

## SECOND DIVISION

**[ G.R. No. 140982, September 23, 2003 ]**

**MARIO GUTIERREZ, PETITIONER, VS. SINGER SEWING MACHINE COMPANY AND LEONARDO CONSUNJI, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

For review is the decision<sup>[1]</sup> of the Court of Appeals, dated November 29, 1999, in CA-G.R. SP No. 50498. The appellate court reversed the decision<sup>[2]</sup> of the National Labor Relations Commission (NLRC), 2<sup>nd</sup> Division, dated December 22, 1997, and thereby affirmed the ruling<sup>[3]</sup> of the Labor Arbiter in NLRC NCR Case No. 00-10-06201-96, which dismissed petitioner's complaint for illegal dismissal.

Culled from the records are the following facts:

Petitioner Mario Gutierrez was initially hired by Singer Sewing Machine Company (hereafter "Singer" for brevity) as Audit Assistant on contractual basis in 1993. He became an Accounts Checker on probationary status on February 8, 1994. Thereafter, he acquired regular status as Asset Auditor on March 1, 1995, receiving a monthly salary of P4,455, until September 9, 1996, when he was dismissed from employment.

Singer premised the petitioner's termination on the following incidents:<sup>[4]</sup>

On August 1, 1996, at around 3:15 p.m., Ms. Emelita Garcia, Personnel Supervisor of Singer, caught Gutierrez and three other Asset Auditors, watching a video tape inside the Asset/Legal Department Office. Despite Ms. Garcia's reminder that it was no longer break time and that the other occupants of the room might be disturbed, Gutierrez and company ignored Ms. Garcia and continued to watch the video.

The following day, August 2, 1996, Ms. Evangeline Que-Ilagan, Administration Manager of Singer, noticed a sign posted at the door of the Asset/Legal Department Office, which read "*MAIPARIT TI UMISBO DITOY.*" When she asked who placed the sign at the door, Gutierrez admitted responsibility. When Ms. Que-Ilagan asked what it meant, Gutierrez answered, "*BAWAL ANG UMIHI DITO*" (No Urinating Here). Ms. Que-Ilagan then asked if Gutierrez had seen anyone urinate at the door where the sign was posted and the latter replied in the negative. Ms. Que-Ilagan then asked why he placed such a sign, to which Gutierrez replied, "*Gusto ko, eh*" (It is my pleasure). She admonished him not to do the same thing again and requested him to remove the sign, but Gutierrez refused to do so.

Later that same day, August 2, 1996, Gutierrez personally explained his side to the Asset Manager, Mr. Leonardo Consunji, at the latter's office. Gutierrez claimed that

he only admitted to the posting of the sign in order to take the cudgels for a co-employee. He also explained that their use of the video equipment was upon the orders of their supervisor, Mr. Romeo C. Ninada. The latter wanted to test the quality of their video players.

Mr. Consunji brought the matter to the attention of Mr. Ninada. The latter promptly issued a Memo dated August 6, 1996, requiring Gutierrez to explain his side.

Gutierrez then informed Mr. Ninada that he had already discussed the matter with Mr. Consunji.

In his letter to Mr. Consunji dated August 21, 1996,<sup>[5]</sup> Mr. Ninada opined, "[T]he case does not deserve to be devoted with too much time and effort" as he considered it a "minor offense."<sup>[6]</sup>

Nevertheless, Mr. Consunji issued a Memo<sup>[7]</sup> dated August 28, 1996, informing Gutierrez of the latter's violation of company rules and regulations, specifically citing the following:

Part V-B.9 Use of Company's time, materials, equipment and other assets for personal use or business; and

Part V-B.18 Acts of vandalism such as defacing or destroying Company documents and records; posting, altering or removing any printed matter, announcements or signs in the Bulletin Boards unless specifically authorized.

Under the Company Code of Discipline, these infractions were classified as 4<sup>th</sup> Degree Offenses with the corresponding sanction of dismissal.

In the same Memo, Gutierrez was directed to explain in writing why the aforesaid penalty should not be imposed on him. He was given until August 30, 1996, to comply with the directive.

As Gutierrez insisted that he had previously verbally explained his side to Mr. Consunji, no written explanation was submitted by him.

On September 9, 1996, another Memo<sup>[8]</sup> was issued by Mr. Consunji, worded as follows:

After a thorough investigation of the incident and after having found your explanations to be unsatisfactory and due to your refusal to comply with my memo to you dated August 28, 1996 which constitutes willful defiance or disregard of Company authority, the management deems it fitting and proper to impose upon you the penalty of dismissal *effective immediately* upon receipt hereof. (Emphasis ours)

On September 19, 1996, petitioner filed a motion/request for reconsideration with Singer, but the latter stood pat on its decision to dismiss him.

Thus, petitioner filed the complaint for illegal dismissal with claims for damages before the Labor Arbiter, docketed as NLRC NCR Case No. 00-10-06201-96. In a

decision<sup>[9]</sup> dated August 13, 1997, Labor Arbiter Renato A. Bugarin dismissed the complaint for lack of merit, thus:

Taking into consideration the totality of the evidence for the respondents all extant in the records, we find and so hold that complainant was dismissed for valid and just cause.

Lastly, we find no necessity to discuss at length complainant's prayer for award of damages, for lack of factual and legal basis to apply Article 2217 and 2229 of the Civil Code, as well as Article 111 of the Labor Code.

WHEREFORE, let this case be, as it is hereby DISMISSED, for want of merit.

Respondent's counter-claim is hereby likewise DISMISSED, for the same reason.

SO ORDERED.<sup>[10]</sup>

On appeal, the NLRC's 2<sup>nd</sup> Division reversed the Labor Arbiter and found in favor of petitioner, disposing as follows:

WHEREFORE, finding merit in the appeal, the Decision dated August 19, 1997 is hereby REVERSED and SET ASIDE. A new one is entered declaring respondents guilty of illegal dismissal. Complainant is entitled to reinstatement with backwages commencing from the date of his dismissal on September 9, 1996 up to the date of his actual reinstatement. In case reinstatement is no longer feasible, complainant should be paid his separation pay at the rate of one month salary for every year of service in addition to backwages.

SO ORDERED.<sup>[11]</sup>

Singer's Motion for Reconsideration was likewise denied by the NLRC.

Aggrieved, Singer filed a petition for certiorari with this Court, which in turn was referred, by resolution<sup>[12]</sup> dated December 2, 1998, to the Court of Appeals, pursuant to our ruling in *St. Martin Funeral Homes v. NLRC and Bienvenido Aricayos*.<sup>[13]</sup>

The Court of Appeals reversed the NLRC, thereby upholding and reinstating the decision of the Labor Arbiter, to wit:

WHEREFORE, the petition is hereby GRANTED. The questioned decision and resolution of the National Labor Relations Commission are SET ASIDE and the complaint filed by private respondent is DISMISSED, as decreed by the Labor Arbiter.

SO ORDERED.<sup>[14]</sup>

Gutierrez now comes to us *via* a petition for review on certiorari seeking to reverse and set aside the decision of the Court of Appeals, with a prayer for moral damages and attorney's fees. Petitioner alleges that the Court of Appeals gravely erred...

...WHEN IT DISMISSED THE COMPLAINT FOR ILLEGAL DISMISSAL, RELYING SOLELY ON THE BASIS OF THE AFFIDAVITS SUBMITTED BY RESPONDENTS' EMPLOYEES, CONTRARY TO THE FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION THAT THESE ARE BIAS[ED] AND THEREFORE SHOULD NOT BE GIVEN MUCH WEIGHT AND CREDIT;

...WHEN IT SHIFTED THE BURDEN OF PROOF UPON THE PETITIONER TO PROVE HIS INNOCENCE FROM THE ALLEGED OFFENSE IMPUTED BY THE RESPONDENTS, CONTRARY TO EXISTING JURISPRUDENCE; and

...WHEN IT SUSTAINED THE SUPREME PENALTY OF DISMISSAL NOTWITHSTANDING THE TRIVIAL NATURE OF THE INFRACTIONS ALLEGEDLY COMMITTED BY THE PETITIONER.<sup>[15]</sup>

In our view, the pertinent issues for our resolution are: (1) Whether the appellate court erred in procedural and evidentiary matters, such as its alleged reliance on mere affidavits of respondents' employees and shifting the burden of proof to the petitioner, in violation of due process; and (2) Whether the appellate court erred in reversing the NLRC which declared respondents guilty of illegal dismissal of the petitioner from his employment.

Anent the *first issue*, the sufficiency of Singer's evidence is strongly contested by petitioner. Generally, it is not our function to review findings of fact. However, the divergence in the findings and conclusions of the NLRC, on one hand, from those of the Labor Arbiter and the Court of Appeals, on the other, constrains us to examine the evidence presented by Singer to support its grounds for Gutierrez' dismissal.

The record shows that Singer's evidence against petitioner was based on three affidavits<sup>[16]</sup> made by three of its employees. These consisted of the affidavit of Mrs. Evangeline Que-Ilagan with respect to the "No Urinating Here" sign; the affidavit of Ms. Emelita Garcia, which narrated the details of the video-watching incident; and the sworn statement of Ms. Rosalina Orongan corroborating the affidavit of Ms. Garcia.

Petitioner Gutierrez refuted the allegations against him. He claimed that he only admitted authorship of the "No Urinating Here" sign in order to bail out a co-employee who actually posted the sign. As to the video- watching, according to him, it was pursuant to instructions of their supervisor.

The company arrived at its decision to dismiss petitioner after hearing the complaints against him and also giving him an opportunity to air his own side of the controversy.

On this score, we agree with the Court of Appeals in finding that in this case procedural due process was not violated by management. Singer has shown compliance with the two-notice requirement – *first*, of the intention to dismiss, indicating therein the acts or omissions complained against; and *second*, of the decision to dismiss an employee – and in between such notices, an opportunity for