

FIRST DIVISION

[G.R. No. 174316, June 23, 2009]

**TEODORICO S. MIRANDA, JR., PETITIONER, VS. ASIAN
TERMINALS, INC. (ATI) AND COURT OF APPEALS,
RESPONDENTS.**

D E C I S I O N

PUNO, C.J.:

At bar is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking the review and reversal of the amended decision,^[1] dated August 31, 2005, and resolution,^[2] dated August 25, 2006, of the Court of Appeals in two separate but consolidated petitions for *certiorari* docketed as CA G.R. SP No. 68283 and CA G.R. SP No. 77174, both entitled Teodorico S. Miranda, Jr. v. National Labor Relations Commission (NLRC) and Asian Terminals, Inc. (ATI or the company). The amended decision of the Court of Appeals dismissed the petitioner's consolidated petitions for being moot and academic and the motion for reconsideration of the petitioner was denied by the Court of Appeals.

In this petition for review on *certiorari*, the petitioner seeks the reinstatement of the decision^[3] of the Court of Appeals, dated June 27, 2005, which reversed and set aside the resolutions of the NLRC. The NLRC resolutions that were set aside by the Court of Appeals remanded the case to the Labor Arbiter for clarification of his decision and ordered the issuance of a temporary restraining order against the execution of the judgment.

Let us examine the facts.

Petitioner Teodorico S. Miranda, Jr. was employed by respondent ATI in 1991 as Checker I. He also became a member of the Associated Port Checkers and Workers Union (APCWU or the union).^[4] On April 10, 1992, the petitioner, who was then the Vice President of the union, was appointed to the position of Shop Steward which is a union position under the payroll of the company.^[5] The Collective Bargaining Agreement (CBA) between the union and ATI provided for the appointment of a Shop Steward from among the union members, upon the recommendation of the union president. The Shop Steward is a field representative of both the company and the union and acts as an independent arbiter of all complaints brought to his attention.^[6]

On December 28, 1993, Roger P. Silva, the President of APCWU, wrote a letter^[7] to the petitioner regarding the recall of his designation as the union Shop Steward. The union president explained that the petitioner was recalled as union Shop Steward due to loss of trust and confidence in him, pursuant to the "Agreement Amending the MPSI (Marina Port Services, Inc.) - APCWU CBA." The letter further stated that

the petitioner refused to heed the union president's reminders concerning his "chronic absenteeism" that "is hurting the interest of the Union members as they are left with no responsible union officer when summoned for investigation concerning alleged infractions of company rules."^[8] The union president further wrote that the decision to dismiss the petitioner came only after a series of personal dialogues and after the petitioner had been given ample opportunity to efficiently perform the duties and obligations of a Shop Steward assigned to the night shift. The union president then gave the petitioner five days from receipt of the letter to explain why he should not be recalled as Shop Steward for chronic absenteeism which started from the second week of September 1993 until December 28, 1993.

A rift then developed between the union leadership and certain union members, including the petitioner.^[9] In June 1994, the petitioner and some of the members of APCWU sent an undated letter to ATI protesting the manner in which the APCWU leadership handled the affairs of the union.^[10] This led to the formation of a grievance committee to investigate the complaints against the union officers, including the petitioner. The petitioner, however, refused to participate in the investigation.^[11]

Upon the conclusion of the investigation, the grievance committee issued its report recommending to ATI the recall of the petitioner as Shop Steward and for his reversion to his former position of Checker I, in accordance with the CBA. ^[12] The petitioner questioned his recall as union Shop Steward, and the union president, Roger P. Silva, issued a letter which reasoned that the petitioner's recall as Shop Steward was pursuant to Section 13 of the Agreement Amending the MPSI-APCWU CBA, amending Section 2, Article V of the MPSI-APCWU CBA which required that the term of office of the Shop Steward shall be based on trust and confidence and favorable recommendation of the duly elected president of the Union.

Acting on the recommendation of the union, respondent ATI issued a Memorandum^[13] to the petitioner regarding his transfer on January 11, 1994. The Memorandum cited the provision of the CBA, viz.:

Acting on the two letters dated 10 December 1993 of the APCWU-ATI (Local Chapter) and pursuant to Section 13 of the Agreement Amending of [sic] the APCWU-MPSI (now ATI) CBA which provides that:

"SECTION 13. - Article V, Section 2 is hereby amended to read as follows:

Section 2. The Shop Steward shall be an independent arbiter of all complaints and grievances brought before him as a field representative both of the COMPANY and the UNION. **Only bonafide [sic] members of the UNION shall be designated as Shop Steward whose designation and term of office shall be based on trust and confidence and upon the favorable recommendation of the duly elected president of the UNION.** In like manner shall the designation of the Union rotation representative posted in the

hiring shall be based. [emphasis supplied]

"Section 2-A. **Upon the recall of the designation as Shop Steward**, or union representative, as the case maybe [sic], **the party concerned shall revert back to his position occupied prior to the designation** and shall receive the salary that corresponds to that particular office/position."
[emphasis supplied]

[T]he management EFFECTIVE IMMEDIATELY hereby recalls the designation of Mr. Teodorico Miranda as Shop Steward and Mr. Rolando de Luna as Union Rotation Representative and designate[s] Mr. Hipolito Cruz as Shop Steward vice Teodorico Miranda, Jr. and Mr. Elpidio Valdez as Union Rotation Representative vice Mr. Rolando de Luna.

As per amendment quoted above, Messrs. Miranda and de Luna shall revert back to their position as Checker I and shall receive the salary that corresponds therefor.

The abovementioned personnel are directed to report to the Operations Department for further instructions and/or eventual deployment.

(Sgd.)

R.G. CORVITE, JR. [14]

The petitioner first filed a complaint against Roger Silva as the President of APCWU, Marina Local Chapter with the Department of Labor and Employment (DOLE), National Capital Region, docketed as Case No. NCR-OD-M-0403-005, praying for his reinstatement as Shop Steward. In an Order issued by the Mediation Arbiter (Med-Arbiter) on August 1, 1994, the petitioner was ordered reinstated to the position of Shop Steward. The Med-Arbiter found that the union president did not have the authority to recall the petitioner as Shop Steward for lack of approval of the Board of Directors of the union. The Order of the Med-Arbiter was affirmed by the Secretary of Labor in a Resolution [15] dated February 23, 1995, [16] viz.:

It is noted that appellant Roger P. Silva relied heavily on the provisions of Article V, Section 2 of its CBA which provides that:

"Section 2. The shop steward shall be an independent arbiter of all complaints and grievances brought before him as a field representative both of the company and the union. Only bonafide [sic] members of the union shall be designated as shop steward whose designation and term of office shall be based on trust and confidence and upon the favorable recommendation of the duly elected president of the union. In like manner shall the designation of the union rotation representative posted in the hiring shall be based."

A close scrutiny of [t]he said provision however, would reveal that the designation of a shop steward and union rotation representative is only upon the favorable recommendation of the union president. In other words, **it is not the union president who makes the appointment. The union president merely recommends.**

Further, the union constitution and by-laws confers upon the Board of Directors the power "to approve appointments made by the President." The two (2) provisions taken together, would bring us to the conclusion that appointments or recommendations made by the union president needs [sic] the approval of the Board for validity. Consequently, **recall of appointments likewise requires the imprimatur of the Board.**

In the present case, the recall of appointment was made by the union president. It was not shown to be approved by the Board. Hence, it is clear that the recall is invalid, having been made by one unauthorized to do so.

Even assuming arguendo, that the union president has the power to recall appointments, still the action may not be upheld for being violative of complainants' right to due process.

Teodorico Miranda, Jr. was removed due to loss of trust and confidence primarily arising from alleged absenteeism. Except for such general allegation, no evidence was presented to substantiate the same. In fact, Miranda's subordinates executed affidavits to the effect that he never failed to assist them x x x. **[T]he removal was effected without affording complainants the opportunity to present their side. There was no showing that an investigation was conducted prior to the removal** of the complainants.^[17] [emphasis supplied]

On October 3, 1995, the petitioner filed another complaint before the Med-Arbiter involving money claims in the form of allowances, 13th month pay, and attorney's fees. The complaint was dismissed by the Med-Arbiter, ruling that the Mediation Office of the DOLE has no jurisdiction over money claims, which must be brought before the company.^[18]

The petitioner also filed a series of complaints before the NLRC. On January 1, 1995, the petitioner filed a complaint for unfair labor practice, which was later amended to illegal demotion with a claim for reduction or diminution in pay, against respondent ATI and/or Richard Barclay, the President of the respondent, and APCWU and/or Roger Silva, which was docketed as NLRC NCR Case No. 01-00881-95 and assigned to Labor Arbiter Donato Quinto, Jr. (Quinto). On July 3, 1996, Labor Arbiter Quinto issued a Decision^[19] which dismissed the case against ATI for lack of cause of action reasoning that the petitioner "should institute the appropriate charges/complaint against the erring union official/leadership."^[20] And since the petitioner has already obtained a favorable decision from the Secretary of Labor, then he should have the said judgment enforced and should compel the union

president to have him designated as Shop Steward, under pain of contempt.^[21]

While the cases filed by the petitioner were pending, on July 10, 1995, the petitioner was re-assigned from the position of Checker I to Checker I Mobile, which is lower in rank than Checker I.^[22] He was further re-assigned to Vessel Operation Checker, which is designated only to Checker Grades II and III and which positions were only assigned to casual Checkers.^[23]

The petitioner then filed a second complaint in the NLRC against the respondent for unfair labor practice, illegal demotion and reduction and diminution of pay, docketed as NLRC NCR Case No. 00-02-01192-96, which was assigned to Labor Arbiter Fatima Jambaro-Franco (Jambaro-Franco). On June 18, 1996, Labor Arbiter Jambaro-Franco issued an Order^[24] and dismissed the complaint as the case pending before Labor Arbiter Quinto involved the same parties and the same cause of action.

On December 12, 1996, a third complaint for Unfair Labor Practice and Illegal Demotion was filed by the petitioner against union president Roger Silva, the President of ATI, Richard Barclay, and the Operations Manager, Bonifacio Lomotan, which was docketed as NLRC-NCR Case No. 00-12-07641-96. The cause of action of the complaint was later amended on January 23, 1997^[25] to illegal demotion in rank and discrimination, amounting to constructive dismissal.^[26] The complaint was dismissed by Labor Arbiter Felipe T. Garduque II (Garduque) in an Order^[27] issued on March 24, 1997 on the ground that the claim is barred by prior judgment since the decision of Labor Arbiter Quinto and the order of Labor Arbiter Jambaro-Franco were not appealed and have become final.^[28] The petitioner appealed the order of Labor Arbiter Garduque before the Third Division of the NLRC on April 28, 1997. The Third Division of the NLRC issued an Order^[29] remanding the case to the office of origin for further proceedings, reasoning that the principle of *res judicata* cannot be applied because the earlier decision and order rendered by Labor Arbiter Quinto and Labor Arbiter Jambaro-Franco were not decided on the merits of the case but were dismissed based on jurisdictional grounds.^[30]

Upon remand of the case to the Arbitration Office of the NLRC, the case was re-raffled to Labor Arbiter Arthur L. Amansec (Amansec). On August 20, 1999, Labor Arbiter Amansec rendered a Decision^[31] which ruled that the demotion from union Shop Steward to Checker 1 was for cause but was effected without observance of procedural due process. He ordered the respondent to pay the petitioner indemnity in consonance with the Wenphil Doctrine,^[32] which was then the prevailing doctrine with respect to separation for a valid cause but through an invalid procedure. The dispositive portion of the decision made matters confusing for the parties since it declared the petitioner to be constructively dismissed and ordered the petitioner to be reinstated.

Labor Arbiter Amansec's decision states:

Regarding his appointment to the position of Shop Steward, subsequent recall therefrom and reversion to Checker 1, **the management's approval of his recall and termination as Shop Steward cannot be adjudged as one constitutive of constructive dismissal.** This is