

FIRST DIVISION

[G.R. No. 187005, April 07, 2010]

FERDINAND A. PANGILINAN, PETITIONER, VS. WELLMADE MANUFACTURING CORPORATION, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

Petitioner Ferdinand Pangilinan was employed by Wellmade Manufacturing Corporation (respondent) on July 2, 2001 as Key Account Specialist tasked to sell Speed Detergent products to supermarkets and groceries within his assigned area. In addition to his monthly salary of P9,300.00, he received sales commissions based on volume of sales, and was provided with a service vehicle.

On October 31, 2003, petitioner used the service vehicle to travel to Naga City without approval from respondent. While returning to Manila on November 3, 2003, the vehicle broke down and it took more than two days to have it repaired. Petitioner admitted having used the vehicle without respondent's approval and reported the incident ^[1] on November 8, 2003 to respondent's National Capital Region Sales Supervisor, Ireneo Tomas (Tomas).

Tomas and the District Sales Manager, Noel de la Cruz (de la Cruz) thereupon sent on November 13, 2003 a memorandum^[2] to petitioner requiring him to explain within 48 hours why he should not be disciplined for the following charges: unofficial use of the service vehicle; absence without prior application and approval for 2-3 days (October 31 and November 2-3, 2003); use of company time or materials to do unauthorized work; insubordination; and "moonlighting.

By memorandum^[3] of November 17, 2003, petitioner, reiterating his earlier admission of his unauthorized use of the service vehicle, explained that the vehicle had to undergo major repairs for two days the expenses for which he himself shouldered. He stated that he would accept any sanctions that may be imposed upon him.

In another memorandum^[4] dated December 15, 2003, respondent required petitioner to explain within 24 hours his unauthorized absence for the period November 22 to December 15, 2003, warning him that failure to submit any explanation would mean forfeiture of his right to due process.

By letter^[5] of December 18, 2003, petitioner explained that he did not report for work starting November 22 because on November 21, he was told by his supervisors, Tomas and De la Cruz, to resign; and that he was willing to resign, as requested, provided that the benefits due him would be given. It appears, however, that petitioner's letter was received by respondent only on January 20, 2004, hence,

in the interim or on December 22, 2003 and January 5, 2004, respondent sent petitioner memoranda^[6] giving him a last chance to explain his unauthorized absences.

On January 22, 2004, petitioner filed with the Labor Arbiter a complaint^[7] for constructive dismissal. Meanwhile, by Notice of Termination^[8] dated February 9, 2004, respondent dismissed petitioner, finding him liable for the abovementioned charges, and considering his consecutive absences as abandonment.

By Decision^[9] of December 2, 2005, Labor Arbiter Isabel Ortiguerra found respondent liable for illegal dismissal and ordered it to pay petitioner separation pay computed at one month for every year of service, as well as proportionate 13th month pay and service incentive leave pay. The Labor Arbiter noted that the charges of unauthorized absences, unauthorized use of company time and materials and insubordination occurred in relation to the admitted unauthorized use of the service vehicle; and that the "moonlighting" charge was not substantiated. The Arbiter also observed that respondent neither controverted nor squarely addressed petitioner's claim of being told to resign by his superiors to thus lead him to incur consecutive absences upon which his dismissal was anchored.

Additionally, the Arbiter, noting that petitioner did not receive the last two memoranda of respondent which explained his inability to air his side, held that respondent had no just cause to terminate the services of petitioner and did not afford him due process.

Noting, however, that petitioner's unauthorized use of his service vehicle is a serious offense for which he "should not be allowed to go scot-free," the Arbiter awarded separation pay instead of reinstatement.

Both parties appealed to the National Labor Relations Commission (NLRC). By Resolution^[10] of November 28, 2007, the NLRC granted both appeals by affirming and modifying the Labor Arbiter's Decision, viz:

WHEREFORE, premises considered, both parties' appeals are partly granted. The Executive Labor Arbiter's assailed Decision in the above-entitled case is hereby **AFFIRMED** with **MODIFICATION**.

The Executive Labor Arbiter's finding that Complainant was illegally dismissed from his employment is hereby **AFFIRMED**. Respondent is ordered to reinstate Complainant to his former position and to pay him his full backwages, computed from November 22, 2003 up to the time of his actual reinstatement, which, as of September 22, 2007, have already accumulated to P470,305.77.

Respondent is further ordered to pay Complainant attorney's fees equivalent to ten percent (10%) of his total monetary award.

The award of separation pay is **DELETED** for lack of legal basis, but the award of 13th month pay for P8,339.00 and service incentive leave pay for P3,576.92 is **AFFIRMED**.