

NOEL E. MORA, PETITIONER, VS. AVESCO MARKETING CORPORATION, RESPONDENT.

G.R. No. 177414. November 14, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On petition for review on certiorari is the February 28, 2007 Decision[1] of the Court of Appeals in CA-G.R. SP No. 86993 affirming the ruling of Voluntary Arbitrator (VA) Nicolas Barriatos that Noel Mora (petitioner) was not illegally dismissed as he voluntarily resigned.

In March 1996, petitioner was hired as a "sales engineer" at Avesco Marketing Corporation (respondent) to supervise and install sound and communications systems for its clientele.[2] On March 25, 2003, he tendered his letter of resignation to be effective a month after or on April 25, 2003. The letter reads verbatim as follows:

FOR : EDWIN L. TANG

Vice - President Mktg.

CC : FRANTOR B. FERNANDEZ

Personnel Manager

BENNIE B. GUIAMOY

PMK- Manager

DATE : MARCH 25, 2003

Dear Sir:

It is with much reluctance and regret that I must ask to be released from my position of Sales Engineer at Avesco Marketing. For the past seven years, I cannot forget how much this company has meant to me.

With this regard, I'm tendering my resignation effective on April 25, 2003. Please extend to Mr. Jimmy Tang my appreciation of his kindness during the time I served.[3] (Emphasis and underscoring supplied)

It appears that petitioner's filing of a resignation letter came about after he was confronted for "selling competitors' products" to the prejudice and detriment of respondent and was given the option of either immediately resigning or face administrative charges.[4]

It further appears that petitioner changed his mind and withdrew his letter of resignation on the same day, March 25, 2003, after respondent denied his request to have his resignation made effective a month after or on April 25, 2003. Petitioner was later to claim that he inadvertently left a copy of the letter at respondent's office.[5]

The following day or on March 26, 2003, respondent's personnel manager issued to petitioner a notice of disciplinary action reading:

A report by your Superiors has reached our office just recently some days ago [sic] that you again have committed another breach of trust [sic] against our Company in violation of our [sic] Company Rules and Regulations. This time instead of attending to the products you have to sell, you have surreptitiously undertaken sales transaction [sic], which is patently inimical to the interest of the Company that results to sales loss for the company. x x x x.

As you know very well, earlier[,] you have been disciplined for breach of trust against the Company . . . where you served a penalty of six days suspension . . . with a stern warning that commission of similar offense will eventually lead to your dismissal from the service of the company. The report that reached us now is a repetition of similar breach of trust reported upon you as Jr. Sales Engineer and for this, Management is constrained to dismiss you from the service for loss of trust and confident [sic] in gross violation of our Company Rules & Regulations on Dishonesty and Fraud.

On account of the foregoing, you are hereby directed to submit to the undersigned not later than 48 hours upon receipt of this memo why dismissal penalty should not be effected against you for the cited violation. Should you fail to comply with our requirement, the company may have no other recourse except to initiate dismissal proceedings. Meantime, you are placed under preventive suspension effective today, March 26, 2003 until further notice pending investigation of your case.[6] (Emphasis and underscoring supplied)

In his March 27, 2003 Response to the above-quoted notice, petitioner gave his side as follows, quoted verbatim:

In response to your memo with reference no. PD-C003-095 dated March 26, 2003 regarding to [sic] the preventive suspension you serve to me [sic], I am not culpable.

The report of my superior that I am surreptitiously selling other products instead of our products is just speculation and his mere tactics [sic] for our unfavorable sales output for the month. I sell products only from Avesco and never transact/deal other products. I know the consequences of that move and never cross to my mind doing that kind of accusation [sic].

I have been accused for a thing [sic] that I did not know what particular transactions [sic], I was not being talked by my superior [sic] about this or even asked me [sic], this is just a one[-]sided accusation and I am willing to know what it is all about. Your office did not explain to me what this accusation is all about[,] instead offering me an immediate resignation and your notice is a step for my termination [sic].

x x x x [7] (Emphasis and underscoring supplied)

Petitioner had not heard from respondent thereafter. He was later to learn from third party sources that his employment had been terminated as of April 1, 2003.

Petitioner thereupon filed a complaint for illegal dismissal before the National Labor Relations Commission (NLRC) which the labor arbiter[8] dismissed for lack of jurisdiction[9] since the dispute falls within the province of the grievance procedure provided for by the Collective Bargaining Agreement between respondent and the workers' union.

The case was thus referred to the National Conciliation and Mediation Board for voluntary arbitration. Voluntary Arbitrator (VA) Barriatos, by Decision of August 23, 2004, dismissed petitioner's complaint upon the ground that he had voluntarily resigned.[10] Petitioner received a copy of the decision on August 31, 2004.[11] Forty nine days later or on October 19, 2004, he filed a petition for certiorari[12] before the Court of Appeals which denied the same, it similarly finding him to have voluntarily resigned from his job.

His motion for reconsideration having been denied,[13] petitioner filed the present petition for review.

Petitioner argues that he was only inveigled to file a resignation letter on March 25, 2003 after he was asked by

respondent's vice president to immediately resign and that respondent's subsequent show cause order cum preventive suspension clearly proves that he did not resign.

Respondent at once raises procedural infirmities in the petition, foremost of which is its attribution of grave abuse of discretion on the part of the appellate court, instead of raising errors of law, apart from a lack of verified statement of material dates.[14]

On the merits, respondent maintains that petitioner resigned.[15]

The Court notes that the appellate court erred in giving due course to petitioner's petition for certiorari, for his proper mode of appeal was for review under Rule 43 of the 1997 Rules of Civil Procedure. Respondent had pointed this out in its Comment[16] before the appellate court. The appellate court, however, misappreciated this Court's ruling in *Luzon Development Bank v. Association of Luzon Development Bank Employees*[17] which, together with Circular 1-95,[18] was subsequently used as basis of the Rules of Court Revision Committee for the inclusion of the decisions of the VA as appealable to the Court of Appeals under Rule 43.[19]

Section 1 of Rule 43 reading:

SECTION 1. Scope. This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals* and from awards, judgments final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission,** Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law (emphasis and underscoring supplied)

vis-à-vis Section 4[20] thereof requires that the petition for review to be taken to the Court of Appeals should be filed within fifteen (15) days from notice of the award, judgment or final order or resolution of the VA.

While Sec. 2[21] of the same Rule 43 provides that said Rule shall not apply to judgments or final orders issued under the Labor Code, the same refers only to cases decided by labor arbiters which are appealable to the National Labor Relations Commission.

As earlier noted, petitioner filed before the appellate court a petition for certiorari on October 19, 2004 or 49 days after receipt of the decision of the VA at which time the 15-day period to file appeal had expired.

An independent action for certiorari may of course be availed of when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law,[22] if the decision of the voluntary arbitrator involves a question of jurisdiction. What petitioner is contesting, however, is the finding that he voluntarily resigned. Where the error is not one of jurisdiction, but of law or fact which is a mistake of judgment, the proper remedy should be appeal.[23] The appellate court should thus have dismissed outright the petition for certiorari, as the decision of the VA had already become final and executory.

The Court, however, resolves to set aside procedural infirmity and rule on the merits of the present petition in the interest of substantial justice to arrive at the proper conclusion that is conformable to the evidentiary facts.[24]

In *Mobile Protective & Detective Agency v. Ompad*,[25] the Court held that should an employer interpose the defense of resignation, as in the present case, it is still incumbent upon the employer, respondent herein, to prove

that the employee voluntarily resigned.

Voluntary resignations being unconditional in nature, both the intent and the overt act of relinquishment should concur. If the employer introduces evidence purportedly executed by an employee as proof of voluntary resignation yet the employee specifically denies such evidence, as in petitioner's case, the employer is burdened to prove the due execution and genuineness of such evidence.[26]

Respondent in this case failed to discharge such burden. The notice of disciplinary action-"show cause" letter indefinitely suspending petitioner, even after petitioner had submitted on March 25, 2003 his letter of resignation, albeit alleged to have withdrawn on even date, negates respondent's assertion of voluntary separation. If respondent considered petitioner resigned on account of his March 25, 2003 letter, to be effective on April 25, 2003, there would have been no more need to preventively suspend him effective March 26, 2003 "until further notice pending investigation" of his alleged transgressions.

It is significant to note that in his response to the March 26, 2003 "show cause" letter of respondent, petitioner denied being "culpable" and sought to know what were those "particular transactions"-bases of breach of trust. He had not had the courtesy of any reply from respondents, however. His preventive suspension effective March 26, 2003 lapsed into termination six days later or on April 1, 2003, which he was to learn from third parties.

For a resignation tendered by an employee to take effect, it should first be accepted or approved by the employer.[27] Petitioner's receipt by respondent's personnel department of his resignation letter is not equivalent to approval. Since petitioner requested that his resignation was to be effective a month later or on April 25, 2003, respondent's approval was a fortiori necessary.

That respondent issued the "show cause" letter a day after petitioner filed the controversial letter of resignation could only mean that it did not accept the same.

Petitioner's "resignation" being premised on a qualification â€œthat it be effective April 25, 2003 â€œ was conditional in character. It is thus only considered as a mere offer. Since respondent did not accept the condition attendant to the offer as, it bears repeating, he was in fact given a "show cause" letter a day after, there was no resignation to speak of.

This brings the Court to the issue of whether petitioner was illegally dismissed. The Court finds in the affirmative.

While selling of respondent's competitors' products is a valid ground for termination of employment, an employer cannot just hurl generalized accusations but should at least cite specific instances and proof in support thereof. Respondent relied on a "report by [petitioner's] superiors" in faulting petitioner. What this alleged "report" was and what it contained, no testimonial or documentary proof thereof was proffered. And while respondent gave the impression that it conducted or was going to conduct an investigation on the basis of the "report," there is no showing that one such was conducted and, if there was, what the result was.

The tenor of respondent's "show cause" letter sent to petitioner â€œ it was "constrained to dismiss" petitioner â€œ shows that it was terminating his services, the incongruent directive for him to explain notwithstanding.

While the appellate court's ratio that "preventive suspension is a disciplinary measure for the protection of the company's property pending investigation of any alleged malfeasance or misfeasance committed by the employee,"[28] is well-taken, it overlooked that the preventive suspension of petitioner effective on March 26, 2003 "until further notice" lapsed into dismissal six days later without petitioner substantiating the basis therefor.

Petitioner's questioned filing of the illegal dismissal case three months and 20 days after he withdrew his letter of resignation does not dent his case. Under the law,[29] he has four years to file his complaint.

In fine, petitioner's dismissal was illegal. His claim for damages and attorney's fees must, however, be denied in light of his failure to prove the bases therefor. Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries unjustly caused.[30] Broad allegations, bereft of proof, cannot sustain the award of moral damages, as well as attorney's fees.

WHEREFORE, the assailed Decision of the Court of Appeals is REVERSED and SET ASIDE. Respondent is ordered to reinstate petitioner with full backwages without loss of seniority rights and privileges from the time of his dismissal until his actual reinstatement or, if reinstatement is no longer feasible, to give him separation pay equivalent to at least one month salary for every year of service.

SO ORDERED.

Quisumbing, Acting C.J., (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Penned by Justice Myrna Dimaranan-Vidal with Justices Jose L. Sabio Jr. and Jose C. Reyes Jr. concurring, rollo, pp. 37-49..

[2] Rollo, p. 15.

[3] CA rollo, p. 63; Annex "A."

[4] Rollo, p.16.

[5] Id. at p.17.

[6] CA rollo, p. 54.

[7] Id. at p. 55.

[8] Labor Arbiter Fe Superiaso-Cellan.

[9] CA rollo, pp. 79-82.

[10] Id. at pp. 21-29.

[11] Id. at p. 3.

[12] Id. pp. 2-20.

[13] Rollo, p. 49.

[14] Id. at 69-73.

[15] Id. at 74-81.

[16] CA rollo, pp. 141-154.

[17] G.R. No. 120319, October 6, 1995, 249 SCRA 162.

[18] Issued May 16, 1995.

[19] Vide: Centro Escolar University Faculty and Allied Workers-Independent Union v. Court of Appeals, G.R. No. 165486, May 31, 2006, 490 SCRA 61, 69-70. In this case, the Court related the development of Rule 43, as regards the proper appeal of decisions of voluntary arbitrators. It observed that the Labor Code was silent as

regards the appeals from the decisions of the voluntary arbitrator, unlike those of the Labor Arbiter which may be appealed to the National Labor Relations Commission. The Court noted, however, that the voluntary arbitrator is a government instrumentality within the contemplation of Section 9 of Batas Pambansa Blg. 129 which provides for the appellate jurisdiction of the Court of Appeals. The decisions of the voluntary arbitrator are akin to those of the Regional Trial Court, and, therefore, should first be appealed to the Court of Appeals before being elevated to the Court. This is in furtherance and consistent with the original purpose of Circular No. 1-91 to provide a uniform procedure for the appellate review of adjudications of all quasi-judicial agencies not expressly excepted from the coverage of Section 9 of BP 129. Circular No. 1-91 was later revised and became Revised Administrative Circular No. 1-95. The Rules of Court Revision Committee incorporated said circular in Rule 43 of the 1997 Rules of Civil Procedure. The inclusion of the decisions of the voluntary arbitrator in the Rule was based on the Court's pronouncements in *Luzon Development Bank*.

* As amended.

** As amended.

[20] Section 4, Rule 43: Period of appeal. - The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency a quo. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

[21] Section 2 of Rule 43: Cases not covered. - This Rule shall not apply to judgments or final orders issued under the Labor Code of the Philippines.

[22] Section 1, Rule 65, 1997 RULES OF CIVIL PROCEDURE.

[23] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, G.R. No. 156067, August 11, 2004, 436 SCRA 123.

[24] *Progressive Development Corporation v. NLRC*, G.R. No. 138820, October 30, 2000; 344 SCRA 512; *Samson v. NLRC*, G.R. No. 121035, April 12, 2000, 330 SCRA 460; *PAL v. NLRC*, G.R. No. 126805, March 16, 2000; 328 SCRA 273 (2000); *Aklan Electric Cooperative, Inc. v. NLRC*, G.R. No. 121439, January 25, 2000, 323 SCRA 258.

[25] G.R. No. 159195, May 9, 2005, 458 SCRA 308, 323.

[26] *Ibid*.

[27] *Rase v. NLRC*, G.R. No. 110637, October 7, 1994, 237 SCRA 523, 536..

[28] *Rollo*, p. 46.

[29] Article 1146 of the Civil Code states: The following actions must be instituted within four years: (1) Upon an injury to the rights of the plaintiff;

(2) Upon a quasi-delict.

[30] Article 2217 of the Civil Code states that: Moral damages include physical suffering, mental anguish, fright serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury.

Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

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