

FERDINAND A. PANGILINAN, PETITIONER, VS. WELLMADE MANUFACTURING CORPORATION, RESPONDENT.

G.R. No. 187005. April 07, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioner Ferdinand Pangilinan was employed by Wellmade Manufacturing Corporation (respondent) on July 2, 2001 as Key Account Specialist tasked to sell Speed Detergent products to supermarkets and groceries within his assigned area. In addition to his monthly salary of P9,300.00, he received sales commissions based on volume of sales, and was provided with a service vehicle.

On October 31, 2003, petitioner used the service vehicle to travel to Naga City without approval from respondent. While returning to Manila on November 3, 2003, the vehicle broke down and it took more than two days to have it repaired. Petitioner admitted having used the vehicle without respondent's approval and reported the incident [1] on November 8, 2003 to respondent's National Capital Region Sales Supervisor, Ireneo Tomas (Tomas).

Tomas and the District Sales Manager, Noel de la Cruz (de la Cruz) thereupon sent on November 13, 2003 a memorandum[2] to petitioner requiring him to explain within 48 hours why he should not be disciplined for the following charges: unofficial use of the service vehicle; absence without prior application and approval for 2-3 days (October 31 and November 2-3, 2003); use of company time or materials to do unauthorized work; insubordination; and "moonlighting.

By memorandum[3] of November 17, 2003, petitioner, reiterating his earlier admission of his unauthorized use of the service vehicle, explained that the vehicle had to undergo major repairs for two days the expenses for which he himself shouldered. He stated that he would accept any sanctions that may be imposed upon him.

In another memorandum[4] dated December 15, 2003, respondent required petitioner to explain within 24 hours his unauthorized absence for the period November 22 to December 15, 2003, warning him that failure to submit any explanation would mean forfeiture of his right to due process.

By letter[5] of December 18, 2003, petitioner explained that he did not report for work starting November 22 because on November 21, he was told by his supervisors, Tomas and De la Cruz, to resign; and that he was willing to resign, as requested, provided that the benefits due him would be given. It appears, however, that petitioner's letter was received by respondent only on January 20, 2004, hence, in the interim or on December 22, 2003 and January 5, 2004, respondent sent petitioner memoranda[6] giving him a last chance to explain his unauthorized absences.

On January 22, 2004, petitioner filed with the Labor Arbiter a complaint[7] for constructive dismissal. Meanwhile, by Notice of Termination[8] dated February 9, 2004, respondent dismissed petitioner, finding him liable for the abovestated charges, and considering his consecutive absences as abandonment.

By Decision[9] of December 2, 2005, Labor Arbiter Isabel Ortiguerra found respondent liable for illegal dismissal

and ordered it to pay petitioner separation pay computed at one month for every year of service, as well as proportionate 13[th] month pay and service incentive leave pay. The Labor Arbiter noted that the charges of unauthorized absences, unauthorized use of company time and materials and insubordination occurred in relation to the admitted unauthorized use of the service vehicle; and that the "moonlighting" charge was not substantiated. The Arbiter also observed that respondent neither controverted nor squarely addressed petitioner's claim of being told to resign by his superiors to thus lead him to incur consecutive absences upon which his dismissal was anchored.

Additionally, the Arbiter, noting that petitioner did not receive the last two memoranda of respondent which explained his inability to air his side, held that respondent had no just cause to terminate the services of petitioner and did not afford him due process.

Noting, however, that petitioner's unauthorized use of his service vehicle is a serious offense for which he "should not be allowed to go scot-free," the Arbiter awarded separation pay instead of reinstatement.

Both parties appealed to the National Labor Relations Commission (NLRC). By Resolution[10] of November 28, 2007, the NLRC granted both appeals by affirming and modifying the Labor Arbiter's Decision, viz:

WHEREFORE, premises considered, both parties' appeals are partly granted. The Executive Labor Arbiter's assailed Decision in the above-entitled case is hereby AFFIRMED with MODIFICATION.

The Executive Labor Arbiter's finding that Complainant was illegally dismissed from his employment is hereby AFFIRMED. Respondent is ordered to reinstate Complainant to his former position and to pay him his full backwages, computed from November 22, 2003 up to the time of his actual reinstatement, which, as of September 22, 2007, have already accumulated to P470,305.77.

Respondent is further ordered to pay Complainant attorney's fees equivalent to ten percent (10%) of his total monetary award.

The award of separation pay is DELETED for lack of legal basis, but the award of 13[th] month pay for P8,339.00 and service incentive leave pay for P3,576.92 is AFFIRMED.

SO ORDERED.

In ordering petitioner's reinstatement and accordingly deleting the award of separation pay, the NLRC ruled that none of the circumstances attendant to the payment of separation pay was present.

Respondent's Motion for Reconsideration having been denied by the NLRC by Resolution[11] of January 31, 2008, it appealed to the Court of Appeals.

By the assailed Decision[12] of November 27, 2008, the appellate court, on respondent's petition, modified the NLRC decision. It held that the NLRC erred in ordering reinstatement, instead of payment of separation pay, stating that the award of separation pay is the proper relief, given that respondent had already hired a new Key Account Specialist to thus make reinstatement no longer feasible.

Thus, the appellate court disposed:

WHEREFORE, premises considered, the Petition for Certiorari is PARTIALLY GRANTED and accordingly, the Resolutions dated November 28, 2007 and January 31, 2008 are hereby MODIFIED. Petitioner corporation is hereby ordered to pay private respondent, separation pay equivalent to one month pay for every year of service or P18,600 in addition to 13[th] month pay in the amount of P8,339.00 and service incentive leave in the amount of P3,576.92. The award of attorney's fees is also AFFIRMED. (emphasis in the original)

Petitioner moved to reconsider the appellate court's decision but it was denied by Resolution[13] dated March 5,

2009, hence, the present petition which faults the appellate court for deleting the award of backwages.

The present petition poses the only issue of whether petitioner is entitled to the payment of backwages (in addition to separation pay, 13[th] month pay, service incentive leave pay and attorney's fees).

The Court rules in the affirmative.

Article 279 of the Labor Code provides that "[a]n 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." Thus a number of cases holds:

[A]n illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.

The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages. [14]
<http://127.0.0.1:7860/source/2009.zip%3E17d,df%7C2009/JAN/178524.htm> - fn16 (emphasis and underscoring supplied)

Since reinstatement is no longer feasible in the present case, the award of separation pay in lieu of reinstatement is in order. Petitioner's prayer for the award of backwages is meritorious, it, and the award of separation pay not being mutually exclusive.[15]

WHEREFORE, the petition is GRANTED. The challenged Court of Appeals Decision dated November 27, 2008 and the Resolution dated March 5, 2009 are MODIFIED to include the award of backwages to petitioner in the amount of P 470,305.77, in addition to the following: separation pay equivalent to one month pay for every year of service or P18,600, 13[th] month pay in the amount of P8,339.00, service incentive leave in the amount of P3,576.92 and attorney's fees equivalent to ten percent (10%) of the monetary award.

SO ORDERED.

Puno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] NLRC records, p. 49.

[2] Id. at 68.

[3] Id. at 69.

[4] Id. at 71.

[5] Id. at 72.

[6] Id. at 73-74.

[7] Id. at 2.

[8] Id. at 75-76.

[9] Id. at 100-111.

[10] Id. at 211-225. Penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan (now Associate Justice of the Court of Appeals).

[11] Id. at 274-275. Penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan (now Associate Justice of the Court of Appeals)

[12] CA rollo, pp. 189-198. Penned by Associate Justice Juan Q. Enriquez, Jr., and concurred in by Associate Justices Isaias P. Dicdican and Marlene Gonzales-Sison.

[13] Id. at 209-211. Penned by Associate Justice Juan Q. Enriquez, Jr., and concurred in by Associate Justices Isaias P. Dicdican and Marlene Gonzales-Sison.

[14] Macasero v. Southern Industrial Gases, G.R. No. 178524, January 30, 2009, citing Mt. Carmel College v. Resuena, G.R. No. 173076, October 10, 2007, 535 SCRA 518, 541.

[15] Nissan v. Serrano, G.R. No. 162538, June 4, 2009.

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