

FIRST DIVISION

[G.R. NO. 139526, October 25, 2005]

**RAMATEK PHILIPPINES, INC. AND MORRIS WEINBERG,
PETITIONERS, VS. MA. ANELIA DE LOS REYES, RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review^[1] of the Resolutions^[2] dated 31 March 1999 and 6 July 1999 of the Court of Appeals in CA-G.R. SP No. 52018. The Court of Appeals dismissed the petition for having been filed out of time.

The Facts

In August 1995, RAMATEK PHILIPPINES, INC. ("RAMATEK") hired Ma. Anelia de los Reyes ("Anelia") as RAMATEK's comptroller.

In September 1995, RAMATEK entered into a sub-contracting agreement with Sicar Micro-Electronics Corporation ("Sicar Corporation"). Nestor de los Reyes ("Nestor"), Anelia's husband, was a major stockholder, Treasurer and Chief Operations Officer of Sicar Corporation.

On 5 July 1996, Sicar Corporation and Nestor filed a civil case for damages against Lawrence Esparaz, Percy Jarin, and Edgardo Linsangan ("RAMATEK officials"), in their capacity as Plant Manager, Secretary, and Operations Manager, respectively, of RAMATEK for their unilateral termination of the contract between RAMATEK and Sicar Corporation without authority from RAMATEK.^[3] Later, Morris Weinberg ("Weinberg"), the chairman of the Board of Directors of RAMATEK, informed Anelia that she should file a leave of absence while the case between RAMATEK and Sicar Corporation was ongoing. On 31 July 1996, Anelia filed an indefinite leave of absence effective 1 August 1996 until "after the negotiations of the case."^[4]

On 5 August 1996, Weinberg sent an electronic mail ("e-mail") to Anelia, requesting for Anelia's voluntary resignation. The e-mail reads:

ANELIA:

IT IS WITH GREAT REGRET THAT I MUST INFORM YOU OF MY REACTION TO THE SICAR AFFAIR. YOUR CONNECTION IN THIS MATTER HAS CAUSED ME TO LOSE MY FAITH AND TRUST IN YOU. IT IS A MAJOR CONFLICT OF INTEREST SITUATION.

I HAVE ASKED RAMATEK'S MANAGING DIRECTOR TO REQUEST FROM YOU A VOLUNTARY RESIGNATION INSTEAD OF IMMEDIATE TERMINATION. AND TO DO THE SAME FOR ANY OTHER EMPLOYEES INVOLVED.

I REGRET HAVING TO TAKE THIS ACTION. IT PAINS ME VERY MUCH.

MORRIS WEINBERG^[5]

In a letter dated 9 September 1996, RAMATEK required Anelia to explain within 72 hours some of her allegedly questionable transactions. RAMATEK's President and General Manager Lawrence Esparaz ("Esparaz") signed the letter which reads:

September 9, 1996

Ms. Ma. Anelia Delos Reyes
2484 Aladdin Street,
Pandacan, Manila

Dear Ms. Delos Reyes:

A review of the various records and transactions of your office yielded serious questions that require explanation on the following, to wit:

- 1) The bidding of fourteen (14) pcs. of iron works (table) wherein you awarded the account to Ms. Viola Mocorro who offered a bid of Phil. Pesos 37,700.00 or about Phil. Pesos 2,692.85 per table, as against Mr. Ronnie Yucaran's minimum bid offer of Phil. Pesos 2,105.00 per table;
- 2) Your purchase of five (5) units Olympia Heavy Duty typewriter, Model SG3-N, 15" carriage, Elite Type from Mitec International Corporation, at a cost of Phil. Pesos 14,000.00 per unit, when there was an existing offer from FCR Business Machines Corp. at a much reduced price of Phil. Pesos 11,950.00 per unit;
- 3) The roofing works at the Cordova Condominium Building which you awarded to Ms. Viola Mocorro at a cost of Phil. Pesos 250,000.00 as against a bid/quotation submitted by a certain Wally Bondoc for the same scope of work only at a cost of Phil. Pesos 90,000.00;
- 4) Your cash advances amounting to Phil. Pesos 500,000.00 per SBTC Check No. 285965 dated January 12, 1996, for the purchase of furnitures and fixtures for the BF House, which to date remain unliquidated, despite repeated demand, and/or lapse of considerable length of time;
- 5) Your failure to submit/produce various company documents, paperworks, despite the lapse of sufficient time from its demand;
- 6) Unauthorized deposit of company funds/checks into personal bank accounts.

Please explain in writing, within 72 hours, why no disciplinary action

should be imposed against you for violation of Article 282 of the Labor Code of the Philippines which provisions we quote hereunder:

"ART. 282. Termination by employer. An employer may terminate an employment for any of the following just causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing."

Your strict compliance is hereby enjoined.

Very truly yours,

RAMATEK PHILIPPINES, INC.

(signed)
LAWRENCE ESPARAZ

President/General Manager^[6]

Anelia failed to claim the letter which RAMATEK sent to her by registered mail. RAMATEK sent Anelia another letter dated 2 October 1996 inviting Anelia to attend an administrative investigation on her alleged questionable transactions.^[7] The investigation was scheduled on 10 October 1996 at RAMATEK's office in Carmona, Cavite. Anelia was absent at the investigation, during which the investigating body^[8] concluded that Anelia's transactions were grossly disadvantageous to RAMATEK and constituted sufficient ground for Anelia's termination under Article 282(c) of the Labor Code.^[9]

In a letter dated 14 October 1996, RAMATEK terminated Anelia's employment effective 15 October 1996 for committing the alleged anomalies amounting to breach of trust and confidence.^[10]

Meanwhile, on 20 September 1996, Anelia filed with the National Labor Relations Commission ("NLRC") a Complaint for illegal suspension, illegal dismissal, illegal withholding of salary, allowances and 13th month pay, and damages.

On 5 August 1997, the Labor Arbiter ruled in favor of Anelia. The Labor Arbiter held

that petitioners failed to prove their allegation that Anelia engaged in anomalous transactions grossly disadvantageous to RAMATEK. The Labor Arbiter found the charges against Anelia false and baseless. Further, the Labor Arbiter held that RAMATEK terminated Anelia without due process. The Labor Arbiter stated that the records show that RAMATEK made the decision to dismiss Anelia even before RAMATEK requested Anelia to explain the charges against her. The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, judgment is hereby rendered finding complainant to have been illegally dismissed from employment by respondent corporation and concomitantly ordering said respondent company to reinstate her with backwages.

Respondent company is also ordered to pay her salary for July 15 - August 1, 1996, her proportionate 13th month pay for 1996 and attorney's fees equivalent to ten (10%) percent of the financial award.

Other claims are hereby ordered dismissed for lack of merit.

SO ORDERED.^[11]

On 15 August 1997, petitioners appealed the Labor Arbiter's decision. On 12 December 1997, the NLRC dismissed the appeal for failure to perfect the same. The NLRC found that the surety bond filed by petitioners was spurious. Petitioners filed a replacement bond and the NLRC reconsidered its decision on petitioners' motion. The NLRC held that there was no showing that petitioners purposely posted a fake surety bond.

In a Resolution dated 31 August 1998, the NLRC upheld the factual findings of the Labor Arbiter. However, the NLRC found that Anelia's reinstatement was no longer feasible due to strained relations and held that Anelia should instead be granted separation pay. Further, in accordance with Article 111^[12] of the Labor Code, the NLRC held that the attorney's fees should be based on the awards representing unpaid salary for the period of 15 July to 1 August 1996 and the 13th month pay. The dispositive portion of the NLRC Resolution reads:

WHEREFORE, the instant motion for reconsideration is hereby GRANTED. The appealed Decision is hereby AFFIRMED with MODIFICATION in that aside from the payment of full backwages reckoned from date of dismissal on August 5, 1996 up to the finality of this Decision (less wages, if any, received by complainant by virtue of reinstatement, actual or payroll, if at all, during the pendency of the appeal), respondents are further ordered to grant complainant separation pay equivalent to one (1) month salary per year of service, reckoned from date of employment on August 1995 up to the finality of this decision.

The attorney's fees awarded should be adjusted and based only on the awards representing the unpaid salary covering the period from July 15 to August 1, 1996 and 13th month pay.

SO ORDERED.^[13]

Petitioners received on 27 October 1998 the NLRC Resolution. On 5 November 1998, petitioners filed a motion for reconsideration, which NLRC denied in a Resolution dated 27 November 1998. Petitioners received the NLRC Resolution denying the motion for reconsideration on 25 January 1999. On 26 March 1999, petitioners filed a petition for *certiorari* with the Court of Appeals.

On 31 March 1999, the Court of Appeals dismissed the petition for having been filed out of time.

Hence, this petition.

The Ruling of the Court of Appeals

The Court of Appeals dismissed the petition based on Section 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended by this Court in an *En Banc* Resolution dated 21 July 1998. The resolution, which is contained in Circular No. 39-98,^[14] took effect on 1 September 1998. The amended provision reads:

SEC. 4. *Where and when petition to be filed.* - The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Emphasis supplied)

The Court of Appeals stated that when petitioners filed their motion for reconsideration on 5 November 1998, eight (8) days had elapsed from 27 October 1998 when they received the NLRC Resolution dated 31 August 1998. When the NLRC denied petitioners' motion for reconsideration, which denial petitioners received on 25 January 1999, petitioners had only the remaining fifty-two (52) days or until 18 March 1999 to file the petition for *certiorari*. Thus, the Court of Appeals held that the petition for *certiorari* that petitioners filed on 26 March 1999 was clearly filed out of time.

The Issues

Petitioners raise the following issues: