

SECOND DIVISION

[G.R. No. 165968, April 14, 2008]

PEPSI COLA PRODUCTS PHILIPPINES, INC. AND ERNESTO F. GOCHUICO, PETITIONERS, VS. EMMANUEL V. SANTOS, RESPONDENT.

DECISION

QUISUMBING, J.:

For review under Rule 45 is the Decision^[1] dated October 25, 2004 of the Court of Appeals in CA-G.R. SP No. 71648, which affirmed the Decision^[2] dated January 31, 2002 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 015665-98. The NLRC had affirmed the Decision^[3] dated January 26, 2000 of the Labor Arbiter which ordered petitioners to pay respondent separation pay of P165,000, backwages of P180,000, and 10% attorney's fees, but deleted the award of moral and exemplary damages.

The pertinent facts are as follows:

Respondent Emmanuel V. Santos was employed by petitioner Pepsi Cola Products Phils., Inc. sometime in July 1989. In March 1996, he was promoted as Acting Regional Sales Manager at the Libis Sales Office.

On February 14, 1997, respondent received from petitioner Ernesto F. Gochuico a memorandum^[4] charging him with violation of company rules and regulations and Article 282(a)^[5] of the Labor Code, as follows:

Group III FRAUD AND ACTS OF DISHONESTY

NO. 12 Falsifying company records or documents or knowingly using falsified records or documents.

NO. 8 Breach of trust and confidence.

NO. 4 Engaging in fictitious transactions, fake invoicing, deals padding and other sales malpractices.

NO. 5 Misappropriation or embezzlement of company funds or property and other acts of dishonesty.

Article 282 (a) Serious misconduct or willful disobedience to the lawful orders of his employer.^[6]

The charges arose out of alleged artificial sales by the sales personnel of the Libis Sales Office in March 1996 allegedly upon the instruction of respondent. The alleged

artificial sales resulted in damage to petitioners amounting to P795,454.54.

The memorandum also apprised respondent of his preventive suspension and the scheduled hearings of the administrative investigation.

After the termination of the hearings, petitioners found respondent guilty of the aforesaid charges with the exception of falsifying company records. As a result, respondent was dismissed on June 27, 1997.^[7]

Respondent filed a case for illegal dismissal which the Labor Arbiter dismissed on April 30, 1998.^[8] On appeal, the NLRC remanded the case to the Labor Arbiter for further proceedings.

In a Decision^[9] dated January 26, 2000, the Labor Arbiter ruled that petitioners failed to satisfactorily prove the serious charges against respondent. The only relevant evidence adduced by petitioners was the notice of termination which narrated what happened during the administrative investigation. The decretal portion of the decision reads:

WHEREFORE, premises above considered, a decision is hereby issued declaring the suspension and dismissal of complainant illegal. However, in view of the already impaired relationship between complainant and respondent, and the non-feasibility of the relief of reinstatement, respondent Pepsi Cola Products, Phil.[,] Inc. and/or Ernesto F. Gochuico is hereby ordered to pay complainant separation pay of P165,000.00 based on his eleven (11) years of service at one-month salary for every year of service, plus one (1) year backwages in the amount of P180,000.00, all in the aggregate amount of Three Hundred Forty Five Thousand [(P)345,000.00) pesos, and attorney's fees equivalent to ten (10) percent of the above monetary award.

In addition, as his suspension and dismissal is illegal, and apparently tainted with malice and bad faith, an award of P100,000.00 as moral damages and P50,000.00 as exemplary damages is hereby granted.

SO ORDERED.^[10]

Petitioners appealed to the NLRC which affirmed the Labor Arbiter's finding of illegal dismissal. It observed that after the case was remanded, the Labor Arbiter immediately conducted hearings. Moreover, in the hearing dated September 7, 1999,^[11] petitioners agreed to submit the case for resolution based on the additional pleadings submitted by the parties. Nevertheless, the NLRC deleted the award of moral and exemplary damages in the absence of evidence that respondent's suspension and eventual dismissal were tainted with bad faith and malice. Thus, it ruled:

WHEREFORE, premises considered, the Decision dated January 26, 2000 is hereby MODIFIED by deleting the award of moral damages in the amount of P100,000.00 and exemplary damages in the amount of P50,000.00.

The rest of the decision is hereby AFFIRMED.

SO ORDERED.^[12]

Aggrieved, petitioners elevated the matter to the Court of Appeals. On October 25, 2004, the appellate court affirmed the NLRC decision. It agreed with the Labor Arbiter and the NLRC that the charges in the memorandum of suspension and the notice of termination were not satisfactorily proven. The only evidence submitted by petitioners was the notice of termination which narrated what happened during the administrative investigation. It also observed that while petitioners discovered the alleged fictitious sales in April 1996, it was only on February 14, 1997 that petitioners placed respondent on preventive suspension and commenced administrative investigation. It further ruled that the holding of a trial was discretionary on the Labor Arbiter especially where the parties had already presented their documentary evidence, as in this case.

Petitioners now submit the following issues for our consideration:

I.

THE HONORABLE COURT OF APPEALS COMMITTED MANIFEST AND REVERSIBLE ERROR IN HOLDING AND AFFIRMING THAT PETITIONERS FAILED TO PROVE THAT RESPONDENT'S DISMISSAL WAS VALID.

II.

THE HONORABLE COURT OF APPEALS COMMITTED MANIFEST AND REVERSIBLE ERROR IN HOLDING THAT THE LABOR ARBITER BELOW NEED NOT CONDUCT A TRIAL ON THE MERITS.

III.

THE HONORABLE COURT OF APPEALS COMMITTED MANIFEST ERROR WHEN IT AFFIRMED THE AWARD OF ATTORNEY'S FEES.^[13]

In essence, the issues are: (1) whether respondent was validly dismissed; (2) whether a trial on the merits was necessary; and (3) whether the award of attorney's fees was proper.

Petitioners contend that the charges arose out of artificial sales by the sales personnel of the Libis Sales Office in March 1996 upon the direction of respondent. The alleged artificial sales resulted in damage to petitioners amounting to P795,454.54. It is petitioners' view that since respondent never denied these allegations, he is deemed to have admitted the same. Petitioners also aver that the Labor Arbiter should have conducted a trial on the merits since the case involved vital factual issues. Petitioners finally dispute the award of attorney's fees since it is only allowed in case of unlawful withholding of wages.

Respondent counters that petitioners can no longer raise before the Court questions of fact that have already been passed upon by the Labor Arbiter, the NLRC, and the Court of Appeals.

The *first* issue involves a question of fact which the Court is not at liberty to review.