

THIRD DIVISION

[G.R. NO. 170811, April 24, 2007]

**SUPREME STEEL PIPE CORPORATION AND REGAN SY,
PETITIONERS, VS. ROGELIO BARDAJE, RESPONDENT.**

DECISION

CALLEJO, SR., J.:

This a petition for review of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 81775, which reversed the July 10, 2003 Decision^[2] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 028936-01 and reinstated the April 30, 2001 Decision^[3] of the Labor Arbiter in NCR Case No. 00-09-09800-99.

The Antecedents

Petitioner Supreme Steel Pipe Corporation (SSPC), a domestic corporation primarily engaged in the business of manufacturing steel pipes, employed respondent Rogelio Bardaje as a warehouseman on March 14, 1994. SSPC employees were required to wear a uniform (a yellow t-shirt with a logo and the marking "Supreme") while at work.

On August 19, 1999, respondent reported for work at 6:45 a.m. It was a common practice among warehousemen to wear long-sleeved shirts over their uniforms to serve as protection from heat and dust while working, and on this day, respondent had on a green long-sleeved shirt over his uniform. Momentarily, security guard Christopher Barrios called him in a loud voice, and arrogantly ordered him to remove and turn-over to him (Barrios) the long-sleeved shirt. Insulted and feeling singled-out from the other warehousemen who were also wearing long-sleeved shirts over their uniforms, respondent replied: *"Ano ba ang gusto mo, hubarin ko o magsuntukan na lang tayo sa labas?"* A heated exchange of words ensued, but the brewing scuffle between the two was averted by a co-employee from the Production Division, Albert A. Bation. A security guard, Ricky Narciso, was able to keep the parties apart. Barrios reported the incident to the SSPC management.

The next day, respondent received a Memorandum from petitioner SSPC stating that pending the investigation for his alleged violation of the company rule prohibiting "inciting a fight, harassing, coercing, intimidating and/or threatening co-workers," he was being meted a 30-day preventive suspension beginning August 23, 1999.^[4] He was also required to submit his Answer/Comment to the incident, to which he readily complied.

When respondent reported back to work a month after, he was served with a Notice dated September 8, 1999, terminating his employment effective September 23, 1999. Petitioner SSPC had taken into account the August 19, 1999 incident as well as respondent's "previous infractions of company rules." Petitioner SSPC declared

that respondent's continued employment would pose serious and imminent threat to the lives of his co-workers and to the property of the corporation and its employees. In part, the notice stated:

Upon thorough investigation of your case, and the incident, there surfaced on records similar acts which you had committed on the following instances: 1.) August 06, 1997, you were charged with Coercing, Intimidating and/or Threatening your co-worker and challenged to a fight against the Production Supervisor Engr. Benny Lloren[;] 2.) August 07, 1997, Inciting a fight inside the Company premises against Engr. Benny Lloren; 3.) October 09, 1997, damage to Company Vehicle thru Reckless Imprudence using Company equipment without proper permission and authority; 4.) August 15, 1998, inflicting injury against a Company Overseer Mr. Lim; 5.) May 24, 1999, at 6:30 P.M., more or less, Inciting a Fight against your co-employee Ariel Burton.

With the aforecited incident/instances [it] would clearly manifest that your continued employment with this Company [poses] a serious and imminent threat to the life or property of the employer or of your co-workers, but through your pleadings for forgiveness with the above incidents, the Company being considerate enough[,] you were given a second chance.

At this instance, applying the above-stated Rule to the [facts] obtaining in this most recent case, [it] would inevitably result in the [finding] that dismissal is proper. Your continued employment would pose a serious and imminent threat to the life or property of the Company or any of its workers.

Taking into account all the circumstances surrounding this case, the acts which you have showed considering your unruly temper on August 19, 1999, in the presence of the Personnel Officer inside the Personnel Office [which] was deliberately done to embolden yourself in a fight against another person[,] you would have been punished of (sic) outright dismissal.

Examination of the circumstances surrounding your quarrel with the Guard shows [that] a serious or [substantial] danger has been posed by the quarrel to the well-being of your co-employees, and your behavior threatened to cause substantial prejudice for the business of the Company.^[5]

Alleging that his dismissal from service was illegal, respondent filed a Complaint on September 29, 1999 against petitioner and its President, Regan Sy. The complaint contained the following prayer:

WHEREFORE, complainant prays that the Honorable Labor Arbiter render a decision:

1. declaring the dismissal of Bardaje illegal;
2. ordering Bardaje to be reinstated without loss of seniority rights and with full backwages;

3. ordering respondents to pay Bardaje TWENTY-FIVE THOUSAND PESOS (P25,000.00) by way of moral damages;
4. ordering respondents to pay Bardaje TWENTY-THOUSAND PESOS (P20,000.00) by way of exemplary damages;
5. ordering respondents to pay Bardaje an amount equivalent to ten percent (10%) of his total money claims;
6. declaring respondent Regan Sy to be held solidarily liable to complainant for damages.

Other just and equitable reliefs are likewise prayed for.^[6]

In their Position Paper, petitioners SSPC and Sy posited that for threatening Barrios and challenging him to a fight after being "politely advised" to remove the long-sleeved shirt and wear the uniform, respondent committed serious misconduct. Petitioners submitted in evidence the handwritten statements of Albert Bation and the three (3) security guards, Ricky Narciso, Ben Montoya, as well as that of Christopher Barrios.

Petitioner SSPC reiterated that the August 19, 1999 incident was not an isolated case; on prior occasions, the complainant had shown his violent temper and tendency to breach company rules and regulations given the slightest provocation, but in all the previous offenses, the complainant was just given a "kid's gloves treatment." The August 19 incident was, however, different since respondent was challenging not only the security guards but petitioner SSPC as well. Petitioner insisted that Barrios was only performing his job, and that respondent should have complied with the lawful and reasonable instructions on wearing of proper uniform instead of arrogantly displaying his "perceived superiority." They insisted that respondent was afforded procedural due process — he was duly informed of the charges against him, and in fact submitted his explanation thereto. Moreover, his termination was based on the evidence presented.^[7]

On April 30, 2001, the Labor Arbiter rendered judgment and held that Bardaje was illegally dismissed. The *fallo* of the decision reads:

WHEREFORE, premises considered, judgment is entered **FINDING** the respondents to have illegally dismissed complainant thus, **ORDERING** them to reinstate him to his previous position without loss [of] seniority rights and other privileges and to pay him full backwages, inclusive of 13th-month-pay benefits and 5-day SILP/year, computed from date of dismissal on 23 August 1999 up to the time of his actual reinstatement, less 3 months salary as penalty for his infraction as shown in the attached computation sheet by the Computation & Research Unit-this Office.

As the reinstatement aspect is immediately executory even pending appeal by the employer, respondents are to admit back to work complainant under the same terms and conditions prevailing prior to his dismissal or at its option, merely reinstated in the payroll.

All other claims of complainant are dismissed for lack of merit.

SO ORDERED. [8]

The Labor Arbiter declared that respondents failed to substantiate their claim that the complainant committed serious misconduct. According to the Labor Arbiter, as between the handwritten account of Montoya and complainant's version that he only wore his long-sleeved shirt when he was about to work (not at the time he punched in his daily time record) and was shouted at, the narration of the complainant is more worthy of belief; the guard could not be expected to testify against his own employer. According to the Labor Arbiter, the respondent's alleged past "misdemeanors" should not be considered since no investigations were conducted thereon.

However, the Labor Arbiter ruled, even if respondent was not guilty of serious misconduct, that he was not entirely blameless. He could have easily called the attention of his superiors to the guard's arrogant attitude. Thus, the penalty of suspension for three (3) months without pay was proper. [9]

Petitioners appealed the case before the NLRC, alleging that petitioner SSPC had the management prerogative to dismiss employees as a measure of self-protection. It was claimed that the handwritten statements of Montoya and Narciso substantially corroborated the allegations of Barrios; considering petitioner's violent tendencies in previous incidents, he was more capable of provoking the fight. It further claimed that the past offenses of respondent were investigated, but for humanitarian reasons, no disciplinary actions were imposed. They insisted that the Labor Arbiter should have conducted trial on the merits since the resolution of the issues in the case basically revolve on the credibility of witnesses. It further alleged that, applying the doctrine of separate corporate entity in labor cases, petitioner Sy should not be held liable in his personal capacity. [10]

Meantime, petitioner SSPC opted to reinstate respondent in its payroll effective August 23, 2001, the date he actually reported back to work. [11] However, starting June 2002, petitioner refused to pay respondent's salary. Consequently, on March 26, 2003 (while petitioners' appeal in the NLRC was pending), respondent filed a Manifestation and Motion praying that respondent SSPC or any of its representatives be immediately ordered to pay his salary from June 2002 up to the present. [12]

Without ruling on the motion, the NLRC rendered its July 10, 2003 Decision reversing the Decision of the Labor Arbiter, and ordering the dismissal of the complaint. [13]

The NLRC declared that, based on the written statements of Bation, Montoya and Narciso, the incident was not a mere exchange of words or simple altercation; respondent was "raring for a fight" when accosted for not properly wearing the company uniform. Moreover, his propensity to incite trouble was evident from the other incidents involving him and Engr. Benny Lloren, Ape Lim and Ariel Burton. Hence, the August 19, 1999 incident, taken together with respondent's previous infractions, justified the imposition of the ultimate penalty of dismissal. [14]

Respondent seasonably filed his appeal before the CA.^[15] The appellate court rendered judgment on October 14, 2004 reversing the decision of the NLRC and reinstating the decision of the Labor Arbiter. The *fallo* of the decision reads:

WHEREFORE, the present petition for *certiorari* is **GRANTED**. The assailed decision and resolution of the public respondent National Labor Relations Commission is **ANNULLED** and **SET ASIDE**; and the 30 April 2001 decision of Labor Arbiter Renaldo O. Hernandez is **REINSTATED**.

Private respondent Supreme Steel Pipe Corporation is further ordered to pay the salaries of petitioner Rogelio Bardaje from June 2002, onwards.

SO ORDERED.^[16]

The CA agreed with the Labor Arbiter and the NLRC that respondent was guilty of misconduct, since he openly acknowledged that he was engaged in a war of words that could have resulted in a fistfight with Barrios. The CA, however, found that the penalty of dismissal was not warranted, and that it was too harsh and evidently disproportionate to the act committed. The NLRC patently erred and gravely abused its discretion when it declared that the dismissal was justified due to the previous "infractions" committed by respondent, as there was no evidence that respondent was culpable therefor. Even assuming that these were actually committed, the CA ruled that petitioner SSPC could no longer utilize the infractions since they had been admittedly condoned for humanitarian considerations.^[17]

Petitioners filed a motion for reconsideration, which was eventually denied on December 15, 2005;^[18] hence, this petition.

The petition has no merit.

In this jurisdiction, we have consistently defined misconduct as an improper or wrong conduct, a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, implies wrongful intent and not mere error of judgment.^[19] To be a just cause for termination under Article 282 of the Labor Code of the Philippines,^[20] the misconduct must be serious,^[21] that is, it must be of such grave and aggravated character and not merely trivial or unimportant.^[22] However serious, such misconduct must nevertheless be in connection with the employee's work;^[23] the act complained of must be related to the performance of the employee's duties showing him to be unfit to continue working for the employer.^[24] Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the performance of the employee's duties; and, (c) it must show that the employee has become unfit to continue working for the employer.^[25]

These guideposts were not complied with in the instant case. Although we have recognized that fighting within company premises may constitute serious misconduct,^[26] we have also held that not every fight within company premises in which an employee is involved would automatically warrant dismissal from service.^[27] Thus, in *Sanyo Travel Corporation v. National Labor Relations Commission*,^[28] *Oania v. National Labor Relations Commission*,^[29] and *Foodmine, Inc. (Kentucky*