

THIRD DIVISION

[G.R. No. 142759, November 10, 2004]

**PHILTREAD TIRE & RUBBER CORPORATION, PETITIONER, VS.
ALBERTO VICENTE, RESPONDENT.**

DECISION

SANDOVAL-GUTIERREZ, J.:

For resolution is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[1] dated November 25, 1999 and the Resolution^[2] dated March 22, 2000 rendered by the Court of Appeals in CA-G.R. SP No. 52723, entitled "*Philtread Tire and Rubber Corporation vs. National Labor Relations Commission and Alberto Vicente.*"

The facts as borne by the records are:

On February 9, 1978, Alberto M. Vicente, *respondent*, was employed by Philtread Tire and Rubber Corporation, *petitioner*. At the time of his dismissal from the service, he was a housekeeping coordinator at the General Services Department, receiving a monthly salary of P8,784.00. One of his duties was to recommend to petitioner, for its approval, projects intended for the beautification and maintenance of its premises.

On February 15, 1991, Engr. Ramon Y. Dumo, Administrative Officer and Head of petitioner's Security and Safety Department, received a complaint from Crisente Avis, a sign painter with whom petitioner had a service contract. Avis reported that he was being forced by respondent to overprice by P1,000.00 his service fee of PP3,800.00 and to deliver to him (respondent) the said amount of P1,000.00; and that should Avis fail to do so, he will no longer be awarded future contracts.

Acting thereon, Engr. Dumo conducted an investigation attended by respondent, Avis, and three representatives from the workers' union. Avis declared that sometime in January 1991, petitioner hired him to paint its trash cans, push carts and cigarette waste boxes. They agreed that his services will be paid upon completion of the painting job and submission of the corresponding invoice. However, herein respondent instructed him to prepare an invoice indicating therein that his fee for his painting services is P4,800.00, instead of P3,800.00. Respondent even assured him that the petitioner will approve the invoice.

At this juncture, petitioner assigned respondent to perform janitorial duties, prompting him to request an immediate disposition of his case. But when petitioner directed him to submit his evidence within three (3) days from notice, he failed to comply.

After evaluating the records on hand, petitioner found respondent guilty of

extortion, fraud, serious misconduct and willful breach of trust and confidence. Petitioner then sent him a notice terminating his services effective March 3, 1991.

Eventually, respondent filed with the Labor Arbiter a complaint for illegal dismissal and damages against petitioner and Engr. Dumo, docketed as NLRC NCR Case No. 00-03-01376-91.

In due course, the Labor Arbiter rendered a Decision dated December 3, 1992 dismissing respondent's complaint for lack of merit.

Upon appeal, the National Labor Relations Commission (NLRC) promulgated a Decision dated August 29, 1994 reversing the Arbiter's assailed Decision, holding that respondent was illegally dismissed, thus:

"WHEREFORE, premises considered, the appealed decision is hereby REVERSED and SET ASIDE and a new one entered declaring respondent Ramon Y. Dumo and Philtread Tire and Rubber Co. to have illegally dismissed complainant Alberto M. Vicente. Accordingly, respondent is hereby ordered to reinstate complainant to his former or equivalent position without loss of seniority rights and privileges with full backwages from the time of his dismissal up to the time of his reinstatement, whether physical or payroll. Corollary to this, complainant shall be entitled to and be paid for whatever increases and benefits that have accrued to his position reckon from the time of his dismissal.

SO ORDERED."

Petitioner then filed a motion for reconsideration but was denied by the NLRC in a Resolution dated October 11, 1994. Hence, it filed with this Court a petition for certiorari with prayer for the issuance of a temporary restraining order, docketed as G.R. No. 118337.

Pursuant to our ruling in *St. Martin's Funeral Home vs. NLRC*,^[3] we referred the petition to the Court of Appeals for appropriate action and disposition.

On November 25, 1999, the Appellate Court rendered a Decision affirming the assailed Decision of the NLRC, thus:

"After a review of the records, We find no cogent reason to reverse the respondent Commission.

Private respondent herein was dismissed allegedly for asking, not receiving, the sum of P1,000.00, from Crisente Avis. x x x.

This alleged request is not supported by any documentary evidence. It is strange that no purchase order was presented to show that Crisente Avis was given a contract to paint the trash cans and cigarette butt boxes at the company premises for the contract price of P3,800.00 x x x. In this instance, Mr. Avis did not show any contract to prove that his services were estimated at P3,800.00, as proof that private respondent asked him to overprice it by P1,000.00.

Moreover, it is strange that in reporting the alleged request of private respondent, Mr. Avis complained, not to the personnel department, or to the department in charge of giving out contracts or paying for them, but to the security department. x x x. The only explanation We can find is that the security guards are headed by Mr. Ramon Dumo, who was apparently displeased with private respondent.

x x x

There is also no clear showing that private respondent was in a position to influence company decisions in giving out contracts of services, so that Mr. Avis should be pressured to acceding to his request.

With regard to the report of Avis that private respondent tricked him into going to Cavite to execute an affidavit of retraction, we see no reason why Avis could not have simply refused to sign such affidavit, especially since he was brought before a notary public, a lawyer, whom he could have sought legal assistance.

Finally, private respondent was dismissed for 'willful violation of trust x x x.' However, there is no showing that he occupied a position of trust and confidence. x x x. The position of private respondent as Housekeeping Coordinator at the General Services Department of Philtread can hardly be considered as one of trust and confidence.

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

SO ORDERED."

On December 10, 1999, petitioner filed a motion for reconsideration, but was denied by the Appellate Court in a Resolution dated March 22, 2000.

Hence, this petition for review on *certiorari*.

Petitioner contends, among others, that the Court of Appeals seriously erred (1) in finding that there is no substantial evidence to support the complaint against petitioner; and (2) in disregarding the testimony of Crisente Avis on the ground that it is an affirmation of his unverified complaint.

The fundamental issue here is whether petitioner was able to prove by substantial evidence that respondent is liable for extortion by forcing Avis to increase his service fee by P1,000.00. The issue raised is factual. It is basic that the findings of fact by the Court of Appeals, when supported by substantial evidence, are conclusive and binding upon the parties and are not reviewable by this Court, unless the case falls under any of the exceptions to the rule, such as when the findings by the Appellate Court are not supported by evidence.^[4] This exception is being relied upon by petitioner.

Here, there is **neither direct nor documentary evidence** to prove that respondent was involved in extortion. In fact, a careful perusal of the minutes of the investigation reveals that Avis did not categorically state that he was pressured by respondent to overprice his service fee, thus: