

THIRD DIVISION

[G.R. No. 164118, February 09, 2010]

**SARGASSO CONSTRUCTION AND DEVELOPMENT CORPORATION,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION
(4TH DIVISION) AND GORGONIO MONGCAL, RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Court, praying that the Decision^[1] of the Court of Appeals (CA) dated January 27, 2004 dismissing petitioner's petition for *certiorari*, and the CA Resolution^[2] dated May 28, 2004, denying petitioner's motion for reconsideration, be reversed and set aside.

The undisputed facts, as accurately narrated by the Labor Arbiter, are as follows.

x x x complainant [herein respondent Mongcal] alleged that on May 7, 1993, he was employed as a payloader operator by the respondent company; that his latest assignment was in La Castellana, Negros Occidental for the period from March to June 1995 in connection with the respondent's [herein petitioner] road construction project at La Castellana; that as payloader operator, he was required to be ready at any time to load dump trucks as so requested by truck drivers even at early hours of the morning; that he was paid a monthly salary of not less than P3,900.00 for working seven (7) days a week including Saturdays, Sundays and holidays.

That on June 29, 1995 at around 2:30 o'clock in the morning, a dump truck driver of the respondent company for truck No. 25, requested complainant to load his dump truck with construction materials at the crusher site; that fully aware of the policy of the company allowing dump truck drivers to start hauling materials even at early hours of the morning and considering that truck drivers were required by the company to haul a quota of the number of truck loads of aggregates to be delivered to the construction site everyday as per instruction given to them, complainant willingly obliged to do his job; that it was later on discovered that said Aldrin Rasote had diverted the delivery of said materials loaded to another person; that as a result of this incident, complainant was dismissed from his job effective 30 June 1995. Complainant denies having a hand nor was he involved in the act committed by truck driver Aldrin Rasote.

Complainant alleged that the respondent corporation filed a criminal

complaint for theft against him six (6) months after 29 June 1995, the date of the alleged commission of the crime charged and only after coming to know that he had filed a labor case against the company with this office.

Complainant further alleged that his dismissal from work was effected without any valid ground and violative of the rules on due process; that he was not informed of the reasons for his termination from the service nor was he given an opportunity to explain his side, and hence, he was deprived of his means of livelihood without due process of law. Hence, he prays for reinstatement, backwages, and separation pay if reinstatement is no longer feasible.

Complainant also claims for moral and exemplary damages for having been dismissed by respondent without cause and in order to harass and to discourage him from pursuing his case against the respondent, he was falsely charged of the crime of theft; that these are all indications of bad faith and this, having been done in a wanton, oppressive or malevolent manner, complainant claims that he should be awarded moral and exemplary damages in the amount of P100,000.00 and P50,000.00, respectively.

On the other hand, in their memorandum, the respondents aver that complainant was validly dismissed from his job based on loss of confidence due to commission of offense constituting act of dishonesty and flagrant violation of respondent's policy.

Respondents aver that complainant was employed as a contract/project employee on 18 April 1995 and later as payloader operator at its crusher site at Sitio Lapak, La Castellana, Negros Occidental; that on 29 June 1995, or two (2) months and eleven (11) days after complainant was hired, he was caught together with another respondent's employee, Aldrin Rasote, a dump truck driver, stealing crushed aggregate belonging to respondent company; that complainant operated his payloader on the unholy hour of 2:00 o'clock in the early morning and loaded the crushed aggregate unto the dump truck; that this act of loading crushed aggregates during this particular date and time was unauthorized, as there was no memorandum nor instruction from the management for complainant to perform his job on that particular day.^[3]

The Labor Arbiter ruled in favor of petitioner by dismissing the complaint but ordered petitioner to pay herein private respondent P1,000.00 for failure to observe due process requirements of law. On appeal, the National Labor Relations Commission (NLRC) overturned the Labor Arbiter's ruling and issued a Decision the dispositive portion of which reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered setting aside the appealed decision and another one entered ordering respondent Sargasso Construction and Development Corporation to pay the

complainant Gorgonio Mongcal as follows:

1. SEPARATION PAY	P 40,560.00
2. BACKWAGES	<u>164,450.00</u>
TOTAL	P205,010.00

The other claims and the case against respondent Mel J. Go and Felipe S. Penecilla are dismissed for lack of merit.

SO ORDERED.^[4]

The case was then elevated to the CA *via* a petition for *certiorari* and on January 27, 2004, the CA promulgated the assailed Decision which disposed thus:

WHEREFORE, premises considered, the instant petition is **DISMISSED**. The assailed Decision and Resolution of the National Labor Relations Commission, Fourth Division, Cebu City, dated November 29, 1999 and November 22, 2001, respectively, are hereby **AFFIRMED** with **MODIFICATION**: the separation pay should be computed from the date of private respondent's employment until the finality of this decision while his backwages should be computed from the time of his alleged dismissal up to the finality of this decision, and in both cases, using his monthly salary of P3,380.00 as basis of computation.

SO ORDERED.^[5]

Petitioner moved for reconsideration but the same was denied per CA Resolution dated May 28, 2004. Hence, this petition where it is alleged that:

I.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR IN DISREGARDING THE FINDINGS OF THE LABOR ARBITER WHICH ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.

II.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR IN HOLDING THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED.

III.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR IN SUSTAINING THE AWARD OF SEPARATION PAY AND BACKWAGES TO PRIVATE RESPONDENT.^[6]

The Court finds the petition unmeritorious.