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SECOND DIVISION

[G.R. No. 142007, March 28, 2001]

MANUEL C. FELIX, PETITIONER, VS. ENERTECH SYSTEMS INDUSTRIES, INC. AND COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a petition for review on *certiorari* of the decision[1] of the respondent Court of Appeals, dated January 6, 2000, affirming the decision of the National Labor Relations Commission (NLRC), dated June 17, 1998, declaring the dismissal of petitioner Manuel C. Felix to be legal, although granting his claim for 13th month pay, and the appeals court's resolution, dated February 18, 2000, denying petitioner's motion for reconsideration.

The facts, as found by the Court of Appeals, are as follows:

Respondent Enertech System Industries, Incorporated is engaged in the manufacture of boilers and tanks. Petitioner Manuel C. Felix worked as a welder/fabricator in respondent company. On August 5, 1994, petitioner and three other employees, namely, Dante Tunglapan, Hilario Lamog, and Emerson Yanos, were assigned to install a smokestack at the Big J Feedmills in Sta. Monica, Bulacan. During the entire period they were working at the Big J Feedmills, petitioner and his companions accomplished daily time records (DTRs). Petitioner wrote in his DTR that he had worked eight hours a day on the basis of which his wages were computed.

The work was estimated to be completed within seven days, but it actually took the workers until August 17, 1994, or about two weeks, before it was finished. On that day, petitioner and his three co-employees were each given notice by respondent, which read in part:

> Reports came to our office that for the past few days you were reporting at [the] Big J jobsite at around eleven o'clock in the morning and you were leaving said site at two o'clock.
>
> We would like to inform you that said act constitutes Abandonment of Work which is [a] violation of our Company Code on Employees Discipline that warrants a penalty of DISMISSAL.
>
> Therefore, you are hereby given 24 hours to explain your side on the said matter.[2]

The next day, August 18, 1994, petitioner and his co-workers were placed under preventive suspension for seven working days. On August 26, 1994, respondent, through its personnel assistant, Ma. Imelda E. Samson (MIES), and in the presence

of two union officers, Armando B. Tumamao (ABT) and Jessie T. Yanos (JTY), interviewed Johnny F. Legaspi (JFL), who owned the Big J Feedmills, and his engineer, Juanito Avena. The transcript of their interview reads:

MIES: Anong oras ho ba nagtatrabaho ang mga tao naming nai-assign dito?

JFL: Madalas nagsisimula sila ng alas-diyes ng umaga at minsan naman alas-onse ng umaga; mula ng nag-umpisa sila dito hindi pa sila naka-buo ng apat na oras na trabaho mag-hapon.

MIES: Bakit ho, anong oras ba sila dumarating?

JFL: Hindi pare-pareho, may alas-otso ng umaga, minsan 9:00, minsan 9:30 ng umaga, pero hindi sila sabay-sabay na dumarating ha. Madalas pa nga mag-aalas-diyes na sila dumarating, pag kumpleto na silang apat saka pa lang sila magsisimulang magtrabaho.

ABT: May mga araw ho nagdadaan sila sa Shop namin para pumick-up ng gamit baka ito ho iyong tinatanghali sila ng dating?

JFL :Iyon nga ang sabi nila eh, kaya daw sila tinatanghali kasi nga kumukuha sila ng gamit sa shop ninyo, pero hindi naman sila sabay-sabay kumukuha ng gamit o suweldo, di ba? Saka nagpapapirma sila ng delivery receipt kay Engr. Avena at isa-isa lang naman ang nagpupunta sa Shop ninyo, yung naiiwan dito sa Shop hindi agad nagtatrabaho, hinihintay pa nila yung kasama nila.

ABT: May dumarating ho ba ng alas-siyete ng umaga?

JFL: Wala nga eh, tanghali na nga sila dumarating, pagdating magtatabraho sandali tapos titigil para kumain sa tindahan - wala pang alas-dose kumakain na sila kasi baka maubusan sila ng ulam o kakainin, tapos alas-dose magpapahinga na sila, matutulog doon sa may boiler bago pa lamang mag-alas-kuatro umaalis na sila kaya wala talagang otso oras ang trabaho nila.

JTY: Paano nyo ho nalalaman kung nagtratrabaho sila o hindi?

JFL: Alam ninyo, galing ako sa sakit; kailangan ko ng pahinga pero imbes na sa loob ako nagpapahinga dito na lang ako sa labas, umagang-umaga pa lang, nandito na ako. Kita niyo naman mula dito nakikita ko ang lumalabas at pumapasok dito, saka makikita mo kung may tao doon sa bubong saka doon sa may boiler at maririning mo rin kung nag-we-welding o may nag-pupukpok.

Lumalapit nga itong si Manuel sa amin at nagpapagawa ng sulat na nagpapatunay na pumapasok sila ng 7 to 4 pero

> hindi ako pumayag kasi lalabas na nagsisinungaling na ako. Gusto lang naman namin lumagay sa tama, kung ano yung totoo iyon na iyon, noong minsan nag-report kami sa opisina ninyo na nag half-day sila, yun pala natutulog lang sila sa ilalim ng boiler sa may skid. Kaya naman gumawa kami agad ng sulat para ipaalam sa inyo na hindi pala sila umuwi, nandoon pa pala sila, natutulog."[3]

These statements were corroborated by the affidavit[4] of petitioner's co-employee, Emerson G. Yanos, who stated that petitioner and his co-worker Dante Tunglapan usually arrived for work at the Big J Feedmills between 9:30 to 10:00 a.m., stopped working at 12:00 noon, then resumed work at 1:00 p.m., continuing until 3:00 p.m. Before going home, they had snacks.

Reynaldo Tapiru, petitioner's co-employee and neighbor in Sitio Kabanatuan, Valenzuela, also stated in an affidavit[5] that he had seen petitioner either in his house or within their compound on August 6, 7, 8, and 14, 1994, between 3 and 4 o'clock in the afternoon, when he was supposed to be working at the Big J Feedmills in Bulacan at that time.

On September 9, 1994, respondent required petitioner to report to the company lawyer on September 13, 1994 for investigation.[6] Then, on October 17, 1994, it issued a memorandum[7] placing petitioner under preventive suspension for 30 days. Finally, on November 21, 1994, respondent sent petitioner a memorandum terminating his employment on the following grounds:

> SECTION 7. DISHONESTY
>
> 6. Falsifying time cards or any other timekeeping records, or drawing salary/allowance by virtue of falsified time cards.
>
> SECTION 8. INSUBORDINATION
>
> 4. Willful holding back, slowing down, hindering, or limiting work output.
>
> 5. Encouraging, coercing, inciting, bribing, or otherwise inducing any employee to engage in any practice in violation of the Company's work rules.[8]

Petitioner filed a complaint for illegal dismissal against respondent before the Arbitration Branch of the NLRC. On June 19, 1997, Labor Arbiter Arthur Amansec rendered a decision finding petitioner to have been illegally dismissed and ordering respondent as follows:

> WHEREFORE, complainant Manuel Felix is hereby found to have been illegally DISMISSED from employment and concomitantly respondent is hereby ordered to reinstate complainant with backwages and pay his proportionate 13th month pay for 1994.
>
> Other claims are hereby ordered DISMISSED for lack of merit. The Complaint of Dante Tungpalan should be as it is hereby DISMISSED by reason of settlement.

SO ORDERED.[9]

Respondent appealed to the NLRC. Pending appeal, a writ of execution was issued on September 23, 1997 directing respondent to reinstate petitioner either physically or in the payroll.

On October 10, 1997, respondent filed an omnibus motion[10] arguing that reinstatement was no longer possible as the violations of company rules committed by petitioner had caused strained relations between petitioner and itself. Respondent further alleged that because of petitioner's falsification of his daily time records which enabled him to collect his full salary, it could no longer trust him. Respondent prayed that the writ of execution be recalled and that a new order be issued allowing it to pay petitioner separation pay in lieu of reinstatement.

On June 17, 1998, the NLRC rendered a decision reversing the labor arbiter's decision and dismissing petitioner's complaint for illegal dismissal for lack of merit. The NLRC found sufficient evidence to prove that petitioner put in less than the required eight hours daily work during his detail at the Big J Feedmills and, therefore, held that his dismissal was in accordance with the Company Code of Discipline and the Labor Code.[11]

Petitioner filed a motion for reconsideration, but the same was denied.[12] He appealed to the Court of Appeals which, on January 6, 2000, affirmed the dismissal of petitioner although it granted his claim for 13th month pay. In its resolution of February 18, 2000, the Court of Appeals denied reconsideration of its decision. Hence this present petition.

Petitioner assails the decision of the Court of Appeals in not ordering the award of backwages by reason of respondent corporation's refusal to reinstate him pending appeal of the case. He argues that the omnibus motion filed by respondent during the pendency of the appeal should have been treated as respondent's admission of liability for reinstatement or, in lieu thereof, for separation pay.

First. Petitioner prays that the Court reinstate the labor arbiter's decision finding respondent corporation guilty of illegal dismissal. The labor arbiter held as doubtful the statement of Johnny Legaspi and petitioner's two co-employees to the effect that petitioner and his co-workers put in only four hours; that the statements of Legaspi and Yanos were inaccurate as there was no timekeeper at the job site to monitor the arrivals and departures of employees; and that the delay in the completion of the project could be due to an erroneous estimate on duration of work, lack of materials, or lack of work coordination.[13]

Petitioner's argument has no merit. The Court of Appeals, taking into account the findings of the NLRC, the interview with Johnny Legaspi and his engineer, and the affidavits of Yanos and Tapiru, correctly concluded that there was substantial evidence presented showing that petitioner did not really work eight hours a day, as he had stated in his time cards.[14]

Indeed, the validity of petitioner's dismissal is a factual question. It is not for the reviewing court to weigh the conflicting evidence, determine the credibility of