

HARPOON MARINE SERVICES, INC. AND JOSE LIDO T. ROSIT, PETITIONERS, VS. FERNAN H. FRANCISCO, RESPONDENT.

G.R. No. 167751. March 02, 2011

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Satisfactory evidence of a valid or just cause of dismissal is indispensably required in order to protect a laborer's right to security of tenure. In the case before us, the employer presented none despite the burden to prove clearly its cause.

This Petition for Review on Certiorari with Prayer for the Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction[1] assails the Decision[2] dated January 26, 2005 and Resolution[3] dated April 12, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 79630, which affirmed the Decision[4] of the National Labor Relations Commission (NLRC) dated March 31, 2003, as well as the NLRC modified Decision[5] dated June 30, 2003, declaring petitioners Harpoon Marine Services, Incorporated (Harpoon) and Jose Lido T. Rosit (Rosit) solidarily liable to pay respondent Fernan H. Francisco (respondent) separation pay, backwages and unpaid commissions for illegally dismissing him.

Factual Antecedents

Petitioner Harpoon, a company engaged in ship building and ship repair, with petitioner Rosit as its President and Chief Executive Officer (CEO), originally hired respondent in 1992 as its Yard Supervisor tasked to oversee and supervise all projects of the company. In 1998, respondent left for employment elsewhere but was rehired by petitioner Harpoon and assumed his previous position a year after.

On June 15, 2001, respondent averred that he was unceremoniously dismissed by petitioner Rosit. He was informed that the company could no longer afford his salary and that he would be paid his separation pay and accrued commissions. Respondent nonetheless continued to report for work. A few days later, however, he was barred from entering the company premises. Relying on the promise of petitioner Rosit, respondent went to the office on June 30, 2001 to receive his separation pay and commissions, but petitioner Rosit offered only his separation pay. Respondent refused to accept it and also declined to sign a quitclaim. After several unheeded requests, respondent, through his counsel, sent a demand letter dated September 24, 2001[6] to petitioners asking for payment of P70,000.00, which represents his commissions for the seven boats[7] constructed and repaired by the company under his supervision. In a letter-reply dated September 28, 2001,[8] petitioners denied that it owed respondent any commission, asserting that they never entered into any contract or agreement for the payment of commissions. Hence, on October 24, 2001, respondent filed an illegal dismissal complaint praying for the payment of his backwages, separation pay, unpaid commissions, moral and exemplary damages and attorney's fees.

Petitioners presented a different version of the events and refuted the allegations of respondent. They explained that petitioner Rosit indeed talked to respondent on June 15, 2001 not to dismiss him but only to remind and warn

him of his excessive absences and tardiness, as evinced by his Time Card covering the period June 1-15, 2001.[9] Instead of improving his work behavior, respondent continued to absent himself and sought employment with another company engaged in the same line of business, thus, creating serious damage in the form of unfinished projects. Petitioners denied having terminated respondent as the latter voluntarily abandoned his work after going on Absence Without Official Leave (AWOL) beginning June 22, 2001. Petitioners contended that when respondent's absences persisted, several memoranda[10] informing him of his absences were sent to him by ordinary mail and were duly filed with the Department of Labor and Employment (DOLE) on August 13, 2001. Upon respondent's continuous and deliberate failure to respond to these memoranda, a Notice of Termination dated July 30, 2001[11] was later on issued to him.

Respondent, however, denied his alleged tardiness and excessive absences. He claimed that the three-day absence appearing on his time card cannot be considered as habitual absenteeism. He claimed that he incurred those absences because petitioner Rosit, who was hospitalized at those times, ordered them not to report for work until he is discharged from the hospital. In fact, a co-worker, Nestor Solares (Solares), attested that respondent always goes to work and continued to report until June 20, 2001.[12] Respondent further denied having received the memoranda that were allegedly mailed to him, asserting that said documents were merely fabricated to cover up and justify petitioners' act of illegally terminating him on June 15, 2001. Respondent absolved himself of fault for defective works, justifying that he was illegally terminated even before the company projects were completed. Finally, respondent denied petitioners' asseveration that he abandoned his job without any formal notice in 1998 as he wrote a resignation letter which petitioners received.

As regards the commissions claimed, respondent insisted that in addition to his fixed monthly salary of P18,200.00, he was paid a commission of P10,000.00 for every ship repaired or constructed by the company. As proof, he presented two check vouchers[13] issued by the company showing payment thereof.

Petitioners, on the other hand, contended that respondent was hired as a regular employee with a fixed salary and not as an employee paid on commission basis. The act of giving additional monetary benefit once in a while to employees was a form of recognizing employees' efforts and cannot in any way be interpreted as commissions. Petitioners then clarified that the word "commission" as appearing in the check vouchers refer to "additional money" that employees receive as differentiated from the usual "vale" and is written for accounting and auditing purposes only.

Ruling of the Labor Arbiter

On May 17, 2002, the Labor Arbiter rendered a Decision[14] holding that respondent was validly dismissed due to his unjustified absences and tardiness and that due process was observed when he was duly served with several memoranda relative to the cause of his dismissal. The Labor Arbiter also found respondent entitled to the payment of commissions by giving credence to the check vouchers presented by respondent as well as attorney's fees for withholding the payment of commissions pursuant to Article 111 of the Labor Code. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the dismissal of complainant Fernan H. Francisco legal; ordering respondents Harpoon Marine Services Inc., and Jose Lido T. Rosit, to pay complainant his commission in the sum of PHP70,000.00; as well as attorney's fees of ten percent (10%) thereof; and dismissing all other claims for lack of merit.

SO ORDERED.[15]

Proceedings before the National Labor Relations Commission

Both parties appealed to the NLRC. Petitioners alleged that the Labor Arbiter erred in ruling that respondent is entitled to the payment of commissions and attorney's fees. They questioned the authenticity of the check vouchers for being photocopies bearing only initials of a person who remained unidentified. Also, according to petitioners, the vouchers did not prove that commissions were given regularly as to warrant respondent's entitlement thereto.[16]

Respondent, on the other hand, maintained that his dismissal was illegal because there is no sufficient evidence on record of his alleged gross absenteeism and tardiness. He likewise imputed bad faith on the part of petitioners for concocting the memoranda for the purpose of providing a semblance of compliance with due process requirements.[17]

In its Decision dated March 31, 2003,[18] the NLRC affirmed the Labor

Arbiter's award of commissions in favor of respondent for failure of petitioners to refute the validity of his claim. The NLRC, however, deleted the award of attorney's fees for lack of evidence showing petitioners' bad faith in terminating respondent.

As the NLRC only resolved petitioners' appeal, respondent moved before the NLRC to resolve his appeal of the Labor Arbiter's Decision.[19] For their part, petitioners filed a Verified Motion for Reconsideration[20] reiterating that there was patent error in admitting, as valid evidence, photocopies of the check vouchers without substantial proof that they are genuine copies of the originals.

The NLRC, in its Decision dated June 30, 2003,[21] modified its previous ruling and held that respondent's dismissal was illegal. According to the NLRC, the only evidence presented by the petitioners to prove respondent's habitual absenteeism and tardiness is his time card for the period covering June 1-15, 2001. However, said time card reveals that respondent incurred only three absences for the said period, which cannot be considered as gross and habitual. With regard to the award of commissions, the NLRC affirmed the Labor Arbiter because of petitioners' failure to question the authenticity of the check vouchers in the first instance before the Labor Arbiter. It, nevertheless, sustained the deletion of the award of attorney's fees in the absence of proof that petitioners acted in bad faith. Thus, for being illegally dismissed, the NLRC granted respondent backwages and separation pay in addition to the commissions, as contained in the dispositive portion of its Decision, as follows:

WHEREFORE, the decision dated 31 March 2003 is further MODIFIED. Respondents are found to have illegally dismissed complainant Fernan H. Francisco and are ordered to pay him the following:

1. Backwages =

P218,066.33

(15 June 2001 - 17 May 2002)

a) Salary - P18,200.00 x 11.06 months =

P201,292.00

b) 13[th] month pay: P201,292.00/12 =

16,774.33

2. Separation Pay of one month salary for every year of service

(October 1999 - 17 May 2002)

P18,200.00 x 3 yrs.

=

54,600.00

3. Commission

=

70,000.00

TOTAL

P342,666.33

The Motion for Reconsideration filed by complainant and respondents are hereby DISMISSED for lack of merit.

SO ORDERED.[22]

Ruling of the Court of Appeals

Petitioners filed a petition for certiorari[23] with the CA, which on January 26, 2005, affirmed the findings and conclusions of the NLRC. The CA agreed with the NLRC in not giving any probative weight to the memoranda since there is no proof that the same were sent to respondent. It also upheld respondent's right to the payment of commissions on the basis of the check vouchers and declared petitioners solidarily liable for respondent's backwages, separation pay and accrued commissions.

Petitioners moved for reconsideration which was denied by the CA. Hence, this petition.

Issues

WHETHER THE COURT OF APPEALS COMMITTED ERROR IN RENDERING ITS DECISION AND ITS RESOLUTION DISMISSING AND DENYING THE PETITION FOR CERTIORARI A QUO WHEN IT FAILED TO RECTIFY AND CORRECT THE FINDINGS AND CONCLUSIONS OF THE NLRC (AND OF THE LABOR ARBITER A QUO), WHICH WERE ARRIVED AT WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION. IN PARTICULAR:

I

WHETHER THE COURT OF APPEALS ERRED WHEN IT FAILED TO REVERSE THE FINDINGS OF THE NLRC AND OF THE LABOR ARBITER A QUO BECAUSE THESE FINDINGS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE[;] ARE CONFLICTING AND CONTRADICTORY; GROUNDED UPON SPECULATION, CONJECTURES, AND ASSUMPTIONS; [AND] ARE MERE CONCLUSIONS FOUNDED UPON A MISAPPREHENSION OF FACTS, AMONG OTHERS.

II

WHETHER THE COURT OF APPEALS ERRED WHEN IT RULED THAT THERE WAS AN ILLEGAL DISMISSAL IN THE SEPARATION FROM EMPLOYMENT OF FERNAN H. FRANCISCO NOTWITHSTANDING THE FACT THAT HE WAS HABITUALLY ABSENT, SUBSEQUENTLY WENT ON AWOL, AND HAD ABANDONED HIS WORK AND CORRELATIVELY, WHETHER HE IS ENTITLED TO BACKWAGES AND SEPARATION PAY.

III

WHETHER THE COURT OF APPEALS ERRED WHEN IT RULED THAT FERNAN H. FRANCISCO IS ENTITLED TO COMMISSIONS IN THE AMOUNT OF P70,000 EVEN THOUGH NO SUBSTANTIAL EVIDENCE WAS SHOWN TO SUPPORT THE CLAIM.

IV

WHETHER THE COURT OF APPEALS ERRED WHEN IT RULED THAT THERE WAS BAD FAITH ON THE PART OF PETITIONER ROSIT EVEN THOUGH NO SUBSTANTIAL EVIDENCE WAS PRESENTED TO PROVE THIS AND CORRELATIVELY, WHETHER PETITIONER ROSIT CAN BE HELD SOLIDARILY LIABLE WITH PETITIONER HARPOON.[24]

Petitioners submit that there was no basis for the CA to rule that respondent was illegally dismissed since more than sufficient proof was adduced to show his habitual absenteeism and abandonment of work as when he further incurred additional absences after June 15, 2001 and subsequently went on AWOL; when he completely ignored all the notices/memoranda sent to him; when he never demanded for reinstatement in his September 24, 2001 demand letter, complaint and position paper before the Labor Arbiter; when it took him four months before filing an illegal dismissal complaint; and when he was later found to have been working for another company.

Petitioners also question the veracity of the documents presented by respondent to prove his entitlement to commissions, to wit: the two check vouchers[25] and the purported list[26] of vessels allegedly constructed and repaired by the company. Petitioners insist that the check vouchers neither prove that commissions were paid on account of a repair or construction of a vessel nor were admissible to prove that a regular commission is given for every vessel that is constructed/repaired by the company under respondent's supervision. The list of the vessels, on the other hand, cannot be used as basis in arriving at the amount of commissions due because it is self-serving, unsigned, unverified and merely enumerates a list of names of vessels which does not prove anything. Therefore, the award of commissions was based on unsupported assertions of respondent.

Petitioners also insist that petitioner Rosit, being an officer of the company, has a personality distinct from that of petitioner Harpoon and that no proof was adduced to show that he acted with malice or bad faith hence no liability, solidary or otherwise, should be imposed on him.

Our Ruling

The petition is partly meritorious.

Respondent was illegally dismissed for failure of petitioners to prove the existence of a just cause for his dismissal.

Petitioners reiterate that respondent was a habitual absentee as indubitably shown by his time card for the period covering June 1-15, 2001,[27] payroll[28] for the same period as well as the memoranda[29] enumerating his absences subsequent to

June 15, 2001.

Respondent belies these claims and explained that his absence for three days as reflected in the time card was due to petitioner Rosit's prohibition for them to report for work owing to the latter's hospitalization. He claims that he was illegally terminated on June 15, 2001 and was subsequently prevented from entering company premises. In defense, petitioners deny terminating respondent on June 15, 2001, maintaining that petitioner Rosit merely reminded him of his numerous absences. However, in defiance of the company's order, respondent continued to absent himself, went on AWOL and abandoned his work.

We find no merit in petitioners' contention that respondent incurred unexplained and habitual absences and tardiness. A scrutiny of the time card and payroll discloses that respondent incurred only three days of absence and no record of tardiness. As aptly held by the NLRC, the time card and payroll presented by petitioners do not show gross and habitual absenteeism and tardiness especially since respondent's explanation of his three-day absence was not denied by petitioners at the first instance before the Labor Arbiter. No other evidence was presented to show the alleged absences and tardiness. On the other hand, Solares, a co-worker of respondent has stated under oath that, as their supervisor, respondent was diligent in reporting for work until June 20, 2001 when they heard the news concerning respondent's termination from his job.

Likewise, we are not persuaded with petitioners' claim that respondent incurred additional absences, went on AWOL and abandoned his work. It is worthy to note at this point that petitioners never denied having offered respondent his separation pay. In fact, in their letter-reply dated September 28, 2001,[30] petitioners intimated that respondent may pick up the amount of P27,584.37 any time he wants, which amount represents his separation and 13th month pays. Oddly, petitioners deemed it fit to give respondent his separation pay despite their assertion that there is just cause for his dismissal on the ground of habitual absences. This inconsistent stand of petitioners bolsters the fact that they wanted to terminate respondent, thus giving more credence to respondent's protestation that he was barred and prevented from reporting for work.

Jurisprudence provides for two essential requirements for abandonment of work to exist. The "failure to report for work or absence without valid or justifiable reason" and "clear intention to sever the employer-employee relationship x x x manifested by some overt acts" should both concur.[31] Further, the employee's deliberate and unjustified refusal to resume his employment without any intention of returning should be established and proven by the employer.[32]

Petitioners failed to prove that it was respondent who voluntarily refused to report back for work by his defiance and refusal to accept the memoranda and the notices of absences sent to him. The CA correctly ruled that petitioners failed to present evidence that they sent these notices to respondent's last known address for the purpose of warning him that his continued failure to report would be construed as abandonment of work. The affidavit of petitioner Harpoon's liaison officer that the memoranda/notices were duly sent to respondent is insufficient and self-serving. Despite being stamped as received, the memoranda do not bear any signature of respondent to indicate that he actually received the same. There was no proof on how these notices were given to respondent. Neither was there any other cogent evidence that these were properly received by respondent.

The fact that respondent never prayed for reinstatement and has sought employment in another company which is a competitor of petitioner Harpoon cannot be construed as his overt acts of abandoning employment. Neither can the delay of four months be taken as an indication that the respondent's filing of a complaint for illegal dismissal is a mere afterthought. Records show that respondent first attempted to get his separation pay and alleged commissions from the company. It was only after his requests went unheeded that he resorted to judicial recourse.

In fine, both the NLRC and the CA did not commit manifest error in finding that there was illegal dismissal. The award of backwages and separation pay in favor of respondent is therefore proper.

Respondent is not entitled to the payment of commissions since the check vouchers and purported list of vessels show vagueness as to sufficiently prove the claim.

The Labor Arbiter, the NLRC and the CA unanimously held that respondent is entitled to his accrued commissions in the amount of P10,000.00 for every vessel repaired/constructed by the company or the total amount of P70,000.00 for the seven vessels repaired/constructed under his supervision.

The Court, however, is inclined to rule otherwise. Examination of the check vouchers presented by respondent reveals that an amount of P30,000.00 and P10,000.00 alleged as commissions were paid to respondent on June 9, 2000 and September 28, 2000, respectively. Although the veracity and genuineness of these documents were not effectively disputed by petitioners, nothing in them provides that commissions were paid to respondent on account of a repair or construction of a vessel. It cannot also be deduced from said documents for what or for how many vessels the amounts stated therein are for. In other words, the check vouchers contain very scant details and can hardly be considered as sufficient and substantial evidence to conclude that respondent is entitled to a commission of P10,000.00 for every vessel repaired or constructed by the company. At most, these vouchers only showed that respondent was paid on two occasions but were silent as to the specific purpose of payment. The list of vessels supposedly repaired/constructed by the company neither validates respondent's monetary claim as it merely contains an enumeration of 17 names of vessels and nothing more. No particulars, notation or any clear indication can be found on the list that the repair or complete construction of seven of the seventeen boats listed therein was supervised or managed by respondent. Worse, the list is written only on a piece of paper and not on petitioners' official stationery and is unverified and unsigned. Verily, its patent vagueness makes it unworthy of any credence to be used as basis for awarding respondent compensations as alleged commissions. Aside from these documents, no other competent evidence was presented by respondent to determine the value of what is properly due him, much less his entitlement to a commission. Respondent's claim cannot be based on allegations and unsubstantiated assertions without any competent document to support it. Certainly, the award of commissions in favor of respondent in the amount of P70,000.00 should not be allowed as the claim is founded on mere inferences, speculations and presumptions.

Rosit could not be held solidarily liable with Harpoon for lack of substantial evidence of bad faith and malice on his part in terminating respondent.

Although we find no error on the part of the NLRC and the CA in declaring the dismissal of respondent illegal, we, however, are not in accord with the ruling that petitioner Rosit should be held solidarily liable with petitioner Harpoon for the payment of respondent's backwages and separation pay.

As held in the case of *MAM Realty Development Corporation v. National Labor Relations Commission*,^[33] "obligations incurred by [corporate officers], acting as such corporate agents, are not theirs but the direct

accountabilities of the corporation they represent." [34] As such, they should not be generally held jointly and solidarily liable with the corporation. The Court, however, cited circumstances when solidary liabilities may be imposed, as exceptions:

- When directors and trustees or, in appropriate cases, the officers of a corporation -
 - (a) vote for or assent to [patently] unlawful acts of the corporation;
 - (b) act in bad faith or with gross negligence in directing the corporate affairs;
 - (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons.
- When the director or officer has consented to the issuance of watered stock or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto.
- When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation.
- When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action. [35]

The general rule is grounded on the theory that a corporation has a legal personality separate and distinct from the persons comprising it. [36] To warrant the piercing of the veil of corporate fiction, the officer's bad faith or wrongdoing "must be established clearly and convincingly" as "[b]ad faith is never presumed." [37]

In the case at bench, the CA's basis for petitioner Rosit's liability was that he acted in bad faith when he approached respondent and told him that the company could no longer afford his salary and that he will be paid instead his separation pay and accrued commissions. This finding, however, could not substantially justify the holding of any personal liability against petitioner Rosit. The records are bereft of any other satisfactory evidence that petitioner Rosit acted in bad faith with gross or inexcusable negligence, or that he acted outside the scope of his authority as company president. Indeed, petitioner Rosit informed respondent that the company wishes to terminate his services since it could no longer afford his salary. Moreover, the promise of separation pay, according to petitioners, was out of goodwill and magnanimity. At the most, petitioner Rosit's actuations only show the illegality of the manner of effecting respondent's termination from service due to absence of just or valid cause and non-observance of procedural due process but do not point to any malice or bad faith on his part. Besides, good faith is still presumed. In addition, liability only attaches if the officer has assented to patently unlawful acts of the corporation.

Thus, it was error for the CA to hold petitioner Rosit solidarily liable with petitioner Harpoon for illegally dismissing respondent.

WHEREFORE, the petition is PARTLY GRANTED. The Decision dated January 26, 2005 and Resolution dated April 12, 2005 of the Court of Appeals in CA-G.R. SP No. 79630 finding respondent Fernan H. Francisco to have been illegally dismissed and awarding him backwages and separation pay are AFFIRMED. The award of commissions in his favor is, however, DELETED. Petitioner Jose Lido T. Rosit is ABSOLVED from the liability adjudged against co-petitioner Harpoon Marine Services, Incorporated.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

[1] Rollo, pp. 52-165.

- [2] Annex "A" of the Petition, id. at 166-178; penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao.
- [3] Annex "B" of the Petition, id. at 180.
- [4] Annex "C" of the Petition, id. at 182-185; penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioner Tito F. Genilo.
- [5] Annex "D" of the Petition, id. at 187-193; penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioners Ernesto C. Verceles and Tito F. Genilo.
- [6] Annex "A" of respondent's position paper before the Labor Arbiter, CA rollo, p.109.
- [7] See Annex "C", id. at 111.
- [8] Annex "B," id. at 110.
- [9] Annex "1" of petitioners' reply to respondent's position paper, id. at 99.
- [10] Annexes "1", "2" and "3" of petitioners' position paper before the Labor Arbiter, id. at 85-87.
- [11] Annex "4," id. at 88.
- [12] See Nestor Solares' Sinumpaang Salaysay, Annex "A" of respondent's reply, id. at 117.
- [13] Check Vouchers dated June 9, 2000 and September 28, 2000, Annexes "B" and "C," respectively, id. at 118-119.
- [14] Annex "E" of the Petition, rollo, pp. 195-206; penned by Labor Arbiter Natividad M. Roma.
- [15] Id. at 205-206.
- [16] See Petitioners' Appeal-Memorandum, CA rollo, pp. 126-134.
- [17] See Respondent's Memorandum on Appeal; id. at 139-148.
- [18] Annex "C" of the Petition, rollo, pp. 182-185.
- [19] See Respondent's Motion for Reconsideration and Motion to Resolve Complainant's Appeal of the Labor Arbiter's Decision Dated June 2, 2002, CA rollo, pp. 62-65.
- [20] Id. at 57-61.
- [21] Annex "D" of the Petition, rollo, pp. 187-193.
- [22] Id. at 191-192.
- [23] Annex "F" of the Petition, id. at 207-249.
- [24] Id. at 87-89.
- [25] Supra note 13.
- [26] Supra note 7.
- [27] Supra note 9.
- [28] Annex "7" of Petitioners' Position Paper before the Labor Arbiter, CA rollo, p. 91.

[29] Supra note 10.

[30] Supra note 8.

[31] Henlin Panay Company v. National Labor Relations Commission, G.R. No. 180718, October 23, 2009, 604 SCRA 362, 369.

[32] Samarca v. Arc-Men Industries, Inc., 459 Phil. 506, 515 (2003).

[33] 314 Phil. 838 (1995).

[34] Id. at 844.

[35] Id. at 844-845.

[36] Petron Corporation v. National Labor Relations Commissions, G.R. No. 154532, October 27, 2006, 505 SCRA 596, 613.

[37] Carag v. National Labor Relations Commission, G.R. No. 147590, April 2, 2007, 520 SCRA 28, 49.

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