himself. The two-notice requirement must be complied with, to wit: a) a written notice containing a statement of the cause for the termination to afford the employee ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires; and b) if the employer decides to terminate the services of the employee, the employer must notify him in writing of the decision to dismiss him, stating clearly the reason therefore.[20]

The case of *Agabon v. NLRC, et al.*[21] applies to the case at bar. In *Agabon*, the dismissal was found by the Court to be based on a just cause because the employee abandoned his work. But it also found that the employer did not follow the notice requirement demanded by due process. It ruled that this violation of due process on the part of the employer did not nullify the dismissal, or render it illegal, or ineffectual. Nonetheless, the employer was ordered to indemnify the employee for the violation of his right to due process. It further held that the penalty should be in the nature of indemnification, in the form of nominal damages and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer.[22] The amount of such damages is addressed to the sound discretion of the court, considering the relevant circumstances.[23] Thus, in *Agabon*, the Court ordered the employer to pay the employee nominal damages in the amount of P30,000.00.

Again, we stress that though the Court is given the latitude to determine the amount of nominal damages to be awarded to an employee who was validly dismissed but whose due process rights were violated, a distinction should be made between a valid dismissal due to just causes under Article 282 of the Labor Code and those based on authorized causes, under Article 283. The two causes for a valid dismissal were differentiated in the case of *JAKA Food Processing Corporation v. Pacot*[24] where the Court held that:

A dismissal for just cause under Article 282 implies that the employee concerned has committed, or is guilty

of, some violation against the employer, i.e. the employee has committed some serious misconduct, is guilty of some fraud against the employer, or, as in *Agabon*, he has neglected his duties. Thus, it can be said that the employee himself initiated the dismissal process.

On another breath, a dismissal for an authorized cause under Article 283 does not necessarily imply delinquency or culpability on the part of the employee. Instead, the dismissal process is initiated by the employer's exercise of his management prerogative, i.e. when the employer opts to install labor saving devices, when he decides to cease business operations or when, as in this case, he undertakes to implement a retrenchment program.

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Accordingly, it is wise to hold that: (1) if the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of his management prerogative.[25]

Since in the case of *JAKA*, the employee was terminated for authorized causes as the employer was suffering from serious business losses, the Court fixed the indemnity at a higher amount of P50,000.00. In the case at bar, the cause for termination was abandonment, thus it is due to the employee's fault. It is equitable under these circumstances to order the petitioner company to pay nominal damages in the amount of P30,000.00, similar to the case of *Agabon*.

We affirm the award of salary differentials, 13[th] month pay and holiday pay, awarded by the NLRC and the Court of Appeals. We note that although petitioner company had cause to terminate *Madriaga*, this has no bearing on the issue of award of salary differentials, holiday pay and 13[th] month pay because prior to his valid dismissal, he performed work as a regular employee of petitioner company, and he is entitled to the benefits provided under the law. Thus, in the case of *Agabon*, even while the Court found that the dismissal was for a just cause, the employee was still awarded his monetary claims.

An employee should be compensated for the work he has rendered in accordance with the minimum wage, and must be appropriately remunerated when he was suffered to work on a regular holiday during the time he was employed by the petitioner company. As regards the 13[th] month pay, an employee who was terminated at any time before the time for payment of the 13[th] month pay is entitled to this monetary benefit in proportion to the length of time he worked during the year, reckoned from the time he started working during the calendar year up to the time of his termination from the service.[26]

As a general rule, one who pleads payment has the burden of proving it. Even where the employee must allege nonpayment, the general rule is that the burden rests on the employer to prove payment, rather than on the employee to prove nonpayment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents -- which will show that overtime, differentials, service incentive leave and other claims of workers have been paid -- are not in the possession of the employee but in the custody and absolute control of the employer. [27] Since in the case at bar petitioner company has not shown any proof of payment of the correct amount of salary, holiday pay and 13[th] month pay, we affirm the award of *Madriaga's* monetary claims.

IN VIEW WHEREOF, the petition is DENIED. The decision of the Court of Appeals in C.A.-G.R. SP No. 84796, dated August 31, 2004, annulling and setting aside the Decision of the NLRC dated January 30, 2004 and reinstating the Decision dated August 26, 2002 of the Labor Arbiter finding respondent Pablo S. *Madriaga* a

regular employee and ordering the petitioner company to pay the amount of twenty-four thousand, two hundred forty pesos (P24,240.00) as salary differentials, five thousand, one hundred forty-eight pesos (P5,148.00) as 13th month pay, and one thousand, nine hundred eighty pesos (P1,980.00) as holiday pay, is hereby AFFIRMED. In accordance with the ruling in Agabon, the award for backwages is deleted, but in addition, the amount of thirty thousand pesos as nominal damages (P30,000.00) is awarded to the respondent. The aggregate sum of the award to Madriaga shall be the total of sixty-one thousand, three hundred twenty-eight pesos (P61,328.00).

No costs.

SO ORDERED.

Carpio, Corona, Leonardo-De Castro, and Bersamin, JJ., concur,

[1] Penned by Justice Magdangal M. De Leon, with Justices Romeo A. Brawner and Mariano C. Del Castillo concurring; promulgated on August 31, 2004.

[2] Penned by Presiding Commissioner Lourdes C. Javier, with Commissioners Ernesto C. Vercelles and Tito F. Genilo concurring; promulgated on January 30, 2004.

[3] Co-petitioner Bobby del Rosario was alleged by the respondent as part of the employers. However, the Labor Arbiter and the NLRC both found that Mantle Trading Services, Inc. has in its incorporators and officers no person by the name of "Bobby del Rosario."

[4] CA rollo, p. 30; Annexes B & C, Mantle's Original NLRC Position Paper.

[5] Id. at pp. 66-78, Decision of the Labor Arbiter, dated August 26, 2002.

[6] Rollo, p. 142.

[7] Id.

[8] Id. at 143.

[9] Id. at 46.

[10] Citing Labor Congress of the Philippines v. NLRC, et al., G.R. No. 123938, May 21, 1998, 290 SCRA 509.

[11] Rollo, p. 47.

[12] CA Rollo, pp. 76-77.

[13] Rollo, pp. 102-103. NLRC NCR CA No. 034291-03, dated January 30, 2004, pp. 5-6 (emphasis supplied).

[14] Decision of the Third Division, National Labor Relations Commission, dated January 30, 2004.

[15] Citing Caurdanetaan Piece Workers Union v. Laguesma, G.R. No. 113542, February 24, 1998, 286 SCRA 401.

[16] Rollo, p. 37.

[17] Id. at 37.

[18] Id. at 40.

[19] See RBC Cable Master System, et al. v. Marcial Baluyot, G.R. No. 172670, January 20, 2009.

[20] *Shoppes Manila, Inc. v. NLRC*, G.R. No. 147125, January 14, 2004, 419 SCRA 354; *R Transport Corp. v. Rogelio Ejandra*, G.R. No. 148508, May 20, 2004, 428 SCRA 75.

[21] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[22] *Id.*

[23] *Id.*

[24] G.R. No. 151378, March 28, 2005, 454 SCRA 119.

[25] *Id.* at 124-126.

[26] Revised Guidelines On The Implementation Of The 13th Month Pay Law, November 16, 1987.

[27] *Villar v. NLRC*, G.R. No. 130935, May 11, 2000, 331, SCRA 686, 695.

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