

SECOND DIVISION

[G.R. NO. 156810, November 25, 2004]

GERMAN MACHINERIES CORPORATION, PETITIONER, VS. EDDIE D. ENDAYA, RESPONDENT.

DECISION

AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the November 14, 2002 Resolution^[1] of the Court of Appeals in CA-G.R. SP No. 71460^[2] which dismissed the petition for *certiorari* filed by petitioner; and the January 16, 2003 Resolution^[3] denying petitioner's motion for reconsideration.

The antecedents of the case as summarized by the labor arbiter are as follows:

Complainant [Eddie Endaya] alleged that he was employed by respondent company on January 18, 1993, [as a] car painter with a salary of P8,000.00 a month for work performed from 7:30 A.M. to 5:15 P.M., Monday to Friday; that before March 1, 1999, he requested management that his SSS premiums already deducted from his salary be remitted to the SSS but management did not pay attention to his request; that on March 29, 1999, he filed a complaint with the Social Security System against respondent company for failure to remit his SSS premiums; that when management learned about his complaint, he was reprimanded and became the object of harassment; that he was shouted at and belittled; that on August 27, 1999, he at first refused to paint the trusses of the newly-constructed building, an extension of office of respondent company because his position is that of a car painter, not that of a construction worker and besides he finds difficulty working in high places as he was not trained for the purpose; but, later, he consented to do the painting job; that at about 11:00 A.M., he felt thirsty, so he went down to drink; but when he was about to go back to work, Mr. Andy Junginger who asked him where he came from got irked when told that he (complainant) went down to drink and, immediately, told complainant to get his separation pay from the Cashier and go home as he was already terminated.

Complainant also alleged that on September 6, 1999, he reported for work but he was surprised that Mr. Joseph Baclig handed him letters of suspension, dated August 27, 1999 and September 6, 1999 and he was told to go home; that he reported for work several times thereafter but he was told to stop reporting for work since his services were already terminated as of August 27, 1999.

Complainant, thus, contends that he was illegally dismissed.

Controverting complainant's allegations, respondents averred that complainant was employed, as painter, on January 18, 1993, with a salary of P8,000.00; that he was performing well in the first years in his employment but in the later years, particularly in July and August 1999, he became lazy, inefficient and hardheaded; that on August 27, 1999, after an investigation, complainant was suspended for acts of insubordination on August 23, 1999, when he did not follow instruction of the company president who asked him to help and assist a co-worker and instead turned his back on the president as if he heard nothing; that complainant was also warned of several offenses, such as "(a) negligence in the performance of his work in quality and efficiency, for doing a below par painting job, (b) evading work by leaving the working area without permission of his superior, (c) showing no interest in his work, (d) not cooperating or supporting co-employees during work, and (e) cutting short working time;" that when complainant returned to work on September 6, 1999, after his suspension, he was observed to be working halfheartedly, did not cooperate with his co-employees and did not follow instructions of his superiors for which respondent called his attention in a Memorandum dated September 6, 1999; that after he received the Memorandum, complainant never reported for work; and that respondent sent a Memorandum requiring complainant to explain his absences from work, which Memorandum was received by complainant's wife on September, 28, 1999; and that thereafter, nothing was heard of the complainant.

Further, respondents alleged that deductions from complainant's salary were amounts authorized by law or with the authority of complainant; that he was paid his holiday pay, five (5) days service incentive leave pay, 13th month pay for 1999 and vacation and sick leaves; that complainant has unpaid cash advances in the total amount of P8,600.00 secured from May, 1998 to May, 1999 for enrollment of his children, hospitalization of his parents, medicine and other personal family needs; that his sick leave, vacation leave and incentive leave had been fully paid by way of cash advances given to him on July 5, 1999, for the death of his father.

Respondents contended that complainant was never dismissed but he was the one who voluntarily left the company after his attention was called by management to his inefficiency and bad attitude toward his co-employees and superiors, which is chaotic and disorderly and troublesome; and that respondents offered to accept complainant back during the preliminary conference but he declined the offer and demanded payment of backwages and to be allowed to finish his painting job contract.

Respondents, thus, contend that complainant was never dismissed.^[4]

On January 8, 2001, the Labor Arbiter rendered judgment in favor of herein respondent, ratiocinating as follows:

On the first issue – whether or not complainant was illegally dismissed – it has invariably been ruled by the Supreme Court that, in termination cases, the burden of proof rests on the respondent to show that the dismissal is for a just cause and when there is no showing of a clear, valid and legal cause for the termination of employment, the law considers that matter a case of illegal dismissal. (See *Cosep, et. al. vs. NLRC, et. al.*, G. R. No. 124960, June 6, 1998).

In this case, the respondents contend that complainant abandoned his work and submitted in evidence a Memorandum dated September 15, 1999 (Annex 'E', Position Paper for respondent), stating:

*Date: September 15, 1999
To : EDDIE D. ENDAYA
From: EBERHARD JUNGINGER
Memo: Absence from work*

Since the time you had received the memo dated September 6, 1999

you choose not to report for work since then, and you did not also reply this memo as required.

Please explain why you do not like to work, and if you fail to do so you can be considered having abandoned your work.

Also you have failed to explain our charge of insubordination as stated in our memo.

Very truly yours,

*German Machineries Corporation
(Sgd.) Eberhard Junginger*

Said Memorandum appears to have been received by one Margie Endaya on September 28, 1999. (Annex "E-1," *ibid.*)

We note, however, that complainant has filed a complaint with the Department of Labor and Employment, National Capital Region, on August 30, 1999, charging the respondents of illegal dismissal (Annex 'F', *ibid.*). Summons was issued by the Chief, Industrial Relations Division of DOLE-NCR on September 13, 1999, ordering the parties to appear at the DOLE-NCR on September 24, 1999, at 10:00 A.M.

There is, thus, good reason to believe that the said Memorandum, dated September 15, 1999, was issued by respondent Junginger for the purpose of justifying the prior illegal dismissal of complainant.

Besides, abandonment is inconsistent with the filing of a complaint for illegal dismissal seeking reinstatement, as in this case.

As regards respondents' charges of absenteeism, painting job contract,

bad attitude towards co-employees and superior and alleged bad working habits, suffice it to state that complainant was not asked to explain his said offenses and, therefore, the same cannot constitute as valid causes for dismissal of the complainant.

From all the foregoing, it is clear that complainant did not abandon his work and respondent has no just or authorized cause to terminate the services of the complainant.^[5]

The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, judgment is hereby rendered:

1. declaring the dismissal of complainant to be without a just or authorized cause and, therefore, illegal;
2. ordering respondent German Machineries Corporation to reinstate the complainant to his former position without loss of seniority rights and other privileges and to pay complainant his full backwages inclusive of allowances and other benefits, computed from August 27, 1999 up to his actual reinstatement. As of the date of this Decision, complainant's full backwages totaled P143,884.06.

Should reinstatement of complainant be no longer feasible due to some valid reasons, respondent German Machineries Corporation is ordered to pay to complainant in addition to his full backwages, separation pay equivalent to one (1) month salary for every year of service, a fraction of at least six (6) months to be computed as one (1) whole year.

3. Ordering respondent German Machineries Corporation to pay to complainant the amount equivalent to ten (10%) percent of the total award in this decision as attorney's fees.

The other claims of complainant are hereby DISMISSED for lack of merit.

SO ORDERED.^[6]

Aggrieved by the Labor Arbiter's decision, herein petitioner filed an appeal with the National Labor Relations Commission (NLRC).

In a decision promulgated on February 28, 2002, the NLRC affirmed, with modification, the Labor Arbiter's decision. Accordingly, it disposed of the case as follows:

PREMISES CONSIDERED, the Decision of January 8, 2001 is hereby MODIFIED in that the award of 10% attorney's fees shall be based on awards representing 13th month pay and service incentive leave pay.

SO ORDERED.^[7]

Petitioner filed a motion for reconsideration but the same was denied by the NLRC in a resolution promulgated on April 19, 2002.^[8]