LUNESA O. LANSANGAN AND ROCITA CENDAÑA, PETITIONERS, VS. AMKOR TECHNOLOGY PHILIPPINES, INC., RESPONDENT.

G.R. No. 177026. January 30, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

An anonymous e-mail was sent to the General Manager of Amkor Technology Philippines (respondent) detailing allegations of malfeasance on the part of its supervisory employees Lunesa Lansangan and Rosita Cendaña (petitioners) for "stealing company time." [1] Respondent thus investigated the matter, requiring petitioners to submit their written explanation. In handwritten letters, petitioners admitted their wrongdoing. [2] Respondent thereupon terminated petitioners for "extremely serious offenses" as defined in its Code of Discipline, [3] prompting petitioners to file a complaint for illegal dismissal against it. [4]

Labor Arbiter Arthur L. Amansec, by Decision of October 20, 2004, [5] dismissed petitioners' complaint, he having found them guilty of

> "[s]wiping another employees' [sic] I.D. card or requesting another employee to swipe one's I.D. card to gain personal advantage and/or in the interest of cheating", an offense of dishonesty punishable as a serious form of misconduct and fraud or breach of trust under Article 282 of the Labor Code:
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> x x x x
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> which allows the dismissal of an employee for a valid cause. (Emphasis and underscoring supplied)

The Arbiter, however, ordered the reinstatement of petitioners to their former positions without backwages "as a measure of equitable and compassionate relief" owing mainly to petitioners' prior unblemished employment records, show of remorse, harshness of the penalty and defective attendance monitoring system of respondent. [6]

Respondent assailed the reinstatement aspect of the Arbiter's order before the National Labor Relations Commission (NLRC).

In the meantime, petitioners, without appealing the Arbiter's finding them guilty of "dishonesty as a form of serious misconduct and fraud or breach of trust," moved for the issuance of a "writ of reinstatement." [7]

After a series of oppositions, motions and orders, [8] the Arbiter issued an alias writ of execution following which respondent's bank account at Equitable-PCI Bank was garnished. Respondent thereupon moved for the quashal of the alias writ of execution and lifting of the notice of garnishment, which the Arbiter denied by Order of January 26, 2005, drawing respondent to appeal to the NLRC.

After consolidating respondent's appeal from the Labor Arbiter's order of reinstatement and subsequent appeal/order denying the quashal of the alias writ of execution and lifting of the notice of garnishment, the NLRC, by Resolution of June 30, 2005, [9] granted respondent's appeals by deleting the reinstatement aspect of the Arbiter's decision and setting aside the Arbiter's Alias Writ of Execution and Notice of Garnishment. Thus the

NLRC disposed as follows:

> ACCORDINGLY, the appeal is hereby GRANTED. The Labor Arbiter's Decision dated October 20, 2004 is hereby MODIFIED by DELETING the portion that ruled for appelle[e]s' reinstatement. Consequently, the Writ of Execution dated November 19, 2004, the subsequent Alias Writ of Execution dated January 26, 2005, and the Notice of Garnishment dated January 14, 2005 served upon Equitable PCI Bank by Sheriff Agripina Sangel are hereby ordered to be SET ASIDE.
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> SO ORDERED. (Underscoring supplied)

Petitioners' motion for reconsideration of the NLRC Resolution having been denied, they filed a petition for certiorari before the Court of Appeals which, by Decision [10] of September 19, 2006, while affirming the finding that petitioners were guilty of misconduct and the like, ordered respondent to "pay petitioners their corresponding backwages without qualification and deduction for the period covering October 20, 2004 (date of the Arbiter's decision) up to June 30, 2005 (date of the NLRC Decision)," citing Article 223 of the Labor Code and Roquero v. Philippine Airlines. [11]

Both parties' filed their respective motions for partial reconsideration which were denied. [12] Only petitioners have come to this Court via the present petition for review, [13] contending that:

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> WITH ALL DUE RESPECT, THE ORDER OF THE HONORABLE COURT OF APPEALS LIMITING THE PAYMENT OF BACKWAGES [TO] THE PETITIONERS FROM OCTOBER 20, 2004 (ARBITER DECISION) UP TO JUNE 30, 2005 (NLRC DECISION) ONLY IS CONTRARY TO THE CASE OF ALEJANDRO ROQUERO VS. PHILIPPINE AIRLINES, INC.[,] G.R. NO. 152329, APRIL [22,] 2003 [AND]
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> II
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> . . . THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN CONCLUDING THAT THE PETITIONERS COMMITTED SERIOUS MISCONDUCT, FRAUD, DISHONESTY AND BREACH OF TRUST. BUT EVEN ASSUMING THAT THE PETITIONERS COMMITTED THE SWIPING IN OF IDENTIFICATION CARD, THE PENALTY OF DISMISSAL IS TOO SEVERE, HARSH AND CONTRARY TO ARTICLE 282 OF THE LABOR CODE OF THE PHILIPPINES AND EXISTING JURISPRUDENCE. [14]

Since respondent did not appeal from the appellate court's decision, the said court's order for it to pay backwages to petitioners for the therein specified period has become final.

Petitioners highlight the Court's ruling in Roquero v. Philippine Airlines [15] where the therein employer was ordered to pay the wages to which the therein employee was entitled from the time the reinstatement order was issued until the finality of this Court's decision [16] in favor of the therein employee. Thus, petitioners contend that the payment of backwages should not be computed only up to the promulgation by the NLRC of its decision.

In its Comment, [17] respondent asserts that, inter alia, petitioners' reliance on Roquero is misplaced in view of the glaring factual differences between said case and the present case.

The petition fails.

The decision of the Arbiter finding that petitioners committed "dishonesty as a form of serious misconduct and fraud, or breach of trust" had become final, petitioners not having appealed the same before the NLRC as in fact they even moved for the execution of the reinstatement aspect of the decision. It bears recalling that it was only

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respondent which assailed the Arbiter's decision to the NLRC – to solely question the propriety of the order for reinstatement, and it succeeded.

Roquero, as well as Article 223 [18] of the Labor Code on which the appellate court also relied, finds no application in the present case. Article 223 concerns itself with an interim relief, granted to a dismissed or separated employee while the case for illegal dismissal is pending appeal, as what happened in Roquero. It does not apply where there is no finding of illegal dismissal, as in the present case.

The Arbiter found petitioners' dismissal to be valid. Such finding had, as stated earlier, become final, petitioners not having appealed it. Following Article 279 which provides:

> x x x x
>
> In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement (Emphasis, underscoring and italics supplied),

petitioners are not entitled to full backwages as their dismissal was not found to be illegal. Agabon v. NLRC [19] so states — payment of backwages and other benefits is justified only if the employee was unjustly dismissed.

WHEREFORE, the petition is DENIED.

No costs.

SO ORDERED.

Quisumbing, (Chairperson), Corona,[*] Tinga, and Brion, JJ., concur.

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[*] Additional member per Special Order No. 558 dated January 15, 2009 in lieu of Justice Presbitero J. Velasco, Jr. who is on leave.

[1] CA rollo, pp. 419.

[2] Id. at 447-449.

[3] Id. at 465-466.

[4] Rollo, p. 26.

[5] NLRC Records, pp. 3-12.

[6] The dispositive portion of the Labor Arbiter's Decision reads:

> WHEREFORE, judgment is hereby made finding as without merit the Complaint for illegal dismissal but, as discussed above, the respondent company is ordered to reinstate the complainants to their last or substantially equivalent positions, without backwages and without benefits.
>
> Respondent Mike Petrucci, President of respondent company, is ordered stricken-off as party-respondent, there being no viable cause of action against him.
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> Other claims are DISMISSED for utter lack of merit.
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> SO ORDERED. (Underscoring supplied)

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[7] Rollo, pp. 137.

[8] After Arbiter Amansec issued a writ of execution on November 19, 2004, respondent filed a motion to quash writ of execution on November 24, 2004. By Order of December 16, 2004, the Arbiter denied respondent's motion to quash. Petitioners then filed a motion for the issuance of an order to compute the accumulated salaries of petitioners on December 28, 2004. The Computation and Examination Unit of the NLRC computed the accumulated salaries to be P60,951.22 for both petitioners.

[9] Rollo, pp. 287-310.

[10] Id. at 52-64. Penned by then Associate Justice (now Presiding Justice) Conrado M. Vasquez, Jr. with Associate Justices Mariano C. Del Castillo and Mariflor Punzalan Castillo concurring.

[11] 449 Phil. 437 (2003).

[12] Rollo, p. 65.

[13] Id. at pp.23-51.

[14] Id. at 37.

[15] Supra note 11.

[16] Rollo, p. 41.

[17] Id. at 517-552.

[18] Article 223.

x x x x

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

x x x x

[19] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

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