675 Phil. 108

SECOND DIVISION

[G.R. No. 195033, October 12, 2011]

AGG TRUCKING AND/OR ALEX ANG GAEID, PETITIONERS, VS. MELANIO B. YUAG, RESPONDENT.

D E C I S I O N

SERENO, J.:

In this Petition for Review on Certiorari under Rule 45 with Prayer for Issuance of Writ of Temporary and/or Permanent Injunction, assailed is the 23 June 2010 Decision of the Court of Appeals (CA), Cagayan de Oro City, in CA-G.R. SP No. 01854-MIN.[1] Reversing the 30 November 2006 Resolution of the National Labor Relations Commission and reinstating, with modification, the 30 August 2006 Decision of the labor arbiter, the CA disposed as follows:

> WHEREFORE, premises considered, the instant Petition is hereby GRANTED, and the Resolution dated November 30, 2006 is hereby REINSTATED subject to MODIFICATION, thus:
>
> Private respondent Alex Ang Gaeid and/or AAG Trucking is hereby ORDERED to pay petitioner Melanio B. Yuag or his heirs or assigns the following:
>
> (1) FULL BACKWAGES, inclusive of all allowances, other benefits or their monetary equivalent computed from the time petitioner's compensation was withheld from him starting December 6, 2004 until the time he was employed by his new employer (Bernie Ragandang), instead of the date of his supposed reinstatement which We no longer require as explained above.
>
> (2) SEPARATION PAY (in lieu of the supposed reinstatement) equivalent to one-half (½) month pay for every year of service. A fraction of at least six (6) months shall be considered one (1) whole year.
>
> (3) TEMPERATE DAMAGES in the amount of Five Thousand Pesos (Php5,000.00) for the financial loss suffered by the petitioner when he was abruptly dismissed as a truck driver on December 6, 2004 (during or around the Christmas season), although the exact amount of such damage is incapable of exact determination); and
>
> (4) EXEMPLARY DAMAGES in the amount of Five Thousand Pesos (Php5,000.00) as a corrective measure in order to set out an example to serve as a negative incentive or deterrent against socially deleterious actions.

> Considering that a person's wage is his/her means of livelihood i.e., equivalent to life itself, this decision is deemed immediately executory pending appeal, should the private respondent decide to elevate this case to the Supreme Court.
>
> SO ORDERED.[2]

The Motion for Reconsideration filed by petitioner was denied by the CA.[3] Hence, this Petition.

The facts of the case are simple. Petitioner Alex Ang Gaeid had employed respondent Melanio Yuag as a driver since 28 February 2002. He alleged that he had a trucking business, for which he had 41 delivery trucks driven by 41 drivers, one of whom was respondent.[4] His clients were Busco Sugar Milling Co., Inc., operating in Quezon, Bukidnon; and Coca-cola Bottlers Company in Davao City and Cagayan de Oro City.[5] Respondent received his salary on commission basis of 9% of his gross delivery per trip. He was assigned to a ten-wheeler truck and was tasked to deliver sacks of sugar from the Busco Sugar Mill to the port of Cagayan de Oro.[6] Petitioner noticed that respondent had started incurring substantial shortages since 30 September 2004, when he allegedly had a shortage of 32 bags, equivalent to ?48,000; followed by 50 bags, equivalent to ?75,000, on 11 November 2004.[7] It was also reported that he had illegally sold bags of sugar along the way at a lower price, and that he was banned from entering the premises of the Busco Sugar Mill.[8] Petitioner asked for an explanation from respondent who remained quiet.[9]

Alarmed at the delivery shortages, petitioner took it upon himself to monitor all his drivers, including respondent, by instructing them to report to him their location from time to time through their mobile phones.[10] He also required them to make their delivery trips in convoy, in order to avoid illegal sale of cargo along the way.[11]

Respondent, along with 20 other drivers, was tasked to deliver bags of sugar from Cagayan de Oro City to Coca-Cola Bottlers Plant in Davao City on 4 December 2004.[12] All drivers, with the exception of Yuag who could not be reached through his cellphone, reported their location as instructed. Their reported location gave evidence that they were indeed in convoy.[13] Afterwards, everyone, except Yuag, communicated that the delivery of their respective cargoes had been completed.[14] The Coca-Cola Plant in Davao later reported that the delivery had a suspiciously enormous shortage.[15]

Respondent reported to the office of the petitioner on 6 December 2004. Allegedly in a calm and polite manner, petitioner asked respondent to explain why the latter had not contacted petitioner for two days, and he had not gone in convoy with the other trucks, as he was told to do.[16] Respondent replied that the battery of his cellphone had broken down.[17] Petitioner then confronted him allegedly still in a polite and civilized manner, regarding the large shortages, but the latter did not

answer.[18] Petitioner afterwards told him to "just take a rest" or, in their vernacular, "*pahulay lang una*."[19] This exchange started the dispute since respondent construed it as a dismissal. He demanded that it be done in writing, but petitioner merely reiterated that respondent should just take a rest in the meanwhile.[20] The former alleged that respondent had offered to resign and demanded separation pay. At that time, petitioner could not grant the demand, as it would entail computation which was the duty of the cashier.[21] Petitioner asked him to come back the next day.

Instead of waiting for another day to go back to his employer, Respondent went to the Department of Labor-Regional Arbitration Board X, that very day of the confrontation or on 6 December 2004. There he filed a Complaint for illegal dismissal, claiming his separation pay and 13th month pay.[22] Subsequently, after the delivered goods to the Coca-Cola Plant were weighed on 9 December 2004, it was found out that there was a shortage of 111 bags of sugar, equivalent to ? 166,000.[23]

Respondent argued that he was whimsically dismissed, just because he had not been able to answer his employer's call during the time of the delivery.[24] His reason for not answering was that the battery pack of his cellphone had broken down.[25] Allegedly enraged by that incident, his employer, petitioner herein, supposedly shouted at him and told him, "*pahuway naka*."[26] When he asked for a clarification, petitioner allegedly told him, "*wala nay daghan istorya, pahulay na*!" This statement was translated by the CA thus: "No more talking! Take a rest!"[27] He then realized that he was being dismissed. When he asked for his separation pay, petitioner refused.[28] Respondent thus filed a Complaint for illegal dismissal.

Ruling of the Labor Arbiter

On 30 August 2006, labor arbiter Nicodemus G. Palangan rendered his Decision sustaining respondent's Complaint for illegal dismissal.[29] The labor arbiter made a discourse on the existence of an employer-employee relationship between the parties. In granting the relief sought by petitioner, the labor arbiter held as follows:

> For failure on the part of the respondent to substantially prove the alleged infraction (shortages) committed by complainant and to afford him the due process mandated by law before he was eventually terminated, complainant's dismissal from his employment is hereby declared illegal and the respondent is liable to reinstate him with backwages for one (1) year but in view of the strained relationship that is now prevailing between the parties, this Arbitration Branch finds it more equitable to grant separation pay instead equivalent to one (1) month per year of service based on the average income for the last year of his employment CY 2004 which is P9,974.51, as hereby computed: ...[30]

Thus, the labor arbiter awarded respondent separation pay and proportionate 13th month pay for 2004 and 13th month pay differential for 2003.[31]

Petitioner appealed to the NLRC, alleging that the latter erred in finding that respondent had been illegally dismissed and that the utterance of "pahulay lang una" meant actual dismissal.[32] He also alleged that the pecuniary awards of separation pay, backwages, proportionate 13th month pay and differential were erroneous. He argued that *pahulay lang una* was not an act of dismissal; rather, he merely wanted to give respondent a break, since the company's clients had lost confidence in respondent. Thus, the latter allegedly had to wait for clients other than Busco Sugar Mill and Coca-Cola, which had banned respondent from entering their premises.

Ruling of the NLRC

In a Resolution dated 30 November 2006,[33] the NLRC reversed the labor arbiter's ruling, holding as follows:

> While the general rule in dismissal cases is that the employer has the burden to prove that the dismissal was for just or authorized causes and after due process, said burden is necessarily shifted to the employee if the alleged dismissal is denied by the employer, as in this case, because a dismissal is supposedly a positive and unequivocal act by the employer. Accordingly, it is the employee that bears the burden of proving that in fact he was dismissed. It was then incumbent upon complainant to prove that he was in fact dismissed from his job by individual respondent Alex V. Ang Gaeid effective December 6, 2004 when the latter told him: Pahuway naka!" (You take a rest). Sadly, he failed to discharge that burden. Even assuming that Mr. Gaeid had the intention at that time of dismissing complainant from his job when he uttered the said words to him, there is no proof showing of any overt act subsequently done by Mr. Gaeid that would suggest he carried out such intention. There is no notice of termination served to complainant. Literally construing the remarks of Mr. Gaeid as having been dismissed from his job, complainant immediately filed the instant complaint for illegal dismissal on the same day without first ascertaining the veracity of the same. The how, why and the wherefore of his alleged dismissal should be clearly demonstrated by substantial evidence. Complainant failed to do so; hence, he cannot claim that he was illegally dismissed from employment."[34]

The NLRC further held thus:

> At best, complainant should be considered on leave of absence without pay pending his new assignment. Not having been dismissed much less illegally, complainant is not entitled to the awarded benefits of backwages and separation pay for lack of legal and factual basis."[35]

The NLRC likewise held that the complainant was not entitled to 13th month pay, since he was paid on purely commission basis, an exception under Presidential Decree No. 851 - the law requiring employers to pay 13th month pay to their

employees.[36]

Respondent moved for reconsideration,[37] in effect arguing that petitioner should not be allowed to change the latter's theory. Supposedly, the argument in the position paper of petitioner was that there was no employer-employee relationship between them, and that he was compelled to dismiss respondent because of the heavy losses the latter was bringing to petitioner. In this Motion for Reconsideration, respondent admitted that his wife had received the Resolution on 12 January 2007, but that he learned of it much later, on 7 February 2007, justifying the untimely filing of the motion.[38]

The NLRC denied the Motion for Reconsideration for being filed out of time.[39] He and his counsel each received notice of the NLRC's Resolution dated 30 November 2006, reversing the labor arbiter's Decision on 11 January 2007,[40] but they only filed the motion 25 days after the period to file had already lapsed.[41] Respondent, thus, sought recourse from the CA through a Petition for a Writ of Certiorari under Rule 65.

The CA Ruling

On 23 June 2010, brushing aside the "technicality" issue, the CA proceeded to resolve the substantive issues which it deemed important, such as whether there was an employer-employee relationship between petitioner and respondent, and whether it was correct for the NLRC to declare that respondent was not illegally dismissed.[42] It completely reversed the NLRC and came up with the dispositive portion mentioned at the outset.

The Issues

Petitioner is now before us citing factual errors that the CA allegedly committed, such as not appreciating petitioner's lack of intention to dismiss respondent. These factual errors, however, are beyond this Court to determine, especially because the records of the proceedings at the level of the labor arbiter were not attached to the Petition. The Court is more interested in the legal issues raised by petitioner and rephrased by the Court as follows:

I

THE COURT OF APPEALS ERRED IN REVERSING THE NLRC WITHOUT ANY FINDING OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION;

II

THE COURT OF APPEALS ERRED IN ENTERTAINING RESPONDENT'S PETITION NOTWITHSTANDING THE FACT THAT HIS MOTION FOR RECONSIDERATION OF THE NLRC'S DECISION WAS FILED OUT OF TIME;

III