495 Phil. 706

FIRST DIVISION

[G.R. NO. 149371, April 13, 2005]

ABERDEEN COURT, INC., AND RICHARD NG, PETITIONERS, VS. MATEO C. AGUSTIN JR., RESPONDENT.

D E C I S I O N

AZCUNA, J.:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, assailing the Decision of the Court of Appeals in CA-G.R. SP No. 60223, entitled "Mateo Agustin Jr. v. National Labor Relations Commission (First Division), Aberdeen Court, Inc. and Ricardo Ng," dated January 31, 2001, and the Resolution of August 10, 2001 denying the motion for reconsideration therein.

On September 16, 1996, Aberdeen Court, Inc. (Aberdeen), one of the petitioners, employed Mateo C. Agustin (Agustin), herein respondent, for the purpose of trouble shooting the electrical problems in said petitioner's establishment. Agustin was engaged on a six-month probationary basis. The employment contract provided, *inter alia*, that:

> Should my performance be considered unsatisfactory at any time by management during my probationary period, I understand and agree that the management can terminate my services at any time, even before the termination of the agreed six-month period.[1]

On January 12 and 13, 1997 the personnel of Centigrade Industries, Inc. performed a reading of the exhaust air balancing at the fifth and sixth floors of Aberdeen's premises. Petitioners claim that Agustin was placed in charge of the undertaking. On the other hand, Agustin asserts that Engr. Abad merely requested him to accompany the aforesaid personnel to show the location of the exhaust air outlet at the fifth and sixth floors of the premises. He avers that:

> The request of Engr. Abad is actually the responsibility of the company's mechanical engineers. Despite the fact that the request of Engr. Abad is not a part of his job since he is not a mechanical engineer and there were three (3) other mechanical engineers on duty in the company premises, petitioner [herein respondent], being a subordinate of Engr. Abad, obliged and accompanied the aforementioned personnel to the location. There were no other specific instructions from Engr. Abad to petitioner with respect to the conduct or actual reading to be made by the Centigrade personnel.
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> It must be noted that the reading of exhaust air balancing is under the category of heating, ventilating and air conditioning (HVAC) which are within the realm of field of work of mechanical engineers. Being an electrical engineer, petitioner obviously has no knowledge of the

> procedure and the equipment used by mechanical engineers in the conduct of the reading of the exhaust air balancing.[2]

After the Centigrade personnel finished their job, they submitted their report to Agustin. Petitioners allege that Agustin accepted and signed the report, without verifying its correctness. Engineer Abad later checked the work of the Centigrade employees only to find out that four rooms in the fifth floor and five rooms in the sixth floor were incorrectly done.[3] In contrast, Agustin states that after the report was handed to him, he took the same to Engr. Abad, who he claims was responsible for evaluating and confirming the said report. Allegedly, instead of signing it himself, Engr. Abad directed respondent to sign it, giving the reason that Agustin was present when the reading was conducted. Respondent Agustin complied, but he now points out that his signature was not accompanied by any qualification that he accepted the report on behalf of Aberdeen. He claims that he signed merely to evidence that he received a copy of the report.[4]

The parties also differ on the occurrences two days after the signing of the report or on January 15, 1997. According to petitioners, Aberdeen management confronted Agustin with his failure to check the job and asked him to explain his side. Agustin allegedly ignored management and left the company, which made it impossible for Aberdeen to transmit any further notice to him.[5]

However, Agustin claims that:

> On January 15, 1997 or two days after the report was submitted by Centigrade Industries, petitioner [herein respondent] was summarily dismissed. In the afternoon of that day, he received a telephone call from the personnel office of respondent company ordering him to report to that office after his tour of duty. At about seven p.m. at the personnel office, Ms. Lani Carlos of the Personnel Department, informed him that Aberdeen Court is terminating his services as electrical engineer. Petitioner was flabbergasted. Ms. Carlos then informed him that he could get his two (2) weeks salary in the amount of P4,000, more or less, on the condition that he will sign some documents which provides that the company has no more liability and that he is voluntarily resigning from Aberdeen Court. Aware of his rights, petitioner did not sign the offered documents. He was then hurriedly led to the door by Ms. Carlos.
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> The following day or on January 16, 1997, petitioner requested assistance from the Department of Labor and Employment (DOLE). A DOLE personnel told him to report for work since private respondents did not serve him a notice of termination. As instructed, petitioner reported for work on the same day. Upon arriving at the company premises, petitioner asked Ms. Carlos if he could still report for work but private respondent's personnel officer told him that he cannot do so.[6]

Within the same month of that year, respondent Agustin filed a complaint for illegal dismissal which was docketed as NLRC NCR Case No. 00-01-00466-97.

In an undated decision, the labor arbiter rendered judgment in favor of herein respondent, declaring that Agustin was illegally dismissed, thus:

WHEREFORE, judgment is hereby rendered:

1. Ordering respondent ABERDEEN COURT, INC. to reinstate to his former position without loss of seniority rights complainant MATEO C. AGUSTIN, JR.

2. Ordering respondent to pay to complainant backwages in the sum of PHP P175,933.33.[7]

Petitioners appealed the decision to the National Labor Relations Commission (NLRC). On February 29, 2000, the NLRC reversed the decision of the Labor Arbiter and held that Agustin had not been illegally dismissed, disposing thus:

> WHEREFORE, for and on account of the reasons above-discussed, the decision appealed from is hereby reversed and set aside and a new one entered dismissing the complaint for lack of merit.[8]

From the NLRC decision, Agustin filed a petition for *certiorari* under Rule 65 of the Rules of Court with the Court of Appeals. The appellate court ruled in favor of Agustin and reasoned thus:

> Constructive dismissal is defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving demotion in rank and a diminution in pay (Jarcia Machine Shop and Auto Supply, Inc. vs. National Labor Relations Commission, 266 SCRA 97, 108). As there is no showing in the record of any circumstance to support the proposition that the petitioner was constructively dismissed, the private respondents correctly point out the flaw in the first ground proffered by the petitioner in support of his petition. Be that as it may, the petitioner's erroneous choice of terminology does not, to our mind, preclude a finding of illegal dismissal. Alongside the private respondents' contention that it was the petitioner who unceremoniously quit his employment after being confronted with his negligence, greater stock m[a]y be taken of the petitioner's immediate recourse for assistance from the Department of Labor and his subsequent filing of his complaint. The rule is settled that the immediate filing of a complaint for illegal dismissal is inconsistent with abandonment (Pampanga Sugar Development Company, Inc. vs. National Labor Relations Commission, 272 SCRA 737, 747) and, in such cases, the burden of proof to establish the validity of the dismissal of an employee lies on the employer (Gonpu Services Corporation vs. National Labor Relations Commission, 266 SCRA 657, 662). Rather than the employee who must prove its invalidity, it is the employer who should prove the validity of a dismissal. (Sanyo Travel Corporation vs. National Labor Relations Commission, 280 SCRA 129, 138) and failure to do so will result in a finding that the dismissal was unfounded (Reformist Union of R.B. Liner, Inc. vs. National Labor Relations Commissions, 266 SCRA 713, 726).
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> Our perusal of the record yielded no showing of satisfactory attempt on the part of the private respondents to prove the validity of the petitioner's dismissal. It bears emphasizing that, to be lawful, the employee's dismissal must comply with the following requirements (a) the dismissal must be for any of the causes provided in Article 292 of the

Labor Code; and, (b) the employee must be given an opportunity to be heard and defend himself (Molato vs. National Labor Relations Commission, 266 SCRA 42, 45). The employer must first affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause (Brahm Industries, Inc. vs. National Labor Relations Commission, 280 SCRA 828,838).

It is our considered view that the private respondents did not succeed in discharging the aforesaid onus. Against the petitioner's contention that exhaust air balancing is neither covered by his duties nor competence, there is no showing that the private respondents even attempted to prove the extent of the petitioner's technical responsibilities. Even assuming that the task properly pertained to the petitioner, an employee where, as in the case at bench, the offense appears to be the first committed by the employee, was devoid of malice and, more importantly, was not his sole responsibility (Tumbiga vs. National Labor Relations Commission, 274 SCRA 338, 348).

The fact that the petitioner was still in his probationary period of employment did not lessen the burden of proof the law imposes on the private respondents. Probationary employees are protected by the security of tenure provision of the Constitution and cannot, likewise, be removed from their position unless for cause (Pines City Educational Center vs. National Labor Relations Commission, 227 SCRA 655, 663). Article 281 of the Labor Code of the Philippines, as amended provides:

Art. 281. Probationary employment. - Probationary employment shall not exceed six (6) months from the date the employee started working unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

Aside from failing to show a just cause for the termination of the petitioner's services, the private respondents appear not to have even deigned to show such reasonable standards the petitioner's failure to measure up alongside which would have justified his dismissal from employment.

Neither did the private respondents successfully show their compliance with the second requirement for the validity of the termination of petitioner's employment. Their contention that it was the latter who abandoned his job cannot be taken at face value in view of the fact that an employee who forthwith takes steps to protest his layoff cannot, by any logic, be said to have abandoned his work (Nazal vs. National Labor Relations Commission, 274 SCRA 350, 355). Even without the petitioner's affirmative allegation that he returned to his workplace after being so advised at the Department of Labor and Employment, we find the dearth of any notice of termination sent to the petitioner or, at the very least,