



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

JARL CONSTRUCTION and
ARMANDO K. TEJADA,
Petitioners.

G.R. No. 175969

Present:

LEONARDO-DE CASTRO,*
Acting Chairperson,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR., and
PERLAS-BERNABE,** JJ.

- versus -

SIMEON A. ATENCIO,
Respondent.

Promulgated:

01 AUG 2012

DECISION

DEL CASTILLO, J.:

In dismissing an employee from service, the employer has the burden of proving its observance of the two-notice requirement and its accordance to the employee of a real opportunity to be heard.

Before the Court is a Petition for Review¹ assailing the November 29, 2005 Decision² of the Court of Appeals (CA) in CA-G.R. SP No. 80517, which contained the following disposition:

WHEREFORE, premises considered, the petition is **GRANTED**. Accordingly, [JARL Construction and Armando K. Tejada] are ordered to pay the unpaid salaries of [Simeon A. Atencio] in the amount of ₱165,000.00, pro-

* Per Special Order No. 1226 dated May 30, 2012.

** Per Special Order No. 1227 dated May 30, 2012.

¹ Rollo, pp. 9-21.

² CA rollo, pp. 175-186; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Bienvenido L. Reyes (now a member of this Court) and Vicente S.E. Veloso.

rated 13th month pay of ₱12,500.00 and ₱30,000.00 nominal damages. No pronouncement as to costs.

SO ORDERED.³

Factual Antecedents

This case stems from a complaint for illegal dismissal, nonpayment of salaries, and 13th month pay filed by respondent Simeon A. Atencio (Atencio) with the National Labor Relations Commission (NLRC) against petitioners JARL Construction (JARL) and its general manager, Armando K. Tejada (Tejada).⁴

On December 16, 1998, JARL, through its general manager, Tejada, hired Atencio as its chief operating manager, whose primary function was to direct and manage JARL's construction projects in accordance with its company policies and contracts. Atencio's employment contract agreement⁵ states that, when the execution of a project requires a contract modification, the chief operating manager has the duty to report the needed changes to the company President, for the latter's approval. Further, as chief operating manager, he is the recommending authority with respect to the award of subcontracts and purchase orders. The agreement provides for a monthly salary of ₱30,000.00.

During Atencio's tenure as chief operating manager, his employer JARL had an existing contract with Caltex Philippines (Caltex) to construct a Caltex service station in Quezon City (Caltex project). The contract with Caltex prohibited JARL from subcontracting the project.

According to Atencio, he discovered during his employment that JARL did not have the proper facilities, personnel, and equipment to undertake the Caltex project, hence he and Tejada discussed the need for hiring subcontractors. It was

³ Id. at 185.

⁴ Id. at 38.

⁵ Id. at 32-36.

during these meetings that Tejada agreed to hire Atencio's construction company, Safemark Construction and Development Corporation (Safemark), to perform works for the Caltex project.⁶ This arrangement is proven by Safemark's contract proposal dated February 2, 1999, to which Tejada signed his conformity,⁷ and two official receipts of Safemark, which were issued to acknowledge receipt of JARL's payments for Safemark's professional services. The first receipt is dated May 12, 1999, which states that Safemark received from JARL a partial payment of ₱1,074,173.50 for professional services. The second receipt dated June 4, 1999 acknowledges JARL's partial payment of ₱817,336.00,⁸ for Safemark's billing for June 2, 1999, which demanded the amount of ₱1,702,051.81 from JARL.⁹

Further, Tejada allegedly gave Atencio full authority as JARL's chief operating manager to hire other subcontractors if necessary.¹⁰ Pursuant to his blanket authority, Atencio hired DDK Steel Construction and Building Multi-Technology (DDK Steel) for the electrical installations of the Caltex project.¹¹

On May 24, 1999, Tejada informed Atencio and Safemark that JARL was terminating Atencio's management and supervision works for the Caltex project effective May 20, 1999. JARL assured Atencio and Safemark that it will pay for the rendered services, save for a 15% portion thereof, which JARL will retain until Caltex has accepted the project.¹²

Atencio construed the above letter as a termination of the subcontract between his company and JARL. Thus, he threatened JARL and Tejada that he will report their unethical conduct with the Philippine Accreditation Board for possible sanctions.¹³

⁶ Id. at 51.

⁷ Id. at 91.

⁸ Id. at 116.

⁹ Id. at 118.

¹⁰ Id. at 51.

¹¹ Id. at 51-52.

¹² Id. at 115.

¹³ Id. at 117. The letter reads:
31 May 1999

Believing, however, that his employment as JARL's chief operating manager was separate from their subcontracting agreement, Atencio allegedly continued reporting for work to the Caltex project site until, sometime in June 1999,¹⁴ when he was barred from entering the said premises.¹⁵

On July 20, 1999, Atencio filed his complaint for illegal dismissal, nonpayment of salaries, and 13th month pay with the NLRC.¹⁶ He maintained that JARL did not inform him of the charges leveled against him and of his termination from employment. He claimed learning of his termination only through the letter that JARL sent to Caltex Philippines¹⁷ (he did not explain, however, how he came to see this letter), which reads:¹⁸

31 May 1999

CALTEX (Philippines)
6760 Ayala Avenue
Makati City

Attention : MR. EDUARDO S. MAXIMO
Manager, Retail Engineering

Subject : NOTICE OF TERMINATION

Dear Mr. Maximo,

JARL CONSTRUCTION

1773 Guizon Street,
Makati City

Attention : MR. ARMAN K. TEJADA

Subject : CSS Construction

Commonwealth Avenue, Matandang Balara, Quezon City

Dear Mr. Tejada,

Please be informed that we will soon submit your name and Company to the Philippine Accreditation Board for Sanction of unbecoming and unethical contractor at the expense of another contractor.

We will soon send to Caltex our Contract Agreement for their proper information [illegible] you have subcontracted the job to us.

Because of this action re: NOTICE OF TERMINATION without first clearing this from us, you have just created a grave abuse of confidence.

Unless you can come up with any acceptable explanation and compromise to this serious action, this may reach beyond the halls of our respective offices.

May I await your response? Thank you.

(signed)

Simeon Atencio

¹⁴ Id. at 49-54.

¹⁵ Id. at 41.

¹⁶ Id. at 38.

¹⁷ Id. at 40-41.

¹⁸ Id. at 37.

This is to formally inform you that Mr. Simeon A. Atencio is no longer connected with JARL CONSTRUCTION effective May 20, 1999. Any transaction made and entered into by him in behalf of JARL CONSTRUCTION will not be honored by our company.

Thank you very much.

Very truly yours,

(signed)
ARMANDO K. TEJADA
General Manager

He maintained that JARL never paid him his monthly salary and 13th month pay as chief operating manager.¹⁹

JARL and Tejada admitted hiring Atencio as chief operating manager and terminating his services on May 20, 1999, but asserted that it was done for just causes and with substantial compliance with the procedural requirements.²⁰

They allegedly lost confidence in Atencio after the latter entered into a Subcontract Agreement with DDK Steel in the Caltex project, without the consent of the top management of JARL and in violation of JARL's contract with Caltex. He even sent letters to Caltex that jeopardized JARL's relationship with its client. Further, he instigated JARL's project engineer to fabricate the project accomplishment report and he habitually defied company policies and procedures.²¹

They maintained having apprised Atencio of the foregoing charges against him but the latter refused to explain himself and chose not to report for work beginning May 20, 1999.²²

¹⁹ Id. at 41.

²⁰ Id. at 44-46.

²¹ Id. at 45-46.

²² Id. at 44-48.

Lastly, they maintained that they have adequately compensated Atencio for his services as evidenced by Safemark's two official receipts, which total ₱1,891,509.50.²³

Atencio denied the truth of petitioners' explanations.²⁴ He maintained that the amounts that JARL paid to Safemark were payments for the company's services as subcontractor, not payment of Atencio's salaries as chief operating manager.

Ruling of the Labor Arbiter²⁵

Labor Arbiter Ariel Cadiente Santos found just cause for Atencio's removal²⁶ but found the dismissal ineffectual because of petitioners' failure to observe the twin requirements of due process.²⁷ For this violation, he ordered petitioners to pay Atencio's backwages from the date of ineffectual dismissal until rendition of the judgment.²⁸

The Labor Arbiter also found in Atencio's favor the issue of nonpayment of salaries and 13th month pay.²⁹ He did not accept petitioners' contention that the receipts that Atencio's construction company issued were proof of payment of Atencio's salaries and other benefits. The Labor Arbiter held that an employer can easily present its own payrolls and vouchers, if indeed payments for salaries and other benefits were made but JARL failed to do so.³⁰

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

²³ Id. at 46.

²⁴ Id. at 49-54.

²⁵ Id. at 63-70; penned by Labor Arbiter Ariel Cadiente Santos.

²⁶ Id. at 68-69.

²⁷ Id. at 69.

²⁸ Id. at 70.

²⁹ Id.

³⁰ Id. at 69-70.

WHEREFORE, premises considered, the complaint for illegal dismissal is hereby DISMISSED. However, for non-observance of due process, respondents are jointly and severally liable to pay complainan[t] his backwages from date of dismissal until rendition of this judgment which to date is ₱810,225.00. (₱30,000.00 x 24.93 mos. = ₱747,900.00 plus ₱62,325.00 as 13th month pay)

Further, respondents are liable to pay complainant his salaries amounting to ₱165,000.00.

Finally, complainant should be paid his pro-rata 13th month pay in the sum of ₱12,500.00.

SO ORDERED.³¹

JARL and Tejada appealed the monetary awards to the NLRC.³² They maintained affording Atencio his procedural due process, but the latter chose to waive his right to be heard by refusing to talk to them.³³ They also insisted that the payments they gave to Safemark covered Atencio's salaries and 13th month pay.³⁴ They asked for the reversal of the Labor Arbiter's Decision and the dismissal of Atencio's complaint.³⁵

Ruling of the National Labor Relations Commission³⁶

The NLRC reversed the Labor Arbiter's Decision.

In finding that the employer observed the procedural requirements for a valid dismissal, the NLRC gave emphasis to two letters adduced in evidence. The first is Atencio's letter to JARL dated June 21, 1999, which reads:

Dear Mr. Tejada,

Thank you very much for making everything clear. I agree, 100% that you are

³¹ Id. at 70.

³² Id. at 72-80.

³³ Id. at 77.

³⁴ Id. at 77-78.

³⁵ Id. at 79.

³⁶ Id. at 18-29; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioner Victoriano R. Calaycay.

right on your letter of June 16, 1999,³⁷ as faxed on June 18, 1999 to our office for having hired me as your MANAGING DIRECTOR.

I am very sorry, and therefore please accept my apology for initially entertaining the impression that the construction of the NEW CSS (El Mavic Property) has been under a Sub-contract Agreement between JARL Construction and SAFEMARK CONSTRUCTION AND DEVELOPMENT CORPORATION, wherein I am the President and Chief Executive Officer.

I also regret that I may have cause[d] you any inconvenience about the Sub-contract Agreement affair. It was my mistake for that wrong assumption. The proof of the existing duly signed said appointment and non-existing Sub-contract Agreement has now settled everything in an unmistakable manner.

Relative to this, we are enclosing herewith the official receipts acknowledging payment of the Professional Service Fee amounting to ₱1,074,173.50 and ₱817,336.00, dated May 12, 1999 and June 4, 1999, respectively. It may also interest you to know that we have the SEC and BIR registration documents, herewith attached for reference.

Please rest assured that we will completely forget the idea, and any thought regarding the obfuscating Sub-contract Agreement that never exists between your company and mine. Thank you.

Very truly yours,

(signed)
Simeon Atencio
President and CEO³⁸

The NLRC held that the above letter, wherein Atencio acknowledges his mistakes and apologizes for them, constitutes proof that Atencio was aware of the charges leveled against him, that he had the opportunity to explain himself.

The *second* letter is JARL's earlier letter dated May 24, 1999, which reads:

May 24, 1999

Safemark Construction & Dev. Corp.
298 Roosevelt Ave. San Francisco Del Monte
Quezon City

Attention : Mr. Simeon A. Atencio

³⁷ This letter does not appear in the available records and was not attached by the parties to their respective pleadings before this Court.

³⁸ CA *rollo*, p. 113.

Subject : EL MAVIC INVEST. CO., INC. PROPERTY NEW CSS
CONSTRUCTION

Dear Mr. Atencio:

Per your letter dated May 22, 1999,³⁹ we are officially terminating your management and supervision works for the abovementioned subject effective May 20, 1999.

We are committed to pay for the services you have rendered, however fifteen percent of your contract will be on hold for retention and a certain percentage amount for liquidated damages if any, our client required [sic] us to pay. We will release this on hold payment as soon as we received [sic] the final acceptance from our client.

Thank you for your services and assistance regarding this project.

Very truly yours,

(signed)
Armando K. Tejada
General Manager⁴⁰

The NLRC held that JARL, through this letter, clearly informed Atencio of its decision to terminate his employment as its chief operating manager. Having been accorded due process, Atencio is not entitled to backwages.⁴¹

The NLRC further held that Atencio admitted in the above letter receiving the total amount of ₱1,891,509.50 from JARL. Since the amount he admittedly received from JARL exceeds Safemark's demand in the letter dated June 2, 1999 (wherein Atencio's company demanded from JARL the amount of ₱1,702,051.84 only), the excess payment already covers the alleged unpaid salaries and 13th month pay. Thus, Atencio is not entitled to further monetary awards.⁴²

The NLRC dismissed Atencio's complaint thus:

WHEREFORE, premises considered, the decision appealed from is hereby SET ASIDE and a new one entered dismissing this case for lack of merit.

³⁹ Neither of the parties attached this particular letter to the records of the case, nor discussed its contents in any of their pleadings.

⁴⁰ *CA rollo*, p. 115.

⁴¹ *Id.* at 26-27.

⁴² *Id.* at 27-28.

SO ORDERED.⁴³

Atencio sought a reconsideration⁴⁴ of the NLRC Decision, which it denied for lack of merit.⁴⁵

Atencio then appealed to the CA, seeking the reinstatement of the Labor Arbiter's Decision.⁴⁶

Ruling of the Court of Appeals⁴⁷

The appellate court clarified that the parties do not dispute the finding that JARL terminated Atencio's employment for a just cause. The only issue before it is the propriety of the monetary awards granted by the Labor Arbiter but deleted by the NLRC.

The CA held that Atencio's dismissal was ineffectual for the employer's failure to observe the procedural requirements for a proper termination of employment. *First*, the law requires the employer to inform the employee in writing of the charges against him, which notice should be served at the employee's last address. No such notice is extant on the records. *Second*, the law requires the employer to give the employee an opportunity to explain his or her side before the employer terminates the employment. The CA found no evidence that JARL gave Atencio such an opportunity *before* it dismissed him as its chief operating manager. The letter that the NLRC highlighted was written on June 16, 1999, which is *after* Atencio's termination from employment on May 20, 1999. The CA determined that according the employee an opportunity to be heard after he has already been terminated does not comply with the requirement of law. *Third*, the law requires a written notice of termination duly served on the

⁴³ Id. at 28.

⁴⁴ Id. at 85-90.

⁴⁵ Id. at 30-31.

⁴⁶ Id. at 15; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

⁴⁷ Id. at 175-186.

dismissed employee. Contrary to the NLRC's findings, the May 24, 1999 letter does not terminate Atencio's employment from JARL, but only the services of Atencio's construction company from the Caltex project.⁴⁸ Due to the violations of the procedural requirements, the CA determined that Atencio is entitled to nominal damages in the amount of ₱30,000.00.⁴⁹

The appellate court also reversed the NLRC with respect to the issue of the unpaid salaries and 13th month pay. It held that the party who pleads payment has the burden of proving his allegation.⁵⁰ The employer should have presented the pertinent personnel files, payrolls, records, remittances, and other similar documents, which are in its custody and control. JARL did not present any of these relevant documents in support of its contention that it has duly paid Atencio for his services as chief operating manager.⁵¹ JARL's failure to produce said evidence gives the impression that Atencio had not been paid.

Contrary to the NLRC's findings, the CA held that Safemark's official receipts are not sufficient proof of payment of Atencio's salaries. These receipts do not manifest that the amounts received by Safemark, or any portion thereof, is intended as payment of Atencio's salaries.⁵² Thus, it ordered JARL and Tejada to pay Atencio's unpaid salaries amounting to ₱165,000.00 and pro-rated 13th month pay of ₱12,500.00.

The appellate court denied the employer's motion for reconsideration⁵³ in its Resolution dated December 8, 2006.⁵⁴

Petitioners filed the instant petition seeking the reinstatement of the NLRC Decision, which dismissed Atencio's complaint.⁵⁵

⁴⁸ Id. at 180-183.

⁴⁹ Id. at 183.

⁵⁰ Id. at 184.

⁵¹ Id.

⁵² Id. at 184-185.

⁵³ Id. at 187-193.

⁵⁴ Id. at 197-198.

⁵⁵ Petition, p. 10; *rollo*, p. 18.

Issues

Whether petitioners were able to prove their substantial compliance with the procedural due process requirements

Whether the receipts issued by Safemark evidencing JARL’s payment for “Professional Services” suffice as proof of payment of salaries and 13th month pay

Our Ruling

Compliance with procedural due process requirements

Article 277(b) of Presidential Decree No. 442 or the Labor Code of the Philippines requires according the employee both notice and hearing, thus:

ART. 277 – MISCELLANEOUS PROVISIONS

x x x x

(b) x x x, [T]he employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations x x x.

Section 2(d), Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code expounds on the procedural due process requirements that every employer must observe in a termination of employment based on a just cause:

Section 2. *Security of Tenure.* – x x x (d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him.

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

The Court explained the purposes of the two notices:

The first notice, which may be considered as the proper charge, serves to apprise the employee of the particular acts or omissions for which his dismissal is sought. The second notice on the other hand seeks to inform the employee of the employer's decision to dismiss him. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge and ample opportunity to be heard and defend himself with the assistance of a representative, if he so desires. This is in consonance with the express provision of the law on the protection to labor and the broader dictates of procedural due process. Non-compliance therewith is fatal because these requirements are conditions sine qua non before dismissal may be validly effected.⁵⁶

The Court agrees with the shared conclusions of the Labor Arbiter and the appellate court that petitioners' evidence fails to prove their contention that they afforded Atencio with due process. The June 21, 1999 letter, which allegedly proves Atencio's knowledge of the charges against him, and which allegedly constitutes Atencio's explanation, clearly discusses an entirely different topic – which is the removal of his construction company from the Caltex project. In the letter, Atencio states that he was wrong for assuming that there was a subcontracting agreement between his firm and JARL. He took responsibility for the misunderstanding between them and apologized. Nowhere in the said letter does Atencio refer to the charges, which JARL mentioned before the Labor Arbiter as the causes for his dismissal. Logically, he did not also explain himself as regards the said charges.

⁵⁶ *Austria v. National Labor Relations Commission*, 371 Phil. 340, 357 (1999).

As for the May 24, 1999 letter, which allegedly constitutes the notice of termination of Atencio's employment as JARL's chief operating manager, the Court agrees with the CA's appreciation that the said letter involves the termination of the subcontracting agreement between JARL and Atencio's company, and not the termination of Atencio's employment. This is bolstered by the fact that the said letter is not addressed solely to Atencio, which should have been the case if it were a letter terminating his employment. Instead, it is addressed to Safemark, with Atencio in the attention byline, which supports the conclusion that this letter involves a contract of *the* corporation, and not of Atencio only. Moreover, petitioners' reservation in the May 24, 1999 letter, which states that JARL will retain a 15% portion of the contract price until Caltex has accepted the project, is expected in a subcontract agreement, but not in employment contracts. Clearly, the letter does not meet the statutory requirement of notice of termination of employment.

The Court thus affirms the appellate court's ruling that petitioners' failure to observe the two-notice rule under Article 277(b) of the Labor Code entitles the respondent to nominal damages, in accordance with *Agabon v. National Labor Relations Commission*.⁵⁷

Payment of salaries and 13th month pay

With respect to the issue of unpaid salaries and 13th month pay, the Court agrees with the appellate court that petitioners' evidence does not support their contention of payment.

When there is an allegation of nonpayment of salaries and other monetary benefits, it is the employer's burden to prove its payment to its employee.⁵⁸ The employer's evidence must show, with a reasonable degree of certainty, that it paid

⁵⁷ 485 Phil. 248, 288 (2004).

⁵⁸ Id. at 289.

and that the workers actually received the payment. “The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents x x x are not in the possession of the worker but [are] in the custody and absolute control of the employer.”⁵⁹

In the case at bar, the two official receipts issued by Safemark, and offered as JARL’s evidence, only prove that JARL made a total partial payment of ₱1,891,509.50 to the said company for its “professional services.” Since JARL admits that the said company actually rendered services for JARL on its Caltex project, the payment can only be assumed as covering for the said services. There is nothing on the face of the receipts to support the conclusion that Atencio (and not his company) received it as payment for his service as a JARL employee.

Moreover, JARL’s contention that out of the ₱1,891,509.50 payment, only ₱1,702,051.81 thereof pertains to Safemark, while the balance of ₱189,457.69 pertains to Atencio’s salaries is not supported by the attending circumstances. It will be remembered that JARL made the first payment of ₱1,074,173.50 to Safemark on May 12, 1999.⁶⁰ After such payment, Atencio sent to JARL on June 2, 1999 a summary of cost of materials, labor and equipment rental totaling ₱1,702,051.81.⁶¹ Two days later, JARL paid Safemark the amount of ₱817,336.00 as partial payment for Professional Services.⁶² Naturally, the last payment of ₱817,336.00 should be deducted from the last demand, which was for ₱1,702,051.81. Thus, the attending facts reveal that, instead of an overpayment, JARL still owed Safemark the amount of ₱884,715.81. Without proof of the alleged excess payment, JARL’s contention has no leg to stand on. The CA was therefore correct in awarding Atencio his unpaid salaries and pro-rated 13th month pay.

⁵⁹ Id.

⁶⁰ CA *rollo*, p. 116.

⁶¹ Id. at 118.

⁶² Id. at 116.

WHEREFORE, premises considered, the Petition is **DENIED**. The assailed November 29, 2005 Decision of the Court of Appeals in CA-G.R. SP No. 80517 is **AFFIRMED**.

SO ORDERED.




MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:



TERESITA J. LEONARDO-DE CASTRO

Associate Justice
Acting Chairperson




LUCAS P. BERSAMIN

Associate Justice



MARTIN S. VILLARAMA, JR.

Associate Justice



ESTELA M. PERLAS-BERNABE

Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



TERESITA J. LEONARDO-DE CASTRO

Associate Justice
Acting Chairperson

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

A handwritten signature in black ink, appearing to read 'Antonio T. Carpio', with a stylized, flowing script.

ANTONIO T. CARPIO

Senior Associate Justice

(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)