

## FIRST DIVISION

[ G.R. NO. 155279, October 11, 2005 ]

**MICRO SALES OPERATION NETWORK AND WILLY BENDOL,  
PETITIONERS, VS. THE NATIONAL LABOR RELATIONS  
COMMISSION (SECOND DIVISION), LARRY HERMOSA,  
LEONARDO G. DE CASTRO AND RAMIL BASINILLO,  
RESPONDENTS.**

### D E C I S I O N

#### **QUISUMBING, J.:**

For review on certiorari are the **Resolutions**<sup>[1]</sup> dated November 28, 2001 and September 3, 2002, respectively, of the Court of Appeals, in CA-G.R. SP No. 67755. The said Resolutions dismissed petitioners' special civil action for certiorari against the National Labor Relations Commission (NLRC) Resolution,<sup>[2]</sup> which affirmed the Labor Arbiter's Decision<sup>[3]</sup> finding petitioners herein liable for illegal dismissal.

The antecedent facts are as follows:

Petitioner Micro Sales Operation Network ("company" for brevity) is a domestic corporation engaged in local transportation of goods by land. Petitioner Willy<sup>[4]</sup> Bendol was the company's operations manager at the time of the controversy.

Private respondents Larry Hermosa, Leonardo de Castro, and Ramil Basinillo were employed by the company as driver, warehouseman, and helper, respectively. Hermosa was hired on November 17, 1997, de Castro on February 1, 1996, and Basinillo on February 4, 1998.

Hermosa failed to promptly surrender the ignition key of the company's vehicle after discharging his duties. Such failure was allegedly contrary to the company's standard operating procedure. Thus, he was asked to explain within 24 hours why disciplinary action should not be meted on him. He explained that he kept the ignition key because the vehicle was stalled when its battery broke down.<sup>[5]</sup> Unsatisfied with Hermosa's explanation, the company dismissed him on January 9, 1999.

De Castro was suspected of firing a gun during the blessing of the company's warehouse on December 10, 1998. The next day, he was placed under preventive suspension and temporarily banned from entering the company's premises. He was also asked to explain within 24 hours why he should not be terminated. He explained that he had no knowledge of the said incident.<sup>[6]</sup> As his suspension was indefinite and he received no recall order from petitioners, he no longer reported for work.

Basinillo alleged that sometime in September 1998, the company's security guard scolded him for not wearing the employee ID. On October 17, 1998, he was dismissed.

Thus, on February 10, 1999, Hermosa, de Castro, and Basinillo collectively filed a Complaint<sup>[7]</sup> for illegal dismissal before the Regional Arbitration Branch No. IV, docketed as NLRC Case No. RAB-IV-2-10765-99-C.

In his **Decision**<sup>[8]</sup> dated February 21, 2000, Labor Arbiter Antonio R. Macam found that private respondents were illegally dismissed. The fallo of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of all complainants herein illegal and ordering respondents to reinstate them to their former or equivalent positions and to pay them full backwages, plus ten percent (10%) attorney's fees, computed as follows:

LARRY HERMOSA			
From January 9, 1999 to Feb. 21, 2000 = 1 yr. 1 mo. & 12 days or 13.36 mos.			
P220.00 x 26 x 13.36	=	P76,419.20	
P76,419.20/12	=	6,368.27	
P220.00 x 5	=	<u>1,100.00</u>	P83,887.47
<u>LEONARDO DE CASTRO</u>			
From Dec. 12, 1998 to Feb. 21, 2000 = 1 yr. 2 mos. & 9 days or 14.30 mos.			
P7,280.00 x 14.30	=	P104,104.00	
P104,104.00/12	=	8,675.33	
P7,280.00/26 x 5	=	<u>1,400.00</u>	P114,179.33

<u>RAMIL</u>		
<u>BASINILLO</u>		
From Oct. 17,		
1998 to Feb.		
21, 2000		
= 1 yr., 4		
mos. & 4 days		
or 16.13 mos.		
P200.00 x 26 x	=	P83,876.00
16.13		
P83,876.00/12	=	6,989.67
P200.00 x 5	=	<u>1,000.00</u>
		<u>P 91,865.67</u>
Total Full	=	P289,932.47
Backwages		
Plus 10%	=	<u>28,993.25</u>
Attorney's Fees		
GRAND TOTAL		P318,925.72

SO ORDERED.<sup>[9]</sup>

On appeal, the NLRC affirmed the Labor Arbiter's decision. It also denied petitioners' motion for reconsideration.

Undaunted, petitioners filed with the Court of Appeals a special civil action for certiorari. However, the appellate court dismissed the petition for being defective in form. It found that only the company signed the verification and certification on non-forum shopping. Petitioner Willy Bendol did not sign the same.

Petitioners' motion for reconsideration was denied. The appellate court reasoned that even if petitioner Willy Bendol was not impleaded as a real party in interest, records showed that he was impleaded as a co-respondent before the Labor Arbiter. Thus, the appellate court ruled, his failure to sign the verification and certification on non-forum shopping is a ground for the dismissal of the petition.

Hence, the instant petition anchored on the following grounds:

A. THE HONORABLE COURT OF APPEALS PLAINLY ERRED AND ACTED CONTRARY TO EXISTING LAW AND JURISPRUDENCE IN DISMISSING THE PETITION FOR *CERTIORARI* ON A MERE TECHNICALITY CONSIDERING THAT WILLY BENDOL WAS JOINED MERELY AS A NOMINAL PARTY TO THE

PETITION.

B. MORE IMPORTANTLY, JUSTICE WOULD BE BEST SERVED IF THE PETITION WAS GIVEN DUE COURSE CONSIDERING THAT THE PUBLIC RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE DECISION OF LABOR ARBITER MACAM CONSIDERING THAT:

1. THERE IS NO FACTUAL OR EVIDENTIARY BASIS TO SUPPORT THE FINDING OF ILLEGAL DISMISSAL. DUE PROCESS AND FAIR PLAY DICTATE THAT THE PUBLIC RESPONDENT COMMISSION POINT OUT THE PARTICULAR FACTUAL FINDING OF THE LABOR ARBITER WHICH JUSTIFIED THE FINDING OF ILLEGAL DISMISSAL.
2. THE PUBLIC RESPONDENT COMMISSION IGNORED THE FACT THAT THE LABOR ARBITER'S FINDING OF ILLEGAL DISMISSAL RESTS ON PURE SPECULATION, CONJECTURE AND SURMISES.
3. PRIVATE RESPONDENT BASINILLO HIMSELF DENIED THAT HE WAS DISMISSED BY PETITIONERS.
4. THE ACTS OF HERMOSA CONSTITUTE WILLFUL DISOBEDIENCE JUSTIFYING HIS DISMISSAL.
5. THE HONORABLE COMMISSION COMPLETELY IGNORED THE FACT THAT PRIVATE RESPONDENTS' SINGULAR CAUSE OF ACTION IS THAT FOR ILLEGAL DISMISSAL. THUS, THE LABOR ARBITER'S AWARD OF SEPARATION PAY AND ATTORNEY'S FEES WAS UTTERLY WITHOUT BASIS.<sup>[10]</sup>

Petitioners insist Willy Bendol was impleaded merely because he was the immediate supervisor of private respondents. They argue that the real party in interest in this case is the company. In any case, petitioners point out that Bendol was no longer connected with the company when the special civil action for certiorari was filed.

Private respondents, however, maintain that formal requirements must be strictly complied with. Thus, they posit, the Court of Appeals correctly dismissed the petition for failure of one of the petitioners to sign the verification and certification on non-forum shopping.

Further, petitioners contend that Hermosa's omission constituted willful disobedience justifying his dismissal. With respect to de Castro, petitioners claim that he was merely suspended. As for Basinillo, petitioners point to an unsworn statement,<sup>[11]</sup> where he denied filing any complaint for illegal dismissal against the company.

Private respondents, however, counter that petitioners failed to prove willful disobedience as a just cause for Hermosa's termination. Moreover, they posit that de Castro's preventive suspension constituted constructive dismissal because it was for an indefinite period and no recall order was issued by the company. Private respondents also argue that Basinillo's purported unsworn statement has no probative value.