

METRO CONSTRUCTION, INC. AND DR. JOHN LAI, PETITIONERS, VS. ROGELIO AMAN, RESPONDENT.

G.R. No. 168324. October 12, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] assailing the Decision[2] promulgated on 24 November 2004 of the Court of Appeals (appellate court) in CA-G.R. SP No. 80440 as well as the Resolution[3] promulgated on 1 June 2005. The appellate court granted the petition filed by Rogelio Aman (Aman) and ordered Metro Construction, Inc. (Metro) to pay Aman his backwages from the time of his illegal dismissal on 15 May 2001 up to the time of the finality of its decision, as well as separation pay in lieu of reinstatement computed at one month for every year of service, with a fraction of at least six months computed as one whole year. The appellate court remanded the case to the National Labor Relations Commission (NLRC) for proper computation of Aman's backwages and separation pay.

The Facts

Petitioners Metro and Dr. John Lai (Dr. Lai) filed the present petition against Aman. The appellate court narrated the facts as follows:

On 6 July 2001, [Aman] filed a case of illegal dismissal against [Metro] and/or [Dr. Lai] and the case was docketed as NLRC NCR Case No. 07-03521-2001 and was assigned to Labor Arbiter Manuel P. Asuncion.

For failure to convince the parties to enter into settlement, Labor Arbiter Asuncion directed [Aman] and [petitioners] to file their respective pleadings and documentary evidence.

On 2 October 2001, [petitioners] filed their position paper, alleging the following:
"Complainant ROGELIO AMAN was hired by [Metro] as one of it's (sic) foreman.

On July 19, 2001, a letter was sent by [Metro] to [Aman] informing him that [Metro] will be temporarily terminating his services because of completed projects, lack of work and continuous financial losses. But with an assurance that [Metro] will be contracting him if ever there will be new projects. xxx

On July 24, 2001, five (5) days after the receipt of temporary termination, [Metro] sent a letter to [Aman] informing him of the prospective project that [Metro] would undertake in a few months time. xxx

On July 6, 2001, [Aman] filed a complaint before the National Labor Relations Commission."

On 20 November 2001, [Aman] filed his position paper where he alleged that:

"In January 1975, [Metro] employed [Aman] as a laborer in its construction projects. Even if he is not an

elementary graduate, [Aman] quickly learned carpentry through perseverance and was promoted as carpenter after a few years. [Aman] observed full dedication and loyalty to the company and in the process, gained the confidence of his immediate superiors. Subsequently, he was promoted as a lead man for all the carpenters of [Metro] in the various projects of [Metro]. Continuously rising in his career, [Aman] finally became a foreman. Indeed, [Aman] continuously served his employer well.

Early this year, or after the lapse of almost TWENTY SIX (26) YEARS, more specifically upon completion of another [Metro] project in Banawe Street (right beside the PPSTA Building, presently occupied by Rustan's Supermarket), [Aman] was forced by [Dr. Lai] to have an official leave for a period of two (2) weeks. However, while it is termed as an official leave with pay, [Aman] curiously received only half (½) of the supposed salary. [Aman] kept his silence. However, when he reported for work on May 15, 2001, Dr. Lai summoned him to his office where the former unceremoniously, nay illegally dismissed [Aman] from his employment by asserting that the company no longer needed his services. Right there and then, the hapless [Aman] pleaded for the retention of his post as a project foreman having in mind the welfare of his family. Unfortunately, his plea fell on deaf ears. For four (4) consecutive days, [Aman] reported for work and sought an audience with Dr. Lai, but was turned away by [Dr. Lai].

On May 21, 2001, [Dr. Lai] gave [Aman] an audience, but during the said meeting, [Dr. Lai] offered him the measly amount of Twenty Thousand Pesos (20,000.00) as "financial assistance" for his twenty six (26) years of service, but [Aman] refused. He needed the job to support his family. With his back against the wall, [Aman] countered by seeking at least a full-month separation pay for every year of service, but the cold and ruthless [Dr. Lai] cursed him and retorted: "Gago ka ba?! Ang dami-dami ko pa tatanggalin, tapos hihingi ka ng separation pay?! Lumayas ka nga sa harap ko baka sipain kita dyan! Ayoko makita ang pagmumukha mo dito!" Helpless, [Aman] left.

[Aman] wandered aimlessly. Shattered with worries on how to support his family, [Aman] decided to swallow his pride by once again approaching Metro to secure the necessary documents and signature to apply for a salary loan with the Social Security System (SSS). But surprise of all surprises, the Administrative Officer of Metro (Ms. Josephine Ong) turned down his request by asserting that [Aman's] employment was already terminated."^[4]

The Labor Arbiter's Ruling

In his Decision dated 29 January 2002, the Labor Arbiter dismissed Aman's case for lack of merit. The Labor Arbiter found that Metro did not dismiss Aman, but only laid him off temporarily. The Labor Arbiter further stated that:

[Aman's] work stoppage was brought about by a cause which was not of [petitioners'] own making. [Metro] ran out of project after the one where [Aman] was last assigned. The economic climate has affected [Metro]. [Aman] was verbally notified of the situation sometime in May 2001. On 19 July 2001, [petitioners] sent a letter to [Aman] formally notifying the latter of his temporary lay-off. Management assured [Aman] though of reinstatement should there be a new project or if there be none in 6 months [sic] he will be given his corresponding separation pay. On 24 July 2001, another letter was sent to [Aman] requiring him to report to [Metro] upon receipt for assignment to a new big project or to the smaller ones which are available at that time.

The separate letters issued by [petitioners] to [Aman] have legal implications specially the latter one. When [petitioners] gave the instruction to [Aman] to report for duty assignment the latter should have complied, otherwise he loses [sic] the right to reinstatement.

Evidently, [Aman] did not have the intention to return to his job with [petitioners]. His counsel manifested this in the latter dated 7 September 2001 in reply to the two previous letters of [petitioners] and understandably so

because [Aman] has already acquired [a] job in another company.

There is no dismissal by [petitioners] of [Aman] in the case but only temporary lay-off because it so happened that there was no existing project where [Aman] could be assigned after his stint at the last project undertaken by management. The company considered [Aman] though for duty assignment in forthcoming big project or in the small one should he wish to accept any of the offers. [Aman] refused both offers in the letter of his counsel dated 7 September 2001.

This is not to say that [petitioners] are totally absolved from liability. It is important to consider that [Aman] has rendered service quite sometime for [Metro]. Equity dictates that such past service should not go for naught even though he has manifested his dislike to go back to his former job. It would be fair and justified to grant him financial assistance. The claims for overtime compensation, premium pay for holidays and rest days were not particularized leaving this Office with no basis to make an outright award.

WHEREFORE, the complaint is hereby dismissed for lack of merit. For reason of equity, however, [petitioners] are hereby ordered to pay [Aman] the sum of P30,000.00 as financial assistance.

SO ORDERED.[5]

The Ruling of the NLRC

Aman filed an appeal before the NLRC. In its Decision[6] promulgated on 12 September 2002, the NLRC affirmed the ruling of the Labor Arbiter and dismissed Aman's appeal for lack of merit. The NLRC reiterated the Labor Arbiter's finding that petitioners temporarily terminated Aman for lack of work, completed projects, and financial losses. The NLRC believed that Aman left Metro, and that the P30,000 awarded by the Labor Arbiter as financial assistance is commensurate to whatever damage that Aman may have suffered.

On 30 June 2003, the NLRC resolved to deny Aman's Motion for Reconsideration for lack of merit.[7]

The Decision of the Appellate Court

Aman assailed the NLRC's decision and resolution before the appellate court. Aman imputed grave abuse of discretion upon the NLRC in sustaining the Labor Arbiter's ruling that there was no illegal dismissal but only a case of temporary lay-off.

The appellate court ruled that petitioners illegally dismissed Aman. Upon a perusal of the letters sent by petitioners to Aman, the appellate court concluded that the letters were vain attempts of petitioners to hide the illegality of Aman's termination from employment. The finding by the NLRC of Aman's temporary termination was not supported by substantial evidence. Moreover, the appellate court declared that Aman's dismissal was illegal because of the lack of observance of both procedural and substantive due process. The dispositive portion of the appellate court's decision reads as follows:

WHEREFORE, the instant petition is hereby GRANTED and the Resolution dated 12 September 2002 of the NLRC as well as its Order dated 30 June 2003 are hereby REVERSED and SET ASIDE. Private respondent Metro Construction, Inc. is hereby ordered to pay [Aman] his backwages from the time of his illegal dismissal on 15 May 2001 up to the time of the finality of this decision, as well as separation pay, in lieu of reinstatement, computed at one month for every year of service, with a fraction of at least six (6) months computed as one whole year.

Let this case be remanded to the NLRC for proper computation of [Aman's] backwages and separation pay.

SO ORDERED.[8]

The appellate court denied petitioners' motion for reconsideration in a Resolution promulgated on 1 June 2005.[9]

The Issues

Petitioners raise the following grounds for allowance of their petition:

- The Honorable Public Respondent Court of Appeals erred in reversing and setting aside the Resolution dated 12 September 2002 of the NLRC, as well as its Order dated 30 June 2003.
- The Honorable Public Respondent Court of Appeals gravely misappreciated the facts in ruling that [Aman] is entitled to his backwages from the time of his illegal dismissal on 15 May 2001, as well as separation pay, in lieu of [Aman's] reinstatement from work, computed at one month for every year of service, with a fraction of at least six (6) months computed as one whole year.[10]

The Ruling of the Court

The petition has no merit. Aman was able to show that the Labor Arbiter and the NLRC arbitrarily made factual findings and disregarded evidence on record.

Aman's Illegal Dismissal

Pertinent sections of Rule XXIII, Termination of Employment, of the Omnibus Rules Implementing the Labor Code provide as follows:

Section 1. Security of Tenure. -- (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.

x x x

(c) In cases of project employment or employment covered by legitimate contracting or subcontracting arrangements, no employee shall be dismissed prior to the completion of the project or phase thereof for which the employee was engaged, or prior to the expiration of the contract between the principal and the contractor, unless the dismissal is for just or authorized cause subject to the requirements of due process or prior notice or is brought about by the completion of the phase of the project or contract for which the employee was engaged.

Section 2. Standards of due process; requirements of due notice. -- In all cases of termination of employment, the following standards of due process shall be substantially observed:

I. For termination of employment based on just causes as defined in Article 282 of the Code:

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

(c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

In case of termination, the foregoing notices shall be served on the employee's last known address.

x x x

III. If the termination is brought about by the completion of the contract or phase thereof, no prior notice is required. If the termination is brought about by the failure of an employee to meet the standards of the employer in case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination.

It seems that, despite petitioners' assertion that there are no longer any construction projects wherein Aman may be given work, both the Labor Arbiter and the NLRC deemed Aman a regular employee instead of a project employee because they both accepted Metro's tale of business loss as justification for Aman's termination. Retrenchment to prevent business loss is considered an authorized cause to terminate employment of regular employees.[11]

Consider the following circumstances: On 15 May 2001, Dr. Lai told Aman that Metro no longer needed Aman's services. Prior to this, Metro put Aman on official leave for two weeks, but Metro gave Aman only half of his usual pay. On 21 May 2001, Dr. Lai offered P20,000 as financial assistance to Aman for his 26 years of service. Aman refused Dr. Lai's offer. On 6 July 2001, or after a little more than six weeks, Aman filed a complaint for illegal dismissal against respondents. It was only on 19 July 2001, or about two weeks after Aman filed his complaint, that Metro sent Aman a letter about his "temporary lay-off." Metro sent Aman another letter dated 24 July 2001 which required Aman to report to Metro.

In an unlawful dismissal case, the employer has the burden of proving the lawful cause sustaining the dismissal of the employee. The employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.[12] Apart from its self-serving allegations, Metro failed to prove that it sustained serious business losses. To justify retrenchment, the employer must prove serious business losses, and not just any kind or amount of loss. Metro should have produced its books of accounts, profit and loss statements, and even its accountant to competently amplify its financial position.[13]

[R]etrenchment strikes at the very core of an individual's employment and the burden clearly falls upon the employer to prove economic or business losses with appropriate supporting evidence. After all, not every asserted potential loss is sufficient legal warrant for a reduction of personnel and the evidence adduced in support of a claim of actual or potential business losses should satisfy certain established standards, to wit:

1. The losses expected and sought to be avoided must be substantial and not merely de minimis;
2. The apprehended substantial losses must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer;
3. The retrenchment should reasonably necessary and likely to prevent effectively the expected losses;
4. The losses, both the past and forthcoming, must be proven by sufficient and convincing evidence.[14]

We agree with the appellate court's finding that the two letters are vain attempts on the part of petitioners to hide the illegality of the cause of Aman's termination. We quote from the appellate court's decision below:

[E]ven if these two (2) letters could be viewed as truly reflective of their contents, they lack evidentiary value.

First, in the letter dated 16 June 2001, the reasons cited by [Metro] for [Aman's] temporary lay-off are the following: completed projects, lack of work and continuous financial losses. However, apart from the said letter, [Metro] did not present any evidence to show that all their projects had already been completed, that there is no more work available for [Aman], and that [Metro] is suffering from continuous financial losses.

Second, the said letter dated 16 June 2001 was sent to [Aman] only on 19 July 2001, after the complaint for illegal dismissal was filed on 6 July 2001. This is clearly a mere afterthought on the part of [Metro] to give a semblance of validity to the illegal dismissal which transpired much earlier in May 2001.

We are inclined to favor [Aman's] version that he was illegally dismissed on 15 May 2001. Considering that [Aman] has been in the employ of [Metro] since 1975 or for a period of twenty-six (26) years, coupled with the fact that it is his only source of income and that he has a family to support, it is very unlikely, that during these very difficult times [Aman] would just leave his job, if he was not unceremoniously dismissed by [Metro] and

Dr. Lai].[15]

Petitioners' unsubstantiated assertion that they did not dismiss Aman, coupled with the two letters sent to Aman, shows that petitioners failed to observe the twin requirements of notice and hearing for a valid dismissal. The law requires that the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him. Failure to comply with the requirements taints the dismissal with illegality.[16]

Had Metro's cause for terminating Aman rested on a just or authorized cause yet failed to observe procedural requirements, then Metro will only be liable for nominal damages worth P30,000.[17] However, such is not the case here. We hold that Aman's dismissal not only failed to observe procedural

requirements, it also lacked an authorized cause.[18] Article 279 of the Labor Code mandates that the employee who is illegally dismissed and not given due process is entitled to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.

WHEREFORE, we DENY the petition. We AFFIRM in toto the Decision of the Court of Appeals promulgated on 24 November 2004 as well as the Resolution promulgated on 1 June 2005 in CA-G.R. SP No. 80440.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and Peralta, JJ., concur.

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

[2] Rollo, pp. 121-130. Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Eugenio S. Labitoria and Bienvenido L. Reyes, concurring.

[3] Id. at 144-145.

[4] Id. at 121-123.

[5] Id. at 59-61.

[6] Id. at 99-101.

[7] Id. at 119.

[8] Id. at 129.

[9] Id. at 144-145.

[10] Id. at 21-22.

[11] See Art. 283, Labor Code of the Philippines.

[12] See *Dizon v. National Labor Relations Commission*, G.R. No. 79554, 14 December 1989, 180 SCRA 52.

[13] See *Bogo-Medellin Sugarcane Planters Asso., Inc. v. NLRC*, 357 Phil. 110 (1998).

[14] *Balbalec v. National Labor Relations Commission*, G.R. No. 107756, 19 December 1995, 251 SCRA 398,

403-404.

[15] Rollo, pp. 127-128.

[16] Pepsi-Cola Bottling Co. v. NLRC, G.R. No. 101900, 23 June 1992, 210 SCRA 277, 286.

[17] See Agabon v. National Labor Relations Commission, 485 Phil. 248 (2004).

[18] Article 283 of the Labor Code reads as follows:

ART. 283. CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL. -- EMPLOYER MAY ALSO TERMINATE THE EMPLOYMENT OF ANY EMPLOYEE DUE TO THE INSTALLATION OF LABOR-SAVING DEVICES, REDUNDANCY, RETRENCHMENT TO PREVENT LOSSES OR THE CLOSING OR CESSATION OF OPERATION OF THE ESTABLISHMENT OR UNDERTAKING UNLESS THE CLOSING IS FOR THE PURPOSE OF CIRCUMVENTING THE PROVISIONS OF THIS TITLE, BY SERVING A WRITTEN NOTICE ON THE WORKER AND THE MINISTRY OF LABOR AND EMPLOYMENT AT LEAST ONE (1) MONTH BEFORE THE INTENDED DATE THEREOF. X X X IN CASE OF RETRENCHMENT TO PREVENT LOSSES AND IN CASES OF CLOSURES OR CESSATION OF OPERATIONS OF ESTABLISHMENT OR UNDERTAKING NOT DUE TO SERIOUS BUSINESS LOSSES OR FINANCIAL REVERSES, THE SEPARATION PAY SHALL BE EQUIVALENT TO ONE (1) MONTH PAY OR AT LEAST ONE-HALF (1/2) MONTH PAY FOR EVERY YEAR OF SERVICE, WHICHEVER IS HIGHER. A FRACTION OF AT LEAST SIX (6) MONTHS SHALL BE CONSIDERED AS ONE (1) WHOLE YEAR.

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