

SECOND DIVISION

[G.R. NO. 154532, October 27, 2006]

**PETRON CORPORATION AND PETER C. MALIGRO, PETITIONERS,
VS. NATIONAL LABOR RELATIONS COMMISSION AND CHITO S.
MANTOS, RESPONDENTS.**

D E C I S I O N

GARCIA, J.:

Assailed and sought to be set aside in this petition for review under Rule 45 of the Rules of Court is the **Resolution dated November 26, 2001**^[1] of the Court of Appeals (CA) in *CA-G.R. SP No. 67702*, dismissing the petition for certiorari thereat filed by the herein petitioners on the ground that the Verification and Certification on Non-Forum Shopping was defective because co-petitioner Peter C. Maligro was not a signatory thereto, as reiterated in its subsequent **Resolution of July 16, 2002**,^[2] denying the petitioners' motion for reconsideration.

The facts:

Petitioner Petron Corporation (Petron), a corporation duly organized and existing under the laws of the Philippines, is engaged in the refining, sale and distribution of petroleum and other related products, while its co-petitioner Peter C. Maligro was the former Visayas Operations Assistant Manager of Petron's Visayas-Mindanao District Office at Lahug, Cebu City.

On May 15, 1990, Petron, through its Cebu District Office, hired the herein private respondent Chito S. Mantos, an Industrial Engineer, as a managerial, professional and technical employee with initial designation as a Bulk Plant Engineering Trainee. He attained regular employment status on November 15, 1990 and was later on designated as a Bulk Plant Relief Supervisor, remaining as such for the next five years while being assigned to the different plants and offices of Petron within the Visayas area.

It was while assigned at Petron's Cebu District Office with petitioner Peter Maligro as his immediate superior, when Mantos, thru a Notice of Disciplinary Action dated October 29, 1996,^[3] a copy of which was received by him on November 18, 1996,^[4] was **suspended** for 30 days from November 1 to 30, 1996 for violating company rules and regulations regarding Absence Without Leave (AWOL), not having reported for work during the period August 5 to 27, 1996.

Subsequently, in a notice Termination of Services bearing date November 20, 1996^[5] and received by him on November 25, 1996,^[6] Mantos' services were altogether **terminated** effective December 1, 1996, by reason of his continued absences from August 28, 1996 onwards, as well as for Insubordination/Discourtesy

for making false accusations against his superior.

Meanwhile, on November 8, 1996, contending that he has been constructively dismissed as of August 5, 1996, Mantos filed with the National Labor Relations Commission, Regional Arbitration Branch (NLRC-RAB), Cebu City, a complaint for illegal dismissal and other monetary claims against Petron and/or Peter C. Maligro. The case was docketed as **NLRC RAB-VII Case No. 11-1439-96**.

In his complaint, Mantos made the following allegations:

xxx He had an unblemished record in his service with [Petron]. Intrigues and professional jealousies, however, have prevailed over the work atmosphere in [Petron]. This became more particularly true in regard to his close relationship with Jaime "Boy" Tamayo, then the VISMIN Operations Manager who later left the company to migrate to Canada. His closeness to Tamayo has caused problems with his relationship with Peter Maligro, Visayas Operations Assistant Manager, who has been after his neck for sometime. Maligro's hatred on him became evident when he was assigned to Nasipit Bulk Plant at Nasipit, Agusan del Norte for two (2) months or so. He was deprived of his usual P1,000.00 a day per diem. He was also deprived of the usual facilities such as the service vehicle and the use and access to lighterage services.

Because of the tremendous work pressure, he availed and was granted a vacation leave in March 1996. Before he reported back to work he was summoned to the office of Peter Paul Shotwell. There, he was advised by [Petron's] officers to resign from [Petron] as they were instructed by superiors that he should quit as they no longer liked him. Failing to convince him he was later offered to avail of [Petron's] early retirement program dubbed as "Manpower Reduction Program" or MRP. Thereafter he was advised to avail of his remaining vacation leave while they process his MRP papers. After his vacation, he was no longer allowed to report back at his assignment at Mactan Aviation Facilities but directly to Maligro at the Cebu District Office. While being designated as Operations Engineer, he was assigned only menial tasks such as recopying errands, digging up files, drafting and redrafting memoranda and other mere clerical works. On August 5, 1996, Maligro bad-mouthed him in the presence of his co-employees for alleged dissatisfaction of his work as a mere clerk. What [Petron and Maligro] have done to him amounts to constructive dismissal. Hence, his complaint.^[7] (Words in brackets supplied.)

For their part, Petron and Maligro averred that Mantos was dismissed for just and valid causes effective December 1, 1996, asserting that:

xxx complainant [Mantos] incurred absences without leave (AWOL) on August 5 to 27, 1996 inclusive. He failed to comply with the instruction of a superior for him to report for work at the Cebu City District office and to submit a formal explanation of his AWOL. From August 28, 1996, up to the filing of respondents' position paper, complainant has not reported for work but continued to receive the salary for the months of August, September and October 2, 1996. An investigation was

conducted on September 2, 1996 but complainant failed to appear. Instead he sent two (2) letters thru his counsel accusing respondent Maligro of certain acts humiliating and prejudicing him. After a series of hearings, [Petron's] Investigation Committee in a report and recommendation of November 19, 1996, recommended that after a 30-day suspension, complainant should be subjected to a more severe penalty. Hence, they deny complainant's claims. [8]

In a decision dated June 30, 1998, Labor Arbiter Dominador A. Almirante declared Mantos to have been constructively dismissed but ruled that only Petron could be held liable to him for separation pay in lieu of reinstatement and the cash equivalent of his certificate of stocks, less his personal accountabilities. More specifically, the decision dispositively states:

WHEREFORE, foregoing premises considered, judgment is hereby rendered ordering the respondent Petron Corporation VISMIN District Office to pay complainant the amount of One Hundred Two thousand Nine Hundred Twenty-Eight Pesos and 41/100 (P102,928.41) representing the separation pay for his six (6) years of service at P15,420.00 a month, the cash equivalent of his certificate of stocks minus his outstanding account, computed as follows:

a. Separation Pay:

P15,420.00 x 6 years - P 92,520.00

b. Cash equivalent of certificate of stocks - P 66,600.00

Total P159,120.00

Minus - P 56,191.59

Net Award P102,928.41

SO ORDERED. [9]

Explains the Labor Arbiter in his decision:

It is an established fact that for his absences from August 5 to August 27, 1996, complainant was imposed the penalty of suspension for thirty (30) days from November 1 to 30, 1996 per the letter of respondent Maligro to complainant dated October 29, 1996 (Annex "D"). From respondents' Annex "6" which is a memorandum of November 19, 1996 containing the report of the Investigation Committee it is shown therein that the summons in this case was received by respondents on November 14, 1996. The following day, November 15, 1996, the Committee met to determine the factual basis of the charges of absence without leave and insubordination against complainant. The Committee was convened seven (7) days after the filing of the complaint herein on November 8, 1996.

We find that the foregoing factual milieu militates badly against the cause for the respondents. It appears that the Investigation Committee was belatedly constituted as an afterthought after the respondents received the summons in this case. For his AWOL, complainant was already sufficiently penalized by suspension for thirty (30) days, the maximum penalty authorized by law. In fact, complainant was still serving his

suspension when the Committee was convened and issued the memorandum of November 19, 1996 recommending his dismissal for AWOL and insubordination. The insubordination aspect stemmed from complainant's accusation in his complaint for constructive dismissal and withholding of his stock certificates. The imposition of the penalty of dismissal smacks of a desire to get even for complainant's filing of a complaint against the respondents. Anyway, the penalty of dismissal was too harshly and [d]isproportionately imposed on the complainant considering his length of service.

Furthermore, there is in an (sic) un rebutted evidence for the complainant that earlier while being assigned directly under respondent Maligro at the Cebu District Office, with the designation as Operations Engineer, he was assigned only menial tasks like recopying errands, digging up files, drafting and redrafting memoranda and other clerical works.

We find that respondents' act was tantamount to constructive dismissal xxx Under such circumstances, the continuance of complainant's employment with respondent corporation has been rendered impossible, unreasonable and unlikely. There exists also a demotion in rank.

xxx xxx xxx

We find therefore that complainant was illegally dismissed from the service. He should have been reinstated to his former position without loss of seniority rights. We find however, that the filing of this complaint has spawned strained relationship between the parties. Hence, reinstatement is no longer practical and feasible. Instead complainant should be awarded his separation pay equivalent to one (1) month pay per year of service. He is not however entitled to backwages. He is not completely free from blame in his separation from the service. He committed absences without leave. xxx

xxx xxx xxx

Complainant is also entitled to the cash equivalent of his certificate of stocks admitted in respondent's Exhibit "7" to be P66,600.00. From the total award shall be deducted the amount of P56,191.59 complainant's outstanding account to respondent.

The rest of the claims are hereby ordered dismissed for lack of merit not having been substantiated by clear and convincing evidence. Respondent Peter C. Maligro is hereby absolved from any liability hereof there being no showing that he acted in bad faith and in excess of his authority in dealing with the complainant. [10]

Both dissatisfied, the parties questioned the aforementioned Labor Arbiter's decision: Petron and Maligro, by way of an appeal to the NLRC at Cebu City, accompanied by a P102, 928.41 surety bond in favor of Mantos; and the latter, by a motion for reconsideration which the NLRC eventually treated as an appeal.

On July 31, 2000, the NLRC reversed the findings of the Labor Arbiter regarding

Mantos' constructive dismissal as of November 1, 1996 and considered him to have been illegally dismissed only on December 1, 1996. In the same decision, the NLRC adjudged Maligro solidarily liable with Petron, and accordingly modified the Labor Arbiter's decision as follows:

WHEREFORE, the questioned Decision is MODIFIED in that complainant was illegally suspended from November 1-30, 1996 and was ILLEGALLY DISMISSED on December 1, 1996, accordingly and as discussed, he should be paid separation pay based on his one month salary (P15,420.00) per year of service computed until the month of promulgation (July, 2000) of this Decision. In addition, complainant is entitled to full backwages from November 1, 1996 until July, 2000.

The finding below of cash equivalent of certificate of stocks in the amount of P66,600.00 is deleted. The accountability of complainant in the amount of P56,191.59 shall be deleted from his total awards.

Complainant is likewise entitled to ten percent (10%) of the total awards by way of attorney's fees.

The foregoing liabilities are solidary against respondents Petron Corporation and Peter C. Maligro.

SO ORDERED.^[11]

Justifying its decision, the NLRC explained that Mantos failed to prove that he had to quit his job on August 5, 1996 because his continued employment was rendered impossible, unbearable and unlikely. On the other hand, Petron and Maligro did not observe the requisite procedural due process considering that (1) the alleged Notice of Violation of Company Rules and Regulations dated August 27, 1996 which preceded the suspension of Mantos was not received by the latter; and (2) no separate notice for the two new charges of Absence Without Leave (AWOL) starting August 28, 1996 and Insubordination/Discourtesy for making false accusations against his superior, were sent to Mantos prior to the Notice of Termination dated November 20, 1996 based on the report/recommendation dated November 19, 1996 of the Investigation Committee. Furthermore, the Commission noted that on the day after Petron and Maligro received the summons with respect to Mantos' complaint with the NLRC-RAB, the Investigation Committee was immediately convened regarding Mantos' continued absences beginning August 28, 1996 with Maligro himself being a member of said committee.

With their motion for reconsideration having been denied by the NLRC in its Resolution of August 31, 2001,^[12] the petitioners elevated the case *via certiorari* to the CA in CA-G.R. SP No. 67702.

As stated at the threshold hereof, the CA, in its assailed **Resolution of November 26, 2001**, outrightly dismissed the petition for being defective in form because only petitioner Petron signed the verification and certification on non-forum shopping without its co-petitioner Peter Maligro likewise signing the same.

Their motion for reconsideration having been denied by the CA in its second