

FIFTH DIVISION

[CA-G.R. SP NO. 72079, July 20, 2006]

**IRMA FISHING & TRADING, INC., AND ITS PRESIDENT/GENERAL
MANAGER ROBERTO DEL ROSARIO, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION (3RD DIVISION),
CELSO SARDANE AND CONFEDERATION LABOR UNION OF THE
PHILIPPINES (CLUP), RESPONDENTS.**

DECISION

BARRIOS, J.:

This petition for certiorari was filed by Irma Fishing and Trading, Inc. and its president/general manager, Roberto Del Rosario (hereafter the petitioners for brevity) assailing the Decision dated April 26, 2001 of the National Labor Relations Commission (or NLRC) favorable to the respondent Celso Sardane (or Sardane), and the Resolution of April 30, 2002 denying its reconsideration. On August 5, 1998, Sardane filed against the petitioners a case for unfair labor practice, illegal dismissal and non-payment of premium pay for holiday, separation pay, holiday pay and 13th month pay. The complaint was amended on November 19, 1998 to include illegal suspension and non-payment of premium pay for rest day and night differential pay plus damages and attorney's fees. Sardane also prayed for reinstatement in lieu of separation pay.

In his position paper, Sardane alleged that he is a member of the Confederated Labor Union of the Philippines (CLUP). He was hired by the petitioners sometime in July 1992 and assigned to work as a hatchman in their fishing vessels. On July 3, 1998, Sardane was placed on preventive suspension for thirty (30) days, and on August 3, 1998 he was terminated from employment on the charges of insubordination and challenging his superior to a fight.

Sardane claimed that his termination was without just and valid cause. He denied the charges that he refused to obey the orders of his superior and that he challenged the boat captain to a fight. On June 29, 1998, while he was on board the fishing vessel, he suffered severe stomach pain and headache so he asked to be excused from performing his tasks. The boat captain however refused to believe him. The maestro bodegero advised him to take a tablet for stomach pain, which he did and when the pain subsided he resumed his work. Upon reaching the port, he underwent urinalysis and hematology examinations at a hospital.

Sardane further claimed that he was denied due process because he was suspended for thirty (30) days without giving him the opportunity to explain his side on the charges against him. When he reported for work after his suspension, he was immediately served a notice of termination without the benefit of an investigation. He also asserted that the petitioners did not pay him overtime pay, night shift differential, premium pay for holiday and rest days and 13th month pay.

In their traverse, the petitioners maintained that Sardane was terminated for his act of insubordination. He had only feigned illness to be excused from performing his work, but it was very apparent to his superiors that he was just malingering. His insubordination and act of challenging the boat captain to a fight constitute the offense of serious misconduct and commission of a crime or offense which are valid grounds for termination. They also claimed that Sardane was accorded due process because after he was placed on preventive suspension, he was served a written notice requiring him to explain his side regarding the incident on board the vessel. Sardane in fact submitted his letter of explanation on August 3, 1998. The petitioners also claimed that they conducted investigation and interview of the other personnel on board the vessel, and they all confirmed the serious misconduct of Sardane.

In its decision dated September 29, 1999, the Labor Arbiter ruled that:

WHEREFORE, premises considered, judgment is hereby rendered dismissing the instant complaint for lack of merit.

Respondent IRMA FISHING & TRADING, Inc. is, however, ordered to pay complainant his proportionate 13th month pay for 1998 ($200 \times 26 \times 7 \div 12$) P3,033.33.

All other claims are also dismissed for lack of merit.

SO ORDERED. (pp. 86-87, rollo)

Sardane appealed this to the NLRC which reversed this in the now assailed Decision dated April 26, 2001, holding that:

WHEREFORE, the decision dated 29 September 1999 is hereby REVERSED and SET ASIDE and a new one entered ordering respondent Irma Fishing & Trading, Inc to pay complainant the following:

1. Separation pay -----	P30,888.00

(1992-1998)	
2. Backwages -----	77,220.00

(July 1998 to September 1999)	
3. Proportionate 13th month pay for 1998	2,574.00
Total -----	P110,682.00
	=====

SO ORDERED. (pp. 32-33, rollo)

A motion for reconsideration was filed by the petitioners but this was denied by the NLRC in its Resolution dated April 30, 2002.

Hence the petitioners sought relief through this petition raising the following issues for consideration: