

## SECOND DIVISION

[ G.R. No. 197384, January 30, 2013 ]

**SAMPAGUITA AUTO TRANSPORT CORPORATION, PETITIONER,  
VS. NATIONAL LABOR RELATIONS COMMISSION AND EFREN I.  
SAGAD, RESPONDENTS.**

### DECISION

**BRION, J.:**

Before the Court is the petition for review on *certiorari*<sup>[1]</sup> in caption, assailing the decision<sup>[2]</sup> dated March 4, 2011 and the resolution<sup>[3]</sup> dated June 13, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 112760.

#### The Antecedents

In a complaint<sup>[4]</sup> dated August 10, 2007, respondent Efren I. Sagad charged the petitioner Sampaguita Auto Transport Corporation (*company*); Andy Adagio, President and General Manager; Monina Ariola Adagio, Vice-President and Finance Manager; Virgilio Olunan (referred to as Olonan by Sagad), Operations Manager; and Gerry Dimate, HRO Officer, with illegal dismissal and damages plus attorney's fees.

Sagad alleged that on May 14, 2006, the company hired him as a regular bus driver, not as a probationary employee as the company claimed. He disowned his purported signature on the contract of probationary employment<sup>[5]</sup> submitted in evidence by the company. He maintained that his signature was forged. He further alleged that on November 5, 2006, he was dismissed by the company for allegedly conniving with conductor Vitola in issuing tickets outside their assigned route.

The company countered that it employed Sagad as a probationary bus driver (evidenced by a probationary employment contract<sup>[6]</sup>) from May 14, 2006 to October 14, 2006; he was duly informed of his corresponding duties and responsibilities.<sup>[7]</sup> He was further informed that during the probationary period, his attendance, performance and work attitude shall be evaluated to determine whether he would qualify for regular employment. For this purpose and as a matter of company policy, an evaluator was deployed on a company bus (in the guise of a passenger) to observe the driver's work performance and attitude.

Allegedly, on September 21, 2006, an evaluator boarded Sagad's bus. The evaluator described Sagad's manner of driving as "*reckless driver, nakikipaggititan, nakikipaghabulan, nagsasakay sa gitna ng kalsada, sumusubsob ang pasahero[.]*"<sup>[8]</sup> Sagad disputed the evaluator's observations. In an explanation (rendered in Filipino),<sup>[9]</sup> he claimed that he could not have been driving as reported because his wife (who was pregnant) and one of his children were with him on the bus. He

admitted though that at one time, he chased an “Everlasting” bus to serve warning on its driver not to block his bus when he was overtaking. He also admitted that once in a while, he sped up to make up for lost time in making trips.

The company further alleged that on October 13, 2006, it conducted a thorough evaluation of Sagad’s performance. It requested conductors who had worked with Sagad to comment on his work. Conductors A. Hemoroz and Israel Lucero revealed that Sagad proposed that they cheat on the company by way of an unreported early bus trip.<sup>[10]</sup> Dispatcher E. Castillo likewise submitted a negative report and even recommended the termination of Sagad’s employment.<sup>[11]</sup> The company also cited Sagad’s involvement in a hit-and-run accident on September 9, 2006 along Commonwealth Avenue in Quezon City while on a trip (bus with Plate No. NYK-216 and Body No. 3094).<sup>[12]</sup> Allegedly, Sagad did not report the accident to the company.

On October 15, 2006, upon conclusion of the evaluation, the company terminated Sagad’s employment for his failure to qualify as a regular employee.<sup>[13]</sup>

### **The Compulsory Arbitration Rulings**

In her decision dated May 8, 2008,<sup>[14]</sup> Labor Arbiter Marita V. Padolina dismissed the complaint for lack of merit. She ruled that the company successfully proved that Sagad failed to qualify as a regular employee. Labor Arbiter Padolina stressed that on October 15, 2006, the company ordered Sagad not to work anymore as his probationary employment had expired. While Sagad claimed that he worked until November 5, 2006, she pointed out that “there is no record to show that he worked beyond October 14, 2006.”<sup>[15]</sup>

Sagad appealed the Labor Arbiter’s ruling. On July 10, 2009, the National Labor Relations Commission (NLRC) rendered a decision<sup>[16]</sup> declaring that Sagad had been illegally dismissed. It held that Sagad was not a probationary employee as the company failed to prove by substantial evidence the due execution of Sagad’s supposed probationary employment contract. It found credible Sagad’s submission that his signature on the purported contract was a forgery. It opined that his signature on the contract was “extremely different” from his signatures in his pleadings and in other documents on record. Further, the NLRC brushed aside the company memorandum dated October 15, 2006<sup>[17]</sup> supposedly terminating Sagad’s probationary employment as there was no showing that the memorandum had been served on him.

The NLRC disregarded Sagad’s alleged infractions that served as grounds for the termination of his employment, holding that his dismissal was not based on these infractions but on his alleged connivance with a conductor in defrauding the company. The NLRC awarded Sagad backwages of P559,050.00 and separation pay of P45,000.00 in lieu of reinstatement, in view of the strained relations between the parties resulting from the filing of the complaint.

Both parties moved for reconsideration of the NLRC decision, to no avail. The company then elevated the case to the CA through a petition for *certiorari* under

### **The CA Decision**

The CA, in its currently assailed decision,<sup>[18]</sup> affirmed the NLRC rulings *in toto*, finding no grave abuse of discretion in the labor tribunal's reversal of the labor arbiter's dismissal of the complaint. It found the "genuineness of respondent's signature on the employment contract is tainted with doubt."<sup>[19]</sup> It agreed with the NLRC that Sagad had been illegally dismissed considering, as it noted, that the grounds the company relied upon for the termination of Sagad's employment were not among the causes for a valid dismissal enumerated under Article 282 of the Labor Code. It added that even if it had been otherwise, the company failed to comply with the twin-notice requirement in employee dismissals.

### **The Petition**

The company seeks the reversal of the appellate court's decision through the present appeal,<sup>[20]</sup> and raises the following issues:

1. Whether it dismissed Sagad illegally; and
2. Whether Sagad is entitled to backwages and separation pay, totaling P604,050.00, after working with the company for barely five months.

The company insists that Sagad entered into a contract of probationary employment with it. It was thus surprised with Sagad's allegation that his signature appearing in the contract was a forgery. It explained that his signature on the contract is the same as his signatures on his employment papers (which include the probationary employment contract). In any event, it faults the NLRC for not considering other pieces of evidence indicating Sagad's actual employment status.

The company points out that one such piece of competent and compelling evidence is Sagad's admission of the nature of his employment expressed in his letter dated October 16, 2006, addressed to Adagio and Olunan.<sup>[21]</sup> In this letter, he asked for another chance to work with the company.

The company posits that with the letter, Sagad acknowledged that his probationary employment had expired.<sup>[22]</sup>

The company maintains that it terminated Sagad's employment in good faith. They are not expected to follow the procedure for dismissing a regular employee, as the NLRC opined, considering that Sagad was merely on probation. Lastly, it contends that the award of backwages and separation pay to Sagad amounting to P604,050.00 is unwarranted and confiscatory since he worked for only five months. It laments that the award would put a premium on reckless driving and would encourage other drivers to follow Sagad's example.

The company disputes the NLRC's basis for the award — Sagad's purported average daily commission of P1,000.00 — as non-existent. They contend in this respect that the payslips Sagad submitted to the NLRC rarely showed his daily commission to reach P1,000.00. It explains that Sagad presented only one (1) payslip for

November 2006, five (5) for October 2006, one (1) each for July, August and September 2006. It posits that the company payrolls from June 29, 2006 to October 8, 2006 showed that his daily commissions were below P1,000.00.

### **The Case for Sagad**

Through his Comment (on the Petition),<sup>[23]</sup> Sagad asks that the petition be denied due course. He presents the following arguments:

1. He was not a probationary employee. The signature on the alleged probationary employment contract attributed to him was not his; it was a forgery, as confirmed by the NLRC and the CA. The same thing is true with the supposed letter (dated October 16, 2006)<sup>[24]</sup> in which he allegedly appealed to be given another chance to work for the company. Not only was the letter not in his handwriting (it allegedly belonged to Vitara, a bus conductor of the company), the signature on the letter attributed to him was also falsified.

2. On the assumption that he was a probationary employee, it is not correct to say that he failed to qualify for regular employment. The written statements of bus conductors Hemoroz and Lucero<sup>[25]</sup> regarding his alleged attempt to cheat on the company are without probative value. The statements were not under oath and the irregular acts he allegedly proposed could only be done by the conductors.

The company's claim that he figured in a "hit-and-run" accident on September 9, 2006, which he allegedly did not report to management, is not also correct. It was not his bus that was involved in the accident that he duly reported to the management. Further, the company's contention that he drove recklessly on September 16, 2006 cannot be used to support his dismissal as he had already been penalized for the incident with a five-day suspension.<sup>[26]</sup>

Also, the company grounds in Castillo's evaluation report<sup>[27]</sup> (that the company relied upon to justify the non-renewal of his contract) are not just causes for the termination of his employment as the CA correctly ruled.

3. He was a regular employee. He continued to work as driver until November 4, 2006. The company's notice of termination of his employment<sup>[28]</sup> was not served on him because no such letter existed. If his probationary employment was to expire on October 14, 2006, he asks: why was he evaluated only on October 13 and 14, 2006 and why did the company serve him the termination notice only on October 15, 2006, when he was supposed to have been separated the previous day, October 14, 2006? He adds: when was the notice served on him that would have prompted him to write the company a letter on October 16, 2006 to ask for a second chance? All these nagging questions, he stresses, demonstrate the incredibility of the company's claim that he was a probationary employee.

4. He does not have to prove his denial that the signatures on the above-mentioned documents were not really his. He posits that evidence need not be given in support of a negative allegation and this is particularly true in dismissal cases where the burden of proof is on the employer.

5. The petition suffers from a procedural defect as it raises only questions of fact

and not of law, in violation of Rule 45 of the Rules of Court.

### **The Court's Ruling**

#### ***The procedural issue***

This Court, as a rule, only reviews questions of law in a Rule 45 petition for review. In labor cases, the factual findings of the labor arbiter and of the NLRC are generally respected and, if supported by substantial evidence, accorded finality. This rule, however, is not absolute. When the factual findings of the CA conflict with those of the labor authorities, the Court is forced to review the evidence on record.<sup>[29]</sup>

In this case, the labor arbiter's factual conclusions, on the one hand, and those of the NLRC and the CA, on the other hand, differ. The labor arbiter found that Sagad was a probationary employee and was validly dismissed for his failure to qualify for regular employment, whereas the NLRC and the CA concluded that he was a regular employee and was illegally dismissed. We thus find the need to review the facts in the present labor dispute.

#### ***The merits of the case***

After a review of the records, we are convinced that Sagad was dismissed, not as a probationary employee, but as one who had attained regular status. The company's evidence on Sagad's purported hiring as a probationary employee is inconclusive. To start with, Sagad denied that he entered into a probationary employment contract with the company, arguing that the signature on the supposed contract was not his.<sup>[30]</sup> He also denied receiving the alleged notice<sup>[31]</sup> terminating his probationary employment. The same thing is true with his purported letter<sup>[32]</sup> asking that he be given another chance to work for the company. He asserts that not only is the letter not in his handwriting, the signature on the letter was also not his.

The submissions of the parties on the issue created a doubt on whether Sagad really entered into a probationary employment contract with the company. The NLRC resolved the doubt in Sagad's favor, ruling that Sagad's signature on the contract was not his, because it was a forgery. It declared that his signature on the contract "is extremely different from those in his pleadings and from the other documents on record[,]"<sup>[33]</sup> without explaining how and why the two sets of signatures were vastly different. Lending further support to the NLRC conclusion, which the CA upheld, is its finding that the company failed to refute Sagad's denial of his signature in the contract, which the labor tribunal considered as an admission of the veracity of Sagad's statement, pursuant to the Rules of Court.<sup>[34]</sup>

Independently of the above discussion and even if we were to consider that Sagad went through a probationary period, the records indicate that he was retained even beyond the expiration of his supposed probationary employment on October 14, 2006. As the NLRC noted, Sagad claimed that he was dismissed by the company on November 5, 2006, after he was accused of conniving with conductor Vitola in issuing tickets outside their assigned route.

The company never refuted this particular assertion of Sagad and its silence can only mean that Sagad remained in employment until November 4, 2006, thereby