

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**PHILTREAD TIRE & RUBBER
CORPORATION,**
Petitioner,

-versus-

**G.R. No. 142759
November 10, 2004**

ALBERTO VICENTE,
Respondent.

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DECISION

SANDOVAL-GUTIERREZ, J.:

For resolution is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[1] dated November 25, 1999 and the Resolution^[2] dated March 22, 2000 rendered by the Court of Appeals in CA-G.R. SP No. 52723, entitled “Philtread Tire and Rubber Corporation vs. National Labor Relations Commission and Alberto Vicente.”

The facts as borne by the records are:

On February 9, 1978, Alberto M. Vicente, respondent, was employed by Philtread Tire and Rubber Corporation, petitioner. At the time of his dismissal from the service, he was a housekeeping coordinator at

the General Services Department, receiving a monthly salary of P8,784.00. One of his duties was to recommend to petitioner, for its approval, projects intended for the beautification and maintenance of its premises.

On February 15, 1991, Engr. Ramon Y. Dumo, Administrative Officer and Head of petitioner's Security and Safety Department, received a complaint from Crisente Avis, a sign painter with whom petitioner had a service contract. Avis reported that he was being forced by respondent to overprice by P1,000.00 his service fee of PP3,800.00 and to deliver to him (respondent) the said amount of P1,000.00; and that should Avis fail to do so, he will no longer be awarded future contracts.

Acting thereon, Engr. Dumo conducted an investigation attended by respondent, Avis, and three representatives from the workers' union. Avis declared that sometime in January 1991, petitioner hired him to paint its trash cans, push carts and cigarette waste boxes. They agreed that his services will be paid upon completion of the painting job and submission of the corresponding invoice. However, herein respondent instructed him to prepare an invoice indicating therein that his fee for his painting services is P4,800.00, instead of P3,800.00. Respondent even assured him that the petitioner will approve the invoice.

At this juncture, petitioner assigned respondent to perform janitorial duties, prompting him to request an immediate disposition of his case. But when petitioner directed him to submit his evidence within three (3) days from notice, he failed to comply.

After evaluating the records on hand, petitioner found respondent guilty of extortion, fraud, serious misconduct and willful breach of trust and confidence. Petitioner then sent him a notice terminating his services effective March 3, 1991.

Eventually, respondent filed with the Labor Arbiter a complaint for illegal dismissal and damages against petitioner and Engr. Dumo, docketed as NLRC NCR Case No. 00-03-01376-91.

In due course, the Labor Arbiter rendered a Decision dated December 3, 1992 dismissing respondent's complaint for lack of merit.

Upon appeal, the National Labor Relations Commission (NLRC) promulgated a Decision dated August 29, 1994 reversing the Arbiter's assailed Decision, holding that respondent was illegally dismissed, thus:

“WHEREFORE, premises considered, the appealed decision is hereby REVERSED and SET ASIDE and a new one entered declaring respondent Ramon Y. Dumo and Philtread Tire and Rubber Co. to have illegally dismissed complainant Alberto M. Vicente. Accordingly, respondent is hereby ordered to reinstate complainant to his former or equivalent position without loss of seniority rights and privileges with full backwages from the time of his dismissal up to the time of his reinstatement, whether physical or payroll. Corollary to this, complainant shall be entitled to and be paid for whatever increases and benefits that have accrued to his position reckon from the time of his dismissal.

SO ORDERED.”

Petitioner then filed a motion for reconsideration but was denied by the NLRC in a Resolution dated October 11, 1994. Hence, it filed with this Court a petition for certiorari with prayer for the issuance of a temporary restraining order, docketed as G.R. No. 118337.

Pursuant to our ruling in *St. Martin's Funeral Home vs. NLRC*,^[3] we referred the petition to the Court of Appeals for appropriate action and disposition.

On November 25, 1999, the Appellate Court rendered a Decision affirming the assailed Decision of the NLRC, thus:

“After a review of the records, We find no cogent reason to reverse the respondent Commission.

Private respondent herein was dismissed allegedly for asking, not receiving, the sum of P1,000.00, from Crisente Avis. x x x.

This alleged request is not supported by any documentary evidence. It is strange that no purchase order was presented to show that Crisente Avis was given a contract to paint the trash cans and cigarette butt boxes at the company premises for the contract price of P3,800.00 x x x. In this instance, Mr. Avis did not show any contract to prove that his services were estimated at P3,800.00, as proof that private respondent asked him to overprice it by P1,000.00.

Moreover, it is strange that in reporting the alleged request of private respondent, Mr. Avis complained, not to the personnel department, or to the department in charge of giving out contracts or paying for them, but to the security department. x x x. The only explanation We can find is that the security guards are headed by Mr. Ramon Dumo, who was apparently displeased with private respondent.

x x x

There is also no clear showing that private respondent was in a position to influence company decisions in giving out contracts of services, so that Mr. Avis should be pressured to acceding to his request.

With regard to the report of Avis that private respondent tricked him into going to Cavite to execute an affidavit of retraction, we see no reason why Avis could not have simply refused to sign such affidavit, especially since he was brought before a notary public, a lawyer, whom he could have sought legal assistance.

Finally, private respondent was dismissed for 'willful violation of trust x x x.' However, there is no showing that he occupied a position of trust and confidence. x x x. The position of private respondent as Housekeeping Coordinator at the General Services Department of Philtread can hardly be considered as one of trust and confidence.

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.”

On December 10, 1999, petitioner filed a motion for reconsideration, but was denied by the Appellate Court in a Resolution dated March 22, 2000.

Hence, this petition for review on certiorari.

Petitioner contends, among others, that the Court of Appeals seriously erred (1) in finding that there is no substantial evidence to support the complaint against petitioner; and (2) in disregarding the testimony of Crisente Avis on the ground that it is an affirmation of his unverified complaint.

The fundamental issue here is whether petitioner was able to prove by substantial evidence that respondent is liable for extortion by forcing Avis to increase his service fee by P1,000.00. The issue raised is factual. It is basic that the findings of fact by the Court of Appeals, when supported by substantial evidence, are conclusive and binding upon the parties and are not reviewable by this Court, unless the case falls under any of the exceptions to the rule, such as when the findings by the Appellate Court are not supported by evidence.^[4] This exception is being relied upon by petitioner.

Here, there is neither direct nor documentary evidence to prove that respondent was involved in extortion. In fact, a careful perusal of the minutes of the investigation reveals that Avis did not categorically state that he was pressured by respondent to overprice his service fee, thus:

“AGENDA: To conduct preliminary investigation regarding the complaint of one CRISENTE AVIS, a painter and a Philtread contractor, alleging that Mr. Alberto Vicente is pressuring him to raise his service fee so that the latter will also gain ‘grease money.’

III. Mr. Avis quoted: ‘Talagang sinabi sa akin ni Abet (referring to respondent) na: Cris, gawin mong P4,800 at akin iyong sobra. Mr. Avis also quoted: P3,500 lamang ang gusto ko sana, hindi ko alam kung biro o totoo ang sinabi niya. Mr. Avis averred: Nang mag-follow up ako ngayong umaga, nagtataka si Mr. Sabong kung bakit mataas ang aking singil.

IV. Mr. Vicente quoted as Mr. Avis saying: ‘Abet, pwede ba ito, P3,500? Abet answered: Ikaw, mahaba at matagal ang trabaho mo. Cris answered: Abet, lakarin natin ito, ako ang bahala sa iyo.

x x x.”^[5]

As gleaned from the above minutes, it is not clear that respondent urged or forced Avis to increase his service fee by P1,000.00 and to give the amount to him (respondent). In fact, Avis is not certain whether respondent was really serious when he allegedly told him (Avis) to increase his service fee to P4,800.00. We thus hold that petitioner failed to prove its charge by substantial evidence. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.^[6]

The Appellate Court did not err in concluding that there is no valid cause in terminating respondent’s employment. The well-established rule is that the findings of fact of the Court of Appeals, particularly where they are in absolute agreement with that of the NLRC, as in this case, are accorded not only great respect but even finality and are deemed binding upon this Court.^[7]

Verily, respondent who was illegally dismissed from work is entitled to reinstatement without loss of seniority rights, full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.^[8]

However, the circumstances obtaining in this case do not warrant the reinstatement of respondent. Aside from the fact that antagonism caused a severe strain in the parties’ employer-employee relationship,

petitioner company has “completely ceased its tire manufacturing and marketing operations effective November 11, 1994,” as evidenced by its Notice of Indefinite Suspension of Manufacturing Operations dated November 10, 1994^[9] to the Security and Exchange Commission and its Application for Business Retirement dated February 22, 1996^[10] filed with the Business Permits & Licensing Office of the City of Muntinlupa. Thus, a more equitable disposition would be an award of separation pay equivalent to at least one month pay, or one month pay for every year of service, whichever is higher, (with a fraction of at least six (6) months being considered as one (1) whole year),^[11] in addition to his full backwages, allowances and other benefits.^[12]

Records show that respondent was employed from February 9, 1978 to March 3, 1991, or for thirteen (13) years, with a monthly salary of P8,784.00. Hence, he is entitled to a separation pay of P114,192.00.

WHEREFORE, the assailed Decision dated November 25, 1999 and the Resolution dated March 22, 2000 of the Court of Appeals in CA-G.R. SP No. 52723 are hereby **AFFIRMED** with **MODIFICATION** in the sense that, in lieu of reinstatement, respondent is awarded separation pay equivalent to P114,192.00, plus his full backwages, and other privileges and benefits, or their monetary equivalent, during the period of his dismissal up to his supposed actual reinstatement.

Costs against petitioner.

SO ORDERED.

Panganiban, J., (Chairman), Carpio-Morales, and Garcia, JJ., concur.
Corona, J., on leave.

[1] Penned by Justice Hector L. Hofileña (ret.), and concurred in by Justices Omar U. Amin (ret.) and Jose L. Sabio, Jr.

[2] Annex “B”, Petition for Review, Rollo at 39-40.

[3] G.R. No. 130866, September 16, 1998, 295 SCRA 494, holding that the appeal from the NLRC should be initially filed with the Court of Appeals, no longer with this Court, pursuant to the doctrine of hierarchy of courts.

- [4] Siasat vs. Court of Appeals, G.R. No. 129382, January 23, 2002, 374 SCRA 326, citing Atillo III vs. Court of Appeals, 334 Phil. 546 (1997).
- [5] Annex “2” of Position Paper, Records at 36.
- [6] Diamond Motors Corporation vs. Court of Appeals, G.R. No. 151981, December 1, 2003, 417 SCRA 46; Anflo Management & Investment Corp. vs. Bolanio, G.R. No. 141608, October 4, 2002, 390 SCRA 473; Resngit-Marquez vs. Llamas, Jr., Adm. Matter No. RTJ-02-1708, July 23, 2002, 385 SCRA 6; Aklan Electric Cooperative, Inc. vs. NLRC, G.R. No. 121439, January 25, 2000, 323 SCRA 258.
- [7] Philippine Journalists, Inc. vs. Mosqueda, G.R. No. 141430, May 7, 2004; Allied Banking Corporation vs. Court of Appeals, G.R. No. 144412, November 18, 2003, 416 SCRA 65; Hantex Trading Co., Inc. vs. Court of Appeals, G.R. No. 148241, September 27, 2002, 390 SCRA 181; Casimiro vs. Court of Appeals, G.R. No. 136911, July 3, 2002, 383 SCRA 701; Milestone Realty and Co., Inc. vs. Court of Appeals, G.R. No. 135999, April 19, 2002, 381 SCRA 406.
- [8] Pursuant to Article 279, Labor Code, as amended by Section 34, R.A. 6715; Bolinao Security and Investigation Service, Inc. vs. Toston, G.R. No. 139135, January 29, 2004 at 11, citing Cebu Marine Beach Resort vs. NLRC, G.R. No. 143252, October 20, 2003 and Damasco vs. NLRC, 346 SCRA 714 (2000).
- [9] Annex “B” of Reply Memorandum, Rollo at 188.
- [10] Annex “D”, Ibid. at 191.
- [11] Bolinao Security and Investigation Service, Inc. vs. Toston, *ibid.*, citing Jardine Davies, Inc. vs. NLRC, 311 SCRA 289 (1999) and Lopez vs. NLRC, 297 SCRA 508 (1998).
- [12] *Ibid.*, citing Cebu Marine Beach Resort vs. NLRC, *id.*, Samarca vs. Arc-Men Industries, Inc., G.R. No. 146118, October 8, 2003 and Philippine Tobacco Flue-Curing and Redrying Corp. vs. NLRC, et al., 300 SCRA 37 (1998).