

THIRD DIVISION

[G.R. No. 188223, July 05, 2010]

SENTINEL INTEGRATED SERVICES, INC., PETITIONER, VS. RIO JOSE REMO, RESPONDENT.

DECISION

BRION, J.:

Sentinel Integrated Services, Inc. (*Sentinel*) challenges, in this petition for review on *certiorari*,^[1] the decision^[2] and the resolution^[3] of February 12, 2009 and June 3, 2009, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 99550.^[4]

The challenged CA rulings reversed and set aside the resolution of the National Labor Relations Commission (NLRC) dated January 31, 2007,^[5] that in turn affirmed the labor arbiter's decision dated January 31, 2006.^[6] **The labor arbiter's decision upheld the dismissal of respondent Rio Jose Remo (Remo) on the ground of retrenchment.** (Remo served Sentinel for almost twenty ^[20] years, commencing employment on March 21, 1986 as a janitor, and rising to the position of operations officer in 2005.)

The CA Decision

The CA ruled that the NLRC committed grave abuse of discretion in upholding Remo's dismissal on the ground of retrenchment. The appellate court found that Sentinel failed to discharge the burden of proving that the losses it incurred warranted Remo's dismissal. The CA rejected Sentinel's financial statements from 1995 to 2005 (which were submitted during the compulsory arbitration) in the absence of evidence that these were "fully audited by an independent external auditor." Also, it held that the NLRC should not have factored in the P5 million awarded by this Court in another case^[7] as an actual loss because the award, although final, could still be the subject of compromise. The CA considered the hiring of a replacement (Marcelo Albay) for Remo, as an indication that Sentinel's financial distress was not as serious as it claimed, and that retrenchment was not the actual reason for Remo's dismissal. Lastly, the CA pointed out that there was no showing that other less drastic means had been tried and found insufficient or inadequate before Sentinel resorted to retrenchment - a jurisprudential requisite in retrenchments.^[8] It, therefore, opined that Sentinel did not act in good faith in terminating Remo's employment.

The Parties' Position

Sentinel mainly submits that it sufficiently proved that it was suffering from financial losses to justify Remo's retrenchment; thus, Remo's dismissal from employment was valid. It contends that the appellate court committed reversible error in: (1)

failing to consider its audited financial statements as basis for the retrenchment; (2) ruling that the P5 million awarded by the Court in an earlier case should not have been included in its losses; and (3) ruling that the hiring of Marcelo Albay as a replacement for Remo was an indication that it was not in serious financial distress.

In his comment of December 15, 2009,^[9] Remo asks the Court to dismiss the petition "for utter lack of merit," stating that the CA committed no reversible error in rendering the assailed decision.

The Court's Ruling

We resolve to deny the petition for lack of merit.

We find, after considering the records and the parties' submissions, that although the CA focused more on the retrenchment aspect of the disputed dismissal, it still committed no reversible error in nullifying the NLRC resolution as it found grave abuse of discretion in the labor tribunal's gross misappreciation of the other adduced evidence.

Our examination of the records shows that Sentinel terminated Remo's employment not because it was suffering from financial losses, but because "he had to be replaced as operations officer by Marcelo Albay who has military training," while Remo held an administrative position that unfortunately was indispensable.^[10] Sentinel concealed this real motive and committed misrepresentation when, in its letter terminating Remo's employment, it stated that: "In view of the economic slump, it therefore necessitates the downsizing of personnel to give way to a re-organization for a smaller staff. x x x Thank you very much for giving your best service to the Agency for the past several years."^[11]

The labor tribunals glossed over this misrepresentation and failed to appreciate it for what it was - an act of active bad faith that fatally tainted Remo's dismissal and rendered it illegal. We note that the CA correctly noted this fatal flaw when it stated that, "If this was so, then the termination of [Remo] should not have been attributed to retrenchment."^[12] This finding totally renders any further discussion of Sentinel's submitted financial statements and its audit-related issues unnecessary.

As a rule, an illegal dismissal merits the penalty of reinstatement and the payment of backwages from the time of dismissal up to actual reinstatement.^[13] Considering, however, the sensitive nature of Remo's position, viewed in light of what had transpired between the parties, we deem it appropriate to order the payment of separation pay in lieu of reinstatement, computed from the time of Remo's dismissal up to the time of finality of this Decision.^[14] This is the same result that the CA decreed, although not for the same reason and under a computation reckoned from the finality of its own decision.

WHEREFORE, premises considered, we **AFFIRM** the challenged decision and resolution of the Court of Appeals in CA-G.R. SP No. 99550, with **MODIFICATION** with respect to the exact basis for the finding of illegality and the computation of separation pay of one month pay for every year of service which should be from the date of the respondent's dismissal