

SECOND DIVISION

[G.R. No. 173291, February 08, 2012]

ROMEO A. GALANG, PETITIONER, VS. CITYLAND SHAW TOWER, INC. AND VIRGILIO BALDEMOR, RESPONDENTS.

D E C I S I O N

BRION, J.:

We resolve the petition for review on *certiorari*^[1] assailing the decision^[2] dated March 27, 2006 and the resolution^[3] dated June 21, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 91037.

The Antecedents

On August 9, 2002, petitioner Romeo A. Galang filed a complaint^[4] for illegal dismissal with several money claims, including damages and attorney's fees, against the respondents Cityland Shaw Tower, Inc. (*Cityland*) and its Building Manager, Virgilio Baldemor.

Galang alleged on compulsory arbitration^[5] that after the expiration of his employment contracts with the agencies providing maintenance services to Cityland, he was absorbed as a janitor by Cityland with a promise of regular employment after the completion of his six-month probation. He claimed that even after the lapse of the period, he continued working for Cityland although he had no idea about his employment status. He did not know his status for certain until he was shown a document on May 21, 2002 informing him that his employment would be terminated effective May 20, 2002.

The respondents countered^[6] that Cityland absorbed Galang as a casual employee after the expiration of his contract with *Gayren Maintenance Services*. They alleged that during his employment with them, they found him to be remiss in the performance of his job and he failed, too, to conduct himself as a good employee. At times, he would disobey the orders of his supervisor, Eva Tupas,^[7] Cityland's janitorial services head.

The respondents further alleged that in the face of Galang's negative work attitude and job performance, Cityland charged him with gross insubordination, harassment of his co-employees and conduct unbecoming an employee.

On one occasion, he took pictures of his co-janitors after he allegedly lost P4,000.00 in his locker; he suspected that the culprit was one of the janitors. This caused agitation among the janitors, prompting Tupas to investigate the incident. She called the janitors, including Galang, to a meeting. At the meeting, Galang told Tupas that she was not qualified to be his supervisor. He also verbally insulted and offended

her in the presence of her subordinates.

Additionally, the janitors, security guards and other employees disclosed that Galang exhibited an air of superiority towards them and would always shout whenever misunderstandings occurred. Galang's alleged transgressions were the subject of Tupas' memo to Moralde Arrogante, Cityland's President.^[8]

The respondents stressed that Cityland's Board of Directors terminated Galang's services, for gross insubordination, effective May 20, 2002, after a "comprehensive examination of the accusation against complainant."^[9]

Cityland, through Baldemor's reply to the labor arbiter's summons,^[10] denied liability for Galang's money claims, maintaining that either the claim had no basis or Galang had already been granted the benefit.

The Compulsory Arbitration Rulings

In a decision dated September 22, 2003,^[11] Labor Arbiter Fe Superiaso-Cellan found that Galang had been illegally dismissed. Labor Arbiter Cellan ruled that Cityland failed to present evidence to support Galang's dismissal for cause after observance of due process. She observed that the alleged board resolution dismissing Galang was unsubstantiated and self-serving, and carries no probative value. She also noted that there was no proof that Galang was notified of the charges against him before he was dismissed.

Labor Arbiter Cellan ordered Cityland to immediately reinstate Galang; if reinstatement is not legally feasible, to pay him separation pay at one-half (1/2) month salary for every year of service, backwages of P134,305.00 (latest computation), 13th month pay differential of P3,601.22, and service incentive leave pay of P1,295.00.

Labor Arbiter Cellan absolved Baldemor from liability, absent a showing that he exceeded his authority in Galang's dismissal. She also denied Galang's claim for damages and attorney's fees as Galang failed to prove that his dismissal was attended by bad faith or was done in a wanton and malevolent manner. Moreover, he was not represented by a counsel.

On appeal, the National Labor Relations Commission (NLRC) affirmed the labor arbiter's findings.^[12] The respondents moved for reconsideration, but the NLRC denied the motion in its resolution of May 31, 2005.^[13] Cityland then elevated the case to the CA through a Rule 65 petition for *certiorari*.

The CA Decision

On March 27, 2006, the CA granted the petition.^[14] It annulled the NLRC's February 28, 2005 decision and declared that Galang had been dismissed for a just cause. However, it ordered Cityland to pay him nominal damages of P30,000.00 for its violation of Galang's right to procedural due process, in accordance with *Agabon v. NLRC*.^[15]

The CA took exception to the conclusion of both the labor arbiter and the NLRC that the respondents failed to discharge the burden of proving that Galang had been dismissed for cause. It pointed out that the records are replete with proof that Galang committed acts justifying the termination of his employment.

The CA stressed that prior to the incidents leading to Galang's dismissal, he had already committed serious negligence in his work. It referred to the flooding of the 32nd floor of the condominium where he was assigned, due to his failure to secure tightly the valve filter room.^[16] The flooding severely damaged the building's elevator, resulting in repair work amounting to P23,952.65. The CA stressed that despite this act of gross negligence, he still remained in employment and it was only "on account of subsequent events x x x that [the respondents] were compelled to dismiss him."^[17]

The CA upheld Galang's dismissal on the strength of: (1) Tupas' *Sinumpaang Salaysay*,^[18] executed and notarized on April 14, 2005, reiterating the statements she made in her memorandum of May 20, 2002;^[19] (2) Baldemor's affidavit,^[20] executed and notarized also on April 14, 2005; and, (3) the affidavit^[21] jointly executed, notarized on April 14, 2005, by the members of Cityland's audit team (Arrogante, Emilio dela Cruz and Baldemor) which "specified the acts comprising [Galang's] stubborn nature[,] as well as acts of insubordination, disrespect of superiors, gross misconduct and gross negligence."^[22]

While the CA had no doubt that Galang's dismissal was for cause, it nonetheless believed that he was not afforded procedural due process for lack of notice. The CA rejected Cityland's explanation that it deviated from the rule because the circumstances of the case left it no room to comply with the requirement. The CA noted that although the meeting – which Tupas convened, was intended to address the janitors' complaints against Galang – the latter had no knowledge of the charges at that point in time. The CA stressed that Galang should have been given a reasonable time to defend himself. Accordingly, it considered Galang's separation as a dismissal for cause, but without the observance of procedural due process. Consequently, it awarded Galang nominal damages of P30,000.00, pursuant to *Agabon*.

After the denial of the motion for reconsideration that he subsequently filed, Galang appealed to this Court under Rule 45 of the Rules of Court.

The Case for Galang

In his submissions,^[23] Galang posits that the appellate court gravely erred in (1) holding that there was a just cause for his dismissal based on evidence not presented before the labor arbiter and the NLRC, and (2) in applying the *Agabon* doctrine in his case.

On the first ground, Galang contends that in granting Cityland's appeal, the CA relied heavily on Tupas' *Sinumpaang Salaysay*,^[24] and on the joint affidavit^[25] of Baldemor, Arrogante and Dela Cruz, despite the fact that these pieces of evidence were not presented before the labor arbiter and the NLRC; they were presented only on a motion for reconsideration. He points out that he filed the case as early as

August 9, 2002, yet it was only in April 2005 when Cityland submitted the self-serving affidavits to the NLRC.

Galang claims that except for Baldemor's affidavit,^[26] Cityland had difficulties in securing the affidavits during the early stages of the case and it was only after three years that the affiants executed the affidavits to save their own employment. He argues that the affidavits are not admissible in evidence.

On the second ground, Galang submits that the *Agabon* ruling cannot be applied to his case as it cannot be applied retroactively; *Agabon* was not yet in place and *Serrano v. NLRC*^[27] was the prevailing doctrine. Under *Serrano*, failure to comply with the notice requirement in employee dismissals for cause entitles the employee to full backwages.

The Respondents' Position

In their bid to have the petition dismissed, the respondents filed a Comment^[28] and a Memorandum^[29] raising the following issues: (1) whether the CA committed a grave abuse of discretion in declaring that Galang had been dismissed for cause; (2) whether the affidavits of Cityland's witnesses constitute new evidence and, therefore, not admissible; and (3) whether the CA erred in applying the *Agabon* doctrine in this case.

The respondents contend that the CA committed no error; neither did it commit grave abuse of discretion in rejecting the findings of the labor arbiter and the NLRC that Galang had been illegally dismissed; and that Cityland's evidence has no probative value. In a comparison of evidence, Galang did not offer any piece of evidence, except his identification card, to establish his claim or to refute their assertions. They posit that the evidence they presented satisfied the burden of proof required of them.

The respondents take strong exception to Galang's submission that the affidavits of their witnesses lack probative value because they were not presented to the labor arbiter. They argue that the rules of evidence prevailing in courts of law are not controlling in labor cases. They stress that the affidavits were intended to elucidate, corroborate or bolster the evidence already presented to the labor arbiter. One such piece of evidence is Tupas' investigation report^[30] which the labor arbiter rejected because the minutes of the meeting were not submitted at the arbitration proceedings. They, therefore, maintain that while the affidavits were submitted for the first time to the NLRC, they, nonetheless, contain factual statements to clarify the evidence earlier presented to the labor arbiter. They contend that the CA committed no error in accepting the affidavits, especially considering that Galang did not deny the contents of Cityland's documentary evidence nor dispute them at any stage of the proceedings.

Finally, the respondents take exception to Galang's position that the CA erred in applying the *Agabon* doctrine to his case, instead of *Serrano* which was the prevailing jurisprudence at the time. They maintain that Galang's argument is premised on the assumption that he had acquired a vested right under the decisions of the labor arbiter and the NLRC. They stress that the labor authorities' decisions have not yet attained finality and, therefore, cannot be the basis of the acquisition