

## THIRD DIVISION

[ G.R. NO. 149180, February 14, 2005 ]

**HODIENG CONCRETE PRODUCTS AND/OR HENRY GO AND ERIC B. GO, PETITIONERS, VS. DANTE EMILIA, RESPONDENT.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

At bar is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision<sup>[1]</sup> dated October 31, 2000 and Resolution<sup>[2]</sup> dated July 17, 2001 rendered by the Court of Appeals in CA-G.R. SP No. 53102, entitled "*Hodieng Concrete Products and/or Henry Go and Eric Go vs. National Labor Relations Commission and Dante Emilia.*"

The instant controversy stemmed from a complaint for illegal dismissal and non-payment of benefits filed with the Labor Arbiter by Dante Emilia, *respondent*, against Hodieng Concrete Products, Henry Go and Eric Go, *petitioners*, docketed as NLRC NCR Case No. 00-01-00273-97.

Respondent, in his complaint, alleged that sometime in January 1985, he was employed as a truck helper by petitioner with a daily salary of P40.00. Eventually, he became a regular truck driver with a salary of P76.00 per trip. Feeling that he was underpaid, he asked petitioners' secretary if he is entitled to 13th month pay and other benefits. Upon receiving a negative response, he reported the matter to the Department of Labor and Employment. This prompted petitioners to terminate his services effective January 2, 1997.

Petitioners denied respondent's allegations in his complaint. They claimed that sometime in 1987, respondent was employed as a truck helper with a salary of P40.00 per trip. Later, in 1991, he recklessly drove and damaged petitioner's truck. As a consequence, he failed to report for work. But, in 1995, he was re-hired as a truck driver with a salary of P76.00 per trip. In 1997, he abandoned his work. Petitioners then came to know that he was employed by Vortex, another company.

On March 30, 1998, the Labor Arbiter rendered a Decision holding that respondent was illegally dismissed from employment and ordering petitioners, jointly and severally, to pay his backwages and other benefits, separation pay, and attorney's fee equivalent to 10% of the monetary awards, thus:

"WHEREFORE, responsive to the foregoing, judgment is hereby rendered finding respondents guilty of illegal dismissal and are therefore, jointly and severally ordered:

1. To pay complainant the amount of P87,191.78 representing his backwages up to the promulgation of this decision;
2. To pay complainant the amount hereunder stated, representing complainants unpaid service incentive leave pay and holiday pay for:
  - a. P2,275.00 – S.I.L.P.
  - b. P4,856.00 – Holiday Pay
3. To pay the amount of P67,353.00 representing complainant's separation pay;
4. To pay attorney's fees equivalent to 10% of the judgment award of P16,167.60.
5. All other claims are hereby dismissed for lack of merit.

SO ORDERED."

Upon appeal, the National Labor Relations Commission (NLRC) promulgated its Decision dated January 21, 1999 affirming the Arbiter's assailed Decision.

Petitioners then filed a motion for reconsideration but was denied by the NLRC in a Resolution dated March 4, 1999. Hence, they filed with the Court of Appeals a petition for certiorari and prohibition with prayer for issuance of a temporary restraining order and a writ of preliminary injunction.

On October 31, 2000, the Appellate Court rendered a Decision affirming with modification the NLRC's Decision in the sense that the award of attorney's fees is deleted.

The Court of Appeals held:

"On the alleged abandonment of employment by private respondent, the contention is not meritorious. x x x. The burden of proof is on the employer to show unequivocal intent on the part of the employee to discontinue employment. Other than the self-serving declarations in the affidavits of their two witnesses (pp. 59-61, *ibid*), petitioners failed to adduce other evidence on any overt act of private respondent showing an actual intent to abandon his employment. Moreover, private respondent filed an illegal dismissal case against petitioners, an act which negates any intention on the part of the employee to forsake his work. x x x.

Considering our finding that private respondent is a regular employee of petitioners, and considering that there was no legal cause for private respondent's termination from employment, We so hold that petitioners violated the constitutional right of private respondent to security of tenure and due process. As a consequence of the illegal dismissal of the private respondent, he is entitled under Articles 279 of the Labor Code, to his full backwages, without deduction of earnings derived elsewhere from the time his compensation was withheld from him up to the time of his actual reinstatement. By virtue however of private respondent's