NEW SUNRISE METAL CONSTRUCTION, FRANK WONG & ERLINDA WONG, PETITIONERS, VS. VICTOR PIA, ILDEFONSO SACARE, RENEBOY SUA, ALLAN SACARE, CELSO MOROJO, ISMAEL ALINAPON, JOHNNY SIRING...

G.R. NO. 171131. July 10, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Respondent Johnny Siringan was an employee of Queen Tower Manpower Services (Queen Tower). He was assigned to work for petitioner New Sunrise Metal Construction which is owned by its co-petitioners Frank Wong and Erlinda Wong on March 1999. He was later recalled by his employer Queen Tower effective April 8, 2000.[1]

The 12 other individual respondents were hired by petitioners under separate 6-month contracts denominated "Contract of Hire,"[2] but their services were terminated even prior to the expiration thereof as the table below shows:

Date Hired Date Dismissed

1. Victor Pia December 11, 1999 May 15, 2000

2. Ildefenso Sacare November 11, 1999 April 8, 2000

3. Reneboy Sua December 13, 1999 May 13, 2000

4. Allan Sacare December 13, 1999 May 13, 2000

5. Celso Morojo, Jr. December 13, 1999 May 12, 2000

6. Ismael Alinapon November 8, 1999 April 8, 2000

7. Tirso Juan February 10, 2000 April 8, 2000

8. Rolando Rabago January 18, 2000 April 8, 2000

9. Ruding Abordo November 8, 1999 April 8, 2000

10. Jackson Ortega January 26, 2000 April 8, 2000

11. Polito Maneja January 24, 2000 April 8, 2000

12. Carlos Zipagan February 5, 2000 April 8, 2000

Respondents subsequently filed a complaint for illegal dismissal as well as for non-payment of benefits against petitioners, claiming that they were dismissed without just cause and in violation of their right to due process; and that they were underpaid of their wages and were not paid their overtime pay, 13[th] month pay, legal holiday pay

and 5 days incentive leave. They thus prayed for reinstatement and payment of their monetary claims.

Petitioners, denying respondents' allegations, claimed that documentary evidence shows that respondents were paid their wages and other benefits in accordance with law; and that respondents were terminated from the service for inefficiency â”€ "performance below par."

By Decision[3] of March 19, 2001, the labor arbiter to which the case was assigned found for respondents except with respect to Siringan, thus:

> Complainant Johnny Siringan was not illegally dismissed. He was recalled by his real employer Queen T[ower] Manpower Services or QTMS. These facts are evidenced by his and other's recall order dated April 8, 2000. The fact that his employer is QTMS is evidenced by the payrolls exhibited by [petitioners in] their Position Paper.
>
> The rest who were signed "Contract of Hire" for a duration of "no more than six (6) months after which it is deemed terminated," but were dismissed before the 6[th] month of their contract, without proof of valid cause were illegally terminated. . . . [4] (Emphasis and underscoring supplied)

Thus, the labor arbiter disposed:

> WHEREFORE, premises considered, Respondents are hereby declared to have illegally preterminated Complainants' Contracts of Hire, and have failed to pay them their proportionate 13[th] month pay for year 2000. Respondents therefore are hereby Ordered to pay Complainants their salaries for the period Complainants should have worked under the unexpired contracts, and their proportionate 13[th] month pay, per computation prepared by the NLRC-NCR Computation Unit and is attached as part of this decision in the total amount of P184,208.70.
>
> The other claims of Complainants are hereby DISMISSED for lack of merit (service incentive leave pay) or for lack of basis (overtime pay, holiday work, and premium pay).[5] (Emphasis in the original)

Petitioners appealed the labor arbiter's decision to the National Labor Relations Commission (NLRC), arguing that the labor arbiter failed to examine paragraph (4) of the individual contracts of the 12 respondents which reads:

> (4) SUNRISE reserves the right to terminate this contract even prior to the expiry thereof, and for any cause or reason it may deem proper. Contract Worker hereby waives any prior notice on that account and shall hold SUNRISE free and harmless from any and all liability arising from, or on account of, the operation of this contract.[6] (Underscoring supplied)

Petitioners thus prayed that the NLRC delete the portion awarding payment of wages for the unexpired portion of the contract and to retain the portion awarding the proportionate 13[th] month pay.

By Resolution[7] dated September 18, 2002, the NLRC dismissed petitioners' appeal.

The NLRC, by Resolution of April 11, 2003, reversed its September 18, 2002 Resolution, however, upon petitioners' motion for reconsideration[8] to which copies of the monthly production reports[9] describing the performance of respondents were appended. The NLRC thus dismissed the complaint filed by respondents, ratiocinating as follows:

> In their Motion for Reconsideration, the [petitioners] reiterated that complainants were dismissed due to their poor performance. And in support thereto, [petitioners] submitted the various production reports of the complainants for the period covering January 2000 to April 2000. The [petitioners] inadvertently failed to attach the production reports in its position paper which showed that during their first four months of employment, complainants miserably failed to meet the required quota. Their poor performance was due to

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> their being slow workers (mabagal magtrabaho) and telling stories while working (nagkukwentuhan). Despite ample opportunity given by the [petitioners], complainants did not even try to improve their performance and output. Complainants' work which consisted of either fil[l]ing up bottles or sealing the same, requires an average or accomplishment of at least 1,500 bottles per day. However, complainants' output average only about 1,000 or 1,200 bottles per day. Their output is certainly below the expected quota of at least 1,500 bottles a day.
>
> x x x x
>
> Complainants' actuation of disregarding compliance with their quota commitment does not speak well of their work attitude. Thus, [petitioners] could not be faulted if after evaluation of the complainants' work performance, they decided to terminate their employment within the probationary period stated in their employment contract. It would be unfair and unjust for the [petitioners] to be required to keep complainants under their employ despite their "not-so-interested" work attitude.
>
> x x x x[10] (Emphasis supplied)

Respondents thereupon filed a petition for certiorari before the Court of Appeals, arguing that the NLRC committed grave abuse of discretion amounting to lack or in excess of jurisdiction in dismissing their complaint for lack of merit, in violation of respondents' right to security of tenure and to their monetary claims.[11]

By Decision[12] dated September 28, 2005, the appellate court set aside the April 11, 2003 Resolution of the NLRC and reinstated the March 19, 2001 decision of the labor arbiter, it holding that the evidence supports the findings and conclusion of the labor arbiter.

Hence, the present petition for review on certiorari, positing, in the main, that contrary to the findings of the appellate court, the NLRC correctly found that there was clearly a valid cause to terminate the employment of respondents due to their incompetence and their poor performance.

The Court finds that, as held by the labor arbiter, respondent Siringan cannot be considered to have been illegally dismissed by petitioners. For Siringan's real employer is Queen Tower. When he ceased to render services for petitioners, it was not because he was dismissed by them but because he was recalled by Queen Tower.

That Queen Tower is Siringan's employer is confirmed by its payroll showing him to be its employee.

Respecting the other respondents, their employment being one with a fixed period as shown by the contracts they signed, it only terminates by its own term at the end of six months[13] unless they are dismissed with just cause.[14]

Petitioners insist, however, that the 12 respondents were dismissed prior to the expiration of the 6-month period for just cause â”€ inefficiency, their performance being below par as shown by the monthly production reports.

Assuming that what is reflected in the monthly production reports is an accurate account of each of the 12 respondents' performance, petitioners failed to establish that they were informed, at the time of hiring, of the standards they were expected to meet, i.e., that they were supposed to reach certain quotas.[15] This is not to mention that petitioners failed to present proof that respondents were apprised of their poor or below average performance after each evaluation period to at least give them the opportunity to improve their performance.

At all events, unsatisfactory performance cannot be considered a just cause for dismissal under the Labor Code if it does not amount to gross and habitual neglect of duties.[16] On this score, petitioners failed to prove that the alleged inefficiency of the 12 respondents amounted to gross and habitual neglect of duties.

Petitioners having failed to substantiate their claim that the 12 respondents were dismissed for just cause, the

decision of the labor arbiter directing them to pay respondents their salaries corresponding to the unexpired period of their respective contracts,[17] plus the proportionate 13th month pay to which they are entitled, is in order.

WHEREFORE, the petition is DENIED. The Court of Appeals' assailed decision reinstating the labor arbiter's decision dated March 19, 2001 is AFFIRMED, with the MODIFICATION that the award in favor of respondent Johnny Siringan is deleted.

Costs against petitioners.
SO ORDERED.
Carpio, Tinga, and Velasco, Jr., JJ., concur.
Quisumbing, J., (Chairperson), on official leave.

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[1]National Labor Relations Commission (NLRC) records, Vol. II, p. 25.

[2] Id. at 31-32, 34-35, 38-41, 43-44, 46-47, 49-50, 55-56, 63-64, 67-68, 75-76, 82-83.

[3] NLRC records, Vol. I, pp. 238-262.

[4] Id. at 258-259.

[5] Id. at 262.

[6] NLRC records, Vol. II, p. 32.

[7] NLRC records, Vol. I, pp. 331-342.

[8] Id. at 365-367.

[9] Id. at 368-374.

[10] Id. at 379-381.

[11] Court of Appeals rollo, pp. 17-18.

[12] Id. at 289-297. Penned by Justice Jose L. Sabio, Jr. with the concurrence of Justice Jose C. Mendoza and Justice Arturo G. Tayag.

[13] Pangilinan v. General Milling Corporation, G.R. No. 149329, July 12, 2004, 434 SCRA 159, 172.

[14] Though Article 279 of the Labor Code provides that the employer shall not terminate the services of an employee except for just or authorized cause in cases of regular employment, the same rule is also made applicable in cases of non-regular employment such as fixed-term employment wherein the employer cannot lawfully terminate it before the end of the agreed period unless there is just cause to do so. Vide Medenilla v. Philippine Veterans Bank, 384 Phil. 529, 537 (2000); Anderson v. NLRC, 322 Phil. 122, 137 (1996).

[15] Orient Express Placement Philippines v. NLRC, G.R. No. 113713, June 11, 1997, 273 SCRA 256, 259-260.

[16] Eastern Overseas Employment Center, Inc. v. Bea, G.R. No. 143023, November 29, 2005, 476 SCRA 384, 393; A.M. Oreta & Co., Inc. v. NLRC, G.R. No. 74004, August 10, 1989, 176 SCRA 218, 227.

[17] Medenilla v. Philippine Veterans Bank, supra note 14 at 537; Anderson v. NLRC, supra note 14 at 137.

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