

THIRD DIVISION

[G.R. NO. 161654, May 05, 2006]

**DUSIT HOTEL NIKKO, PETITIONER, VS. RENATO M. GATBONTON,
RESPONDENT.**

DECISION

QUISUMBING, J.:

This is a petition for review of the **Decision**^[1] dated September 22, 2003, and the **Resolution**^[2] dated January 9, 2004, of the Court of Appeals in CA-G.R. SP No. 73296, which reversed the Resolution^[3] dated September 24, 2001, of the National Labor Relations Commission (NLRC) in NLRC CA No. 025743-00.

The facts are as follows:

On November 21, 1998,^[4] respondent Renato M. Gatbonton was hired as Chief Steward in petitioner Dusit Hotel Nikko's Food and Beverage Department. He signed a three-month probationary employment contract until February 21, 1999,^[5] with a monthly salary of P25,000. At the start of his employment, the standards by which he would be assessed to qualify for regular employment were explained to him.

The hotel alleged that at the end of the probation period, Ingo Rauber, Director of its Food and Beverage Department, observed that Gatbonton failed to meet the qualification standards for Chief Steward, and Rauber recommended a two-month extension of Gatbonton's probationary period, or until April 22, 1999. At the end of the 4th month, on March 24, 1999, Rauber informed Gatbonton that the latter had poor ratings on staff supervision, productivity, quantity of work, and overall efficiency and did not qualify as Chief Steward. Gatbonton requested another month or until April 22, 1999 to improve his performance, to which Rauber agreed but allegedly refused to sign the Performance Evaluation Form. Neither did he sign the Memorandum on the extension.

On March 31, 1999, a notice^[6] of termination of probationary employment effective April 9, 1999, on the above alleged grounds was served on Gatbonton. On April 12, 1999, he filed a complaint for illegal dismissal and non-payment of wages, with prayers for reinstatement, full backwages, and damages, including attorney's fees.

On July 10, 2000, the Labor Arbiter disposed of the case as follows:

WHEREFORE, PREMISES CONSIDERED, respondent Dusit Hotel Nikko is hereby ordered to reinstate upon promulgation of this decision, the herein complainant Renato Gatbonton to his former position as regular Chief Steward without loss of seniority rights and other benefits with full backwages from the time of his illegal dismissal on April 9, 1999 up to

actual reinstatement or in the amount of P375,000 (P25,000 x 15 months or up to July 9, 2000) to be adjusted, plus ten percent (10%) attorneys fees.

The same respondent is also ordered to pay complainant's unpaid salaries within ten (10) days from receipt hereof.

Complainant's prayer for damages is hereby dismissed for lack of concrete evidence.

SO ORDERED.^[7]

The Labor Arbiter found that at the time of the respondent's termination, he was already a regular employee. Further, there was no evidence that Gatbonton was assessed or evaluated by the petitioner during his three-month probationary employment; thus, he could not be dismissed for failure to meet the reasonable standards for his position.

Aggrieved, the petitioner appealed to the National Labor Relations Commission (NLRC) which reversed the Labor Arbiter's decision and declared the respondent's dismissal legal. The NLRC noted that the Personnel Action Form showed respondent's probationary employment was extended from February 24 to April 22, 1999. Hence, when he was terminated on April 9, 1999, he was still on probation.

The respondent filed a petition for certiorari with the Court of Appeals contending that the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it reversed the decision of the Labor Arbiter. The respondent maintained: (1) that the petitioner failed to establish with substantial evidence that the respondent's probationary employment was extended; (2) that the petitioner failed to establish that the alleged extension was formally communicated to the respondent during his probationary employment; and (3) that the petitioner failed to establish that the alleged extension was valid and legal.^[8]

The appellate court granted the petition and reinstated the decision of the Labor Arbiter. The present petition is anchored on the following grounds:

I

WHETHER OR NOT THE RESPONDENT WAS STILL A PROBATIONARY EMPLOYEE AT THE TIME OF HIS DISMISSAL;

II

WHETHER OR NOT THE RESPONDENT WAS VALIDLY DISMISSED ON THE GROUND OF FAILURE TO MEET THE STANDARDS OF SATISFACTORY PERFORMANCE MADE KNOWN TO HIM AT THE TIME OF HIS ENGAGEMENT;

III

WHETHER OR NOT [RESPONDENT] IS ENTITLED TO REINSTATEMENT,