

## FIRST DIVISION

[ G.R. No. 184885, March 07, 2012 ]

**ERNESTO G. YMBONG, PETITIONER, VS. ABS-CBN  
BROADCASTING CORPORATION, VENERANDA SY AND DANTE  
LUZON, RESPONDENTS.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

Before us is a Rule 45 Petition seeking to set aside the August 22, 2007 Decision<sup>[1]</sup> and September 18, 2008 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 86206 declaring petitioner to have resigned from work and not illegally dismissed.

The antecedent facts follow:

Petitioner Ernesto G. Ymbong started working for ABS-CBN Broadcasting Corporation (ABS-CBN) in 1993 at its regional station in Cebu as a television talent, co-anchoring *Hoy Gising* and TV Patrol Cebu. His stint in ABS-CBN later extended to radio when ABS-CBN Cebu launched its AM station DYAB in 1995 where he worked as drama and voice talent, spinner, scriptwriter and public affairs program anchor.

Like Ymbong, Leandro Patalinghug also worked for ABS-CBN Cebu. Starting 1995, he worked as talent, director and scriptwriter for various radio programs aired over DYAB.

On January 1, 1996, the ABS-CBN Head Office in Manila issued Policy No. HR-ER-016 or the "Policy on Employees Seeking Public Office." The pertinent portions read:

1. **Any employee who intends to run for any public office position, must file his/her letter of resignation**, at least thirty (30) days prior to the official filing of the certificate of candidacy either for national or local election.

x x x x

3. Further, **any employee who intends to join a political group/party or even with no political affiliation but who intends to openly and aggressively campaign for a candidate or group of candidates** (e.g. publicly speaking/endorsing candidate, recruiting campaign workers, etc.) **must file a request for leave of absence subject to management's approval**. For this particular reason, the employee should file the leave request at

least thirty (30) days prior to the start of the planned leave period.

x x x x<sup>[3]</sup> [Emphasis and underscoring supplied.]

Because of the impending May 1998 elections and based on his immediate recollection of the policy at that time, Dante Luzon, Assistant Station Manager of DYAB issued the following memorandum:

TO : ALL CONCERNED  
FROM : DANTE LUZON  
DATE : MARCH 25, 1998  
SUBJECT : AS STATED

Please be informed that per company policy, **any employee/talent who wants to run for any position in the coming election will have to file a leave of absence the moment he/she files his/her certificate of candidacy.**

The services rendered by the concerned employee/talent to this company will then be temporarily suspended for the entire campaign/election period.

For strict compliance.<sup>[4]</sup> [Emphasis and underscoring supplied.]

Luzon, however, admitted that upon double-checking of the exact text of the policy and subsequent confirmation with the ABS-CBN Head Office, he saw that the policy actually required suspension for those who intend to campaign for a political party or candidate and resignation for those who will actually run in the elections.<sup>[5]</sup>

After the issuance of the March 25, 1998 Memorandum, Ymbong got in touch with Luzon. Luzon claims that Ymbong approached him and told him that he would leave radio for a couple of months because he will campaign for the administration ticket. It was only after the elections that they found out that Ymbong actually ran for public office himself at the eleventh hour. Ymbong, on the other hand, claims that in accordance with the March 25, 1998 Memorandum, he informed Luzon through a letter that he would take a few months leave of absence from March 8, 1998 to May 18, 1998 since he was running for councilor of Lapu-Lapu City.

As regards Patalinghug, Patalinghug approached Luzon and advised him that he will run as councilor for Naga, Cebu. According to Luzon, he clarified to Patalinghug that he will be considered resigned and not just on leave once he files a certificate of candidacy. Thus, Patalinghug wrote Luzon the following letter on April 13, 1998:

Dear Mr. Luzon,

I'm submitting to you my letter of resignation as your Drama Production Chief and Talent due to your company's policy that every person connected to ABS-CBN that should seek an elected position in the

government will be forced to resigned (sic) from his position. So herewith I'm submitting my resignation with a hard heart. But I'm still hoping to be connected again with your prestigious company after the election[s] should you feel that I'm still an asset to your drama production department. I'm looking forward to that day and I'm very happy and proud that I have served for two and a half years the most stable and the most prestigious Radio and TV Network in the Philippines.

As a friend[,], wish me luck and Pray for me. Thank you.

Very Truly Yours,

(Sgd.)

Leandro "Boy"  
Patalinghug<sup>[6]</sup>

Unfortunately, both Ymbong and Patalinghug lost in the May 1998 elections.

Later, Ymbong and Patalinghug both tried to come back to ABS-CBN Cebu. According to Luzon, he informed them that they cannot work there anymore because of company policy. This was stressed even in subsequent meetings and they were told that the company was not allowing any exceptions. ABS-CBN, however, agreed out of pure liberality to give them a chance to wind up their participation in the radio drama, *Nagbabagang Langit*, since it was rating well and to avoid an abrupt ending. The agreed winding-up, however, dragged on for so long prompting Luzon to issue to Ymbong the following memorandum dated September 14, 1998:

TO : NESTOR YMBONG  
FROM : DANTE LUZON  
SUBJECT : AS STATED  
DATE : 14 SEPT. 1998

Please be reminded that your services as drama talent had already been automatically terminated when you ran for a local government position last election.

The Management however gave you more than enough time to end your drama participation and other involvement with the drama department.

It has been decided therefore that all your drama participation shall be terminated effective immediately. However, your involvement as drama spinner/narrator of the drama "NAGBA[BA]GANG LANGIT" continues until its writer/director Mr. Leandro Patalinghug wraps it up one week upon receipt of a separate memo issued to him.<sup>[7]</sup>

Ymbong in contrast contended that after the expiration of his leave of absence, he reported back to work as a regular talent and in fact continued to receive his salary. On September 14, 1998, he received a memorandum stating that his services are

being terminated immediately, much to his surprise. Thus, he filed an illegal dismissal complaint<sup>[8]</sup> against ABS-CBN, Luzon and DYAB Station Manager Veneranda Sy. He argued that the ground cited by ABS-CBN for his dismissal was not among those enumerated in the Labor Code, as amended. And even granting without admitting the existence of the company policy supposed to have been violated, Ymbong averred that it was necessary that the company policy meet certain requirements before willful disobedience of the policy may constitute a just cause for termination. Ymbong further argued that the company policy violates his constitutional right to suffrage.<sup>[9]</sup>

Patalinghug likewise filed an illegal dismissal complaint<sup>[10]</sup> against ABS-CBN.

ABS-CBN prayed for the dismissal of the complaints arguing that there is no employer-employee relationship between the company and Ymbong and Patalinghug. ABS-CBN contended that they are not employees but talents as evidenced by their talent contracts. However, notwithstanding their status, ABS-CBN has a standing policy on persons connected with the company whenever they will run for public office.<sup>[11]</sup>

On July 14, 1999, the Labor Arbiter rendered a decision<sup>[12]</sup> finding the dismissal of Ymbong and Patalinghug illegal, thus:

WHEREFORE, in the light of the foregoing, judgment is rendered finding the dismissal of the two complainants illegal. An order is issued directing respondent ABS[-]CBN to immediately reinstate complainants to their former positions without loss of seniority rights plus the payment of backwages in the amount of P200,000.00 to each complainant.

All other claims are dismissed.

SO ORDERED.<sup>[13]</sup>

The Labor Arbiter found that there exists an employer-employee relationship between ABS-CBN and Ymbong and Patalinghug considering the stipulations in their appointment letters/talent contracts. The Labor Arbiter noted particularly that the appointment letters/talent contracts imposed conditions in the performance of their work, specifically on attendance and punctuality, which effectively placed them under the control of ABS-CBN. The Labor Arbiter likewise ruled that although the subject company policy is reasonable and not contrary to law, the same was not made known to Ymbong and Patalinghug and in fact was superseded by another one embodied in the March 25, 1998 Memorandum issued by Luzon. Thus, there is no valid or authorized cause in terminating Ymbong and Patalinghug from their employment.

In its memorandum of appeal<sup>[14]</sup> before the National Labor Relations Commission (NLRC), ABS-CBN contended that the Labor Arbiter has no jurisdiction over the case because there is no employer-employee relationship between the company and Ymbong and Patalinghug, and that Sy and Luzon mistakenly assumed that Ymbong and Patalinghug could just file a leave of absence since they are only

talents and not employees. In its Supplemental Appeal,<sup>[15]</sup> ABS-CBN insisted that Ymbong and Patalinghug were engaged as radio talents for DYAB dramas and personality programs and their contract is one between a self-employed contractor and the hiring party which is a standard practice in the broadcasting industry. It also argued that the Labor Arbiter should not have made much of the provisions on Ymbong's attendance and punctuality since such requirement is a dictate of the programming of the station, the slating of shows at regular time slots, and availability of recording studios – not an attempt to exercise control over the manner of his performance of the contracted anchor work within his scheduled spot on air. As for the pronouncement that the company policy has already been superseded by the March 25, 1998 Memorandum issued by Luzon, the latter already clarified that it was the very policy he sought to enforce. This matter was relayed by Luzon to Patalinghug when the latter disclosed his plans to join the 1998 elections while Ymbong only informed the company that he was campaigning for the administration ticket and the company had no inkling that he will actually run until the issue was already moot and academic. ABS-CBN further contended that Ymbong and Patalinghug's "reinstatement" is legally and physically impossible as the talent positions they vacated no longer exist. Neither is there basis for the award of back wages since they were not earning a monthly salary but paid talent fees on a per production/per script basis. Attached to the Supplemental Appeal is a Sworn Statement<sup>[16]</sup> of Luzon.

On March 8, 2004, the NLRC rendered a decision<sup>[17]</sup> modifying the labor arbiter's decision. The *fallo* of the NLRC decision reads:

WHEREFORE, premises considered, the decision of Labor Arbiter Nicasio C. Aninon dated 14 July 1999 is MODIFIED, to wit:

Ordering respondent ABS-CBN to reinstate complainant Ernesto G. Ymbong and to pay his full backwages computed from 15 September 1998 up to the time of his actual reinstatement.

SO ORDERED.<sup>[18]</sup>

The NLRC dismissed ABS-CBN's Supplemental Appeal for being filed out of time. The NLRC ruled that to entertain the same would be to allow the parties to submit their appeal on piecemeal basis, which is contrary to the agency's duty to facilitate speedy disposition of cases. The NLRC also held that ABS-CBN wielded the power of control over Ymbong and Patalinghug, thereby proving the existence of an employer-employee relationship between them.

As to the issue of whether they were illegally dismissed, the NLRC treated their cases differently. In the case of Patalinghug, it found that he voluntarily resigned from employment on April 21, 1998 when he submitted his resignation letter. The NLRC noted that although the tenor of the resignation letter is somewhat involuntary, he knew that it is the policy of the company that every person connected therewith should resign from his employment if he seeks an elected position in the government. As to Ymbong, however, the NLRC ruled otherwise. It ruled that the March 25, 1998 Memorandum merely states that an employee who seeks any elected position in the government will only merit the temporary