

SECOND DIVISION

[G.R. No. 176700, September 04, 2009]

ROMERO MONTERAMOS, PETITIONER, VS. TRI-UNION INTERNATIONAL CORPORATION, RESPONDENT.

DECISION

CARPIO MORALES, J.:

Respondent Tri-Union International Corp. (respondent), which markets and distributes Company B products, hired on July 18, 1997 Romero Montederamos (petitioner) as a stockman at its outlet at the Metro Ayala Department Store, Cebu Business Park, Cebu City.

By Memorandum of June 27, 2003, respondent suspended petitioner for one month effective July 1, 2003, drawing him to file on July 2, 2003 a Complaint^[1] for illegal dismissal and non-payment of overtime pay, service incentive leave, allowances and separation pay before the National Labor Relations Commission (NLRC) Regional Arbitration Branch No. VII.

By petitioner's claim, in August 2002, respondent asked him to sign a contract of employment covering five months^[2] but he refused, knowing that he was already a regular employee; that on June 24, 2003, he informed respondent of his need for a letter of introduction to Metro Ayala since his Metro Ayala Identification Card (I.D.) was due to expire on June 30, 2003; that he was told to return the following day but was unable to do so because he had to accomplish clearance requirements with Metro Ayala; that on June 26, 2003, he repaired to respondent's office but was told that his supervisor was absent and that the latter's assistant could not give the letter of introduction by herself; that he later learned that the assistant could and actually did sign letters of introduction for and in behalf of the supervisor;^[3] and that as his wait for a letter of introduction did not come by June 30, 2003, he realized that respondent had no intention of giving him one and was terminating his employment, hence, his filing on July 2, 2003 of the Complaint against respondent.

Upon the other hand, respondent claimed as follows:^[4]

On April 15, 2003, it sent petitioner a Violation Memorandum^[5] warning him for habitual tardiness, citing his tardiness on February 18, 2003, March 4, 2003, March 18, 2003, and April 1, 2003; and that on June 17, 2003, it sent petitioner a second Violation Memorandum^[6] for habitual tardiness, citing his tardiness on April 22, 2003, May 6, 2003, May 20, 2003, and June 3, 2003, which Memorandum required him to submit a written explanation therefor, but that petitioner refused to receive it and in fact answered back and walked out on his immediate supervisor, prompting the latter to send him a Memorandum on June 18, 2003 reading:

You were given second memorandum last June 17, 2003 with a request of explanation in your part of your habitual tardiness. However, you refuse[d] to sign the memorandum for the said violation. Instead, you answered and walked out from the office before your superior told you to do so.

This memo serves as your **warning**. Another situation that may arise after this memorandum will be a **ground for your suspension**.^[7]
(Underscoring supplied)

Again petitioner refused to receive the third Memorandum. And he failed to submit an explanation behind his habitual tardiness, drawing respondent to send him a June 27, 2003 Memorandum via registered mail suspending him for one month effective July 1, 2003, viz:

You are hereby warned to follow all rules and regulations of our company where you are employed, one of these is to attend [the] company meeting scheduled every Tuesday of the week. However, there has been no improvement of your habitual tardiness since our first memorandum last April 15, 2003. Thereby, you were given a second memo with a request of explanation on your part last June 17, 2003 but you refuse[d] to sign. Instead, you showed insubordination [on] your part by answering back your immediate superior. The same incident took place last June 26, 2003 [*sic*]. You disrespect our office personnel. This is the third time you did this, first was last April 15, 2003. With these offenses, you are **suspended for one month effective July 1, 2003**. You will resume work on August 1, 2003.

This memo serves as your last warning. Another situation that may arise after this memo will be a ground for your termination.^[8] (Emphasis and underscoring supplied)

Hence, petitioner's filing on July 2, 2003 of his Complaint.

On July 31, 2003, the last day of the 30-day suspension of petitioner, respondent advised petitioner as follows:

This is to remind you that your suspension ends this July 31, 2003. You are supposed to report at the office this August 1, 2003 but we are **giving you a chance to report on August 11, 2003 at 9 o'clock in the morning**. I am hoping [for] your presence on the date mentioned above.^[9] (Emphasis and underscoring supplied)

Petitioner never ever reported for work, however.

Finally, respondent claimed that it had paid petitioner overtime pay, allowance, and service incentive leave.^[10]

By Decision^[11] of November 10, 2003, Labor Arbiter Ernesto F. Carreon, finding that there was neither illegal dismissal nor abandonment, ordered respondent to reinstate petitioner without backwages, and pay him service incentive leave pay in the amount of P3,000.00. Petitioner's claim for overtime pay was denied as it was unsubstantiated.

On appeal, the NLRC,^[12] by Decision dated February 21, 2005, reversed and set aside the Labor Arbiter's decision and entered a new one declaring petitioner to have been illegally dismissed. Brushing aside petitioner's alleged tardiness in 2003 in light of respondent's failure to present the daily time records of petitioner who had been working for respondent since 1997, the NLRC held that respondent failed to refute petitioner's allegation that he was made to sign a 5-month contract but that he refused as he had attained regular status. Such refusal of petitioner, the NLRC concluded, precipitated, and ended in his illegal dismissal when respondent denied his request for the issuance of a letter of introduction for the renewal of his Metro Ayala I.D.

Noting that "it is to the best interest of complainant that he should no longer be reinstated to his former position," the NLRC granted him backwages and separation pay covering the period July 1, 2003 to 2004, subject to recomputation upon finality of the Decision.

Respondent's Motion for Reconsideration^[13] having been denied by Resolution^[14] of July 22, 2005, it appealed via Certiorari to the Court of Appeals.

By Decision^[15] of July 27, 2006, the Court of Appeals reversed and set aside the NLRC decision and reinstated the Labor Arbiter's decision. The appellate court held that respondent's June 27, 2003 Memorandum to petitioner suspending him for one month ending July 31, 2003 but later advising him to resume work 10 days later or on August 11, 2003 belied the charge of illegal dismissal. It went on to hold that petitioner's infractions resulting in his suspension – tardiness and refusal to attend company meetings because he was not allegedly paid remuneration – were of his own wrongdoings.

Respecting petitioner's claim that his refusal to sign the 5-month contract precipitated his suspension, the appellate court noted that the refusal occurred in August 2002 yet, but the Violation Memoranda were issued to petitioner much later starting April 2003. It thus held that if indeed respondent wanted to terminate the services of petitioner on the basis of such refusal, it could have done so much earlier.

Finally, the appellate court held that respondent's offer of reinstatement to petitioner runs counter to the charge of illegal dismissal.

His Motion for Reconsideration^[16] having been denied by Resolution^[17] of January 23, 2007, petitioner filed the present Petition for Review on Certiorari,^[18] insisting that he was illegally/constructively dismissed and not merely suspended by respondent, hence, entitled to separation pay, backwages and other money claims. He particularly highlights the fact that his one month suspension ended on July 31, 2003 but he was given "a chance to report on August 9(*sic*), 2003" as amounting to