

NINTH DIVISION

[CA G.R. SP NO. 88576, August 10, 2006]

**BENEDICT L. ORIBE, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, FIRSAT DIVISION, HON. LABOR
ARBITER JOSELITO CRUZ VILLAROZA, AND HIMEX
CORPORATION AND/OR TERUHIRO OHNO (PRESIDENT/
GENERAL MANAGER), ET AL., RESPONDENTS.**

D E C I S I O N

CARANDANG, J.:

This is a petition for certiorari under Rule 65 seeking to reverse and set aside the National Labor Relations Commission's (NLRC) Decision of 7 May 2003, affirming that of the Labor Arbiter's Decision which dismissed petitioner Benedict L. Oribe's complaint for illegal dismissal, as well as its Resolution of 16 November 2004 denying his motion for reconsideration.

The antecedents of the case are as follows:

Petitioner Oribe was hired by private respondent Himex Corporation (HIMEX) on 11 September 1995. By 1998, he was the chief accountant of HIMEX.^[1] As such, he was in charge of all accounting work, books of accounts and other accounting records of HIMEX. He was also responsible for compliance with the legal requirements on tax obligations of HIMEX to the government under the National Internal Revenue Code. He was likewise relied upon to see to it that HIMEX properly compute, withhold and remit correct taxes, file returns, deduct and remit SSS and Philhealth insurance premium, apply established accounting principles for sales under installment method, submit to the Bureau of Internal Revenue (BIR) the required merchandise inventory, implement internal accounting control measures, issue official receipts, prepare checks and vouchers and keep records of the same.^[2] On 11 September 2000, the BIR sent a Letter of Authority to HIMEX informing the latter that it will be sending its revenue officer to examine the books of accounts and other accounting records for income/ VAT/ withholding / and documentary stamps of HIMEX for the year 1999.^[3] In response, HIMEX instructed Oribe to submit all the requirements of the BIR and to extend all help in expediting the latter's examination. However, Oribe was caught unprepared prompting HIMEX to hire the services of an external auditor, R.P. Calma and Company, to eventually handle the BIR examination. On 4 January 2001, the external auditor submitted its initial findings to HIMEX, thus:

"Dear Mrs. Ohno:

During the course of our reconstruction of HIMEX CORPORATION books for the year ended December 31, 2000, we noted that the accountant failed to do the following:

1. Withhold and remit correct taxes on salaries and wages.
2. Refund excess withholding tax on salaries and wages.
3. File a return, pay tax, withhold and remit tax on fringe benefits availed by managers and supervisors and creditable expenses.
4. Failed to withhold the correct SSS premium and failed to remit correct amount of SSS and Philhealth contribution.
5. Apply the correct accounting principle for sales under the installment method.
6. Submit to the BIR the required merchandise inventory list in prior years.
7. Implement internal accounting control measures resulting to the susceptibility of the company records to errors and irregularities.

Because of the accountant's omission to perform the duties enumerated above, his competence becomes questionable.

Yours very truly,

(sgd) Ruperto P. Calma"^[4]

By 22 January 2001, the external auditor sent another letter to HIMEX detailing more problems encountered, to wit:

"January 22, 2001

Mrs. Rema P. Ohno
Vice-President
HIMEX CORPORATION
604 Prestige Tower Condominium
Emerald Avenue, Ortigas Center
Pasig City

Dear Mrs. Ohno:

This is in addition to our findings we cited in our letter we sent to you last January 4, 2001. That during our reconstruction of HIMEX Corporation books for the year ended December 31, 2001, we further state some other failures of the accountant:

- I. The responsibility to establish and maintain internal accounting control measures in company's accounting records. Such noted internal accounting control weaknesses are as follows:
 1. Official receipts were issued even for post-dated checks. They should have waited for the checks to mature before issuing them with OR's Temporarily, they should have issued provisional receipts.

2. Many checks made were payable to cash. Thus, such will result to deprivation on the part of the company of its legal remedy against the bank if such checks are cashed by unauthorized persons.
3. Disbursement vouchers were prepared for multi-payees especially for the cash advances. One voucher should be issued for each payee.
4. Vouchers and its supporting documents were not stamped 'PAID' resulting to possible double payment of this documents.
5. Disorganized file of vouchers. The fault of the accountant to this, is that he failed to instruct its accounting subordinates in proper filing of vouchers which are to file the vouchers intact, taking note of its number sequence and see to it there is an attached original supporting document for every voucher.

II. The accountant seemed to be not proficient in taxation as proven under the foregoing omissions:

1. Failure to file prior year's inventory summary list of the company to the BIR with due date not later than January 29, 2001.
2. Expenses which are supposed to be subjected to withholding taxes under the code but were not in subjected to such, thus presently penalizing the company for such omission.
3. Invoices and OR's detached from the booklets. Under the Tax Code, the accountant or any of the account staff, under his supervision/instruction should have asked for a permit coming from the BIR. It is strictly required by the tax law that a taxpayer should ask first permission to use loose-leaf invoices/receipts.
4. Unable to identify those items that are to be taxed or not. Example of this was the failure of the accountant to tax the unliquidated transportation allowances given to the sales representative of the company. As required under the tax code, transportation allowance given to the representative can only be exempt from tax if it is liquidated.

III. The duty to furnish us his 1999 worksheets. Worksheets are accounting data that the accountant should have supplied to the company's auditor during the latter's audit of 1999 books. Although our services cover only the year 2000, we need to verify the forwarded beginning balances of 2000 from the supposed worksheets of the accountant. But we are told that he had not

prepared any worksheets. Due to this, we are encountering many problems in our accounting services for the year 2000.

Based on the above, it is our opinion that the existing accountant is no longer effective to hold the position as an accountant of HIMEX Corporation.

Please contact us if you have any further questions.

Yours very truly,

(sgd) Ruperto P. Calma"^[5]

On 24 January 2001, or barely two days after the last letter was sent, the external auditor wrote another letter to HIMEX expressing frustration still on Oribe's work and apparent uncooperativeness to them.

"January 24, 2001

Mrs. Rema P. Ohno
Vice President
HIMEX CORPORATION
604 Prestige Tower Condominium Bldg.
Emerald Avenue, Ortigas Center
Pasig City

Dear Mrs. Ohno:

We are presently encountering many problems in our reconstruction services for the HIMEX Corporation covering the year 2000 particularly in our preparation of bank reconciliation statements. This is due to inability of Mr. Benedict Oribe to provide us the breakdown of amount that appeared on the audited financial statements for 1999.

We requested him to provide us his worksheet for 1999. This worksheet is an accounting document used by the auditor as basis for her audit of HIMEX' financial statements. If there was no worksheet prepared, there should be a trial balance in order that the audited financial statements can be prepared. That if the worksheet will not be available, he can just ask their auditor to present her working paper as a basis for her audit of 1999. Unfortunately, the worksheet of the accountant and the working papers of the auditors cannot be supplied to us.

Mr. Oribe is responsible to the management of HIMEX Corporation to make a justification on how the audit came up with the audited financial statements. The audit opinion made by the auditor stated that the responsibility on the financial statements rests upon the management and the auditor is liable only on the opinion issued for the fairness on the presentation of the statements.

The inability of Mr. Oribe to provide us the 1999 trial balance or a worksheet supporting the 1999 audited statements is definitely an

indication of inadequate competence for an accountant.

Yours very truly,

(sgd) Ruperto P. Calma"^[6]

Meanwhile, on 12 January 2001, or eight days into the examination of the books of HIMEX by the external auditor, Oribe sent a letter to the Ohnos in this wise:

"January 12, 2001

TO : MR. & MRS TERUHIRO OHNO
FR : BENEDICT L. ORIBE

Dear Sir and Madam,

First of all let me greet you first and your family a Prosperous New Year. I am praying that this year will be a better year for all of us.

Going to may case let me convey my final appeal to both of you. I know that as much as we try to patch up our differences and work as we did before, things may never be the same again. In the direction to appease both parties and we part still in good terms I am humbly suggesting the following solution subject to your kind approval.

On my part:

1. I will submit my resignation letter effective January 15, 2001.
2. I will sign all clearances and quitclaims as you deem necessary.
3. I will make myself available to have this turnover smooth and even after, if you still need my help.
4. I will surrender all pertinent documents that I accumulated during my employment. I apologized for this but I learned from my previous employments the necessity of this things considering the nature and tenure of my job.

Equivalent to the length of my dedicated service to the company and will form part of my separation pay and other benefits, taken into consideration the difficulty of finding a new job or start a small business and to support my family for at least six months before I could landed a new job, I am appealing to you the following:

1. To transfer ownership of my service car under my name.
2. To release the amount of P150,000.00 upon submission of the above.

I am hoping that it is all in order.

Very truly yours,

(sgd) BENEDICT L. ORIBE"^[7]