

SAN MIGUEL CORPORATION and GERIBERN ABELLA, Petitioners, vs. NATIONAL LABOR RELATIONS COMMISSION (First Division), LABOR ARBITER PEDRO RAMOS and ERNESTO IBIAS, Respondents.

G.R. Nos. 146121-22. April 16, 2008

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TINGA, J.:

In this Petition for Review on Certiorari[1] under Rule 45, petitioners San Miguel Corporation (SMC) and Geribern Abella, Assistant Vice President and Plant Manager of SMC's Metal Closure and Lithography Plant, assail the Decision[2] dated 28 June 2000 and the Resolution[3] dated 17 November 2000, both of the Court of Appeals in the consolidated cases of Ernesto M. Ibias v. National Labor Relations Commission, et al. and San Miguel Corporation Metal Closure and Lithography Plant, et al. v. National Labor Relations Commission, et al., docketed as CA G.R. SP No. 54684 and CA G.R. SP No. 54709, respectively.

The factual and legal antecedents follow.

Ernesto M. Ibias (respondent) was employed by petitioner SMC on 24 December 1978 initially as a CRO operator in its Metal Closure and Lithography Plant. Respondent continuously worked therein until he advanced as Zamatic operator. He was also an active and militant member of a labor organization called Ilaw Buklod Manggagawa (IBM)-SMC Chapter.

According to SMC's Policy on Employee Conduct,[4] absences without permission or AWOPs, which are absences not covered either by a certification of the plant doctor that the employee was absent due to sickness or by a duly approved application for leave of absence filed at least six (6) days prior to the intended leave, are subject to disciplinary action characterized by progressively increasing weight, as follows:

VIOLATIONS 1[ST] Offense 2[nd] Offense 3[rd] Offense 4[th] Offense 5[th] Offense

2. ABSENCE WITHOUT PERMISSION (within one calendar year)

A. Each day absent not exceeding two (2) days Written warning

B. 3[rd] AWOP 3 Days' suspension

C. 4[th] AWOP
5 Days' suspension

D. 5[th] AWOP
7 Days' suspension

E. 6[th] AWOP
10 Days' suspension

F. 7[th] AWOP
15 Days' suspension

G. 8[th] AWOP
30 Days' suspension

H. 9[th] AWOP
Discharge

3. ABSENCE WITHOUT PERMISSION FOR SIX (6) OR MORE CONSECUTIVE WORKING DAYS IS
CONSIDERED ABANDONMENT OF WORK Discharge[5]

The same Policy on Employee Conduct also punishes falsification of company records or documents with discharge or termination for the first offense if the offender himself or somebody else benefits from falsification or would have benefited if falsification is not found on time.[6]

It appears that per company records, respondent was AWOP on the following dates in 1997: 2, 4 and 11 January; 26, 28 and 29 April; and 5, 7, 8, 13, 21, 22, 28 and 29 May. For his absences on 2, 4 and 11 January and 28 and 29 April, he was given a written warning[7] dated 9 May 1997 that he had already incurred five (5) AWOPs and that further absences would be subject to disciplinary action. For his absences on 28 and 29 April and 7 and 8 May, respondent was alleged to have falsified his medical consultation card by stating therein that he was granted sick leave by the plant clinic on said dates when in truth he was not.

In a Notice to Explain dated 20 May 1997,[8] respondent was required to state in writing why he should not be subject to disciplinary action for falsifying his medical consultation card. On 29 May 1997, he was sent a telegram[9] asking him to explain why he should not be disciplined for not reporting for work since 26 May 1997. Respondent did not comply with these notices. He was again issued two Notices to Explain[10] both dated 3 June 1997, one for his AWOPs from 26 May to 2 June 1997 and another for falsification of medical consultation card entries for 28 April and 8 May 1997.

On 5 June 1997, respondent submitted a handwritten explanation to the charges, to wit: "Tungkol po sa ibinibintang po ninyong [sic] sa akin na falsification of medical consultation card ito po hindi ko magagawa at sa mga araw na hindi ko po ipinasok ito po ay may kaukulang supporting paper[s]."[11]

Not satisfied with the explanation, SMC conducted an administrative investigation on 17 and 23 June 1997.[12]

During the investigation, respondent admitted that he was absent on 28 and 29 April and 7 and 8 May 1997 and had not sought sick leave permission for those dates, and also denied falsifying or having had anything to do with the falsification of his medical consultation card.

Ferdinand Siwa (Siwa), staff assistant, and Dr. Angelito Marable (Marable), retainer-physician, testified for SMC.

Siwa testified that sometime in May 1997, he called respondent's attention to AWOPs he incurred on 28 and 29 April. He admitted having given respondent a written warning for his absences on 2, 4 and 11 January and on 28 and 29 April. Respondent admitted his absences on 28 and 29 April but reasoned that he was on sick leave on those dates, producing his medical consultation card from his locker to prove the same. Siwa was surprised that the medical consultation card was in respondent's possession since this should have been in the rack beside the plant clinic. His medical consultation showed that he was purportedly granted sick leave for 28 and 29 April. However, upon verification with the plant clinic, Siwa found that respondent was not granted sick leaves on those dates. When Siwa confronted respondent about the falsification, respondent allegedly replied that he resorted to falsification to cover up his AWOPs which he was forced to incur because of personal problems.

Marable testified that sometime in May 1997, he together with the plant nurse and Siwa counter-checked respondent's sick leaves with the daily personnel leave authority report. The examination revealed that the clinic

had not granted any sick leave on 28 and 29 April and 7 and 8 May 1997. On 16 June 1997, when respondent came to him for consultation, Marable confronted respondent about the falsified entries in his medical consultation card, but respondent only explained that he had been having a lot of problems.

After the completion of the investigation, SMC concluded that respondent committed the offenses of excessive AWOPs and falsification of company records or documents, and accordingly dismissed him.[13]

On 30 March 1998, respondent filed a complaint for illegal dismissal against SMC and Geribern Abella, assistant vice president and plant manager of the Metal Closure and Lithography Plant. On 2 September 1998, Acting Executive Labor Arbiter Pedro C. Ramos rendered his Decision,[14] finding respondent to have been illegally dismissed and ordering his reinstatement and payment of full backwages, benefits and attorney's fees.[15]

The labor arbiter believed that respondent had committed the absences pointed out by SMC but found the imposition of termination of employment based on his AWOPs to be disproportionate since SMC failed to show by clear and convincing evidence that it had strictly implemented its company policy on absences. It found nothing in the records that would show that respondent was suspended for his previous AWOPs before he was meted the maximum penalty of discharge from service and thus, it ruled that management was to be blamed for the non-implementation of and lax compliance with the policy. It also noted that termination based on the alleged falsification of company records was unwarranted in view of SMC's failure to establish respondent's guilt. It observed that the medical card was under the care of Siwa and thus it was he who should be responsible for its loss and the insertion of falsified entries therein.

SMC appealed the decision to the National Labor Relations Commission (NLRC) on 13 November 1998. On 31 March 1999, the NLRC First Division affirmed with modification the decision of the labor arbiter.[16] The NLRC found that there was already a strained relationship between the parties such that reinstatement was no longer feasible, so instead it granted separation pay equivalent to one (1) month for every year of service. It also deleted the award of attorney's fees.[17]

The NLRC, on 30 June 1999, denied the parties' respective motions for reconsideration of its decision.

On 2 September 1999, respondent filed a special civil action for certiorari assailing the NLRC decision and resolution. SMC filed its petition for certiorari on 3 September 1999. The cases were consolidated.

On 28 June 2000, the Court of Appeals rendered its Decision affirming the findings of the labor arbiter and the NLRC relative to the illegality of respondent's dismissal but modifying the monetary award. The dispositive portion of the decision reads:

WHEREFORE, the decision of the public respondent modifying the decision of the labor arbiter is SET ASIDE and the decision of the labor arbiter is hereby REINSTATED with the modification that the payment of the full backwages and other benefits would be from 2 July 1997 up to 14 October 1998.

SO ORDERED.[18]

The Court of Appeals believed that contrary to SMC's claims, it was more consistent with human experience that respondent did not make an admission, especially in view of his consistent denials during the administrative investigation and of his written explanation dated 5 June 1997. The Court of Appeals also stayed firm in its determination that the testimonies of Marable and Siwa could not be given weight as they were uncorroborated, and that it was Siwa who was liable for the falsification of respondent's consultation card.

The appellate court also held that respondent's AWOPs did not warrant his dismissal in view of SMC's inconsistent implementation of its company policies. It could not understand why respondent was given a mere

warning for his absences on 28 and 29 April which constituted his 5[th] and 6[th] AWOPs, respectively, when these should have merited suspension under SMC's policy. According to the appellate court, since respondent was merely warned, logically said absences were deemed committed for the first time; thus, it follows that the subject AWOPs did not justify his dismissal because under SMC's policy, the 4[th] to 9[th] AWOPs are meted the corresponding penalty only when committed for the second time.

The Court of Appeals, however, disagreed with the NLRC's application of the doctrine of "strained relations," citing jurisprudence[19] that the same should be strictly applied so as not to deprive an illegally dismissed employee of his right to reinstatement, and that since every labor dispute almost always results in "strained relations," the phrase cannot be given an over-arching interpretation.[20] Thus, it ordered that respondent's backwages be computed from the date of his dismissal up to the time when he was actually reinstated. Since respondent was placed on payroll reinstatement on 15 October 1998, he should be awarded backwages from 2 July 1997 up to 14 October 1998.

Both parties separately moved for reconsideration of the decision but the Court of Appeals denied the motions for lack of merit in the Resolution dated 17 November 2000.

In this present petition for review, SMC raises the following grounds:

A.

THE COURT OF APPEALS DECIDED THE CASES IN A WAY NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE SUPREME COURT, AND IN VIOLATION OF THE ACCEPTED RULES ON EVIDENCE AND USUAL COURSE OF JUDICIAL PROCEEDINGS.

B.

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE ABSENCES OF IBIAS ON 28[TH] AND 29[TH] OF APRIL 1997 "WERE COMMITTED FOR THE FIRST TIME." SUCH FINDING IS GROUNDED ENTIRELY ON SPECULATION AND CONJECTURE AND A RESULT OF A MANIFESTLY ABSURD INFERENCE.[21]

On the first ground, SMC contends that the Court of Appeals allegedly disregarded the basic rule on evidence that affirmative testimony is stronger than negative testimony. It claims that the testimonies of Marable and Siwa that respondent admitted having committed the falsification should be given more weight than his mere denial. SMC adds that the falsified medical consultation card by itself proves respondent's falsification of the card. The fact that he used the falsified consultation card to falsely represent that he had been granted sick leave on 28 and 29 April and 7 and 8 May 1997 is sufficient to hold him liable for falsification, SMC adds. Further, SMC argues that respondent's possession of the falsified consultation card also raises the presumption that he is the author of the falsification.

On the second ground, SMC points out respondent's absences on 28 and 29 April 1997 were his 5[th] and 6[th] AWOPs, respectively, and following the Court of Appeals' ruling, the same should have been meted the penalty of five (5) days' suspension for the 5[th] AWOP and 10 days' suspension for the 6[th] AWOP under SMC's Policy on Employee Conduct. Respondent incurred fourteen (14) AWOPs but when SMC imposed the penalty of discharge, the Court of Appeals disagreed since SMC had supposedly failed to strictly implement its company policy on attendance. Such reasoning would have respondent's AWOPs justified by SMC's lax implementation of disciplinary action on its employees, and would place on SMC the burden of proving strict conformity with company rules. SMC argues that this is contrary to the ruling in *Cando v. NLRC*[22] that it should be the employee who must show proof of condonation by the employer of the offense or laxity in the enforcement of the

company rules since it is he who has raised this defense.

SMC directs our attention to the Court of Appeals' observation that Ibias' 5[th] and 6[th] AWOPs should be considered as though "said absences were committed for the first time" since respondent "was merely given a warning" for said AWOPs. To SMC, it seems that that the appellate court would count the employee's AWOPs not on the basis of the number of times that he had been absent, but on the basis of the penalty imposed by the employee. This is clearly contrary to the dictates of the Policy. Such a ruling also deprives SMC of its management prerogative to impose sanctions lighter than those specifically prescribed by its rules.

The issues to be resolved are whether the Court of Appeals erred in sustaining the findings of the labor arbiter and the NLRC and in dismissing SMC's claims that respondent was terminated from service with just cause.

The petition is meritorious as regards one of the issues.

At the outset, it should be stressed that whether respondent had falsified his medical consultation card and whether he incurred unauthorized absences are questions of fact which the Court of Appeals, the NLRC, and the labor arbiter had already resolved. We see no reason to disturb the same. After all, findings of fact of the Court of Appeals, particularly where it is in absolute agreement with that of the NLRC and the Labor Arbiter, as in this case, are accorded not only respect but even finality and are deemed binding upon this Court so long as they are supported by substantial evidence.[23] Nevertheless, while the Court subscribes to the factual findings of the lower tribunals, it finds that these tribunals misapplied the appropriate law and jurisprudence on the issue of respondent's dismissal due to his unauthorized absences. But first the falsification issue.

The settled rule in administrative and quasi-judicial proceedings is that proof beyond reasonable doubt is not required in determining the legality of an employer's dismissal of an employee, and not even a preponderance of evidence is necessary as substantial evidence is considered sufficient. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. Thus, substantial evidence is the least demanding in the hierarchy of evidence.[24]

The Court agrees with the tribunals below that SMC was unable to prove the falsification charge against respondent. Respondent cannot be legally dismissed on the basis of the uncorroborated and self-serving testimonies of SMC's employees. SMC merely relied on the testimonies of Marabe and Siwa, who both stated that respondent admitted to them that he falsified his medical consultation card to cover up his excessive AWOPs. For his part, respondent denied having had any knowledge of said falsification, both in his testimony during the company-level investigation and in his handwritten explanation. He did not even claim that he had requested for, nor had been granted any sick leave for the days that the falsified entries were made. Siwa, being responsible for the medical cards, should take the blame for the loss and alleged tampering thereof, and not respondent who had no control over the same.

Proof beyond reasonable doubt is not required as a basis for judgment on the legality of an employer's dismissal of an employee, nor even preponderance of evidence for that matter, substantial evidence being sufficient. In the instant case, while there may be no denying that respondent's medical card had falsified entries in it, SMC was unable to prove, by substantial evidence, that it was respondent who made the unauthorized entries. Besides, SMC's (Your) Guide on Employee Conduct[25] punishes the act of falsification of company records or documents; it does not punish mere possession of a falsified document.

The issue of the unauthorized absences, however, is another matter.

Respondent's time cards showed that he was on AWOP on the dates enumerated by SMC: 2, 4 and 11 January;

26, 28 and 29 April; and 5, 7, 8, 13, 21, 22, 28 and 29 May 1997. The Labor Arbiter even found that respondent was on AWOP on all said dates.[26] Respondent also admitted being absent on 28 and 29 April and 7 and 8 May 1997. For each of the periods of 1 to 15 January 1997 and 16 to 30 April 1997, respondent reported for work only for two days.[27] For the month of May 1997, he reported only for one day.[28]

The Court observes that respondent admitted during the company-level investigation that that his absences incurred on 28 and 29 April, and 7 and 8 May 1997 were without permission.[29] He explained that during those times, he had a family problem which needed his attention; he was confused and was unable to inform or seek permission from his superior.[30]

However, while respondent has admitted these absences, before the Court, he also seeks to belittle the plain by countering that SMC has not been too rigid in its application of company rules pertaining to leave availments. In the proceedings below he claimed that during the days that he was absent, he had attended to some family matters. Thus, he presented copies of two (2) medical certificates and a barangay certification that he attended hearings on some of the days when he was absent. These certifications, however, cannot work to erase his AWOPs; respondent had never submitted these documents to SMC and it is only when the case was pending before the Labor Arbiter that he produced the same.[31]

Respondent cannot feign surprise nor ignorance of the earlier AWOPs he had incurred. He was given a warning for his 2, 4, and 11 January and 26, 28, and 29 April 1997 AWOPs.[32] In the same warning, he was informed that he already had six AWOPs for 1997. He admitted that he was absent on 7 and 8 May 1997.[33] He was also given notices to explain his AWOPs for the period 26 May to 2 June 1997, which he received but refused to acknowledge.[34] It does not take a genius to figure out that as early as June 1997, he had more than nine AWOPs.

Thus, even if he was not punished for his subsequent AWOPs, the same remained on record. He was aware of the number of AWOPs he incurred and should have known that these were punishable under company rules. The fact that he was spared from suspension cannot be used as a reason to incur further AWOPs and be absolved from the penalty therefor.

The Court of Appeals, NLRC, and the labor arbiter found that respondent incurred unauthorized absences, but concluded that the penalty of discharge or determination was disproportionate to respondent's absences in view of SMC's inconsistent and lax implementation of its policy on employees attendance. The Court disagrees. Respondent's dismissal was well within the purview of SMC's management prerogative.

What the lower tribunals perceived as laxity, we consider as leniency. SMC's tendency to excuse justified absences actually redounded to the benefit of respondent since the imposition of the corresponding penalty would have been deleterious to him. In a world where "no work-no pay" is the rule of thumb, several days of suspension would be difficult for an ordinary working man like respondent. He should be thankful that SMC did not exact from him almost 70 days suspension before he was finally dismissed from work.

In any case, when SMC imposed the penalty of dismissal for the 12th and 13th AWOPs, it was acting well within its rights as an employer. An employer has the prerogative to prescribe reasonable rules and regulations necessary for the proper conduct of its business, to provide certain disciplinary measures in order to implement said rules and to assure that the same would be complied with.[35] An employer enjoys a wide latitude of discretion in the promulgation of policies, rules and regulations on work-related activities of the employees.[36]

It is axiomatic that appropriate disciplinary sanction is within the purview of management imposition.[37] Thus, in the implementation of its rules and policies, the employer has the choice to do so strictly or not, since this is

inherent in its right to control and manage its business effectively. Consequently, management has the prerogative to impose sanctions lighter than those specifically prescribed by its rules, or to condone completely the violations of its erring employees. Of course, this prerogative must be exercised free of grave abuse of discretion, bearing in mind the requirements of justice and fair play. Indeed, we have previously stated:

Management also has its own rights, which, as such, are entitled to respect and enforcement in the interest of simple fair play. Out of its concern for those with [fewer] privileges in life, the Supreme Court has inclined more often than not toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded the Court to rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.[38]

All told, we find that SMC acted well within its rights when it dismissed respondent for his numerous absences. Respondent was afforded due process and was validly dismissed for cause.

WHEREFORE, the instant petition is GRANTED. The challenged Decision dated 28 June 2000 and Resolution dated 17 November 2000 of the Court of Appeals in CA-G.R. SP Nos. 54684 and 54709 are REVERSED and SET ASIDE. Respondent's complaint against petitioners is DISMISSED.

SO ORDERED.

Quisumbing, (Chairperson), Austria-Martinez[**], Carpio Morales, and Velasco, Jr., JJ., concur.

[**]As replacement of J. Arturo D. Brion who took no part due to a party being a former client per Administrative Circular No. 84-2007.

[1]Rollo, pp. 28-68.

[2]Id. at 10-19. Penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justices Eloy R. Bello, Jr. and Elvijohn S. Asuncion of the Thirteenth Division.

[3]Id. at 83.

[4]NLRC records, pp. 73-84.

[5]Id. at 77.

[6]Id. at 80.

[7]Id. at 93-A.

[8]Id. at 96.

[9]Id. at 97.

[10]Id. at 98-99.

[11]Id. at 100.

[12]Id. at 102-110; Minutes of the Administrative Investigation dated 17 and 23 June 1997.

[13]Id. at 111; Notice of Termination dated 2 July 1997.

[14]Rollo, pp. 211-229.

[15]Id. at 229.

[16]Id. at 262-274.

[17]Id. at 273.

[18]Id. at 81.

[19]Quijano v. Mercury Drug Corporation, 354 Phil. 112 (1998).

[20]Id. at 122.

[21]Rollo, pp. 53-54.

[22]G.R. No. 91344, 14 September 1990, 189 SCRA 666.

[23]Hantex Trading Co., Inc. v. Court of Appeals, 438 Phil. 737, 743 (2002).

[24]Salvador v. Philippine Mining Service Corporation, 443 Phil. 878, 888-889 (2003).

[25]NLRC records, pp. 73-84.

[26]Rollo, p. 225.

[27]Records, pp. 90-91.

[28]Id. at 92-93.

[29]NLRC records, pp. 102-108. Minutes of the Administrative Meeting held on 17 June 1997. The pertinent portion reads:

Investigator: Ginoong Ibias, Ikaw ba ay pumasok sa iyong trabaho noong April 28 & 29, at May 7 at 8, 1997?

E.Ibias: Hindi po.

Investigator: Sa mga araw na nabanggit, ang iyo bang pagliban o pag-absent ay may permiso ba mula sa iyong supervisor o manager?

E. Ibias: Wala po. (Id. at 102-103)

[30]Id. at 103. Respondent showed his assent to the contents of the Minutes of the said investigation by affixing his signature on every page thereof.

[31]Id. at 146. As called by SMC in its Rejoinder dated 29 June 1998. Respondent did not deny this allegation.

[32]Id. at 93-A.Warning.

[33]Id. at 102-108. Minutes of the Administrative Meeting held on 17 June 1997.

[34]Id. at 97-98.

[35]Gustilo v. Wyeth Philippines, Inc., G.R. No. 149629, 4 October 2004, 440 SCRA 67, 75.

[36]Coca Cola Bottlers, Phils., Inc. v. Kapisanan ng Malayang Manggagawa sa Coca Cola-FFW, G.R. No. 148205, 28 February 2005, 452 SCRA 480, 496.

[37]Lopez v. National Labor Relations Commission, G.R. No. 167385, 13 December 2005, 477 SCRA 596, 602.

[38]Samar II Electric Cooperative, Inc. v. NLRC, 337 Phil. 24, 28-29 (1997), citing Sosito v. Aguinaldo Development Corp., 156 SCRA 392 (1987).

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