

SECOND DIVISION

[G.R. No. 177414, November 14, 2008]

NOEL E. MORA, PETITIONER, VS. AVESCO MARKETING CORPORATION, RESPONDENT.

DECISION

CARPIO MORALES, J.:

On petition for review on *certiorari* is the February 28, 2007 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 86993 affirming the ruling of Voluntary Arbitrator (VA) Nicolas Barriatos that Noel Mora (petitioner) was not illegally dismissed as he voluntarily resigned.

In March 1996, petitioner was hired as a "sales engineer" at Avesco Marketing Corporation (respondent) to supervise and install sound and communications systems for its clientele.^[2] On March 25, 2003, he tendered his letter of resignation to be effective a month after or on April 25, 2003. The letter reads *verbatim* as follows:

FOR : EDWIN L. TANG
Vice - President Mktg.
CC : FRANTOR B. FERNANDEZ
Personnel Manager
BENNIE B. GUIAMOY
PMK- Manager
DATE : MARCH 25, 2003

Dear Sir:

It is with **much reluctance and regret that I must ask to be released from my position** of Sales Engineer at Avesco Marketing. For the past seven years, I cannot forget how much this company has meant to me.

With this regard, I'm tendering my resignation **effective on April 25, 2003**. Please extend to Mr. Jimmy Tang my appreciation of his kindness during the time I served.^[3] (Emphasis and underscoring supplied)

It appears that petitioner's filing of a resignation letter came about after he was confronted for "selling competitors' products" to the prejudice and detriment of respondent and was given the option of either immediately resigning or face administrative charges.^[4]

It further appears that petitioner changed his mind and withdrew his letter of resignation on the same day, March 25, 2003, after respondent denied his request

to have his resignation made effective a month after or on April 25, 2003. Petitioner was later to claim that he inadvertently left a copy of the letter at respondent's office.^[5]

The following day or on March 26, 2003, respondent's personnel manager issued to petitioner a notice of disciplinary action reading:

A report by your Superiors has reached our office just recently some days ago [sic] that you again have committed another breach of trust [sic] against our Company in violation of our [sic] Company Rules and Regulations. This time instead of attending to the products you have to sell, **you have surreptitiously undertaken sales transaction** [sic], which is patently inimical to the interest of the Company that results to sales loss for the company. x x x x.

As you know very well, earlier[,] you have been disciplined for breach of trust against the Company . . . where you served a penalty of six days suspension . . . with a stern warning that commission of similar offense will eventually lead to your dismissal from the service of the company. The report that reached us now is a repetition of similar breach of trust reported upon you as Jr. Sales Engineer and for this, **Management is constrained to dismiss you from the service for loss of trust and confident** [sic] in gross violation of our Company Rules & Regulations on Dishonesty and Fraud.

On account of the foregoing, you are hereby directed to submit to the undersigned not later than 48 hours upon receipt of this memo **why dismissal penalty should not be effected against you for the cited violation**. Should you fail to comply with our requirement, the company may have no other recourse except to initiate dismissal proceedings. Meantime, **you are placed under preventive suspension effective today, March 26, 2003 until further notice pending investigation of your case.**^[6] (Emphasis and underscoring supplied)

In his March 27, 2003 Response to the above-quoted notice, petitioner gave his side as follows, quoted *verbatim*:

In response to your memo with reference no. PD-C003-095 dated March 26, 2003 regarding to [sic] the preventive suspension you serve to me [sic], **I am not culpable.**

The report of my superior that I am surreptitiously selling other products instead of our products is **just speculation** and his **mere tactics** [sic] **for our unfavorable sales output for the month.** I sell products only from Avesco and never transact/deal other products. I know the consequences of that move and never cross to my mind doing that kind of accusation [sic].

I have been accused for a thing [sic] **that I did not know what particular transactions** [sic], **I was not being talked by my superior** [sic] about this or even asked me [sic], this is just a one[-]sided accusation and **I am willing to know what it is all about.** Your office did

not explain to me what this accusation is all about[,] **instead offering me an immediate resignation and your notice is a step for my termination** [sic].

x x x x ^[7] (Emphasis and underscoring supplied)

Petitioner had not heard from respondent thereafter. He was later to learn from third party sources that his employment had been terminated as of April 1, 2003.

Petitioner thereupon filed a complaint for illegal dismissal before the National Labor Relations Commission (NLRC) which the labor arbiter^[8] dismissed for lack of jurisdiction^[9] since the dispute falls within the province of the grievance procedure provided for by the Collective Bargaining Agreement between respondent and the workers' union.

The case was thus referred to the National Conciliation and Mediation Board for voluntary arbitration. Voluntary Arbitrator (VA) Barriatos, by Decision of August 23, 2004, dismissed petitioner's complaint upon the ground that he had voluntarily resigned.^[10] Petitioner received a copy of the decision on August 31, 2004.^[11] Forty nine days later or on October 19, 2004, he filed a petition for certiorari^[12] before the Court of Appeals which denied the same, it similarly finding him to have voluntarily resigned from his job.

His motion for reconsideration having been denied,^[13] petitioner filed the present petition for review.

Petitioner argues that he was only inveigled to file a resignation letter on March 25, 2003 after he was asked by respondent's vice president to immediately resign and that respondent's subsequent show cause order *cum* preventive suspension clearly proves that he did not resign.

Respondent at once raises procedural infirmities in the petition, foremost of which is its attribution of grave abuse of discretion on the part of the appellate court, instead of raising errors of law, apart from a lack of verified statement of material dates.^[14]

On the merits, respondent maintains that petitioner resigned.^[15]

The Court notes that the appellate court erred in giving due course to petitioner's petition for *certiorari*, for his proper mode of appeal was for review under Rule 43 of the 1997 Rules of Civil Procedure. Respondent had pointed this out in its Comment^[16] before the appellate court. The appellate court, however, misappreciated this Court's ruling in *Luzon Development Bank v. Association of Luzon Development Bank Employees*^[17] which, together with Circular 1-95,^[18] was subsequently used as basis of the Rules of Court Revision Committee for the inclusion of the decisions of the VA as appealable to the Court of Appeals under Rule 43.^[19]

Section 1 of Rule 43 reading:

SECTION 1. *Scope*. This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals* and from awards, judgments final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission,** Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and **voluntary arbitrators** authorized by law (emphasis and underscoring supplied)

vis-à-vis Section 4^[20] thereof requires that the petition for review to be taken to the Court of Appeals should be filed within fifteen (15) days from notice of the award, judgment or final order or resolution of the VA.

While Sec. 2^[21] of the same Rule 43 provides that said Rule shall not apply to judgments or final orders issued under the Labor Code, the same refers only to cases decided by labor arbiters which are appealable to the National Labor Relations Commission.

As earlier noted, petitioner filed before the appellate court a petition for *certiorari* on October 19, 2004 or 49 days after receipt of the decision of the VA at which time the 15-day period to file appeal had expired.

An independent action for *certiorari* may of course be availed of when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law,^[22] if the decision of the voluntary arbitrator involves a question of jurisdiction. What petitioner is contesting, however, is the finding that he voluntarily resigned. Where the error is not one of jurisdiction, but of law or fact which is a mistake of judgment, the proper remedy should be appeal.^[23] The appellate court should thus have dismissed outright the petition for *certiorari*, as the decision of the VA had already become final and executory.

The Court, however, resolves to set aside procedural infirmity and rule on the merits of the present petition in the interest of substantial justice to arrive at the proper conclusion that is conformable to the evidentiary facts.^[24]

In *Mobile Protective & Detective Agency v. Ompad*,^[25] the Court held that should an employer interpose the defense of resignation, as in the present case, it is still incumbent upon the employer, respondent herein, to prove that the employee *voluntarily* resigned.

Voluntary resignations being unconditional in nature, both the intent and the overt act of relinquishment should concur. If the employer introduces evidence purportedly executed by an employee as proof of voluntary resignation yet the