

SECOND DIVISION

[G.R. Nos. 146121-22, April 16, 2008]

**SAN MIGUEL CORPORATION and GERIBERN ABELLA, Petitioners,
vs. NATIONAL LABOR RELATIONS COMMISSION (First Division),
LABOR ARBITER PEDRO RAMOS and ERNESTO IBIAS,
Respondents.**

D E C I S I O N

TINGA, J,:

In this Petition for Review on Certiorari^[1] under Rule 45, petitioners San Miguel Corporation (SMC) and Geribern Abella, Assistant Vice President and Plant Manager of SMC's Metal Closure and Lithography Plant, assail the Decision^[2] dated 28 June 2000 and the Resolution^[3] dated 17 November 2000, both of the Court of Appeals in the consolidated cases of *Ernesto M. Ibias v. National Labor Relations Commission, et al.* and *San Miguel Corporation Metal Closure and Lithography Plant, et al. v. National Labor Relations Commission, et al.*, docketed as CA G.R. SP No. 54684 and CA G.R. SP No. 54709, respectively.

The factual and legal antecedents follow.

Ernesto M. Ibias (respondent) was employed by petitioner SMC on 24 December 1978 initially as a CRO operator in its Metal Closure and Lithography Plant. Respondent continuously worked therein until he advanced as Zamatic operator. He was also an active and militant member of a labor organization called Ilaw Buklod Manggagawa (IBM)-SMC Chapter.

According to SMC's Policy on Employee Conduct,^[4] absences without permission or AWOPs, which are absences not covered either by a certification of the plant doctor that the employee was absent due to sickness or by a duly approved application for leave of absence filed at least six (6) days prior to the intended leave, are subject to disciplinary action characterized by progressively increasing weight, as follows:

VIOLATIONS	1 ST Offense	2 nd Offense	3 rd Offense	4 th Offense	5 th Offense
2. ABSENCE WITHOUT PERMISSION (within one calendar year)					
A. Each day absent not exceeding two (2) days	Written warning				
B. 3 rd AWOP	3 Days'				

	suspension				
C. 4 th AWOP		5 Days' suspension			
D. 5 th AWOP		7 Days' suspension			
E. 6 th AWOP		10 Days' suspension			
F. 7 th AWOP		15 Days' suspension			
G. 8 th AWOP		30 Days' suspension			
H. 9 th AWOP		Discharge			
3. ABSENCE WITHOUT PERMISSION FOR SIX (6) OR MORE CONSECUTIVE WORKING DAYS IS CONSIDERED ABANDONMENT OF WORK	Discharge ^[5]				

The same Policy on Employee Conduct also punishes falsification of company records or documents with discharge or termination for the first offense if the offender himself or somebody else benefits from falsification or would have benefited if falsification is not found on time.^[6]

It appears that per company records, respondent was AWOP on the following dates in 1997: 2, 4 and 11 January; 26, 28 and 29 April; and 5, 7, 8, 13, 21, 22, 28 and 29 May. For his absences on 2, 4 and 11 January and 28 and 29 April, he was given a written warning^[7] dated 9 May 1997 that he had already incurred five (5) AWOPs and that further absences would be subject to disciplinary action. For his absences on 28 and 29 April and 7 and 8 May, respondent was alleged to have falsified his medical consultation card by stating therein that he was granted sick leave by the plant clinic on said dates when in truth he was not.

In a Notice to Explain dated 20 May 1997,^[8] respondent was required to state in writing why he should not be subject to disciplinary action for falsifying his medical consultation card. On 29 May 1997, he was sent a telegram^[9] asking him to explain why he should not be disciplined for not reporting for work since 26 May 1997. Respondent did not comply with these notices. He was again issued two Notices to Explain^[10] both dated 3 June 1997, one for his AWOPs from 26 May to 2 June 1997 and another for falsification of medical consultation card entries for 28 April and 8 May 1997.

On 5 June 1997, respondent submitted a handwritten explanation to the charges, to wit: "*Tungkol po sa ibinibintang po ninyong [sic] sa akin na falsification of medical consultation card ito po hindi ko magagawa at sa mga araw na hindi ko po ipinasok ito po ay may kaukulang supporting paper[s].*"^[11]

Not satisfied with the explanation, SMC conducted an administrative investigation on 17 and 23 June 1997.^[12]

During the investigation, respondent admitted that he was absent on 28 and 29 April and 7 and 8 May 1997 and had not sought sick leave permission for those dates, and also denied falsifying or having had anything to do with the falsification of his medical consultation card.

Ferdinand Siwa (Siwa), staff assistant, and Dr. Angelito Marable (Marable), retainer-physician, testified for SMC.

Siwa testified that sometime in May 1997, he called respondent's attention to AWOPs he incurred on 28 and 29 April. He admitted having given respondent a written warning for his absences on 2, 4 and 11 January and on 28 and 29 April. Respondent admitted his absences on 28 and 29 April but reasoned that he was on sick leave on those dates, producing his medical consultation card from his locker to prove the same. Siwa was surprised that the medical consultation card was in respondent's possession since this should have been in the rack beside the plant clinic. His medical consultation showed that he was purportedly granted sick leave for 28 and 29 April. However, upon verification with the plant clinic, Siwa found that respondent was not granted sick leaves on those dates. When Siwa confronted respondent about the falsification, respondent allegedly replied that he resorted to falsification to cover up his AWOPs which he was forced to incur because of personal problems.

Marable testified that sometime in May 1997, he together with the plant nurse and Siwa counter-checked respondent's sick leaves with the daily personnel leave authority report. The examination revealed that the clinic had not granted any sick leave on 28 and 29 April and 7 and 8 May 1997. On 16 June 1997, when respondent came to him for consultation, Marable confronted respondent about the falsified entries in his medical consultation card, but respondent only explained that he had been having a lot of problems.

After the completion of the investigation, SMC concluded that respondent committed the offenses of excessive AWOPs and falsification of company records or documents, and accordingly dismissed him.^[13]

On 30 March 1998, respondent filed a complaint for illegal dismissal against SMC and Geribern Abella, assistant vice president and plant manager of the Metal Closure and Lithography Plant. On 2 September 1998, Acting Executive Labor Arbiter Pedro C. Ramos rendered his Decision,^[14] finding respondent to have been illegally dismissed and ordering his reinstatement and payment of full backwages, benefits and attorney's fees.^[15]

The labor arbiter believed that respondent had committed the absences pointed out by SMC but found the imposition of termination of employment based on his AWOPs to be disproportionate since SMC failed to show by clear and convincing evidence that it had strictly implemented its company policy on absences. It found nothing in the records that would show that respondent was suspended for his previous AWOPs before he was meted the maximum penalty of discharge from service and thus, it ruled that management was to be blamed for the non-implementation of and lax

compliance with the policy. It also noted that termination based on the alleged falsification of company records was unwarranted in view of SMC's failure to establish respondent's guilt. It observed that the medical card was under the care of Siwa and thus it was he who should be responsible for its loss and the insertion of falsified entries therein.

SMC appealed the decision to the National Labor Relations Commission (NLRC) on 13 November 1998. On 31 March 1999, the NLRC First Division affirmed with modification the decision of the labor arbiter.^[16] The NLRC found that there was already a strained relationship between the parties such that reinstatement was no longer feasible, so instead it granted separation pay equivalent to one (1) month for every year of service. It also deleted the award of attorney's fees.^[17]

The NLRC, on 30 June 1999, denied the parties' respective motions for reconsideration of its decision.

On 2 September 1999, respondent filed a special civil action for certiorari assailing the NLRC decision and resolution. SMC filed its petition for certiorari on 3 September 1999. The cases were consolidated.

On 28 June 2000, the Court of Appeals rendered its Decision affirming the findings of the labor arbiter and the NLRC relative to the illegality of respondent's dismissal but modifying the monetary award. The dispositive portion of the decision reads:

WHEREFORE, the decision of the public respondent modifying the decision of the labor arbiter is **SET ASIDE** and the decision of the labor arbiter is hereby **REINSTATED** with the modification that the payment of the full backwages and other benefits would be from 2 July 1997 up to 14 October 1998.

SO ORDERED.^[18]

The Court of Appeals believed that contrary to SMC's claims, it was more consistent with human experience that respondent did not make an admission, especially in view of his consistent denials during the administrative investigation and of his written explanation dated 5 June 1997. The Court of Appeals also stayed firm in its determination that the testimonies of Marable and Siwa could not be given weight as they were uncorroborated, and that it was Siwa who was liable for the falsification of respondent's consultation card.

The appellate court also held that respondent's AWOPs did not warrant his dismissal in view of SMC's inconsistent implementation of its company policies. It could not understand why respondent was given a mere warning for his absences on 28 and 29 April which constituted his 5th and 6th AWOPs, respectively, when these should have merited suspension under SMC's policy. According to the appellate court, since respondent was merely warned, logically said absences were deemed committed for the first time; thus, it follows that the subject AWOPs did not justify his dismissal because under SMC's policy, the 4th to 9th AWOPs are meted the corresponding penalty only when committed for the second time.

The Court of Appeals, however, disagreed with the NLRC's application of the doctrine

of "strained relations," citing jurisprudence^[19] that the same should be strictly applied so as not to deprive an illegally dismissed employee of his right to reinstatement, and that since every labor dispute almost always results in "strained relations," the phrase cannot be given an over-arching interpretation.^[20] Thus, it ordered that respondent's backwages be computed from the date of his dismissal up to the time when he was actually reinstated. Since respondent was placed on payroll reinstatement on 15 October 1998, he should be awarded backwages from 2 July 1997 up to 14 October 1998.

Both parties separately moved for reconsideration of the decision but the Court of Appeals denied the motions for lack of merit in the Resolution dated 17 November 2000.

In this present petition for review, SMC raises the following grounds:

A.

THE COURT OF APPEALS DECIDED THE CASES IN A WAY NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE SUPREME COURT, AND IN VIOLATION OF THE ACCEPTED RULES ON EVIDENCE AND USUAL COURSE OF JUDICIAL PROCEEDINGS.

B.

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE ABSENCES OF IBIAS ON 28TH AND 29TH OF APRIL 1997 "*WERE COMMITTED FOR THE FIRST TIME*." SUCH FINDING IS GROUNDED ENTIRELY ON SPECULATION AND CONJECTURE AND A RESULT OF A MANIFESTLY ABSURD INFERENCE.^[21]

On the first ground, SMC contends that the Court of Appeals allegedly disregarded the basic rule on evidence that affirmative testimony is stronger than negative testimony. It claims that the testimonies of Marable and Siwa that respondent admitted having committed the falsification should be given more weight than his mere denial. SMC adds that the falsified medical consultation card by itself proves respondent's falsification of the card. The fact that he used the falsified consultation card to falsely represent that he had been granted sick leave on 28 and 29 April and 7 and 8 May 1997 is sufficient to hold him liable for falsification, SMC adds. Further, SMC argues that respondent's possession of the falsified consultation card also raises the presumption that he is the author of the falsification.

On the second ground, SMC points out respondent's absences on 28 and 29 April 1997 were his 5th and 6th AWOPs, respectively, and following the Court of Appeals' ruling, the same should have been meted the penalty of five (5) days' suspension for the 5th AWOP and 10 days' suspension for the 6th AWOP under SMC's Policy on Employee Conduct. Respondent incurred fourteen (14) AWOPs but when SMC imposed the penalty of discharge, the Court of Appeals disagreed since SMC had supposedly failed to strictly implement its company policy on attendance. Such reasoning would have respondent's AWOPs justified by SMC's lax implementation of disciplinary action on its employees, and would place on SMC the burden of proving strict conformity with company rules. SMC argues that this is contrary to the ruling