576 Phil. 761

FIRST DIVISION

[G.R. No. 155178, May 07, 2008]

SAN MIGUEL CORPORATION, PETITIONER, VS. ANGEL C. PONTILLAS, RESPONDENT.

D E C I S I O N

CARPIO, J.:

The Case

Before the Court is a petition for review assailing the 26 March 2002 Decision[1] and the 20 August 2002 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 50680.

The Antecedent Facts

On 24 October 1980, San Miguel Corporation (petitioner) employed Angel C. Pontillas (respondent) as a daily wage company guard. In 1984,[3] respondent became a monthly-paid employee which entitled him to yearly increases in salary. Respondent alleged that his yearly salary increases were only a percentage of what the other security guards received.

On 19 October 1993, respondent filed an action for recovery of damages due to discrimination under Article 100[4] of the Labor Code of the Philippines (Labor Code), as amended, as well as for recovery of salary differential and backwages, against petitioner, Capt. Segundino D. Fortich (Capt. Fortich), Company Security Commander and head of the Mandaue Security Department, and Director Francisco Manzon, Vice President and Brewery Director. During the mandatory conference on 23 November 1993, respondent questioned the rate of salary increase given him by petitioner.

On 6 December 1993, Ricardo F. Elizagaque (Elizagaque), petitioner's Vice President and VisMin Operations Center Manager, issued a Memorandum ordering, among others, the transfer of responsibility of the Oro Verde Warehouse to the newly-organized VisMin Logistics Operations effective 1 January 1994. In compliance with Elizagaque's Memorandum, Capt. Fortich issued a Memorandum dated 7 February 1994 addressed to Comdr. Danilo C. Flores (Comdr. Flores), VisMin Logistics Operations Manager, effecting the formal transfer of responsibility of the security personnel and equipment in the Oro Verde Warehouse to Major Teodulo F. Enriquez (Major Enriquez), Security Officer of the VisMin Logistics Operations, effective 14 February 1994. Simultaneously, Capt. Fortich gave the same information to his Supervising Security Guards for them to relay the information to the company security guards.

Respondent continued to report at Oro Verde Warehouse. He alleged that he was not properly notified of the transfer and that he did not receive any written order from

Capt. Fortich, his immediate superior. Respondent also alleged that he was wary of the transfer because of his pending case against petitioner. He further claimed that two other security guards continue to report at Oro Verde Warehouse despite the order to transfer.

Petitioner alleged that respondent was properly notified of the transfer but he refused to receive 14 memoranda issued by Major Enriquez from 14-27 February 1994. Petitioner also alleged that respondent was given notices of Guard Detail dated 9 February 1994 and 15 February 1994 but he still refused to report for duty at the VisMin Logistics Operations.

In a letter dated 28 February 1994, petitioner informed respondent that an administrative investigation would be conducted on 4 March 1994 relative to his alleged offenses of Insubordination or Willful Disobedience in Carrying Out Reasonable Instructions of his superior. During the investigation, respondent was given an opportunity to present his evidence and be assisted by counsel. In a letter dated 7 April 1994, petitioner informed respondent of its decision to terminate him for violating company rules and regulations, particularly for Insubordination or Willful Disobedience in Carrying Out Reasonable Instructions of his superior.

On 15 June 1994, respondent filed an amended complaint against petitioner for illegal dismissal and payment of backwages, termination pay, moral and exemplary damages, and attorney's fees.

The Ruling of the Labor Arbiter

In a Decision dated 25 October 1996,[5] the Labor Arbiter dismissed respondent's complaint for lack of merit. The Labor Arbiter recognized the management prerogative to transfer its employees from one station to another. The Labor Arbiter found nothing prejudicial, unjust, or unreasonable to petitioner's decision to merge the functions of the Materials Management of the Mandaue Brewery and the Physical Distribution Group which resulted to the forming of the VisMin Logistics Operations. The Labor Arbiter ruled that as a consequence of the merger, the instructions and orders to all security personnel should necessarily come from the security officer of the new organization. Hence, respondent's allegation that his transfer order should come from Capt. Fortich and not from Major Enriquez was misleading. The Labor Arbiter ruled that respondent was informed of the impending merger, verbally and in writing, as early as 6 December 1993.

The Labor Arbiter further ruled that petitioner did not violate Article 100 of the Labor Code. The Labor Arbiter ruled that respondent's claim that giving him a day-off twice a month resulted to diminution of his monthly take-home pay was an erroneous interpretation of the Labor Code, which even required employers to give their employees a rest day per week. The Labor Arbiter also ruled that there was no basis for the allegation that respondent was discriminated against in the annual salary increases.

The Labor Arbiter ruled that respondent was accorded due process before his termination from the service. He was investigated with the assistance of counsel, and he was able to confront petitioner's witnesses and present evidence in his favor.

Respondent appealed from the Labor Arbiter's Decision.

The Ruling of the NLRC

In its 23 May 1997 Decision,[6] the National Labor Relations Commission (NLRC) set aside the Labor Arbiter's Decision. The NLRC ruled that respondent was not informed of his transfer from Oro Verde Warehouse to VisMin Logistics Operations. The notices allegedly sent to respondent did not indicate any receipt from respondent. The NLRC also ruled that the notations in the notices stating "Refused to sign" appeared to be written by the same person on just one occasion. The NLRC found that respondent was waiting for a formal notice from Capt. Fortich, who only instructed his Supervising Security Guard, Rodrigo T. Yocte, to remind respondent of his transfer and new assignment. The NLRC declared that the notices sent by Major Enriquez had no binding effect because he was not respondent's superior. The NLRC held that it was premature to charge respondent with insubordination for his failure to comply with the order of someone who was not his department head. The NLRC stated that respondent had good reason to continue reporting at Oro Verde Warehouse.

The NLRC further ruled that respondent was a victim of discrimination. The NLRC declared that petitioner failed to justify why respondent was not entitled to the full rate of salary increases enjoyed by other security guards.

The dispositive portion of the NLRC's Decision reads:

> WHEREFORE, the decision of the Executive Labor Arbiter is hereby VACATED and SET ASIDE and judgment is hereby rendered:
>
> 1. Declaring the dismissal of complainant to be without any just cause and, therefore, illegal;
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> 2. Ordering respondent San Miguel Corporation to reinstate the complainant to his former position without loss of seniority rights and other privileges and with full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from April 8, 1994 up to his actual reinstatement. However, should reinstatement be no longer feasible, respondent San Miguel Corporation shall pay to complainant, in addition to his full backwages, separation pay of one (1) month pay for every year of service, a period of six (6) months to be considered as one (1) whole year;
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> 3. Ordering respondent San Miguel Corporation to pay to complainant moral damages of P50,000.00 and exemplary damages of P20,000.00; and
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> 4. Ordering respondent San Miguel Corporation to pay to complainant the sum equivalent to ten percent (10%) of the total monetary award, for and as attorney's fees.
>
> SO ORDERED.[7]

Petitioner filed a motion for reconsideration. In its 27 February 1998 Resolution,[8] the NLRC partially granted the motion by deleting the award of moral and exemplary damages. The NLRC ruled that there was no showing on record that the discrimination against respondent was tainted with bad faith. Thus:

> WHEREFORE, in view of all the foregoing, the instant motion for reconsideration is hereby PARTIALLY GRANTED only with respect to the award of moral and exemplary damages which are hereby deleted.
>
> SO ORDERED.[9]

Petitioner filed a petition for certiorari before the Court of Appeals.

The Ruling of the Court of Appeals

In its 26 March 2002 Decision, the Court of Appeals affirmed with modification the NLRC's Decision.

The Court of Appeals ruled that under Article 282(a) of the Labor Code, as amended, an employer may terminate an employment for serious misconduct or willful disobedience by the employee of the lawful orders of his employer or his representative in connection with his work. However, disobedience requires the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful or intentional, and the willfulness must be characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.

The Court of Appeals ruled that there was no sufficient evidence that would show that respondent's failure to report to his new superior was willful and characterized by a perverse and wrongful attitude. The Court of Appeals ruled that respondent was waiting for his former superior to formally inform him of his new assignment. The Court of Appeals further ruled that respondent was suspicious of petitioner's intention to transfer him in view of the pendency of the case he filed against petitioner. The Court of Appeals ruled that there was a clear indication that respondent was a victim of retaliatory measures from petitioner.

The dispositive portion of the Court of Appeals' Decision reads:

> IN VIEW OF THE FOREGOING, the assailed decision and resolution of public respondent NLRC are hereby AFFIRMED with the modification that, in lieu of reinstatement, private respondent should be paid separation pay, equivalent to one (1) month salary for every year of service. No pronouncement as to costs.
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> SO ORDERED.[10]

Petitioner filed a motion for reconsideration. In its 20 August 2002 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.