

## SECOND DIVISION

[ G.R. No. 168116, April 22, 2008 ]

**BELLE CORPORATION, PETITIONER, VS. ARTURO N. MACASUSI,  
RESPONDENT.**

### DECISION

**QUISUMBING, J.:**

The instant petition seeks to annul the Decision<sup>[1]</sup> dated August 31, 2004, as well as the Resolution<sup>[2]</sup> dated May 10, 2005, of the Court of Appeals in CA-G.R. SP No. 76648. The appellate court modified the Decision<sup>[3]</sup> dated October 15, 2002 of the National Labor Relations Commission (NLRC) and ordered petitioner to pay respondent separation pay equivalent to one month salary for every year of service, and full backwages from the time he was illegally dismissed on June 21, 1999, until finality of the decision.

In September 1997, petitioner Belle Corporation employed respondent Arturo N. Macasusi as a grader operator of a Caterpillar-14G in its Tagaytay Midlands Golf Course.

On June 10, 1999, while respondent was operating the equipment, he heard a loud cracking sound followed by several cracking sounds. He stopped the equipment and called the mechanic from the Motor Pool. On the same day, he was issued a Disciplinary Action Form<sup>[4]</sup> and required to explain in writing why the equipment broke.

On June 21, 1999, respondent received a Memorandum<sup>[5]</sup> containing the findings of Rodolfo Vocal, the Motor Pool Supervisor. Vocal reported that the damage to the equipment was caused by the sudden and severe shifting of the gear from forward to reverse and *vice versa* while it was in motion. Once the gear is damaged, the operator would hear a loud sound warning him to stop the equipment. Thereupon, petitioner found respondent guilty of gross negligence and dismissed him from employment effective July 1, 1999.

Respondent filed a complaint<sup>[6]</sup> for illegal dismissal, non-payment of wages, premium pay for holiday and rest day, separation pay, holiday pay, service incentive leave pay and 13<sup>th</sup> month pay with prayer for attorney's fees. He alleged that there was no basis for finding him guilty of gross negligence.

Petitioner countered that respondent was guilty of gross negligence since he continued operating the equipment although he heard the warning sounds. It added that the requisite element of habituality may be disregarded since respondent's negligence caused it to suffer P504,000 as actual damages.

On August 1, 2001, Labor Arbiter Pablo C. Espiritu, Jr. rendered a Decision<sup>[7]</sup> in respondent's favor. *First*, he ruled that the mechanical failure could not be attributed solely to respondent since other factors such as ordinary wear and tear and use by other grader operators must be considered. There was no evidence also that respondent operated the equipment wantonly and without the slightest care. *Second*, he noted that the penalty of dismissal was too harsh since this was respondent's first offense. To be a just cause for dismissal, the employee's negligence must be both gross and habitual. *Third*, he held that respondent was a regular and not a project employee for the following reasons: (1) respondent was employed since 1997 and there was no proof that his employment was co-terminous with any project; (2) petitioner failed to show that upon the termination of respondent's project employment, the same was reported to the Department of Labor and Employment (DOLE); and (3) respondent's job assignment did not indicate that he was a project employee. In sum, Labor Arbiter Espiritu disposed, as follows:

WHEREFORE, judgment is hereby rendered ordering respondent Corporation to pay complainant full backwages and separation pay in lieu of reinstatement to the amounts of P234,000.00 and P18,720.00, respectively.

Respondent is further ordered to pay complainant proportionate 13<sup>th</sup> month pay and service incentive leave in the amounts of P4,680.00 and P1,800.00, respectively.

The [complaint] for holiday pay, unpaid wages, and premium pay for holiday and rest day are hereby disallowed for want of merit.

SO ORDERED.<sup>[8]</sup>

On appeal, the NLRC affirmed *in toto* the decision of the Labor Arbiter.<sup>[9]</sup> Petitioner filed a petition for *certiorari* with the Court of Appeals contending that the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that respondent was illegally dismissed and entitled to separation pay, service incentive leave pay, 13<sup>th</sup> month pay and full backwages.

In dismissing the petition, the Court of Appeals ruled that, *first*, under Article 282 (b)<sup>[10]</sup> of the Labor Code, negligence must be both gross and habitual to justify the dismissal of an employee. In this case, there was lack of substantial evidence to prove that respondent was guilty of gross negligence. While respondent heard a loud cracking sound, there was doubt when he heard the succeeding cracking sounds. These may have come immediately after the first, such that there was not enough time to stop the equipment immediately. Any doubt should be considered in respondent's favor. *Second*, petitioner never denied respondent's allegation that the equipment was replaced in April 1999 since it was already old and not functioning properly. *Third*, respondent was entitled to separation pay and backwages since he was a regular and not a project employee. There was no proof that he was hired as a project employee in September 1997. His job assignment did not even indicate that his employment was for a specific project. There was also no evidence that upon the termination of respondent's project employment, the same was reported to the DOLE. Thus, the appellate court ordered:

**WHEREFORE**, premises considered, the instant petition is **DENIED**. The decision of the National Labor Relations Commission dated 15 October 2002 affirming the finding of illegal dismissal and granting monetary awards to private respondent Macasusi is MODIFIED in that petitioner is ordered to pay private respondent Macasusi separation pay equivalent to one (1) month salary for every year of service, a fraction of at least six (6) months being considered as one (1) whole year, and full backwages from the time of his illegal dismissal on 21 June 1999 until the finality of the decision favoring private respondent.

SO ORDERED.<sup>[11]</sup>

Petitioner now submits the following issues for our consideration:

I.

THE COURT OF APPEALS DECIDED THE CASE IN A WAY NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT BY NOT HOLDING THAT -

A. RESPONDENT WAS A PROJECT EMPLOYEE, CONSIDERING THAT -

1. RESPONDENT'S WRITTEN CONTRACT FOR PROJECT EMPLOYMENT WAS NEVER DISPUTED;
2. RESPONDENT PRAYED FOR UNPAID WAGES FOR THE PERIOD BEGINNING 01 JULY 1999 (TIME OF HIS DISMISSAL) UNTIL 16 JULY 1999 (LAST DAY OF PROJECT EMPLOYMENT) ONLY;
3. NON-COMPLIANCE WITH DEPARTMENT ORDER NO. 19 DOES NOT PROVIDE CONCLUSIVE EVIDENCE OF REGULAR EMPLOYMENT; AND
4. EMPLOYMENT FOR SUCCESSIVE PERIODS DOES NOT PROVIDE CONCLUSIVE EVIDENCE OF REGULAR EMPLOYMENT.

B. RESPONDENT WAS LEGALLY DISMISSED, CONSIDERING THAT -

1. RESPONDENT'S GROSS NEGLIGENCE WAS SUFFICIENTLY ESTABLISHED BY SUBSTANTIAL EVIDENCE;
2. RESPONDENT'S ACTS CONSTITUTE GROSS NEGLIGENCE UNDER PREVAILING LAW AND JURISPRUDENCE; AND
3. THE BASIS FOR THE COURT OF APPEALS' FINDING WAS ARBITRARY AND BASED ON MERE ASSUMPTION AND CONJECTURE, WITHOUT ANY EVIDENCE TO SUPPORT THE SAME.

C. RESPONDENT WAS ENTITLED TO SEPARATION PAY AND FULL BACKWAGES, CONSIDERING THAT -