

CANADIAN OPPORTUNITIES UNLIMITED, INC., PETITIONER, VS. BART Q. DALANGIN, JR., RESPONDENT.

G.R. No. 172223. February 06, 2012

Ponente: BRION, J.

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BRION, J.:

For resolution is the petition for review on certiorari[1] to nullify the decision dated December 19, 2005[2] and the resolution dated March 30, 2006[3] of the Court of Appeals (CA) rendered in CA-G.R. SP No. 84907.

The Antecedents

On November 20, 2001, respondent Bart Q. Dalangin, Jr. filed a complaint for illegal dismissal, with prayer for reinstatement and backwages, as well as damages (moral and exemplary) and attorney's fees, against petitioner Canadian Opportunities Unlimited, Inc. (company). The company, based in Pasong Tamo, Makati City, provides assistance and related services to applicants for permanent residence in Canada.

Dalangin was hired by the company only in the previous month, or in October 2001, as Immigration and Legal Manager, with a monthly salary of P15,000.00. He was placed on probation for six months. He was to report directly to the Chief Operations Officer, Annie Llamanzares Abad. His tasks involved principally the review of the clients' applications for immigration to Canada to ensure that they are in accordance with Canadian and Philippine laws.

Through a memorandum[4] dated October 27, 2001, signed by Abad, the company terminated Dalangin's employment, declaring him "unfit" and "unqualified" to continue as Immigration and Legal Manager, for the following reasons:

a)

Obstinacy and utter disregard of company policies. Propensity to take prolonged and extended lunch breaks, shows no interest in familiarizing oneself with the policies and objectives.

b)

Lack of concern for the company's interest despite having just been employed in the company. (Declined to attend company sponsored activities, seminars intended to familiarize company employees with Management objectives and enhancement of company interest and objectives.)

c)

Showed lack of enthusiasm toward work.

d)

Showed lack of interest in fostering relationship with his co-employees.[5]

The Compulsory Arbitration Proceedings

Dalangin's submission

Dalangin alleged, in his Position Paper,[6] that the company issued a memorandum requiring its employees to attend a "Values Formation Seminar" scheduled for October 27, 2001 (a Saturday) at 2:00 p.m. onwards. He inquired from Abad about the subject and purpose of the seminar and when he learned that it bore no relation to his duties, he told Abad that he would not attend the seminar. He said that he would have to leave at 2:00 p.m. in order to be with his family in the province. Dalangin claimed that Abad insisted that he attend the seminar so that the other employees would also attend. He replied that he should not be treated similarly with the other employees as there are marked differences between their respective positions and duties. Nonetheless, he signified his willingness to attend the seminar, but requested Abad to have it conducted within office hours to enable everybody to attend.

Dalangin further alleged that Abad refused his request and stressed that all company employees may be required to stay beyond 2:00 p.m. on Saturdays which she considered still part of office hours. Under his employment contract,[7] his work schedule was from 9:00 a.m. to 6:00 p.m., Monday to Friday, and 9:00 a.m. to 2:00 p.m. on Saturdays. Dalangin argued that it has been an established company practice that on Saturdays, office hours end at 2:00 p.m.; and that an employee cannot be made to stay in the office beyond office hours, except under circumstances provided in Article 89 of the Labor Code.

On October 26, 2001, Dalangin claimed that Abad issued a memorandum[8] requiring him to explain why he could not attend the seminar scheduled for October 27, 2001 and the other forthcoming seminars. The following day, October 27, 2001, Abad informed him that Mr. Yadi N. Sichani, the company's Managing Director, wanted to meet with him regarding the matter. He alleged that at the meeting, he was devastated to hear from Sichani that his services were being terminated because Sichani could not keep in his company "people who are hard-headed and who refuse to follow orders from management." [9] Sichani also told him that since he was a probationary employee, his employment could be terminated at any time and at will. Sichani refused to accept his letter-reply to the company memorandum dated October 26, 2001 and instead told him to just hand it over to Abad.

The company's defense

Through their position paper,[10] the company and its principal officers alleged that at the time of Dalangin's engagement, he was advised that he was under probation for six months and his employment could be terminated should he fail to meet the standards to qualify him as a regular employee. He was informed that he would be evaluated on the basis of the results of his work; on his attitude towards the company, his work and his co-employees, as spelled out in his job description;[11] and on the basis of Abad's affidavit.[12]

They further alleged that during his brief employment in the company, Dalangin showed lack of enthusiasm towards his work and was indifferent towards his co-employees and the company clients. Dalangin refused to comply with the company's policies and procedures, routinely taking long lunch breaks, exceeding the one hour allotted to employees, and leaving the company premises without informing his immediate superior, only to call the office later and say that he would be unable to return because he had some personal matters to attend to. He also showed lack of interpersonal skills and initiative which he manifested when the immigration application of a company client, Mrs. Jennifer Tecson, was denied by the Canadian Embassy. Dalangin failed to provide counsel to Tecson; he also should have found a way to appeal her denied application, but he did not. As it turned out, the explanation he gave to Tecson led her to believe that the company did not handle her application well. Dalangin's lack of interest in the company was further manifested when he refused to attend company-sponsored seminars designed to acquaint or update the employees with the company's policies and objectives.

The company argued that since Dalangin failed to qualify for the position of Immigration and Legal Manager, the company decided to terminate his services, after duly notifying him of the company's decision and the reason for his separation.

The Compulsory Arbitration Rulings

In his decision dated April 23, 2003,[13] Labor Arbiter Eduardo G. Magno declared Dalangin's dismissal illegal, and awarded him backwages of P75,000.00, moral damages of P50,000.00 and exemplary damages of P50,000.00, plus 10% attorney's fees. The labor arbiter found that the charges against Dalangin, which led to his dismissal, were not established by clear and substantial proof.

On appeal by the company, the National Labor Relations Commission (NLRC) rendered a decision on March 26, 2004[14] granting the appeal, thereby reversing the labor arbiter's ruling. It found Dalangin's dismissal to be a valid exercise of the company's management prerogative because Dalangin failed to meet the standards for regular employment. Dalangin moved for reconsideration, but the NLRC denied the motion, prompting him to go to the CA on a petition for certiorari under Rule 65 of the Rules of Court.

The CA Decision

In its now assailed decision,[15] the CA held that the NLRC erred when it ruled that Dalangin was not illegally dismissed. As the labor arbiter did, the CA found that the company failed to support, with substantial evidence, its claim that Dalangin failed to meet the standards to qualify as a regular employee.

Citing a ruling of the Court in an earlier case,[16] the CA pointed out that the company did not allow Dalangin to prove that he possessed the qualifications to meet the reasonable standards for his regular employment; instead, it dismissed Dalangin peremptorily from the service. It opined that it was quite improbable that the company could fully determine Dalangin's performance barely one month into his employment.[17]

The CA denied the company's subsequent motion for reconsideration in its resolution of March 30, 2006.[18] Hence, this appeal.

The Company's Case

Through its submissions -- the Petition,[19] the Reply[20] and the Memorandum[21] -- the company seeks a reversal of the CA rulings, raising the following issues: (1) whether the requirements of notice and hearing in employee dismissals are applicable to Dalangin's case; and (2) whether Dalangin is entitled to moral and exemplary damages, and attorney's fees.

On the first issue, the company argues that the notice and hearing requirements are to be observed only in termination of employment based on just causes as defined in Article 282 of the Labor Code. Dalangin's dismissal, it maintains, was not based on a just cause under Article 282, but was due to his failure to meet the company's standards for regular employment. It contends that under the Labor Code's Implementing Rules and Regulations, "[i]f the termination is brought about x x x by failure of an employee to meet the standards of the employer in the 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." [22] It points out that it properly observed the notice requirement when it notified Dalangin of his dismissal on October 27, 2001,[23] after it asked him to explain (memorandum of October 26, 2001) why he could not attend the seminar scheduled for October 27, 2001; Dalangin failed to submit his explanation. It posits that contrary to the CA's conclusion, the company's finding that Dalangin failed to meet its standards for regular employment was supported by substantial evidence.

With respect to the second issue, the company submits that Dalangin is not entitled to moral and exemplary

damages, and attorney's fees. It maintains that Dalangin failed to present convincing evidence establishing bad faith or ill-motive on its part. It insists that it dismissed Dalangin in good faith with the belief that he would not contribute any good to the company, as manifested by his behavior towards his work and co-employees.

The Case for Dalangin

Through his Comment[24] and Memorandum,[25] Dalangin asks the Court to deny the petition. He argues that (1) probationary employees, under existing laws and jurisprudence, are entitled to notice and hearing prior to the termination of their employment; and (2) he is entitled to moral and exemplary damages, and attorney's fees.

Dalangin disputes the company's submission that under the Labor Code's implementing rules, only a written notice is required for the dismissal of probationary employees. He argues that the rules cited by the company clearly mandate the employer to (1) serve the employee a written notice and (2) within a reasonable time before effecting the dismissal. He stresses that for the dismissal to be valid, these requirements must go hand in hand.

He explains that in the present case, the company did not observe the above two requirements as he was dismissed the day after he was asked, by way of a memorandum dated October 26, 2001,[26] to explain within twenty-four hours why he could not attend the October 27, 2001 seminar. He adds that on the assumption that the termination letter dated October 27, 2001 refers to the written notice contemplated under the rules, still the company did not observe the second requirement of providing him a reasonable time before he was dismissed. He posits that the company disregarded the security of tenure guarantee under the Constitution which makes no distinction between regular and probationary employees.

On the company's claim that he failed to perform in accordance with its standards, Dalangin argues that a perusal of the "grounds" in support of his dismissal reveals that none of the charges leveled against him is supported by concrete and tangible evidence. He maintains that the company miserably failed to cite a single company policy which he allegedly violated and defied. He refutes the company's claim that his job description and his employment contract apprise him of the company policy that he is to observe for the duration of his employment. He, thus, maintains that he had not been previously informed of the company standards he was supposed to satisfy. He stresses that the CA did not err in holding that the company's general averments regarding his failure to meet its standards for regular employment were not corroborated by any other evidence and, therefore, are insufficient to justify his dismissal.

Dalangin insists that he is entitled to backwages, moral and exemplary damages, as well as attorney's fees, claiming that his dismissal was unjust, oppressive, tainted with bad faith, and contrary to existing morals, good customs and public policy. There was bad faith, he argues, because he was dismissed without the requisite notice and hearing required under the law; and merely on the basis of the company's bare, sweeping and general allegations that he is difficult to deal with and that he might cause problems to the company's future business operations. He is entitled to attorney's fees, he submits, because he was forced to litigate and vindicate his rights.

He bewails what he considers as "a pre-conceived plan and determined design"[27] on the part of Sichani and Abad to immediately terminate his employment. Elaborating, he points out that the company, through Abad, prepared two memoranda, both dated October 26, 2001, one is the memo to him requiring his written explanation[28] and the other, addressed to Sichani, recommending his dismissal.[29] He was surprised that Sichani did not bother to ask Abad why she gave him two conflicting memos on the same day; neither did Sichani or Abad investigate the surrounding circumstances on the matter nor did they give him the opportunity to explain his side.

The Court's Ruling

As a rule, the Court is not a trier of facts, the resolution of factual issues being the function of lower courts whose findings are received with respect and are binding on the Court subject to certain exceptions.[30] A recognized exception to the rule is the circumstance in which there are conflicting findings of fact by the CA, on the one hand, and the trial court or government agency concerned, on the other, as in the present case. The factual findings of the NLRC on the dispute between Dalangin and the company are at variance with those of the CA, thus necessitating our review of the case, especially the evidence on record.[31]

We now resolve the core issue of whether Dalangin, a probationary employee, was validly dismissed.

In *International Catholic Migration Commission v. NLRC*,[32] the Court explained that a probationary employee, as understood under Article 281 of the Labor Code, is one who is on trial by an employer, during which, the latter determines whether or not he is qualified for permanent employment. A probationary appointment gives the employer an opportunity to observe the fitness of a probationer while at work, and to ascertain whether he would be a proper and efficient employee.

Dalangin was barely a month on the job when the company terminated his employment. He was found wanting in qualities that would make him a "proper and efficient" employee or, as the company put it, he was unfit and unqualified to continue as its Immigration and Legal Manager.

Dalangin's dismissal was viewed differently by the NLRC and the CA. The NLRC upheld the dismissal as it was, it declared, in the exercise of the company's management prerogative. On the other hand, the CA found that the dismissal was not supported by substantial evidence and that the company did not allow Dalangin to prove that he had the qualifications to meet the company's standards for his regular employment. The CA did not believe that the company could fully assess Dalangin's performance within a month. It viewed Dalangin's dismissal as arbitrary, considering that the company had very little time to determine his fitness for the job.

We disagree.

The essence of a probationary period of employment fundamentally lies in the purpose or objective of both the employer and the employee during the period. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the latter seeks to prove to the former that he has the qualifications to meet the reasonable standards for permanent employment.[33]

The "trial period" or the length of time the probationary employee remains on probation depends on the parties' agreement, but it shall not exceed six (6) months under Article 281 of the Labor Code, unless it is covered by an apprenticeship agreement stipulating a longer period. Article 281 provides:

Probationary employment. -- Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

As the Court explained in *International Catholic Migration Commission*, "the word 'probationary,' as used to describe the period of employment, implies the purpose of the term or period, but not its length." [34] Thus, the fact that Dalangin was separated from the service after only about four weeks does not necessarily mean that his separation from the service is without basis.

Contrary to the CA's conclusions, we find substantial evidence indicating that the company was justified in terminating Dalangin's employment, however brief it had been. Time and again, we have emphasized that

substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[35]

Dalangan overlooks the fact, wittingly or unwittingly, that he offered glimpses of his own behavior and actions during his four-week stay with the company; he betrayed his negative attitude and regard for the company, his co-employees and his work.

Dalangan admitted in compulsory arbitration that the proximate cause for his dismissal was his refusal to attend the company's "Values Formation Seminar" scheduled for October 27, 2001, a Saturday. He refused to attend the seminar after he learned that it had no relation to his duties, as he claimed, and that he had to leave at 2:00 p.m. because he wanted to be with his family in the province. When Abad insisted that he attend the seminar to encourage his co-employees to attend, he stood pat on not attending, arguing that marked differences exist between their positions and duties, and insinuating that he did not want to join the other employees. He also questioned the scheduled 2:00 p.m. seminars on Saturdays as they were not supposed to be doing a company activity beyond 2:00 p.m. He considers 2:00 p.m. as the close of working hours on Saturdays; thus, holding them beyond 2:00 p.m. would be in violation of the law.

The "Values Formation Seminar" incident is an eye-opener on the kind of person and employee Dalangan was. His refusal to attend the seminar brings into focus and validates what was wrong with him, as Abad narrated in her affidavit[36] and as reflected in the termination of employment memorandum.[37] It highlights his lack of interest in familiarizing himself with the company's objectives and policies. Significantly, the seminar involved acquainting and updating the employees with the company's policies and objectives. Had he attended the seminar, Dalangan could have broadened his awareness of the company's policies, in addition to Abad's briefing him about the company's policies on punctuality and attendance, and the procedures to be followed in handling the clients' applications. No wonder the company charged him with obstinacy.

The incident also reveals Dalangan's lack of interest in establishing good working relationship with his co-employees, especially the rank and file; he did not want to join them because of his view that the seminar was not relevant to his position and duties. It also betrays an arrogant and condescending attitude on his part towards his co-employees, and a lack of support for the company objective that company managers be examples to the rank and file employees.

Additionally, very early in his employment, Dalangan exhibited negative working habits, particularly with respect to the one hour lunch break policy of the company and the observance of the company's working hours. Thus, Abad stated that Dalangan would take prolonged lunch breaks or would go out of the office - without leave of the company - only to call the personnel manager later to inform the latter that he would be unable to return as he had to attend to personal matters. Without expressly countering or denying Abad's statement, Dalangan dismissed the charge for the company's failure to produce his daily time record.[38]

The same thing is true with Dalangan's handling of Tecson's application for immigration to Canada, especially his failure to find ways to appeal the denial of Tecson's application, as Abad stated in her affidavit. Again, without expressly denying Abad's statement or explaining exactly what he did with Tecson's application, Dalangan brushes aside Abad's insinuation that he was not doing his job well, with the ready argument that the company did not even bother to present Tecson's testimony.

In the face of Abad's direct statements, as well as those of his co-employees, it is puzzling that Dalangan chose to be silent about the charges, other than saying that the company could not cite any policy he violated. All along, he had been complaining that he was not able to explain his side, yet from the labor arbiter's level, all the way to this Court, he offered no satisfactory explanation of the charges. In this light, coupled with Dalangan's adamant refusal

to attend the company's "Values Formation Seminar" and a similar program scheduled earlier, we find credence in the company's submission that Dalangin was unfit to continue as its Immigration and Legal Manager. As we stressed earlier, we are convinced that the company had seen enough from Dalangin's actuations, behavior and deportment during a four-week period to realize that Dalangin would be a liability rather than an asset to its operations.

We, therefore, disagree with the CA that the company could not have fully determined Dalangin's performance barely one month into his employment. As we said in *International Catholic Migration Commission*, the probationary term or period denotes its purpose but not its length. To our mind, four weeks was enough for the company to assess Dalangin's fitness for the job and he was found wanting. In separating Dalangin from the service before the situation got worse, we find the company not liable for illegal dismissal.

The procedural due process issue

Section 2, Rule I, Book VI of the Labor Code's Implementing Rules and Regulations provides:

If the termination is brought about by the completion of a contract or phase thereof, or by failure of an employee to meet the standards of the employer in the 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.

The company contends that it complied with the above rule when it asked Dalangin, through Abad's Memorandum dated October 26, 2001,[39] to explain why he could not attend the seminar scheduled for October 27, 2001. When he failed to submit his explanation, the company, again through Abad, served him a notice the following day, October 27, 2001, terminating his employment. Dalangin takes strong exception to the company's submission. He insists that the company failed to comply with the rules as he was not afforded a reasonable time to defend himself before he was dismissed.

The records support Dalangin's contention. The notice served on him did not give him a reasonable time, from the effective date of his separation, as required by the rules. He was dismissed on the very day the notice was given to him, or, on October 27, 2001. Although we cannot invalidate his dismissal in light of the valid cause for his separation, the company's non-compliance with the notice requirement entitles Dalangin to indemnity, in the form of nominal damages in an amount subject to our discretion.[40] Under the circumstances, we consider appropriate an award of nominal damages of P10,000.00 to Dalangin.

Damages and attorney's fees

Finally, given the valid reason for Dalangin's dismissal, the claim for moral and exemplary damages, as well as attorney's fees, must necessarily fail.

WHEREFORE, premises considered, the petition is hereby GRANTED. The assailed decision and resolution of the Court of Appeals are hereby SET ASIDE. The complaint is DISMISSED for lack of merit.

Petitioner Canadian Opportunities Unlimited, Inc. is DIRECTED to pay respondent Bart Q. Dalangin, Jr. nominal damages in the amount of P10,000.00.

Costs against the respondent.

SO ORDERED.

Carpio, Perez, Sereno and Reyes, JJ., concur.

- [1] Rollo, pp. 9-28; filed under Rule 45 of the Rules of Court.
- [2] Id. at 35-53; penned by Associate Justice Regalado E. Maambong, and concurred in by Associate Justices Rodrigo V. Cosico and Lucenito N. Tagle.
- [3] Id. at 55-55A.
- [4] Id. at 226.
- [5] Ibid.
- [6] Id. at 87-101.
- [7] Id. at 103-104.
- [8] Supra note 6, at 89.
- [9] Ibid.
- [10] Id. at 79-86.
- [11] Id. at 105-106.
- [12] Id. at 223-224.
- [13] Id. at 62-78.
- [14] Id. at 56-60.
- [15] Supra note 2.
- [16] Cebu Marine Beach Resort v. National Labor Relations Commission, 460 Phil. 301 (2003).
- [17] Miranda v. Carreon, 449 Phil. 285 (2003).
- [18] Supra note 3.
- [19] Supra note 1.
- [20] Rollo, pp. 255-268.
- [21] Id. at 272-298.
- [22] Book VI, Rule 1, Section 2, not Book V, Rule XXIII, III (2) as cited.
- [23] Supra note 4.
- [24] Rollo, pp. 228-252; dated September 21, 2006.
- [25] Id. at 300-322; dated March 28, 2007.
- [26] Supra note 8.
- [27] Supra note 25, at 317.
- [28] Supra note 8.
- [29] Supra note 25, at 305.
- [30] Lanuza v. Muñoz, 473 Phil. 616 (2004).

[31] Palecpec, Jr. v. Davis, G.R. No. 171048, July 31, 2007, 528 SCRA 720.

[32] 251 Phil. 560 (1989).

[33] Id. at 567.

[34] Ibid.

[35] Madrigalejos v. Geminilou Trucking Service, G.R. No. 179174, December 24, 2008, 575 SCRA 570.

[36] Supra note 12.

[37] Supra note 4.

[38] Supra note 25, at 319.

[39] Supra note 8.

[40] Agabon v. NLRC, 485 Phil. 248 (2004).

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