

SAMPAGUITA AUTO TRANSPORT CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND EFREN I. SAGAD, RESPONDENTS.

G.R. No. 197384. January 30, 2013

Ponente: BRION, J.

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BRION, J.:

Before the Court is the petition for review on certiorari[1] in caption, assailing the decision[2] dated March 4, 2011 and the resolution[3] dated June 13, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 112760.

The Antecedents

In a complaint[4] dated August 10, 2007, respondent Efren I. Sagad charged the petitioner Sampaguita Auto Transport Corporation (company); Andy Adagio, President and General Manager; Monina Ariola Adagio, Vice-President and Finance Manager; Virgilio Olunan (referred to as Olonan by Sagad), Operations Manager; and Gerry Dimate, HRO Officer, with illegal dismissal and damages plus attorney's fees.

Sagad alleged that on May 14, 2006, the company hired him as a regular bus driver, not as a probationary employee as the company claimed. He disowned his purported signature on the contract of probationary employment[5] submitted in evidence by the company. He maintained that his signature was forged. He further alleged that on November 5, 2006, he was dismissed by the company for allegedly conniving with conductor Vitola in issuing tickets outside their assigned route.

The company countered that it employed Sagad as a probationary bus driver (evidenced by a probationary employment contract[6]) from May 14, 2006 to October 14, 2006; he was duly informed of his corresponding duties and responsibilities.[7] He was further informed that during the probationary period, his attendance, performance and work attitude shall be evaluated to determine whether he would qualify for regular employment. For this purpose and as a matter of company policy, an evaluator was deployed on a company bus (in the guise of a passenger) to observe the driver's work performance and attitude.

Allegedly, on September 21, 2006, an evaluator boarded Sagad's bus. The evaluator described Sagad's manner of driving as "reckless driver, nakikipaggititan, nakikipaghabulan, nagsasakay sa gitna ng kalsada, sumusubsob ang pasahero[.]"[8] Sagad disputed the evaluator's observations. In an explanation (rendered in Filipino),[9] he claimed that he could not have been driving as reported because his wife (who was pregnant) and one of his children were with him on the bus. He admitted though that at one time, he chased an "Everlasting" bus to serve warning on its driver not to block his bus when he was overtaking. He also admitted that once in a while, he sped up to make up for lost time in making trips.

The company further alleged that on October 13, 2006, it conducted a thorough evaluation of Sagad's performance. It requested conductors who had worked with Sagad to comment on his work. Conductors A. Hemoroz and Israel Lucero revealed that Sagad proposed that they cheat on the company by way of an unreported early bus trip.[10] Dispatcher E. Castillo likewise submitted a negative report and even recommended the

termination of Sagad's employment.[11] The company also cited Sagad's involvement in a hit-and-run accident on September 9, 2006 along Commonwealth Avenue in Quezon City while on a trip (bus with Plate No. NYK-216 and Body No. 3094).[12] Allegedly, Sagad did not report the accident to the company.

On October 15, 2006, upon conclusion of the evaluation, the company terminated Sagad's employment for his failure to qualify as a regular employee.[13]

The Compulsory Arbitration Rulings

In her decision dated May 8, 2008,[14] Labor Arbiter Marita V. Padolina dismissed the complaint for lack of merit. She ruled that the company successfully proved that Sagad failed to qualify as a regular employee. Labor Arbiter Padolina stressed that on October 15, 2006, the company ordered Sagad not to work anymore as his probationary employment had expired. While Sagad claimed that he worked until November 5, 2006, she pointed out that "there is no record to show that he worked beyond October 14, 2006." [15]

Sagad appealed the Labor Arbiter's ruling. On July 10, 2009, the National Labor Relations Commission (NLRC) rendered a decision[16] declaring that Sagad had been illegally dismissed. It held that Sagad was not a probationary employee as the company failed to prove by substantial evidence the due execution of Sagad's supposed probationary employment contract. It found credible Sagad's submission that his signature on the purported contract was a forgery. It opined that his signature on the contract was "extremely different" from his signatures in his pleadings and in other documents on record. Further, the NLRC brushed aside the company memorandum dated October 15, 2006[17] supposedly terminating Sagad's probationary employment as there was no showing that the memorandum had been served on him.

The NLRC disregarded Sagad's alleged infractions that served as grounds for the termination of his employment, holding that his dismissal was not based on these infractions but on his alleged connivance with a conductor in defrauding the company. The NLRC awarded Sagad backwages of P559,050.00 and separation pay of P45,000.00 in lieu of reinstatement, in view of the strained relations between the parties resulting from the filing of the complaint.

Both parties moved for reconsideration of the NLRC decision, to no avail. The company then elevated the case to the CA through a petition for certiorari under Rule 65 of the Rules of Court.

The CA Decision

The CA, in its currently assailed decision,[18] affirmed the NLRC rulings in toto, finding no grave abuse of discretion in the labor tribunal's reversal of the labor arbiter's dismissal of the complaint. It found the "genuineness of respondent's signature on the employment contract is tainted with doubt." [19] It agreed with the NLRC that Sagad had been illegally dismissed considering, as it noted, that the grounds the company relied upon for the termination of Sagad's employment were not among the causes for a valid dismissal enumerated under Article 282 of the Labor Code. It added that even if it had been otherwise, the company failed to comply with the twin-notice requirement in employee dismissals.

The Petition

The company seeks the reversal of the appellate court's decision through the present appeal,[20] and raises the following issues:

1. Whether it dismissed Sagad illegally; and
2. Whether Sagad is entitled to backwages and separation pay, totaling P604,050.00, after working with the company for barely five months.

The company insists that Sagad entered into a contract of probationary employment with it. It was thus surprised with Sagad's allegation that his signature appearing in the contract was a forgery. It explained that his signature on the contract is the same as his signatures on his employment papers (which include the probationary employment contract). In any event, it faults the NLRC for not considering other pieces of evidence indicating Sagad's actual employment status.

The company points out that one such piece of competent and compelling evidence is Sagad's admission of the nature of his employment expressed in his letter dated October 16, 2006, addressed to Adagio and Olunan.[21] In this letter, he asked for another chance to work with the company.

The company posits that with the letter, Sagad acknowledged that his probationary employment had expired.[22]

The company maintains that it terminated Sagad's employment in good faith. They are not expected to follow the procedure for dismissing a regular employee, as the NLRC opined, considering that Sagad was merely on probation. Lastly, it contends that the award of backwages and separation pay to Sagad amounting to P604,050.00 is unwarranted and confiscatory since he worked for only five months. It laments that the award would put a premium on reckless driving and would encourage other drivers to follow Sagad's example.

The company disputes the NLRC's basis for the award — Sagad's purported average daily commission of P1,000.00 — as non-existent. They contend in this respect that the payslips Sagad submitted to the NLRC rarely showed his daily commission to reach P1,000.00. It explains that Sagad presented only one (1) payslip for November 2006, five (5) for October 2006, one (1) each for July, August and September 2006. It posits that the company payrolls from June 29, 2006 to October 8, 2006 showed that his daily commissions were below P1,000.00.

The Case for Sagad

Through his Comment (on the Petition),[23] Sagad asks that the petition be denied due course. He presents the following arguments:

1. He was not a probationary employee. The signature on the alleged probationary employment contract attributed to him was not his; it was a forgery, as confirmed by the NLRC and the CA. The same thing is true with the supposed letter (dated October 16, 2006)[24] in which he allegedly appealed to be given another chance to work for the company. Not only was the letter not in his handwriting (it allegedly belonged to Vitara, a bus conductor of the company), the signature on the letter attributed to him was also falsified.
2. On the assumption that he was a probationary employee, it is not correct to say that he failed to qualify for regular employment. The written statements of bus conductors Hemoroz and Lucero[25] regarding his alleged attempt to cheat on the company are without probative value. The statements were not under oath and the irregular acts he allegedly proposed could only be done by the conductors.

The company's claim that he figured in a "hit-and-run" accident on September 9, 2006, which he allegedly did not report to management, is not also correct. It was not his bus that was involved in the accident that he duly reported to the management. Further, the company's contention that he drove recklessly on September 16, 2006 cannot be used to support his dismissal as he had already been penalized for the incident with a five-day suspension.[26]

Also, the company grounds in Castillo's evaluation report[27] (that the company relied upon to justify the non-renewal of his contract) are not just causes for the termination of his employment as the CA correctly ruled.

3. He was a regular employee. He continued to work as driver until November 4, 2006. The company's notice of

termination of his employment[28] was not served on him because no such letter existed. If his probationary employment was to expire on October 14, 2006, he asks: why was he evaluated only on October 13 and 14, 2006 and why did the company serve him the termination notice only on October 15, 2006, when he was supposed to have been separated the previous day, October 14, 2006? He adds: when was the notice served on him that would have prompted him to write the company a letter on October 16, 2006 to ask for a second chance? All these nagging questions, he stresses, demonstrate the incredibility of the company's claim that he was a probationary employee.

4. He does not have to prove his denial that the signatures on the above-mentioned documents were not really his. He posits that evidence need not be given in support of a negative allegation and this is particularly true in dismissal cases where the burden of proof is on the employer.

5. The petition suffers from a procedural defect as it raises only questions of fact and not of law, in violation of Rule 45 of the Rules of Court.

The Court's Ruling

The procedural issue

This Court, as a rule, only reviews questions of law in a Rule 45 petition for review. In labor cases, the factual findings of the labor arbiter and of the NLRC are generally respected and, if supported by substantial evidence, accorded finality. This rule, however, is not absolute. When the factual findings of the CA conflict with those of the labor authorities, the Court is forced to review the evidence on record.[29]

In this case, the labor arbiter's factual conclusions, on the one hand, and those of the NLRC and the CA, on the other hand, differ. The labor arbiter found that Sagad was a probationary employee and was validly dismissed for his failure to qualify for regular employment, whereas the NLRC and the CA concluded that he was a regular employee and was illegally dismissed. We thus find the need to review the facts in the present labor dispute.

The merits of the case

After a review of the records, we are convinced that Sagad was dismissed, not as a probationary employee, but as one who had attained regular status. The company's evidence on Sagad's purported hiring as a probationary employee is inconclusive. To start with, Sagad denied that he entered into a probationary employment contract with the company, arguing that the signature on the supposed contract was not his.[30] He also denied receiving the alleged notice[31] terminating his probationary employment. The same thing is true with his purported letter[32] asking that he be given another chance to work for the company. He asserts that not only is the letter not in his handwriting, the signature on the letter was also not his.

The submissions of the parties on the issue created a doubt on whether Sagad really entered into a probationary employment contract with the company. The NLRC resolved the doubt in Sagad's favor, ruling that Sagad's signature on the contract was not his, because it was a forgery. It declared that his signature on the contract "is extremely different from those in his pleadings and from the other documents on record[,] "[33] without explaining how and why the two sets of signatures were vastly different. Lending further support to the NLRC conclusion, which the CA upheld, is its finding that the company failed to refute Sagad's denial of his signature in the contract, which the labor tribunal considered as an admission of the veracity of Sagad's statement, pursuant to the Rules of Court.[34]

Independently of the above discussion and even if we were to consider that Sagad went through a probationary period, the records indicate that he was retained even beyond the expiration of his supposed probationary employment on October 14, 2006. As the NLRC noted, Sagad claimed that he was dismissed by the company on

November 5, 2006, after he was accused of conniving with conductor Vitola in issuing tickets outside their assigned route.

The company never refuted this particular assertion of Sagad and its silence can only mean that Sagad remained in employment until November 4, 2006, thereby attaining regular status as of that date. Under the law, “an employee who is allowed to work after a probationary period shall be considered a regular employee.”[35]

Further, when the company questioned the payslips submitted by Sagad to substantiate his claim that he earned on the average a daily commission of P1,000.00, it pointed out that Sagad presented only one (1) payslip for the whole month of November 2006, five (5) payslips for the month of October 2006, and one (1) payslip each for the months of July, August and September 2006.[36] This seemingly harmless allegation is significant in that it revealed that Sagad continued working until the first week of November 2006 and was paid his salary for at least one payroll period. Sagad, therefore, had become a regular employee when he was dismissed on November 5, 2006.

Is Sagad’s dismissal illegal?

The NLRC and the CA ruled in the affirmative. The labor tribunal opined that the infractions which Sagad allegedly committed and which disqualified him from attaining regular status are “unavailing” with respect to his dismissal because the dismissal was not based on those infractions but on his alleged connivance with conductor Vitola to cheat on the company.

The CA concurred with the NLRC but for a different reason. It declared that the “grounds upon which petitioners based respondent’s termination from employment, viz: ‘hindi lahat ng schedule nailalabas,’ [‘]mababa ang revenue ng bus, laging kasama an[g] asawa sa byahe’ and ‘maraming naririnig na kwento tungkol sa kanya, nag-uutos ng conductor para kumita sa hindi magandang paraan[,]’ xxx are not among those enumerated under Article 282 of the Labor Code as just causes for termination of employment.”[37] The CA added that on the assumption that the cited grounds can be considered just causes, the company nonetheless failed to comply with the twin-notice requirement for the termination of Sagad’s employment.

We disagree with the finding that Sagad’s dismissal had no basis.

First. It is not disputed that the company called Sagad’s attention to his negative actuations as a bus driver, which were reported by a company evaluator[38] who boarded his bus on September 21, 2006. The evaluator reported that he was driving recklessly, racing and jostling for position on the road, thereby jarring the passengers on their seats, and picking up passengers on the middle of the road. He disputed the evaluator’s observations,[39] claiming that he could not have been driving as reported because his pregnant wife and one of his children were with him on the bus at the time. He admitted, however, that on one occasion, he chased an “Everlasting” bus to warn its driver not to block him. He also admitted that once in a while, he sped up to compensate for lost time in his trips.

Sagad’s explanation reveals more than what it stated. During his brief employment with the company, he exhibited the tendency to speed up when he finds the need for it, very obviously in violation of traffic rules, regulations and company policy. Instead of negating the evaluator’s observations, his admissions make them credible.

Second. He was also asked to react to the comments of conductors who had worked with him (Hemoroz and Lucero) to the effect that he proposed to them that they cheat on the company by making early (but not to be reported) bus trips.[40] Further, there was Castillo’s evaluation dated October 13, 2006,[41] rating Sagad’s work performance as poor on account of: (1) the low revenue of Sagad’s bus; (2) his inability to make all his scheduled

trips; and (3) his habit of bringing his wife with him on his trips. Castillo also heard of talks of Sagad's orders to the conductors to earn money in a questionable way.

During the arbitration, Sagad disputed the conductors' comments, maintaining that they were not under oath and that the fraudulent proposal they mentioned could only be committed by conductors. With respect to Castillo's evaluation, Sagad invoked the CA's pronouncement that the infractions mentioned in the report are not just causes for the termination of his employment.

Sagad's position fails to convince us. We find no evidence that Hemoroz and Lucero had an ax to grind against Sagad so that they would lie about their impression of him as a bus driver. Significantly, their statements validate Castillo's own observation that he heard talks of Sagad's orders to the conductors for them to cheat on the company. The scheme, contrary to Sagad's explanation, can only be committed with the cooperation, or even at the behest, of the driver, as the proposed scheme is for the bus to make unscheduled, but unreported, early trips.

Lastly, the company cites Sagad's involvement in a hit-and-run incident on September 9, 2006 while driving his assigned bus (with Plate No. NYK-216 and Body No. 3094).[42] Once more, he denies the charge, claiming that it was not his bus, but two other vehicles, a Honda City and an Elf truck, which figured in the incident.[43] To prove his point, he submitted the "SALAYSAY"[44] of his replacement driver, Carlito Laude, for September 10, 2006, saying that there was no dents or scratches on the bus.

Again, Sagad's stance fails to persuade us. Sagad's statements vis-à-vis the incident, as well as those of Laude, are belied by the Traffic Accident Investigation Report[45] which mentioned the "Unidentified driver of Public Utility Bus with plate No. NYK-216 and Body No. 3094." The report was corroborated by the sworn statements of Ronald Apura, driver of the Elf truck, UFF-597, the second party in the incident,[46] and Bibiana Fuentes, driver of the White Honda City, WDV-422 (owned by Purefoods Hormel Co.), the first party in the vehicular accident. There was also the letter to the company of Standard Insurance Co., Inc. dated February 14, 2007[47] demanding the reimbursement of P24,667.54 it paid to Purefoods Hormel Co. by way of damages sustained by the Honda City.

Third. The CA misappreciated the law when it declared that the grounds relied upon by the company in terminating Sagad's employment are not among those enumerated under Article 282 of the Labor Code as just causes for employee dismissals. Article 282 of the Code provides:

Art. 282. Termination by employer. – An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- (e) Other causes analogous to the foregoing. [emphasis supplied]

The irregularities or infractions committed by Sagad in connection with his work as a bus driver constitute a serious misconduct or, at the very least, conduct analogous to serious misconduct, under the above-cited Article 282 of the Labor Code. To be sure, his tendency to speed up during his trips, his reckless driving, his picking up

passengers in the middle of the road, his racing with other buses and his jostling for vantage positions do not speak well of him as a bus driver. While he denies being informed, when he was hired, of the duties and responsibilities of a driver — contained in a document submitted in evidence by the company[48]— the requirement “3. to obey traffic rules and regulations as well as the company policies. 4. to ensure the safety of the riding public as well as the other vehicles and motorist (sic)”[49] is so fundamental and so universal that any bus driver is expected to satisfy the requirement whether or not he has been so informed.

Sagad tries to minimize the adverse effect of the evaluator’s report of September 21, 2006 about his conduct as a driver with the argument that he had already been penalized with a five-day suspension for chasing an “Everlasting” bus at one time. The suspension is of no moment. He was penalized for one reckless driving incident, but it does not erase all the other infractions he committed. The conductors’ comments and the dispatcher’s evaluation, together with the earlier on-board evaluation, all paint a picture of a reckless driver who endangers the safety of his passengers, other motorists and the general public. With this record, it is not surprising that he figured in a hit-and-run accident on September 9, 2006.

Under the circumstances, Sagad has become a liability rather than an asset to his employer, more so when we consider that he attempted to cheat on the company or could have, in fact, defrauded the company during his brief tenure as a bus driver. This calls to mind Castillo’s report on the low revenue of Sagad’s bus, an observation which is validated by the company’s Daily Operation Reports from June to October 2006.[50]

All told, we find substantial evidence supporting Sagad’s removal as a bus driver. Through his reckless driving and his schemes to defraud the company, Sagad committed serious misconduct and breach of the trust and confidence of his employer, which, without doubt, are just causes for his separation from the service. It is well to stress, at this point, an earlier pronouncement of the Court “that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.”[51]

The twin-notice requirement

Even as we find a just cause for Sagad’s dismissal, we agree with the CA that the company failed to comply with the two-notice rule. It failed to serve notice of: (1) the particular acts for which Sagad was being dismissed on November 5, 2006 and (2) his actual dismissal. Consistent with our ruling in *Agabon v. NLRC*, [52] we hold that the violation of Sagad’s right to procedural due process entitles him to an indemnity in the form of nominal damages. Considering the circumstances in the present case, we deem it appropriate to award Sagad 30,000.00.

WHEREFORE, premises considered, the appeal is granted. The assailed decision and resolution of the Court of Appeals are SET ASIDE. The complaint is DISMISSED for lack of merit. Efren I. Sagad is awarded nominal damages of 30,000.00 for violation of his right to procedural due process.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Perez, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. I 1-43; filed pursuant to Rule 45 of the Rules of Court.

[2] Id. at 237-246; penned by Associate Justice Jose C. Reyes, Jr., and concurred in by Associate Justices Antonio L. Villamor and Michael P. Elbinias.

[3] Id at 522.

[4] Id at 321-322.

- [5] Id. at 306.
- [6] Ibid.
- [7] Id. at 326.
- [8] Id. at 49.
- [9] Id. at 50.
- [10] Id. at 51-52.
- [11] Id. at 59.
- [12] Id. at 53; Traffic Accident Investigation Report.
- [13] Id. at 60.
- [14] Id. at 95-102.
- [15] Id. at 100.
- [16] Id. at 114-121.
- [17] Supra note 13.
- [18] Supra note 2.
- [19] Id. at 243.
- [20] Supra note 1.
- [21] Rollo, p. 61.
- [22] Id. at 24-25.
- [23] Id. at 530-537.
- [24] Supra note 21.
- [25] Supra note 10.
- [26] Supra note 23, at 531.
- [27] Supra note 11.
- [28] Supra note 13.
- [29] *Globe Telecom v. Crisologo*, G.R. No. 174644, August 10, 2007, 529 SCRA 811, 817-818.
- [30] Supra note 5.
- [31] Supra note 13.
- [32] Supra note 21.
- [33] Supra note 16, at 117.
- [34] Rule 130, Section 32.
- [35] LABOR CODE, Article 281.

[36] Rollo, p. 40.

[37] Supra note 2, at 243; italics supplied.

[38] Supra note 8.

[39] Supra note 9.

[40] Supra note 10.

[41] Supra note 11.

[42] Supra note 12.

[43] Rollo, p. 92.

[44] Id. at 94.

[45] Id. at 312.

[46] Id. at 313.

[47] Id. at 315.

[48] Id. at 307.

[49] Ibid.

[50] Id. at 142-152.

[51] *Mercury Drug Corporation v. NLRC*, 258 Phil. 384, 391 (1989).

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