

FIRST DIVISION

[G.R. No. 175969, August 01, 2012]

**JARL CONSTRUCTION AND ARMANDO K. TEJADA, PETITIONERS,
VS. SIMEON A. ATENCIO, RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

In dismissing an employee from service, the employer has the burden of proving its observance of the two-notice requirement and its accordance to the employee of a real opportunity to be heard.

Before the Court is a Petition for Review^[1] assailing the November 29, 2005 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 80517, which contained the following disposition:

WHEREFORE, premises considered, the petition is **GRANTED**. Accordingly, [JARL Construction and Armando K. Tejada] are ordered to pay the unpaid salaries of [Simeon A. Atencio] in the amount of P165,000.00, pro-rated 13th month pay of P12,500.00 and P30,000.00 nominal damages. No pronouncement as to costs.

SO ORDERED.^[3]

Factual Antecedents

This case stems from a complaint for illegal dismissal, nonpayment of salaries, and 13th month pay filed by respondent Simeon A. Atencio (Atencio) with the National Labor Relations Commission (NLRC) against petitioners JARL Construction (JARL) and its general manager, Armando K. Tejada (Tejada).^[4]

On December 16, 1998, JARL, through its general manager, Tejada, hired Atencio as its chief operating manager, whose primary function was to direct and manage JARL's construction projects in accordance with its company policies and contracts. Atencio's employment contract agreement^[5] states that, when the execution of a project requires a contract modification, the chief operating manager has the duty to report the needed changes to the company President, for the latter's approval. Further, as chief operating manager, he is the recommending authority with respect to the award of subcontracts and purchase orders. The agreement provides for a monthly salary of P30,000.00.

During Atencio's tenure as chief operating manager, his employer JARL had an

existing contract with Caltex Philippines (Caltex) to construct a Caltex service station in Quezon City (Caltex project). The contract with Caltex prohibited JARL from subcontracting the project.

According to Atencio, he discovered during his employment that JARL did not have the proper facilities, personnel, and equipment to undertake the Caltex project, hence he and Tejada discussed the need for hiring subcontractors. It was during these meetings that Tejada agreed to hire Atencio's construction company, Safemark Construction and Development Corporation (Safemark), to perform works for the Caltex project.^[6] This arrangement is proven by Safemark's contract proposal dated February 2, 1999, to which Tejada signed his conformity,^[7] and two official receipts of Safemark, which were issued to acknowledge receipt of JARL's payments for Safemark's professional services. The first receipt is dated May 12, 1999, which states that Safemark received from JARL a partial payment of P1,074,173.50 for professional services. The second receipt dated June 4, 1999 acknowledges JARL's partial payment of P817,336.00,^[8] for Safemark's billing for June 2, 1999, which demanded the amount of P1,702,051.81 from JARL. ^[9]

Further, Tejada allegedly gave Atencio full authority as JARL's chief operating manager to hire other subcontractors if necessary.^[10] Pursuant to his blanket authority, Atencio hired DDK Steel Construction and Building Multi- Technology (DDK Steel) for the electrical installations of the Caltex project.^[11]

On May 24, 1999, Tejada informed Atencio and Safemark that JARL was terminating Atencio's management and supervision works for the Caltex project effective May 20, 1999. JARL assured Atencio and Safemark that it will pay for the rendered services, save for a 15% portion thereof, which JARL will retain until Caltex has accepted the project.^[12]

Atencio construed the above letter as a termination of the subcontract between his company and JARL. Thus, he threatened JARL and Tejada that he will report their unethical conduct with the Philippine Accreditation Board for possible sanctions.^[13]

Believing, however, that his employment as JARL's chief operating manager was separate from their subcontracting agreement, Atencio allegedly continued reporting for work to the Caltex project site until, sometime in June 1999,^[14] when he was barred from entering the said premises.^[15]

On July 20, 1999, Atencio filed his complaint for illegal dismissal, nonpayment of salaries, and 13th month pay with the NLRC.^[16] He maintained that JARL did not inform him of the charges leveled against him and of his termination from employment. He claimed learning of his termination only through the letter that JARL sent to Caltex Philippines^[17] (he did not explain, however, how he came to see this letter), which reads:^[18]

31 May 1999

CALTEX (Philippines)

6760 Ayala Avenue
Makati City

Attention : MR. EDUARDO S. MAXIMO
Manager, Retail Engineering

Subject : NOTICE OF TERMINATION

Dear Mr. Maximo,

This is to formally inform you that Mr. Simeon A. Atencio is no longer connected with JARL CONSTRUCTION effective May 20, 1999. Any transaction made and entered into by him in behalf of JARL CONSTRUCTION will not be honored by our company.

Thank you very much.

Very truly yours,

(signed)
ARMANDO K. TEJADA
General Manager

He maintained that JARL never paid him his monthly salary and 13th month pay as chief operating manager.^[19]

JARL and Tejada admitted hiring Atencio as chief operating manager and terminating his services on May 20, 1999, but asserted that it was done for just causes and with substantial compliance with the procedural requirements.^[20]

They allegedly lost confidence in Atencio after the latter entered into a Subcontract Agreement with DDK Steel in the Caltex project, without the consent of the top management of JARL and in violation of JARL's contract with Caltex. He even sent letters to Caltex that jeopardized JARL's relationship with its client. Further, he instigated JARL's project engineer to fabricate the project accomplishment report and he habitually defied company policies and procedures.^[21]

They maintained having apprised Atencio of the foregoing charges against him but the latter refused to explain himself and chose not to report for work beginning May 20, 1999.^[22]

Lastly, they maintained that they have adequately compensated Atencio for his services as evidenced by Safemark's two official receipts, which total P1,891,509.50.^[23]

Atencio denied the truth of petitioners' explanations.^[24] He maintained that the amounts that JARL paid to Safemark were payments for the company's services as subcontractor, not payment of Atencio's salaries as chief operating manager.

Ruling of the Labor Arbiter^[25]

Labor Arbiter Ariel Cadiente Santos found just cause for Atencio's removal^[26] but found the dismissal ineffectual because of petitioners' failure to observe the twin requirements of due process.^[27] For this violation, he ordered petitioners to pay Atencio's backwages from the date of ineffectual dismissal until rendition of the judgment.^[28]

The Labor Arbiter also found in Atencio's favor the issue of nonpayment of salaries and 13th month pay.^[29] He did not accept petitioners' contention that the receipts that Atencio's construction company issued were proof of payment of Atencio's salaries and other benefits. The Labor Arbiter held that an employer can easily present its own payrolls and vouchers, if indeed payments for salaries and other benefits were made but JARL failed to do so.^[30]

The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, the complaint for illegal dismissal is hereby DISMISSED. However, for non-observance of due process, respondents are jointly and severally liable to pay complainan[t] his backwages from date of dismissal until rendition of this judgment which to date is P810,225.00. (P30,000.00 x 24.93 mos. = P747,900.00 plus P62,325.00 as 13th month pay)

Further, respondents are liable to pay complainant his salaries amounting to P165,000.00.

Finally, complainant should be paid his pro-rata 13th month pay in the sum of P12,500.00.

SO ORDERED.^[31]

JARL and Tejada appealed the monetary awards to the NLRC.^[32] They maintained affording Atencio his procedural due process, but the latter chose to waive his right to be heard by refusing to talk to them.^[33] They also insisted that the payments they gave to Safemark covered Atencio's salaries and 13th month pay.^[34] They asked for the reversal of the Labor Arbiter's Decision and the dismissal of Atencio's complaint.^[35]

Ruling of the National Labor Relations Commission^[36]

The NLRC reversed the Labor Arbiter's Decision.

In finding that the employer observed the procedural requirements for a valid dismissal, the NLRC gave emphasis to two letters adduced in evidence. The first is Atencio's letter to JARL dated June 21, 1999, which reads:

Dear Mr. Tejada,

Thank you very much for making everything clear. I agree, 100% that you are right on your letter of June 16, 1999,^[37] as faxed on June 18, 1999 to our office for having hired me as your MANAGING DIRECTOR.

I am very sorry, and therefore please accept my apology for initially entertaining the impression that the construction of the NEW CSS (El Mavic Property) has been under a Sub-contract Agreement between JARL Construction and SAFEMARK CONSTRUCTION AND DEVELOPMENT CORPORATION, wherein I am the President and Chief Executive Officer.

I also regret that I may have cause[d] you any inconvenience about the Subcontract Agreement affair. It was my mistake for that wrong assumption. The proof of the existing duly signed said appointment and non-existing Sub-contract Agreement has now settled everything in an unmistakable manner.

Relative to this, we are enclosing herewith the official receipts acknowledging payment of the Professional Service Fee amounting to P1,074,173.50 and P817,336.00, dated May 12, 1999 and June 4, 1999, respectively. It may also interest you to know that we have the SEC and BIR registration documents, herewith attached for reference.

Please rest assured that we will completely forget the idea, and any thought regarding the obfuscating Sub-contract Agreement that never exists between your company and mine. Thank you.

Very truly yours,

(signed)
Simeon Atencio
President and CEO^[38]

The NLRC held that the above letter, wherein Atencio acknowledges his mistakes and apologizes for them, constitutes proof that Atencio was aware of the charges leveled against him, that he had the opportunity to explain himself.

The second letter is JARL's earlier letter dated May 24, 1999, which reads:

May 24, 1999

Safemark Construction & Dev. Corp.
298 Roosevelt Ave. San Francisco Del Monte
Quezon City

Attention : Mr. Simeon A. Atencio
Subject : EL MAVIC INVEST. CO., INC. PROPERTY NEW CSS
CONSTRUCTION