

SECOND DIVISION

[G.R. No. 122033, May 21, 1998]

**ATLAS CONSOLIDATED MINING & DEVELOPMENT
CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS
COMMISSION AND ISABELO O. VILLACENCIO, RESPONDENTS.**

DECISION

PUNO, J.:

Assailed in this petition for certiorari under Rule 65 of the Revised Rules of Court are the Decision^[1] dated December 27, 1994 of the public respondent National Labor Relations Commission (NLRC) in NLRC Case No. V-0423-93 (RAB Case No. 07-02-016690) which ordered the payment of separation pay and backwages to private respondent Isabelo O. Villacencio, and its Resolution^[2] dated August 18, 1995 denying petitioner's Motion for Reconsideration.

The facts show that private respondent Isabelo O. Villacencio worked with petitioner ACMDC from January 23, 1970 to February 2, 1990. He started as an ordinary laborer/helper in the Mill Department. In 1973, he became supervisor of the Tailings Disposal Department. In 1982, he was elevated as a junior staff of the department. Finally, he was promoted general foreman of the Tailings Disposal and Water Supply Department with a monthly salary of P7,440.00. He held this position until his services were terminated on February 2, 1990.^[3]

As general foreman, Villacencio was the second-to-the-highest man in the department which has a field office located in Magdugo, Toledo City. Under Villacencio were some fifty nine (59) workers whom he supervised through regular field inspections. Villacencio was assigned a service jeep and a service motorcycle which he used alternately. He was given the privilege to withdraw the necessary fuel/gasoline for the vehicles at the Transport Department located inside the main compound of ACMDC.^[4]

On September 8, 1989, Engineer Conrado Sanchez of the Services Division wrote a memorandum requesting that Villacencio be investigated for alleged anomalies at the Magdugo Tailings Field Office. Villacencio was charged before the Special Investigation Board with acts of malfeasance consisting of:

1. withdrawal of company-owned gasoline for the refueling of his personal jeep;
2. use of company personnel on company time as well as company-owned materials for the assembly of a jeep not belonging to the company; and
3. granting of authority to non-company personnel to withdraw company-owned stocks.

He was summoned on January 9, 1990, and investigations were conducted on January 12 and 13, 1990.^[5]

On January 25, 1990, the Special Investigation Board^[6] found Villacencio guilty of the charge of withdrawing on various dates a total of 192 liters of company-owned gasoline which he used to refuel his private jeep and of the charge of using company personnel on company time in the assembly of his jeep. The third charge was dismissed for insufficiency of evidence. Villacencio was dismissed from work on February 2, 1990. He lodged a complaint against ACMDC before the Regional Arbitration Branch No. VII, NLRC, Cebu City, on February 19, 1990 for illegal dismissal with prayer for reinstatement and backwages plus damages. The case was assigned to Labor Arbiter Reynoso A. Belarmino.^[7]

Meanwhile, ACMDC initiated a criminal complaint against Villacencio for the misappropriation of 192 liters of gasoline amounting to P1,086.72. An Information for Estafa was filed against Villacencio before the Municipal Trial Court of Toledo City. After trial, he was found guilty and sentenced to suffer the indeterminate penalty of two (2) months and one (1) day of arresto mayor as minimum to one (1) year and eight (8) months of prision correccional as maximum, and to pay ACMDC the amount of P1,086. 72 for the misappropriated gasoline.^[8]

Villacencio appealed his conviction to the Regional Trial Court of Toledo City. For failure of the prosecution to establish the guilt of Villacencio beyond reasonable doubt, the appellate court acquitted him.^[9]

On August 9, 1993, Labor Arbiter Belarmino rendered a Decision^[10] dismissing Villacencio's complaint of illegal dismissal for lack of merit.

Aggrieved, Villacencio appealed to the NLRC. On December 27, 1994, the NLRC reversed the Labor Arbiter's decision. It held:

"We have thoroughly reviewed the record of this case and found no sufficient evidence against the complainant for wrongdoing. x x x

"x x x

"WHEREFORE, the respondent is hereby ORDERED to pay complainant separation pay equivalent to one-half month pay for every year of service, a fraction of 6 months service being considered one whole year.

"Complainant's severance pay is P74,400.00 (January 23, 1970 to February 2, 1990; 1/2 of P7,440.00 = P3,720.00 x 20 years).

"Appealed Decision Reversed.

"SO ORDERED."^[11]

Both parties filed their respective Motion for Reconsideration. ACMDC's motion assailed the public respondent's decision for allegedly misapprehending the Labor Arbiter's decision. On the other hand, Villacencio's motion prayed for reinstatement and award of backwages in addition to separation pay.

On August 18, 1995, the public respondent rendered a Resolution granting Villacencio's prayer for backwages and denying ACMDC's motion. Its dispositive

portion reads:

"x x x

"WHEREFORE, the Motion for Reconsideration filed by respondent-appellee is hereby DENIED for lack of merit. On the other hand, the Motion for Reconsideration filed by complainant-appellant is granted and our Decision is hereby modified to include backwages to complainant from February 1990 up to the present.

"SO ORDERED."^[12]

Hence, the instant petition.

The main issue is whether or not public respondent NLRC acted with grave abuse of discretion amounting to lack of jurisdiction in reversing the Decision of the Labor Arbiter and holding private respondent's dismissal illegal. Both parties urge us to weigh the evidence presented by them in light of the contradictory factual findings of the Labor Arbiter and the public respondent. We shall do so to settle the conflict.^[13]

In illegal dismissal cases, the employer bears the burden of proof to show that the dismissal is for a just or authorized cause.^[14] The charges against private respondent are: (1) withdrawal of 192 liters of gasoline from company stocks for his private use; and (2) knowingly allowing company personnel to work on company time in the assembly of a privately-owned jeep. To prove the first charge, petitioner presented the Tenders Logbook showing the unsigned entries of gasoline withdrawals allegedly made by private respondent. Wilfredo Caba and Bienvenido Villacencio also testified that private respondent refused to sign the entries when requested to do so.^[15]

The evidence for the private respondent shows that during his more than twenty (20)-year stint with petitioner, he received several awards and commendations for his contribution in the areas of production, services and smooth operation of his department. The management recognized his ability in handling his subordinates and in protecting company assets in relation to his assigned duties. As a stickler for company rules, he never held back on issuing warnings, admonitions and even suspensions against erring subordinates. Consequently, he earned the ire of some of his subordinates. Among them were Wilfredo Caba whom he suspended on December 12, 1987 for sleeping while on duty; June Climaco whom he suspended on September 19, 1987 for failing to observe safety rules in handling flammable materials; Felix Gonzales whom he warned for quitting work earlier than the prescribed time; and Bienvenido Villacencio, together with Caba, Gonzales and F. Garnece, whom he warned on January 18, 1990 for leaving blank spaces on the withdrawal logbook. He also denied the requests of Caba, Villacencio, Gonzales and Climaco for promotion from 1988 to 1989.^[16] He averred that these workers made willful assertions of falsehood in charging him and testifying against him.

In sum, private respondent's position is that the logbook entries do not prove that he received the 192 liters of gasoline since his signature does not appear therein and that the witnesses presented by the petitioner to explain the absence of his signature in the logbook entries were motivated by vengeance since he offended their feelings when he disciplined them and denied their requests for promotion.