

SECOND DIVISION

[G.R. No. 163607, July 14, 2008]

**CENTRAL PHILIPPINES BANDAG RETREADERS, INC.,
PETITIONER, VS. PRUDENCIO J. DIASNES, RESPONDENT.**

D E C I S I O N

VELASCO JR., J.:

Respondent Prudencio J. Diasnes was initially hired by petitioner Central Philippines Bandag Retreaders, Inc. (Bandag) as technical service representative for the Visayas and Bicol areas. In the course of his employment with Bandag, Diasnes was able to show his strengths and received numerous awards and citations. In 1995, Diasnes received a promotional appointment as sales manager/officer-in-charge and was assigned to manage Eastern Visayas Retreaders, Inc. based in Tacloban City, with a service area covering the whole of Region VIII.

It was at this latest posting that Diasnes' work performance started to deteriorate. From July to September in 1995, six (6) company-issued checks were dishonored for causes attributable to Diasnes and for which he was suspended for six (6) days. It was also during this two-month stretch that his absences and tardiness became more frequent.

On January 2, 1996, Diasnes received a memorandum from his supervisor, Loreto C. Rico, relieving him from his duties as sales manager of Region VIII. Two days after, Diasnes received a notice to appear before the Employee Adjudication Committee on January 9, 1996 to resolve the matter of his relief. After the meeting, the committee issued the following report and recommendations:

Therefore, the committee unanimously agreed that SM-OIC Prudencio Diasnes be: Relieved for three (3) months. This will give him enough time to help his wife's problem; After the period lapsed he may return to work, but with another position or function; if he desire[s] to retire from the company separation/retirement pay may be granted to him.^[1]

Diasnes, however, did not avail himself of any of the options set forth in the committee's report and recommendations, but requested a Cebu City assignment which his employer granted. In Cebu City, Diasnes' performance as sales supervisor was far from encouraging. His attendance and punctuality were likewise very poor. To top it all, Diasnes did not at all report for work from October 12, 1996 to November 11, 1996.

Thereafter, on October 31, 1996, Bandag, through supervisor Rico, addressed a show-cause letter-memorandum to Diasnes, which reads as follows:

SUBJECT: Habitual tardiness and Absenteeism

Your attendance records from Sept. 1 to Oct. 31, 1996, show that of the 50 working days, you report[ed for work] only for 25 days. Of the 25 days that you report[ed] for work, you never had any instance that you're on time - official reporting time is at 8:00 O'clock A.M.

During this period, you have not reported to work for 25 working days and these are all absences without official leave. This shows that your absences [amounted to] 50% [of the official work days] and [you were tardy] 100% [of the] period referred [to].

You have committed an act unbecoming of an officer and a breach of our policy on attendance. Habitual absenteeism and tardiness are cause for suspension and/or termination from employment.

You are therefore required to submit your written explanation within 48 hrs. from receipt of this memo and present yourself to the employees adjudication committee.

The Adjudication committee will convene immediately upon receipt of your reply. This consultation is of a substance to assure you that the management prerogative to discipline employees is not exercised in an arbitrary manner.

For your information and strict compliance.

L.C. RICO^[2]

Apparently finding Diasnes' explanation to be insufficient, Bandag dismissed Diasnes from the service effective November 11, 1996 on the grounds stated in the termination letter which reads as follows:

TO : P.J. DIASNES

DATE : NOVEMBER 11, 1996

SUBJECT: TERMINATION OF EMPLOYMENT

You had been notified for gross and habitual neglect of your duty and had been given enough time to be heard by an employees adjudication committee[.] Again, you [had been apprised] that the consultation is of a substance to assure you that the management prerogative to discipline employees is not exercise[d] in [an] arbitrary manner.

A number of company representatives had been sent to your residence but all failed to see you in person. A verification with the company Doctor, yield[ed] negative report of any health related consultation. All those that has been done is indicative of the management's concern of employees.

The termination of your employment is base[d] on the following:

1. HABITUAL TARDINESS FROM SEPT. 1, 1996 TO OCT. 11, 1996.
2. ABSENCES WITHOUT OFFICIAL LEAVE DURING THE SAME PERIOD.
3. FAILURE TO REPORT FOR WORK FROM OCTOBER 12, 1996 TO NOVEMBER 11, 1996.

This is a willful breach of trust given to you as officer of the company and serious misconduct of an employee. And it is our belief, that you have put an end to the employer-employee relationship without serving any written notice to the company.

Therefore, your employment is terminated effective November 11, 1996. You are requested to return all company assets in your [possession] to the company representative who will be authorized to retrieve them.

(Sgd.) Loreto C. Rico
General Manager^[3]

To contest his dismissal from the service, Diasnes filed a complaint with the Regional Arbitration Branch of the National Labor Relations Commission (NLRC) for illegal dismissal, non-payment of salaries and allowances, 13th month pay, and other benefits against Bandag, Sarmiento Management Group, and Rico, docketed as NLRC RAB VII-1492-96.

On October 15, 1997, Labor Arbiter Ernesto F. Carreon rendered a decision which, while holding Diasnes to have been legally dismissed from the service, directed payment of separation pay in the amount of PhP 278,965.50 and 13th month pay in the amount of PhP 14,652.74. Dispositively, the labor arbiter's decision reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent Central Philippines Bandag Retreaders, Inc. to pay the complainant Prudencio J. Diasnes Separation Pay in the amount of P278,965.50 and proportionate 13th month pay in the amount of P14,652.74.

The case against respondents Sarmiento Management Corporation and Loreto Rico and the other claims are dismissed for lack of merit.

SO ORDERED.

Therefrom, both parties appealed to the NLRC, Diasnes assailing the labor arbiter's finding on the validity of his dismissal, while Bandag impugning the labor arbiter's decision insofar as the award of separation pay was concerned.

Thereafter, on January 12, 1999, the NLRC rendered a Decision,^[4] dismissing the separate appeals of both parties and thus effectively affirming the decision of the labor arbiter.

Aggrieved, Bandag filed a motion to reconsider the decision of the NLRC.

By Resolution dated October 29, 1999, the NLRC partially granted reconsideration and deleted the award for separation pay, Diasnes having failed to establish that Bandag has an established policy of granting separation pay of one and a half (1 ½) month for every year of service to separated employees. The *fallo* of the NLRC's resolution reads:

WHEREFORE, premises considered, the Motion for Reconsideration filed by respondent Central Philippines Bandag Retreaders, Inc., is PARTIALLY GRANTED. The Decision promulgated on 12 January 1999 is ABANDONED and a new one is entered ordering respondent Central Philippines Bandag Retreaders, Inc. to pay complainant Prudencio J. [Diasnes] the amount of P14,652.74 representing [his] proportionate 13th month pay.

SO ORDERED.

Unsatisfied with the turn of events, Diasnes filed with the Court of Appeals (CA) a petition for certiorari and prohibition with prayer for injunctive relief. Docketed as CA-G.R. SP No. 58916, the petition sought the reinstatement of the NLRC's Decision dated January 12, 1999.

On June 18, 2003, the CA issued a Decision^[5] that granted the petition and effectively reinstated the NLRC's Decision of January 12, 1999, thus restoring the award of separation pay. The CA ratiocinated that separation pay is proper in view of the following main considerations: the Employee Adjudication Committee's recommendation, the imperatives of social justice, and Diasnes' exemplary performance for more than ten (10) years.

In time, Bandag filed a motion for reconsideration, but the CA, by Resolution^[6] dated April 1, 2004, denied the motion.

Bandag now comes before this Court with the present petition under Rule 45 raising the sole issue for resolution, rephrased as follows:

WHETHER OR NOT A VALIDLY AND LEGALLY SEPARATED EMPLOYEE MAY BE ENTITLED TO SEPARATION PAY.

The Court's Ruling

The labor arbiter resolved the issue in the affirmative, basing his award of separation pay mainly on the recommendation of the Employee Adjudication Committee and on the finding that Diasnes' dismissal was for a cause not constituting serious misconduct or reflective of his moral character. This ruling, as earlier recited, was eventually reversed by the NLRC, but was subsequently reinstated by the CA.

Bandag excepts, claiming that separation pay could not and should not be granted based solely on the recommendation made by its adjudication committee. As Bandag explains, the recommendation was merely an offer which Diasnes did not accept, much less avail himself of. Alternatively, Bandag argues that the formula used by the labor arbiter to compute the separation pay, i.e., 1 ½ month's pay per year of service instead of only one month's pay per year of service, is wrong.