

THIRD DIVISION

[G.R. NO. 149590, January 12, 2005]

**SOUTHECH DEVELOPMENT CORP. AND/OR REMCOR AND
RICARDO LU, PETITIONERS, VS. NATIONAL LABOR RELATIONS
COMMISSION (THIRD DIVISION), RODRIGO LAPEZ, SR. AND
REYNALDO GAMUTAN, RESPONDENTS.**

D E C I S I O N

CARPIO MORALES, J.:

From the decision of the Court of Appeals setting aside the resolution of the National Labor Relations Commission (NLRC), which dismissed the belatedly filed appeal of herein respondents Rodrigo Lapez, Sr. and Reynaldo Gamutan from a labor arbiter's decision, and accordingly directing the NLRC to give due course to respondents' appeal, petitioners Southech Development Corporation (SDC) and/or REMCOR and Ricardo Lu lodged the present petition for review on certiorari.

Culled from the *rollo* of the case in this Court and in the Court of Appeals are the following antecedent facts:

Respondents were employed as machine operators of petitioner SDC in the early 1990s. Sometime in September 1999, respondents were directed to submit their explanation why they should not be disciplinarily dealt with for insubordination. They did submit their respective explanations which the management found to be unsatisfactory, drawing it to suspend them for one month. By petitioners' account, respondents refused to acknowledge receipt of the notice of suspension. Respondents were thus advised by the SDC president, petitioner Ricardo Lu, to report to his house but they paid him no heed. Instead, they filed a complaint for illegal dismissal against petitioners.

After the parties had submitted their respective position papers, the labor arbiter, resolving the complaint on the following issues:^[1]

1. Whether or not the severance of complainants' employment with the respondent establishment was illegally effected, if so,
2. Whether or not complainants are entitled to the relief prayed for herein, such as reinstatement with payment of full backwages and all monetary benefits, moral and exemplary damages, as well as attorney's fees and
3. Whether or not complainants are entitled to their monetary claims, such as: differentials, overtime pay, 13th month pay, legal holiday pay, premium pay for holiday, and service incentive leave within the

three year prescriptive period with interest at the legal rate until actual payment.,

held in the negative with respect to the first and second issues in this wise:[2]

Admittedly, on September 28, 1999, when they were allegedly told to stop working, complainants were directed to see Mr. Lu at his residence in Caloocan City, purposely to discuss the controversy, complainants refused and ignored such directive and instead proceeded to this Office and filed the instant complaint. The foregoing facts clearly reveal no act of termination having been effected by respondents. Conversely, this Office views that it was complainants who severed their employment relationship with the respondents. The charge therefore of illegal dismissal must be dismissed. Consequently, the claim for reinstatement and payment of backwages, and damages are likewise dismissed.

Likewise, the claim for lack of due process must fail. As clearly perused from the record, complainants were dully afforded the opportunity to explain their sides on the accusation lodged against them. In fact, they both submitted an explanation letter to that effect (Annexes "3" and "4", respondents' position paper) the submission of the same was never denied by herein complainants. And even if assuming that the contested memorandum of suspension (Annexes "5" and "5"), submitted by respondents were indeed not served to herein complainants, the mere fact that they admitted having refused respondents' directive to see Mr. Lu at his residence in Caloocan City, which undoubtedly displays complainants' arrogant attitude towards their employer, renders the fact that respondents have exhausted all the means to give complainants the opportunity to further explain their sides, but which the latter ignored. (Emphasis and underscoring supplied)

As for the third and last issue, the labor arbiter also held in the negative "for failure of [herein respondents] to clearly establish the particulars of such claims."

The labor arbiter, however, granted respondents' claim for payment of 13th month pay and service incentive leave pay "for failure of [herein petitioners] to show convincing proof(s) (*sic*) that they have extended . . . the aforesaid mandated benefits."

Accordingly, the labor arbiter disposed as follows:[3]

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

1. Dismissing the claim for illegal dismissal, as well as, the claims for reinstatement and payment of backwages and damages for lack of merit;
2. Dismissing the claims for differentials, overtime pay, legal holiday pay, and premium pay for holiday, for lack of legal basis;
3. Ordering respondents to pay complainants' 13th month pay, service incentive leave pay and attorney's fees in the following amounts: