

PADILLA MACHINE SHOP, RODOLFO PADILLA and LEONARDO PADILLA, vs. Petitioners, RUFINO A. JAVILGAS, Respondent.

G.R. No. 175960. February 19, 2008

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This petition for review assails the Decision[1] of the Court of Appeals dated August 29, 2006 in CA-G.R. SP No. 89164 which reinstated the decision of the Labor Arbiter finding respondent Rufino A. Javilgas to have been illegally dismissed. Also assailed is the Resolution[2] of December 21, 2006 denying the motion for reconsideration.

On December 10, 2002, Javilgas filed a Complaint[3] for illegal dismissal, underpayment of 13[th] month pay, separation pay and non-remittance of SSS contributions against petitioners Padilla Machine Shop, Rodolfo Padilla and Leonardo Padilla.

Javilgas alleged that in January 1998, he was hired by Padilla Machine Shop, located at Commonwealth Avenue, Quezon City. His work consisted of reconditioning machines and was paid a monthly salary of P6,480.00. In July 1998, his salary was increased to P7,200.00; and in January 1999, his salary was again increased to P8,400.00 until his dismissal in April 2002. Petitioners made regular deductions for his SSS contributions, but sometime in 2002, he found out that his employer was not remitting the contributions to the SSS; as a result, he was not able to avail of the benefits thereof when his wife gave birth. When he complained about the failure of his employer to remit his SSS contributions, the latter transferred him to the Novaliches branch office.

Javilgas further alleged that in April 2002, Rodolfo Padilla called him by telephone and told him to “stop working,” but “without giving any reason therefor.” He stopped reporting for work and sued petitioners for illegal dismissal, with a prayer for the payment of backwages, pro rated 13[th] month pay, separation pay, and moral and exemplary damages.

On the other hand, petitioner Rodolfo Padilla (Rodolfo), proprietor of Padilla Machine Shop, alleged that in 1999, SSS and Medicare contributions were deducted from Javilgas’ salary and remitted to the SSS; that in 2000, they (petitioners) submitted a report to the SSS that Javilgas had voluntarily left and abandoned his work, and transferred to another shop, Raymond Machine Shop, located within the same vicinity as Padilla Machine Shop; that some months after, Javilgas returned and pleaded to be re-employed with them; that Rodolfo Padilla took Javilgas back to work, but their customers were not satisfied with the quality of his work; hence Javilgas was assigned to the Novaliches branch; that Javilgas incurred numerous absences in the Novaliches branch; that Javilgas had opened his own machine shop and even “pirated” the clients of petitioners; and finally, Javilgas again voluntarily left Padilla Machine Shop without prior notice.

On March 31, 2004, the Labor Arbiter rendered a decision that Javilgas was illegally dismissed, the dispositive portion of which reads, as follows:

WHEREFORE, judgment is hereby rendered finding Complainant to have been illegally dismissed. Concomitantly, Respondents are ordered jointly and severally to pay Complainant the following:

P232,065.92 – representing backwages;
50,400.00 – representing separation pay;
18,571.00 – representing 13[th] month pay

P301,036.92 – Total

Ten percent of the total award as attorney's fees.

The claim of non-remittance of SSS contribution is dismissed for lack of jurisdiction.

SO ORDERED.[4]

Petitioners appealed the decision to the National Labor Relations Commission (NLRC) which reversed the decision of the Labor Arbiter, to wit:

WHEREFORE, premises considered, we give due course to the appeal of respondents. Consequently, the Decision of the Labor Arbiter below is hereby reversed and set aside and a new decision is entered dismissing the instant case for lack of merit.

SO ORDERED.[5]

The NLRC found no sufficient evidence to show that Javilgas was dismissed or prevented from reporting for work; that Javilgas could not categorically state when he was dismissed: in his complaint, he claimed to have been dismissed on February 27, 2002, but in subsequent pleadings he alleged he was dismissed in mid-April, 2002. Relying on the principle enunciated in *Chong Guan Trading v. National Labor Relations Commission*,^[6] it ruled that where Javilgas was never notified of his dismissal nor was he prevented from returning to work, there could be no illegal dismissal. The NLRC also found the telephone conversation between Javilgas and Rodolfo Padilla – where the latter told the former to stop reporting to work – self-serving, conjectural and of no probative value, especially where Javilgas himself declares that he was told by Rodolfo not to report to work without giving any reason therefor. In fine, the NLRC held that Javilgas voluntarily resigned, and not illegally dismissed.

On appeal, the Court of Appeals reversed the NLRC and reinstated the Decision of the Labor Arbiter. It held that the burden of proof is on the petitioners, to show that Javilgas was dismissed for a valid and just cause. As to the inconsistency in the dates of Javilgas' termination, the appellate court noted that it was a case of miscommunication between Javilgas and the person who filled up the entries in the pro forma labor complaint in his behalf; Javilgas was found to be illiterate, as he did not even get to finish Grade School. Likewise, the delay of eight months in the filing of the complaint should not work against respondent because it took time for him to obtain the services of a counsel.

The appellate court did not lend credence to petitioners' claim that respondent voluntarily resigned since the issue was only raised for the first before the NLRC. A change of theory on appeal – from abandonment of work in the Labor Arbiter to voluntary resignation on appeal, is prohibited. It likewise declared as without basis the petitioners' claim that Javilgas was operating a rival machine shop, since petitioners failed to prove with sufficient evidence the veracity of said claim. The Court of Appeals disregarded the documents submitted by the petitioners to the NLRC for the first time (business permit and photographs) which they claim would show that respondent was operating his own machine shop during the period of his employment with Padilla Machine Shop.

Petitioners' motion for reconsideration was denied hence, the instant petition raising the following issues:

- The Court of Appeals erred in holding that upon the petitioners rested the burden of proving that the

termination of the respondent was for a valid cause, despite their consistent position that the latter was never terminated from employment;

- The Court of Appeals erred in holding that the said consistent position adopted by petitioners – that they never dismissed Javilgas – is not sufficient to negate the charge of illegal dismissal;
- The Court of Appeals erred in disregarding documentary evidence presented for the first time on appeal; and,
- The Court of Appeals erred in awarding attorney's fees to the respondent who was being represented pro bono by the Office of Legal Aid of the U.P. College of Law.

Petitioners did not offer any evidence to disprove the allegation that Rodolfo Padilla informed Javilgas by phone to stop reporting to work. On the contrary, Rodolfo admitted that he “advised” Javilgas to “concentrate on his (Javilgas’) shop if he has no more time for the company (Padilla Machine Shop).”[7] Moreover, it was only in the NLRC that the documents and photographs purporting to show that Javilgas was conducting business inimical to the interests of Padilla Machine Shop were submitted.

In illegal dismissal cases, the burden of proof is on the employer to show that the employee was dismissed for a valid and just cause.[8] Petitioners have failed to discharge themselves of the burden. With respect to Javilgas’ claim of illegal dismissal, petitioners merely alleged that –

- From that time on, Complainant (Javilgas), did not anymore report for work and left Respondent’s (Rodolfo) business for the second time without any advance notice of terminating his services as required by law;
- This Complainant requested Respondent to compute all the SSS/Medicare deductions on his weekly/daily salaries for he is planning to have a refund of these deductions;

x x x x

Petitioner Rodolfo, however, did not elaborate or show proof of the claimed abandonment. Instead, he concluded that Javilgas “abandoned his corresponding duties and responsibilities x x x when he established and created his own machine shop outfit x x x.”[9]

For abandonment to exist, it is essential (a) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and, (b) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts.[10] The establishment of his own shop is not enough proof that Javilgas intended to sever his relationship with his employer.

Moreover, it was only in 2003 that Rodolfo allegedly confirmed his suspicion that Javilgas was operating his own machine shop. Rodolfo admits that it was only when the case was on appeal to the NLRC that his suspicion was confirmed. Thus, in the petition for review on certiorari[11] with this Court, petitioners claim that –

During the pendency of this case on appeal with the NLRC, because of the vehement denial of complainant, Rufino Javilgas that he has never operated a machine shop which is doing the same business with (petitioners)(,) Mr. Rodolfo Padilla and the undersigned counsel went to the residence of (respondent), Rufino Javilgas at Barangay Sta. Clara, Sta. Maria, Bulacan on January 3, 2003, and right then and there, Mr. Padilla and the undersigned counsel saw personally the machine shop being operated by Mr. Rufino Javilgas. x x x (Words in parentheses supplied)

This only proves that in April 2002, when Rodolfo allegedly “advised” Javilgas to “concentrate on his (Javilgas’) shop if he has no more time for the company (Padilla Machine Shop),” petitioners had nothing but unfounded suspicions.

In *Machica v. Roosevelt Services Center, Inc.*, [12] we sustained the employer’s denial as against the employees’

categorical assertion of illegal dismissal. In that case, several employees who allegedly refused to sign a memorandum[13] from their employer, detailing the commission of alleged anomalies that resulted in the overpricing and overcharging of customers, filed an illegal dismissal case three days after receiving the said memorandum. They claimed that they were illegally dismissed and were told not to report for work anymore; the employer denied this and asserted that the workers (who appeared to be the suspects in the anomalies) were merely given three to five days off to decide whether or not to agree to share the loss suffered by it as a result of the anomalies. The Court, in ruling that there was no illegal dismissal, held that:

The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. It must be stressed that the evidence to prove this fact must be clear, positive and convincing. The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners.

We have reviewed the Memorandum of respondent Dizon and find nothing therein to indicate that any of the employees of respondent corporation, including the petitioners, would be considered terminated from employment if they refused to share in the P23,997.58 loss. Petitioners and other employees of respondent corporation were merely required to affix their signatures in the Memorandum on the space opposite their respective names, to confirm that they had read and understood the same. As elucidated by the NLRC in the assailed Resolution:

Read in its entirety, the Memorandum reflects the GOOD FAITH of the employer in resolving a discovered anomaly. First, it is a declaration of AMNESTY and FORGIVENESS; it did not name names; it did not state that the guilty ones will be pursued and punished. Second, it asked for SHARING among the employees for the loss due to the discovered anomaly. Third, it indicated a POSITIVE BUSINESS DIRECTION as it exhorted the employees from participating in similar anomalies henceforward.[14]

Petitioners, in like manner, consistently deny that Javilgas was dismissed from service; that he abandoned his employment when he walked out after his conversation with Rodolfo and never returned to work again. But denial, in this case, does not suffice; it should be coupled with evidence to support it. In the Machica case, the memorandum, among others, represented clear and convincing proof that there was no intention to dismiss the employees; it constituted evidence in support of the employer's denial.

In the instant case, petitioners failed to adduce evidence to rebut Javilgas' claim of dismissal and satisfy the burden of proof required.

As regards the eight-month hiatus before Javilgas instituted the illegal dismissal case, we sustain the Court of Appeals' ruling that Javilgas filed the complaint within a reasonable period during the three-year period provided under Article 291 of the Labor Code.

Finally, there is no merit in petitioners' claim that attorney's fees may not be awarded to the respondent since his case was being handled pro bono by the U.P. Office of Legal Aid, which provides free legal assistance to indigent litigants. In this jurisdiction, there are two concepts of attorney's fees. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. On the other hand, in its extraordinary concept, attorney's fees may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party,[15] and not counsel. In its extraordinary sense, attorney's fees as part of damages is awarded only in the instances specified in Article 2208 of the Civil Code,[16] among which are the following which obtain in the instant case:

- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;

x x x x

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated August 29, 2006 in CA-G.R. SP No. 89164 which reinstated the Decision of the Labor Arbiter finding that respondent Rufino Javilgas was illegally dismissed from service and its Resolution of December 21, 2006 denying the motion for reconsideration are hereby AFFIRMED.

No costs.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Rollo, pp. 30-41. Penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin.

[2] Id. at 66-67.

[3] CA rollo, p. 68.

[4] Rollo, pp. 76-77. Penned by Labor Arbiter Ermita T. Abrasaldo-Cuyuca.

[5] Id. at 91. Penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

[6] G.R. No. 81471, April 26, 1989, 172 SCRA 831.

[7] Rollo, p. 14.

[8] Eastern Telecommunications Phils., Inc. v. Diamse, G.R. No. 169299, June 16, 2006, 491 SCRA 239, 244.

[9] CA rollo, p. 135.

[10] ACD Investigation Security Agency, Inc. v. Daquera, G.R. No. 147473, March 30, 2004, 426 SCRA 494, 499.

[11] Rollo, p. 9.

[12] G.R. No. 168664, May 4, 2006, 489 SCRA 534.

[13] The memorandum read:

To: ALL PERSONNEL CONCERNED
Subject: San Francisco Mirror Corp.
#43 De Vera St., SFDM, Quezon City

Ang dating customer na ito ay hindi na bumibili ng mga fuels (Diesel at Gasolina) mula pa noong OCTOBER 2000. Ang dahilan ay nagkaroon ng PANDARAYA sa mga transactions. (Tingnan at basahin ang nakalaki na letter ng San Francisco Mirror Corp.) Ang PANDARAYA at SABWATAN ay pinatunayan ng San Francisco Mirror Corp. sa mga sulat na pag-amin ng kanilang empleyado.

Dahil sa nangyaring ito, ang naging resulta ay ang mga sumusunod:

- 1) Umalis ang San Francisco sa atin, nawalan ng “good customer” ang istasyon
 - 2) Inalis/tinanggal ang mga empleyadong kasama sa pandaraya at sabwatan
 - 3) Sinabihan ang ibang customers tungkol sa sabwatan sa pandaraya at nasira ang “Goodwill” ng istasyon
 - 4) Ang utang nila P47,991.15 naiwan noong October 2000 pa ay nitong March 20, 2001 lang binayaran (or after SIX MONTHS) at kalahati lang o P23,995.58 ang ibinayad
 - 5) Dahil sa wala namang aamin sa pandarayang ito, ang mga may kaugnayan o nakakaalam sa nangyari ay mag-share sa hindi binayaran ng customer
- Sana ay huwag nang gagawin uli ito sa ibang customers at tigilan na ang ganitong masamang gawain. Siguradong hindi mabuti ang mangyayari sa mga gawaing ito!

Roosevelt Servicenter Inc.

March 23, 2001

Nabasa ko at naintindihan ang memo tungkol sa SAN FRANCISCO MIRROR CORP. na kasama sa pahina 1.

[14] *Machica v. Roosevelt Services Center, Inc.*, supra note 12 at 544-545.

[15] *Compania Maritima, Inc. v. Court of Appeals*, G.R. No. 128452, November 16, 1999, 318 SCRA 169, 175-176.

[16] *Padillo v. Court of Appeals*, G.R. No. 119707, November 29, 2001, 371 SCRA 27, 47.

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