

FIRST DIVISION

[G.R. No. 190944, December 13, 2017]

ADVAN MOTOR, INC., PETITIONER, V. VICTORIANO G. VENERACION, RESPONDENT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court seeking to reverse and set aside the September 30, 2009 **Decision**^[1] and the January 13, 2010 **Resolution**^[2] of the Court of Appeals in CA-G.R. SP No. 103744, which affirmed and modified the April 30, 2007 **Decision**^[3] of the National Labor Relations Commission (NLRC) of Quezon City.

The facts as summarized by the NLRC and quoted by the Court of Appeals are quoted below:

Records show that [respondent Victor G. Veneracion] started working sometime in September 1999 in [petitioner Advan Motor, Inc.] company's business of selling and repairing cars manufactured by General Motors Automative Phils., as Sales Consultant. In a letter dated May 21, 2001, he was informed of the termination of his services "effective May 2, 2001 for the reason of repeated AWOL violations for more than six consecutive days and management's loss of trust and confidence in you for your repeated abandonment of your office duties and responsibilities." x x x

Aggrieved, [respondent] filed a complaint for constructive dismissal on July 13, 2001. The complaint was subsequently amended by changing [respondent's] causes of action into actual illegal dismissal and including, underpayment of salaries.

[Respondent] alleged that sometime in December 2000, he was suspected of planning to organize a union, that henceforth. he was harassed by management by being forced to resign in exchange for a financial package and treated unfairly when his purchase orders and sub-dealership agreement with an interested party were not acted upon or sabotaged by management; that unlike the others, his salary was not adjusted although he had been regularized and given the run-around with regard to the giving of promo discounts to buyers. [Respondent] also averred that for the month of March 2001, including the succeeding months, [he] was no longer given any duty date, show room, nor phone and was again pressured to resign; that in April 2001 he applied for a leave of absence which was verbally approved but later denied; that his salaries for April 2001 and the months thereafter were withheld; and, that contemplating on filing an action, [petitioner] jumped the gun on him by serving him with the letter terminating his services.

In [its] defense, [petitioner] contended that [respondent] was oftentimes absent or tardy and failed to meet his sales quota of three (3) cars a month; that he went on an unannounced leave from March 28-31, 2001 and, later, by just handing to the security guard his request for vacation leave from April 2-18, 2001; that on April 20, 2001, he informed the Personnel Officer that he would no longer report for work, prompting management to issue a notice of termination on May 21, 2001.

In ruling for the [respondent], the Labor Arbiter observed that:

"Clearly, [respondent's] termination from his employment was based on AWOL amounting to a violation of company rules and regulation[s] and on attendance for repeated abandonment of office duties and responsibilities and management loss of trust and confidence in him. Specifically, as indicated, management claims that [respondent] x x x "[was on] AWOL since April 10, 2001" x x x.

It appears that [petitioner] predicated as basis of [its] decision to terminate [respondent's] employment when he x x x "just handed to the security guard his request for vacation leave from April 2 to 18, 2001 without informing his immediate superior or even the Personnel Department x x x. This does not persuade. Besides being denied by [respondent], who claimed that he x x x "left it with HRD Manager, who earlier, verbally gave permission to [respondent] to go on leave." x x x, there is no showing on record of any to substantiate this claim. If indeed, it is true, [petitioner] should have notified the [respondent], in the first place. The Sworn Statement of [the] security guard who received the same request for leave alluded to was not presented to [this] effect. Even his name was not noted. Neither was there any statement to this effect from the Personnel Department concerned presented, at least.

Simply [petitioner's] claim remains an allegation. It is a rule well settled [in] this jurisdiction that the employer has the burden of proving the lawful cause sustaining the dismissal of employee. Equipoise is not enough. The employer must affirmatively show rationally adequate evidence that the dismissal was for justifiable cause x x x."^[4]

Advan Motor, Inc. (petitioner) claimed that on December 10, 1999, Victoriano Veneracion (respondent) received a copy of the manual^[5] issued by the former, which provides the company's general personnel policies. Item No. 6 of the said manual provides:

6. Absenteeism

You are expected to notify the office if you are unable to report for work for any reason. Failure to notify the office on the day's absence shall be considered unauthorized and is subject to corresponding sanctions. Unauthorized Leave of Absence (LoA) of five (5) working days will be

construed as abandonment of work and is subject to possible termination of service.

Unauthorized Absence (Absence Without Official Leave)

An employee may be considered as Absent Without Official Leave (AWOL) if he/she fails to report for work:

- For whatever reason without personally or thru his/her immediate superior or the Personnel Department the reason for such absence, within twenty-four (24) hours from the occurrence of such absence.
- For unacceptable reasons even if he/she has notified his/her immediate superior before such absence occurs, likewise in the case of absents from work without prior authorization.
- After the expiration of his/her approved leave of absence.

Procedure for Filing Authorized Absences:

For purposes of procedure and to ensure that the absence is considered authorized, employees are required to observe the following guidelines:

- Secure the *Request for Leave of Absence Form* from the Personnel Department.
- Fill-in all necessary information as required by the form. As much as possible, the request must be filed not less than three (3) days before the intended leave so as not to disrupt operations and to enable the immediate superior to monitor the absences properly.
- Inform immediate superior of the intended leave and secure his/her endorsement signature; forward request to the Department Head for approval.
- Send all copies of the form to the Personnel Department for filing and endorsement to the Accounting Department.
- If the reason for such absence is sickness or injury, the medical certificate shall be attached to the request form. Approval of the said leave shall be based on the Administrative/Personnel Department's verification.

Penalties for Unauthorized Absence

<u>FREQUENCY</u>	<u>PENALTY</u>
One (1) day	Written warning & entry in employee's 201 file
Two (2) to four (4) days	10 days suspension

consecutive
days

Five (5) Termination
consecutive
days or more

Habitual Unauthorized Absences

If, within a period of two (2) months, an employee incurs at least three (3) AWOL violations, he/she shall be considered *habitually AWOL* and a consequence thereof, the next higher penalty shall be applicable to the third and succeeding violations within the said two (2) month period.^[6]

Petitioner alleged that respondent was fully aware that this rule was designed by the company to ensure its uninterrupted operation, without being disrupted or hampered by the absence of one employee. This policy was adopted by the company to plan ahead and properly redesign its operation in case an employee intends to take a vacation.^[7] Petitioner further alleged that respondent failed to reach his sales quotas and committed gross neglect of duty and wanton violation of company policies. Specifically, petitioner claimed that respondent failed to reach the sales quota of at least three units of motor vehicles a month. On several occasions, petitioner issued notices to respondent reminding him of his poor sales performances, frequent tardiness and absences during his floor duty, and prolonged unauthorized absences, which seriously hampered and impaired the sales operations and business plans of the petitioner. Therefore, petitioner concluded that there was a valid and legal ground to dismiss the respondent.

On January 14, 2002, the respondent filed an amended complaint for actual illegal dismissal, underpayment of salaries/wages with damages, attorney's fees, and a prayer for reinstatement and payment of full backwages.^[8] On September 30, 2004, Labor Arbiter Daniel J. Cajilig rendered his Decision,^[9] stating as follows:

WHEREFORE, judgment is hereby rendered declaring complainant's dismissal from his employment as illegal.

Accordingly, respondent-firm [petitioner company] is hereby ordered to pay complainant his backwages amounting to **THREE HUNDRED FORTY-TWO THOUSAND FOUR HUNDRED EIGHTY NINE PESOS AND SEVENTY-FOUR (Php342,489.74) CENTAVOS** as above stated, and **THIRTY-EIGHT THOUSAND AND TWENTY (Php38,020.00) PESOS**, representing his separation pay in lieu of reinstatement and TEN (10) PERCENT as attorney's fees.

Other claims are DENIED for lack of merit.^[10]

Petitioner appealed the Labor Arbiter's decision to the NLRC, while respondent filed his partial appeal. On April 30, 2007, the NLRC affirmed the decision of the Labor Arbiter.

Both parties filed their respective Motions for Reconsideration, but in its Resolution^[11] promulgated on February 29, 2008, the NLRC denied both motions for lack of merit.

On May 29, 2008, the respondent, by way of a Petition for *Certiorari*^[12] submitted the Resolution of the NLRC to the Court of Appeals for judicial review on the ground that it was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. The appellate court partially granted the petition of the respondent and ordered the company to reinstate the respondent to his former position and to pay the latter his backwages.

The Court of Appeals affirmed the NLRC decision with modifications, as quoted below:

WHEREFORE, premises considered, the instant petition is **PARTIALLY GRANTED** and the assailed decision dated April 30, 2007 is **AFFIRMED** with **MODIFICATIONS**, thus:

a) Private Respondent-Firm is hereby **ORDERED** to **REINSTATE** petitioner to his former position without loss of seniority rights and other privileges;

b) Private Respondent-Firm is hereby **ORDERED** to **PAY** petitioner his **BACKWAGES**, computed on the basis of minimum wage from 02 May 2001, or from the time that his compensation was withheld from him, until actual reinstatement. The instant case is hereby remanded to the Labor Arbiter for the proper computation of the said backwages;

c) The award of separation pay is hereby **DELETED**; and

d) The award of Ten [percent] (10%) Attorney's fees is **AFFIRMED**.^[13]

Petitioner filed on October 22, 2009 a Motion for Partial Reconsideration^[14] of the September 30, 2009 decision of the Court of Appeals. However, the appellate court was not persuaded and by way of Resolution promulgated on January 13, 2010, denied the said motion.

Aggrieved, petitioner came to this Court seeking the reversal of the questioned decision and resolution of the appellate court. Petitioner raises the following grounds:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED PALPABLE ERROR WHEN IT ORDERED THE REINSTATEMENT OF RESPONDENT VENERACION TO HIS FORMER POSITION.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED PALPABLE ERROR WHEN IT ORDERED THE AWARD OF BACKWAGES.^[15]

The two issues for our consideration are the questions of **reinstatement** and **backwages**.

Under the first ground, petitioner argues that the order of reinstatement is not proper when the position occupied is one vested with trust and confidence. Petitioner alleges that it placed a high level of trust and confidence to the respondent as a Sales Consultant. Petitioner points out that respondent disregarded