561 Phil. 451

THIRD DIVISION

[G.R. No. 173256, October 09, 2007]

AFI INTERNATIONAL TRADING CORPORATION (ZAMBOANGA BUYING STATION) AND CELEDONIO RAYMUNDO, JR., PETITIONERS, VS. DENNIS G. LORENZO AND CECILIO S. SORSAN, RESPONDENTS.

DECISION

NACHURA, J.:

In illegal dismissal cases, the *onus* of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, rests on the employer and failure to discharge that burden would mean that the dismissal is not justified and therefore illegal.[1] We reiterate that principle in this case.

Petitioner AFI International Trading Corporation (or AFI) is a corporation engaged in buying and manufacturing marine and seafood products. Respondent Dennis Lorenzo was hired by AFI as processor on April 12, 1991, followed by respondent Cecilio S. Sorsan on February 6, 1992. Respondents were paid on a monthly basis.[2]

In March 1999, AFI started paying respondents on a piece-rate or per-kilo basis. Respondents were assured that it would only be temporary, but it continued for several years. Hence, on January 14, 2002, respondents went to the Department of Labor and Employment (DOLE) and inquired on the effects of this manner of payment on the nature of their employment. AFI learned of their visit to the DOLE, and upon respondents' reporting to work on January 16, 2002, AFI's general manager Celedonio Raymundo, Jr., informed them that they can no longer work and ordered them to leave the premises. Still hoping that they would be allowed to work, respondents returned to AFI three days later, but Raymundo prevented them from entering the premises and declared that they were already terminated. Hence, this complaint for illegal dismissal against the petitioners.[3]

Petitioners, on the other hand, presented a different version, and maintained that respondents were dismissed for just cause and with due process. They asserted that respondents, who had no approved application for leave, did not report for work beginning January 16, 2002; that on January 21, 2002, they required respondents to explain their unauthorized absences, but the latter failed to do so. Petitioners concluded that respondents' unauthorized absences constitute gross and habitual neglect of duty, justifying the termination of their employment.[4]

On April 17, 2002, the Labor Arbiter rendered a Decision, *viz.*:

> The undersigned hereby finds and rule (sic) that there was illegal dismissal. For abandonment to be a valid ground of dismissal, two

> elements must be proved: The intention of an employee to abandon, coupled with an overt act from which it maybe inferred that the employee has no more intent to resume his work. x x x
>
> Abandonment does not sever employer-employee relationship, it is merely a form of neglect of duty, which is in turn a just cause for termination of employment. The operative act that will ultimately put an end to this relation is the dismissal of the employee after complying with the procedure prescribed by law. If the employer does not follow this procedure there is illegal dismissal, as in this case, when the [petitioners] simply refused to let the [respondents] work, thereby effecting their actual dismissal. Thus, there is actually no abandonment. As a matter of fact, after [petitioners] told them that they are already terminated, still, they reported back for work on 19 January 2002 in the hope that [petitioners] might consider his stand, however, they were refused and told them (sic) they are already terminated.
>
> The alleged notice dated 21 January 2002 addressed to the [respondents], requiring them to explain why they should not be terminated because of abandonment of work was made and served to them only after they were refused entry in the work premises by the [petitioners]. This does not cure the flaws in the manner by which [petitioners] dismissed the [respondents]. In fact, the sending of the notices appears to have been a mere afterthought on the part of the [petitioners] to formalize the subject dismissals which had actually been already carried out.
>
> Moreover the fact that the [respondents] also filed this case on 21 January 2002, or only five (5) days from the date of their dismissal on 16 January 2002, belies the charge of abandonment made against them by [petitioners].
>
> [Respondents'] dismissals being illegal for lack of just cause as well as lack of due process, as explained above, the [respondents] are entitled to reinstatement (Art. 279 of the Labor Code, as amended). Since, however, they expressly prays (sic) for separation pay x x x, the same shall be granted to them in lieu of reinstatement. x x x[5]

On appeal by petitioners, the NLRC reversed the Labor Arbiter, holding that the latter abused his discretion in delving into the issue of abandonment when the dismissal was grounded on gross and habitual neglect of duty. While declaring that a five-day absence would not constitute gross and habitual neglect of duty, the NLRC denied respondents their backwages and separation pay, reasoning that the latter were never dismissed, but voluntarily terminated their employment. In ruling so, it declared that there was no overt act of termination on the part of petitioners to warrant the conclusion that respondents were dismissed on January 16, 2002. The termination was belied by petitioners' memorandum on January 21, 2002, requiring explanation for their unauthorized absences. On the other hand, the voluntary termination was apparent when respondents prayed for separation pay, in lieu of their reinstatement. Not having been terminated, respondents are, therefore, not entitled to backwages and separation pay.

Respondents went to the Court of Appeals via *certiorari*. On January 27, 2006, the Court of Appeals rendered a Decision[6] setting aside the resolutions of the NLRC. In gist, the Court of Appeals ruled against the legality of respondents' dismissal for want of just or valid cause. It rejected the petitioners' posturing that the absences incurred by the respondents constituted neglect, much less were these gross and habitual, justifying their dismissal. Accordingly, it sustained the award of backwages and separation pay in favor of the respondents.

AFI filed a motion for reconsideration, but the Court of Appeals denied it on May 26, 2006.[7]

Hence, this appeal by petitioners, positing that:

> THE HONORABLE COURT COMMITTED SERIOUS REVERSIBLE ERROR IN REVERSING AND SETTING ASIDE THE DECISION OF THE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION (NLRC).[8]

Relying upon the basic rule in evidence that each party must prove his affirmative allegation, petitioners assert that respondents failed to establish that they had been illegally dismissed. Respondents offered no proof to substantiate their barefaced allegation of dismissal. Thus, they fault the Court of Appeals for sustaining respondents.

As stated at the outset, in illegal dismissal cases, the employer is burdened to prove just cause for terminating the employment of its employees with clear and convincing evidence. Article 277(b) of the Labor Code[9]of the Philippines puts on the employer the burden of proving that the dismissal of an employee was for a valid or authorized cause, whether the latter admits or does not admit the dismissal. [10] Thus, petitioners must not only rely on the weakness of respondents' evidence, but must stand on the merits of their own defense.[11]

Petitioners denied that they dismissed the respondents. They insist that there was no overt or positive act of termination to justify the respondents' claim of illegal termination. Such protestation strikes the Court as a strained attempt to rationalize an untenable position.

Notably, before the Labor Arbiter, petitioners never denied that respondents were terminated. In fact, they vehemently justified respondents' dismissal claiming that it was for just cause and upon compliance with due process.[12] It was only when the NLRC ruled, albeit erroneously, that respondents voluntarily terminated their employment, that petitioners sang a different song, so to speak, and denied that respondents were dismissed. This Court will not allow this obvious turnaround. The change of theory by the petitioners at this stage cannot prosper.

Respondents were dismissed for gross and habitual neglect of duty. Gross negligence connotes want of care in the performance of one's duties, while habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. The single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.[13]