

## FIRST DIVISION

**[ G.R. NO. 167462, October 25, 2005 ]**

**MANLY EXPRESS INC. AND SIU ENG T. CHING, PETITIONERS, VS.  
ROMUALDO PAYONG, JR., RESPONDENT.**

### DECISION

**YNARES-SANTIAGO, J.:**

This petition for review on certiorari under Rule 45 of the Rules of Court assails the November 22, 2004 Decision of the Court of Appeals<sup>[1]</sup> in CA-G.R. SP No. 83800, as well as the February 28, 2005 Resolution<sup>[2]</sup> denying the motion for partial reconsideration.

The facts as found by the Court of Appeals are as follows:

The simple relevant facts of the case show that petitioners Hercules Balena and Romualdo Payong, Jr. were employed by Manly Express, Inc. and/or Siy Eng T. Ching on different dates, as tour coordinator (dispatcher) and welder, respectively.

Balena alleged that during his employment, he demanded from his employer the payment of correct employee's benefits. Nevertheless, every time he made the demand, he was told not to report for work anymore if he is not contented with the wages he was receiving. Then, herein private respondents called Balena's attention on his tardiness in work. As a result, on May 16, 2000, Balena commenced a case for constructive dismissal, payment of salaries, overtime pay, holiday pay, back wages, leave pay, 13th month pay and attorney's fees.

Petitioner Romualdo Payong, Jr. has another story to tell. Sometime in December 1999, he was complaining of eyesight problems. Brought to an eye specialist by private respondent Ching, he was diagnosed to be suffering from eye cataract. Despite having the cataract removed in January of 2000, he was disallowed to return to his work by Ching. Much later, on August 1, 2000, he was given a letter of termination of employment.<sup>[3]</sup>

The full text of the termination letter<sup>[4]</sup> reads:

01 August 2000

Dear Mr. Romualdo Payong Jr.,

Our company has been severely affected by the prevailing poor business climate. There is a reduced demand for our bus services - both for

shuttle and city operations - and this has substantially reduced our income. At the same time, our operating costs have increased, leaving us with a difficult cash position.

In order to survive, the company has decided to check on the performance of all its employees to determine productivity. Unfortunately, it has been noticed that due to your partial blindness, you can no longer work in the position that you are presently employed for.

In view of the above and the fact that despite the proper medical treatment for more than six months now, the company is constrained to terminate your employment effective immediately. In line with this, you are given a grace period of 15 days to remove all your personal belongings from the company premises counted from this date.

In behalf of the company, I would like to express my gratitude for the services that you have rendered our company. Kindly see the undersigned to coordinate the payment of your financial assistance and other benefits.

Thank you.

(Sgd.)  
Charles Malvin Ching  
Operations Manager

Thus, a complaint for illegal dismissal with money claims was filed against Manly, which was consolidated with the complaint of two other employees, namely Francisca Aduara and Flor Palisoc, also for illegal dismissal.

On July 31, 2001, the Labor Arbiter rendered judgment the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the complaint of Hercules Balena is hereby DISMISSED for want of cause of action. Furthermore, respondent company is hereby ordered to pay complainants Payong, Aduara and Palisoc the total amount of SEVENTY-FIVE THOUSAND NINE HUNDRED PESOS (P75,900.00), as discussed above.

SO ORDERED. <sup>[5]</sup>

The National Labor Relations Commission (NLRC) modified the decision of the labor arbiter, thus:

WHEREFORE, premises considered, the Decision of July 31, 2001 is hereby MODIFIED. Respondents are directed to pay the following:

Hercules Balena	-P3,750.00	Service incentive leave
		pay13th month pay
	<u>22,500.00</u>	
	P26,250.00	

Romualdo Payong	-P3,352.00	Service incentive leave
		pay13th month pay

20,115.00  
P23,467.00

Flor Palisoc            20,115.00 13th month pay

The other findings stand affirmed.

SO ORDERED.<sup>[6]</sup>

With the denial of their motion for reconsideration,<sup>[7]</sup> Balena and Payong elevated the case before the Court of Appeals, which rendered on November 22, 2004 a Decision, the dispositive portion of which reads:

IN VIEW OF ALL THE FOREGOING, the instant petition is hereby DENIED, in so far as petitioner Hercules Balena is concerned and the NLRC Decision, as to him, is AFFIRMED. However, as to petitioner Romualdo Payong, Jr., We resolve to GRANT the petition and declare his dismissal from employment by the private respondents to be unlawful and should therefore be entitled to reinstatement and separation pay, if reinstatement is no longer viable and backwages. No pronouncement as to costs.

SO ORDERED.<sup>[8]</sup>

The Court of Appeals found that Balena prematurely filed the complaint for illegal dismissal considering that at the time of its filing, he was still gainfully employed by Manly. The appellate court noted that he failed to mention the details of the alleged dismissal or to prove the severance of his employment. It held that the management's statement that he quit his job if he is not contented with the salary he is receiving is not equivalent to constructive dismissal.

As regards Payong, the appellate court observed that considering that the termination was based on his alleged partial blindness, Manly should have presented a certification by a competent public health authority that Payong was suffering from such a disease and his continued employment is prejudicial to his health and that of his co-employees. Without the certification, the dismissal was illegal.

Manly's motion for partial reconsideration was denied, hence, this petition.

The petition lacks merit.

Article 284 of the Labor Code authorizes an employer to terminate an employee on the ground of disease, thus:

Art. 284. Disease as ground for termination. - An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: ...

However, in order to validly terminate employment on this ground, Section 8, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code requires: