

THIRD DIVISION

[G.R. NO. 158637, April 12, 2006]

MARICALUM MINING CORPORATION, PETITIONER, VS. ANTONIO DECORION, RESPONDENT.

D E C I S I O N

TINGA, J.:

This Petition^[1] dated July 8, 2003 filed by Maricalum Mining Corporation (Maricalum Mining) assails the Decision^[2] of the Court of Appeals which upheld the labor arbiter's finding that respondent, Antonio Decorion (Decorion), was constructively dismissed and therefore entitled to reinstatement and backwages.

There is no substantial dispute on the operative facts of this case.

Decorion was a regular employee of Maricalum Mining who started out as a Mill Mechanic assigned to the Concentrator Maintenance Department and was later promoted to Foreman I. On April 11, 1996, the Concentrator Maintenance Supervisor called a meeting which Decorion failed to attend as he was then supervising the workers under him. Because of his alleged insubordination for failure to attend the meeting, he was placed under preventive suspension on the same day. He was also not allowed to report for work the following day.

A month after or on May 12, 1996, Decorion was served a Notice of Infraction and Proposed Dismissal to enable him to present his side. On May 15, 1996, he submitted to the Personnel Department his written reply to the notice.

A grievance meeting was held upon Decorion's request on June 5, 1996, during which he manifested that he failed to attend the meeting on April 11, 1996 because he was then still assigning work to his men. He maintained that he has not committed any offense and that his service record would show his efficiency.

On July 23, 1996, Decorion filed before the National Labor Relations Commission (NLRC) Regional Arbitration Branch VI of Bacolod City a complaint for illegal dismissal and payment of moral and exemplary damages and attorney's fees.^[3]

In the meantime, the matter of Decorion's suspension and proposed dismissal was referred to Atty. Roman G. Pacia, Jr., Maricalum Mining's Chief and Head of Legal and Industrial Relations, who issued a memorandum on August 13, 1996, recommending that Decorion's indefinite suspension be made definite with a warning that a repetition of the same conduct would be punished with dismissal. Maricalum Mining's Resident Manager issued a memorandum on August 28, 1996, placing Decorion under definite disciplinary suspension of six (6) months which would include the period of his preventive suspension which was made to take effect retroactively from April 11, 1996 to October 9, 1996.

On September 4, 1996, Decorion was served a memorandum informing him of his temporary lay-off due to Maricalum Mining's temporary suspension of operations and shut down of its mining operations for six (6) months, with the assurance that in the event of resumption of operations, he would be reinstated to his former position without loss of seniority rights.

Decorion, through counsel, wrote a letter to Maricalum Mining on October 8, 1996, requesting that he be reinstated to his former position. The request was denied with the explanation that priority for retention and inclusion in the skeleton force was given to employees who are efficient and whose services are necessary during the shutdown.

Conciliation proceedings having failed to amicably settle the case, the labor arbiter rendered a decision^[4] dated November 26, 1998, finding Decorion's dismissal illegal and ordering his reinstatement with payment of backwages and attorney's fees. According to the labor arbiter, Decorion's failure to attend the meeting called by his supervisor did not justify his preventive suspension. Further, no preventive suspension should last longer than 30 days.

The NLRC, however, reversed the labor arbiter's decision and dismissed Decorion's complaint.^[5] The reversal was premised on the finding that the case was litigated solely on Decorion's allegation that he was dismissed on April 11, 1996. However, during the grievance meeting held on June 5, 1996, Decorion left it up to management to decide his fate, indicating that as of that time, there was no decision to terminate his services yet. According to the NLRC, to consider the events that transpired after April 11, 1996 and make the same the basis for the finding of illegal dismissal would violate Maricalum Mining's right to due process.

On petition for certiorari with the Court of Appeals, the decision of the labor arbiter was reinstated. The appellate court held that Decorion was placed under preventive suspension immediately after he failed to attend the meeting called by his supervisor on April 11, 1996. At the time he filed the complaint for illegal dismissal on July 23, 1996, he had already been under preventive suspension for more than 100 days in violation of Sec. 9, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code (Implementing Rules) which provides that no preventive suspension shall last longer than 30 days.

The appellate court denied Maricalum Mining's motion for reconsideration in its Resolution^[6] dated May 16, 2003.

In this petition, Maricalum Mining insists that Decorion was not dismissed but merely preventively suspended on April 11, 1996. Citing the case of *Valdez v. NLRC*,^[7] petitioner contends that constructive dismissal occurs only after the lapse of more than six (6) months from the time an employee is placed on a "floating status" as a result of temporary preventive suspension from employment. Thus, it goes on to argue, since Decorion was suspended for less than six (6) months, his suspension was legal.

Decorion filed a Comment^[8] dated December 5, 2003, maintaining that he was dismissed from employment on April 11, 1996 as he was then prevented from