

SARKIES AND MOLAVE TOURS CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION) AND JIMMY ANTONIO, RESPONDENTS.

G.R. No. 91109, October 04, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition seeks to set aside the decision of public respondent National Labor Relations Commission (NLRC) dated September 26, 1989 declaring private respondent Jimmy Antonio to have been illegally dismissed on January 12, 1988 from work and directing the payment of his money claims:

"WHEREFORE, premises considered, the appealed decision is set aside and a new one is entered declaring the complainant to have been illegally dismissed and directing the respondent to reinstate him to his former position without loss of seniority rights and to pay him backwages from January 12, 1988 up to his actual reinstatement. The respondent is likewise ordered to pay complainant his money claims as discussed above to be computed by the Corporate Auditing Examiner.

"SO ORDERED." (p. 22, Rollo)

The facts of the case are undisputed.

Private respondent Jimmy Antonio ("Antonio") was a former driver of respondent corporation which is engaged in the tourist transportation business. He started working for petitioner Sarkies and Molave Tours Corporation. ("Sarkies") on July 9, 1976 at a daily wage of P4.00. At the time of his alleged dismissal on January 12, 1988, his daily wage was P21.00 and P13.50 ECOLA. He further claimed to have worked eight (8) hours a day, Monday through Sunday and, starting April, 1978, was assigned in the evening from 5:00 p.m. During the entire period of his employment, he claimed to have been paid 13th month pay at an average of P700.00. He was not paid legal holiday pay, premium pay for legal holidays and rest days and 5-days incentive leave.

On December 28, 1987, Antonio, together with Renato M. Abuyo and Edgar Enverga, filed a complaint dated December 16, 1987, for illegal dismissal against petitioner. The records do not show any evidence to prove this case.

From January 1, 1988 until January 11, 1988, Antonio was absent without leave (AWOL) from his job. On January 12, 1988, the President/Managing Director of Sarkies issued an inter-office memorandum to the security guard, as follows:

"Please be advised not to let Mr. Jimmy Antonio to enter into the garage premises and any transaction made is to be entertained at the main office.

"For your guidance and compliance.

(Sgd.)

"SARKIES V. CARAPIET

Pres./Managing Director" (Annex "C,"
Petition, p. 24, Rollo) (Italics ours)

On January 12, 1988, Antonio showed up for work at Sarkies but was not allowed by the security guard to enter the garage per instructions contained in the aforequoted memorandum which was shown to Antonio.

On January 19, 1988, Antonio and two others were given a memorandum dated January 14, 1988 from Sarkies' Garage/Motor Pool Manager, which reads as follows:

"Our records shows (sic) that you were absent without official leave on the following dates:

J. ANTONIO — Jan. 1 - 12, 1988

F. TOMBOC — Jan. 7 - 12, 1988

A. QUIROZ — Jan. 1 - 12, 1988

"Explain in writing within 24 hours upon receipt of this memo why no disciplinary action should be taken against you. Failure on your part to comply to (sic) this memo will mean an admittance of guilt on your part.

"For your compliance,

"ROBERTO P. BAUTISTA
Garage/Motorpool Manager" (p. 25, Rollo),
Annex "D," Petition)

On March 1, 1988, Antonio filed an amended complaint against Sarkies for unfair labor practice, illegal dismissal, illegal suspension, illegal deduction, underpayment, overtime pay, legal holiday pay, premium pay for holiday and rest day, violation of PD No. 1123, unpaid wages or commission and separation and/or retirement/resignation benefit.

After the preliminary conference before Labor Arbiter Arturo V. Cosuco, Abuyo and Envergo, (Antonio's co-employees) returned to Sarkies and resumed their former jobs. Unlike his co-complainants, Antonio did not report for work.

On February 3, 1989, the Labor Arbiter dismissed Antonio's complaint on the sole issue of illegal dismissal, ignoring Antonio's money claims, since it had not been raised as an issue in his complaint, but in his position paper. The Labor Arbiter had relied solely on the inter-office memorandum of January 12, 1988 stating that the memorandum did not substantiate Antonio's complaint for illegal dismissal.

On appeal, the NLRC reversed the Labor Arbiter, stating that issues may likewise be raised and discussed in the position paper, on the basis of Sec. 2, Rule VII of the Revised Rules of the NLRC. Besides, Antonio had amended his complaint on March 1, 1988, to include said money claims.

In its decision promulgated on September 26, 1989, the NLRC found that: (1) Antonio was constructively dismissed on January 12, 1988, by virtue of the inter-office memorandum; (2) that even if Antonio had gone on AWOL, the same did not warrant the harsh penalty of dismissal; (3) that Antonio was denied due process when he was terminated without being given the chance to defend himself; and (4) that Antonio was entitled to three years' worth of 13[th] month pay and night differential pay. However, the NLRC ruled that Antonio was not able to prove his claims for holiday pay, premiums for holiday and rest day, and other monetary claims.

On October 9, 1989, Sarkies filed a motion for reconsideration praying as follows:

"WHEREFORE, it is respectfully prayed that the Decision sought to be reconsidered be MODIFIED so as to

delete the finding of constructive dismissal and restoring status quo to the parties.

"Respondent prays for such other reliefs as may be just and equitable under the premises." (p. 59, Rollo)

The motion was denied for lack of merit on November 13, 1989.

Hence, this petition.

In its decision, NLRC granted 13[th] month pay differentials and night shift differential to private respondent, but rejected the latter's demand for holiday payment and payment of premiums for holidays and rest days, thus:

"The claims for 13[th] month pay differential shall be awarded for three (3) years counting backwards from date of filing of the complainant as well as the night shift differential if complainant worked between 10:00 in the evening up to 6:00 in the morning. Claims for payment of holiday pay, premium for holiday and rest day have not been sufficiently established. These cannot be based on mere allegations of non-payment. There should be sufficient evidence on what holidays in the year were worked. The particular rest days should have been specified and evidence adduced that complainant worked on his rest days. Bare allegations would not suffice." (p. 22, Rollo).

In this petition, Sarkies does not question the monetary award but has confined itself to the question on illegal dismissal. Evidently, therefore, Sarkies has accepted the NLRC monetary award.

Nonetheless, were it not for the fact that Antonio had amended his complaint, We do not agree with the NLRC's findings that issues not raised in the complaint with the Labor Arbiter may still be raised and discussed in one's position paper. The rule clearly limits the discussions in the position paper only to those raised/stated in the complaint as provided in Section 2, Rule VII of the Revised Rules of the NLRC, which reads as follows:

"Sec. 2. Submission of position papers. — During the initial conference/hearing, or immediately thereafter, the Labor Arbiter shall require the parties to simultaneously submit to him their respective verified position papers, which shall cover only the issues raised in the complaint, accompanied by all supporting documents then available to them and the affidavits of their witnesses which shall take the place of their direct testimony. The parties shall thereafter not be allowed to allege, or present evidence to prove, facts not referred to and any cause or causes of action not included in their complaint or position papers, affidavits and other documents. The parties shall furnish each other with copies of the position papers, together with the supporting affidavits and documents submitted by them." (*Italics supplied*).

On the other hand, We believe that there was no basis for "constructive dismissal" as found by the NLRC.

Antonio's first complaint dated December 28, 1987 was deemed abandoned when he filed his amended complaint on March 1, 1988. Insofar as this amended complaint is concerned, Antonio's sole evidence is the inter-office memorandum dated January 12, 1988, which was issued after he had gone AWOL from January 1-11, 1988. This memorandum was a disciplinary measure with respect to Antonio's behaviour. Sarkies, as employer, was well within its rights to declare the garage off-limits to Antonio until such time that he had reported to management and account for his unauthorized absences.

Clearly, therefore, the memorandum was not a notice of termination, and in the absence of any other evidence, Antonio's complaint for illegal dismissal is baseless, and he is deemed to have abandoned his job.

ACCORDINGLY, the petition is hereby partly granted. The decision of the NLRC is AFFIRMED with MODIFICATIONS. The ruling on the money claims is upheld but reversed with respect to the findings on illegal dismissal. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Griño-Aquino, JJ., concur.

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