

FIRST DIVISION

[G.R. No. 167751, March 02, 2011]

**HARPOON MARINE SERVICES, INC. AND JOSE LIDO T. ROSIT,
PETITIONERS, VS. FERNAN H. FRANCISCO, RESPONDENT.**

DECISION

DEL CASTILLO, J.:

Satisfactory evidence of a valid or just cause of dismissal is indispensably required in order to protect a laborer's right to security of tenure. In the case before us, the employer presented none despite the burden to prove clearly its cause.

This Petition for Review on *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction^[1] assails the Decision^[2] dated January 26, 2005 and Resolution^[3] dated April 12, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 79630, which affirmed the Decision^[4] of the National Labor Relations Commission (NLRC) dated March 31, 2003, as well as the NLRC modified Decision^[5] dated June 30, 2003, declaring petitioners Harpoon Marine Services, Incorporated (Harpoon) and Jose Lido T. Rosit (Rosit) solidarily liable to pay respondent Fernan H. Francisco (respondent) separation pay, backwages and unpaid commissions for illegally dismissing him.

Factual Antecedents

Petitioner Harpoon, a company engaged in ship building and ship repair, with petitioner Rosit as its President and Chief Executive Officer (CEO), originally hired respondent in 1992 as its Yard Supervisor tasked to oversee and supervise all projects of the company. In 1998, respondent left for employment elsewhere but was rehired by petitioner Harpoon and assumed his previous position a year after.

On June 15, 2001, respondent averred that he was unceremoniously dismissed by petitioner Rosit. He was informed that the company could no longer afford his salary and that he would be paid his separation pay and accrued commissions. Respondent nonetheless continued to report for work. A few days later, however, he was barred from entering the company premises. Relying on the promise of petitioner Rosit, respondent went to the office on June 30, 2001 to receive his separation pay and commissions, but petitioner Rosit offered only his separation pay. Respondent refused to accept it and also declined to sign a quitclaim. After several unheeded requests, respondent, through his counsel, sent a demand letter dated September 24, 2001^[6] to petitioners asking for payment of P70,000.00, which represents his commissions for the seven boats^[7] constructed and repaired by the company under his supervision. In a letter-reply dated September 28, 2001,^[8] petitioners denied that it owed respondent any commission, asserting that they never entered into any contract or agreement for the payment of commissions. Hence, on October 24,

2001, respondent filed an illegal dismissal complaint praying for the payment of his backwages, separation pay, unpaid commissions, moral and exemplary damages and attorney's fees.

Petitioners presented a different version of the events and refuted the allegations of respondent. They explained that petitioner Rosit indeed talked to respondent on June 15, 2001 not to dismiss him but only to remind and warn him of his excessive absences and tardiness, as evinced by his Time Card covering the period June 1-15, 2001.^[9] Instead of improving his work behavior, respondent continued to absent himself and sought employment with another company engaged in the same line of business, thus, creating serious damage in the form of unfinished projects. Petitioners denied having terminated respondent as the latter voluntarily abandoned his work after going on Absence Without Official Leave (AWOL) beginning June 22, 2001. Petitioners contended that when respondent's absences persisted, several memoranda^[10] informing him of his absences were sent to him by ordinary mail and were duly filed with the Department of Labor and Employment (DOLE) on August 13, 2001. Upon respondent's continuous and deliberate failure to respond to these memoranda, a Notice of Termination dated July 30, 2001^[11] was later on issued to him.

Respondent, however, denied his alleged tardiness and excessive absences. He claimed that the three-day absence appearing on his time card cannot be considered as habitual absenteeism. He claimed that he incurred those absences because petitioner Rosit, who was hospitalized at those times, ordered them not to report for work until he is discharged from the hospital. In fact, a co-worker, Nestor Solares (Solares), attested that respondent always goes to work and continued to report until June 20, 2001.^[12] Respondent further denied having received the memoranda that were allegedly mailed to him, asserting that said documents were merely fabricated to cover up and justify petitioners' act of illegally terminating him on June 15, 2001. Respondent absolved himself of fault for defective works, justifying that he was illegally terminated even before the company projects were completed. Finally, respondent denied petitioners' asseveration that he abandoned his job without any formal notice in 1998 as he wrote a resignation letter which petitioners received.

As regards the commissions claimed, respondent insisted that in addition to his fixed monthly salary of P18,200.00, he was paid a commission of P10,000.00 for every ship repaired or constructed by the company. As proof, he presented two check vouchers^[13] issued by the company showing payment thereof.

Petitioners, on the other hand, contended that respondent was hired as a regular employee with a fixed salary and not as an employee paid on commission basis. The act of giving additional monetary benefit once in a while to employees was a form of recognizing employees' efforts and cannot in any way be interpreted as commissions. Petitioners then clarified that the word "commission" as appearing in the check vouchers refer to "additional money" that employees receive as differentiated from the usual "vale" and is written for accounting and auditing purposes only.

Ruling of the Labor Arbiter

On May 17, 2002, the Labor Arbiter rendered a Decision^[14] holding that respondent was validly dismissed due to his unjustified absences and tardiness and that due process was observed when he was duly served with several memoranda relative to the cause of his dismissal. The Labor Arbiter also found respondent entitled to the payment of commissions by giving credence to the check vouchers presented by respondent as well as attorney's fees for withholding the payment of commissions pursuant to Article 111 of the Labor Code. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the dismissal of complainant Fernan H. Francisco legal; ordering respondents Harpoon Marine Services Inc., and Jose Lido T. Rosit, to pay complainant his commission in the sum of PHP70,000.00; as well as attorney's fees of ten percent (10%) thereof; and dismissing all other claims for lack of merit.

SO ORDERED.^[15]

Proceedings before the National Labor Relations Commission

Both parties appealed to the NLRC. Petitioners alleged that the Labor Arbiter erred in ruling that respondent is entitled to the payment of commissions and attorney's fees. They questioned the authenticity of the check vouchers for being photocopies bearing only initials of a person who remained unidentified. Also, according to petitioners, the vouchers did not prove that commissions were given regularly as to warrant respondent's entitlement thereto.^[16]

Respondent, on the other hand, maintained that his dismissal was illegal because there is no sufficient evidence on record of his alleged gross absenteeism and tardiness. He likewise imputed bad faith on the part of petitioners for concocting the memoranda for the purpose of providing a semblance of compliance with due process requirements.^[17]

In its Decision dated March 31, 2003,^[18] the NLRC affirmed the Labor

Arbiter's award of commissions in favor of respondent for failure of petitioners to refute the validity of his claim. The NLRC, however, deleted the award of attorney's fees for lack of evidence showing petitioners' bad faith in terminating respondent.

As the NLRC only resolved petitioners' appeal, respondent moved before the NLRC to resolve his appeal of the Labor Arbiter's Decision.^[19] For their part, petitioners filed a Verified Motion for Reconsideration^[20] reiterating that there was patent error in admitting, as valid evidence, photocopies of the check vouchers without substantial proof that they are genuine copies of the originals.

The NLRC, in its Decision dated June 30, 2003,^[21] modified its previous ruling and held that respondent's dismissal was illegal. According to the NLRC, the only evidence presented by the petitioners to prove respondent's habitual absenteeism and tardiness is his time card for the period covering June 1-15, 2001. However,

said time card reveals that respondent incurred only three absences for the said period, which cannot be considered as gross and habitual. With regard to the award of commissions, the NLRC affirmed the Labor Arbiter because of petitioners' failure to question the authenticity of the check vouchers in the first instance before the Labor Arbiter. It, nevertheless, sustained the deletion of the award of attorney's fees in the absence of proof that petitioners acted in bad faith. Thus, for being illegally dismissed, the NLRC granted respondent backwages and separation pay in addition to the commissions, as contained in the dispositive portion of its Decision, as follows:

WHEREFORE, the decision dated 31 March 2003 is further MODIFIED. Respondents are found to have illegally dismissed complainant Fernan H. Francisco and are ordered to pay him the following:

1. Backwages		P218,066.33
=		
(15 June 2001 - 17 May 2002)		
a) Salary - P18,200.00 x 11.06	P201,292.00	
months =		
b) 13 th month pay:	16,774.33	
P201,292.00/12 =		

2. Separation Pay of one month salary for every year of service		
(October 1999 - 17 May 2002)		
P18,200.00 x 3 yrs.	=	54,600.00
3. Commission	=	<u>70,000.00</u>
TOTAL		<u>P342,666.33</u>

The Motion for Reconsideration filed by complainant and respondents are hereby DISMISSED for lack of merit.

SO ORDERED. ^[22]

Ruling of the Court of Appeals

Petitioners filed a petition for *certiorari* ^[23] with the CA, which on January 26, 2005, affirmed the findings and conclusions of the NLRC. The CA agreed with the NLRC in not giving any probative weight to the memoranda since there is no proof that the same were sent to respondent. It also upheld respondent's right to the payment of commissions on the basis of the check vouchers and declared petitioners solidarily liable for respondent's backwages, separation pay and accrued commissions.

Petitioners moved for reconsideration which was denied by the CA. Hence, this petition.

Issues

WHETHER THE COURT OF APPEALS COMMITTED ERROR IN RENDERING ITS DECISION AND ITS RESOLUTION DISMISSING AND DENYING THE PETITION FOR CERTIORARI A *QUO* WHEN IT FAILED TO RECTIFY AND CORRECT THE FINDINGS AND CONCLUSIONS OF THE NLRC (AND OF THE LABOR ARBITER A *QUO*), WHICH WERE ARRIVED AT WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION. IN PARTICULAR:

I

WHETHER THE COURT OF APPEALS ERRED WHEN IT FAILED TO REVERSE THE FINDINGS OF THE NLRC AND OF THE LABOR ARBITER A *QUO* BECAUSE THESE FINDINGS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE[;] ARE CONFLICTING AND CONTRADICTORY; GROUNDED UPON SPECULATION, CONJECTURES, AND ASSUMPTIONS; [AND] ARE MERE CONCLUSIONS FOUNDED UPON A MISAPPREHENSION OF FACTS, AMONG OTHERS.

II

WHETHER THE COURT OF APPEALS ERRED WHEN IT RULED THAT THERE WAS AN ILLEGAL DISMISSAL IN THE SEPARATION FROM EMPLOYMENT OF FERNAN H. FRANCISCO NOTWITHSTANDING THE FACT THAT HE WAS HABITUALLY ABSENT, SUBSEQUENTLY WENT ON AWOL, AND HAD ABANDONED HIS WORK AND CORRELATIVELY, WHETHER HE IS ENTITLED TO BACKWAGES AND SEPARATION PAY.

III

WHETHER THE COURT OF APPEALS ERRED WHEN IT RULED THAT FERNAN H. FRANCISCO IS ENTITLED TO COMMISSIONS IN THE AMOUNT OF P70,000 EVEN THOUGH NO SUBSTANTIAL EVIDENCE WAS SHOWN TO SUPPORT THE CLAIM.

IV

WHETHER THE COURT OF APPEALS ERRED WHEN IT RULED THAT THERE WAS BAD FAITH ON THE PART OF PETITIONER ROSIT EVEN THOUGH NO SUBSTANTIAL EVIDENCE WAS PRESENTED TO PROVE THIS AND CORRELATIVELY, WHETHER PETITIONER ROSIT CAN BE HELD SOLIDARILY LIABLE WITH PETITIONER HARPOON.

[24]

Petitioners submit that there was no basis for the CA to rule that respondent was illegally dismissed since more than sufficient proof was adduced to show his habitual absenteeism and abandonment of work as when he further incurred additional absences after June 15, 2001 and subsequently went on AWOL; when he completely ignored all the notices/memoranda sent to him; when he never demanded for