

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**SEABORNE CARRIERS CORPORATION
and JERRY RONALDO GATAN,
*Petitioners,***

-versus-

**G.R. No. 88795
October 4, 1994**

**NATIONAL LABOR RELATIONS
COMMISSION and ARMANDO A.
TERNIDA,
*Respondents.***

X-----X

DECISION

ROMERO, J.:

The private respondent began working for Seaborne Carriers Corporation (Seaborne) on April 8, 1983 as Tug Master with a monthly salary of P2,475.00. On September 15, 1987, the tugboat he was manning met an accident. Half of the cost of repairs totalling P5,000.00 was shouldered by Seaborne. Private respondent was required to pay for the other half, and an initial salary deduction of P250.00 was actually made by Seaborne. On September 24, 1987, he sought permission to go on leave of absence to ask from the Department of Labor and Employment if such deduction was legal, but this request was not granted. Instead, he was asked by petitioner

Gatan, Seaborne's president and manager, to tender his resignation. When he refused to resign, as he had not yet received any separation pay, he was dismissed.

A complaint was then filed by the private respondent against Seaborne for illegal dismissal, illegal deduction, and unpaid wages, which was later amended to include petitioner Gatan as party-respondent and to embrace claims for overtime pay, holiday pay, 13th month pay, sick leave pay, damages, and attorney's fees.

Labor Arbiter Eduardo G. Magno rendered judgment on August 5, 1988, the dispositive portion of which reads thus:

“WHEREFORE, judgment is hereby rendered declaring the dismissal of the complainant as illegal. Respondent is hereby ordered to reinstate complainant to his former position without loss of seniority rights but without backwages. Backwages will lie upon refusal of respondent to reinstate complainant. However, respondent is hereby ordered to pay complainant the amount of Two Hundred Fifty (P250.00) Pesos representing the amount illegally deducted from complainant.

SO ORDERED.”

The private respondent appealed to the National Labor Relations Commission which, in a decision promulgated on March 21, 1989, modified the labor arbiter's ruling, to wit:

“WHEREFORE, the decision appealed from is hereby MODIFIED, ordering the respondents to reinstate complainant to his former position, without loss of seniority right and other privileges, with full backwages from the date his salary is (sic) withheld from him until his actual reinstatement, and to pay complainant his holiday pay, 13th month pay, service incentive leave benefits for 1987 and 1988, plus the amount illegally deducted from his salary, and attorney's fees of 10% of the total amount herein awarded.

SO ORDERED.”

Petitioners' first and second motions for reconsideration were both denied by the public respondent for lack of merit.

In this petition, the petitioners are asking the Court to set aside and nullify the NLRC's decision dated March 21, 1989, and the resolutions denying their motions for reconsideration, on the following grounds: (a) the NLRC erred in concluding that the private respondent is entitled to service incentive leave benefits as well as holiday and 13th month pay; and (b) the NLRC erred in holding petitioner Jerry Ronaldo Gatan personally liable, with the petitioner corporation, for the payment of backwages, holiday pay, 13th month pay, service incentive leave benefits, and attorney's fees.

Having limited the issues to these two questions, the other portions of the challenged decision are deemed admitted by the petitioners. Hence, we will no longer dwell on the issue of dismissal, reinstatement, award of backwages and attorney's fees, and reimbursement of the amount illegally deducted from the private respondent's salary.

The petitioners aver that the award to private respondent should not have included service incentive pay because it was never sought in the complaint and the private respondent is already enjoying vacation leave benefits, which bars the employee from entitlement to the yearly service incentive leave benefit mandated by Article 95 of the Labor Code.

With regard to the award 13th month and holiday pay, the petitioners allege that the private respondent failed to prove or establish that he is entitled to the same, and that he did not specify which holiday or what year he was not paid said benefits.

These arguments are untenable.

The private respondent's allegation of non-payment of these benefits, to which he is by law entitled, is a negative allegation which need not be supported by evidence unless it is an essential part of the cause of action.^[1] It must be noted that the main cause of action of the private respondent is his illegal dismissal, and the claim for the monetary benefits is but an incident of the protest against such dismissal. Thus,

the burden of proving that payment of said benefits has been made rests upon the party who will suffer if no evidence at all is presented by either party, that is, the petitioners as private respondent's employer.

This brings us to the second issue raised by the petitioners: Should Jerry Ronaldo Gatan, as president and general manager of Seaborne be held responsible to the private respondent for the payment of backwages and other monetary benefits awarded by the NLRC?

The petitioners rely on the case of Garcia vs. NLRC, et al.,^[2] where the personal liability of corporate officers to dismissed employees was made to depend on whether such officers acted with evident malice and bad faith. They argue that the assailed decision did not make any finding that Jerry Gatan acted maliciously or in bad faith in terminating the services of private respondent.

This contention is meritorious.

All that the evidence shows is that petitioner Gatan ordered the private respondent to resign and dismissed him when he failed to do so without considering the reason for such refusal, which is the non-payment of his separation pay. There is nothing on record which would prove the insinuation that Jerry Gatan sanctioned the deduction of P250.00 from private respondent's salary, as well as the denial of the latter's request for leave of absence.

These factors are simply not sufficient to convince this Court that petitioner Gatan acted with malice and in bad faith in the termination of private respondent's employment. In this regard only, the assailed decision dated March 21, 1989 should be accordingly modified.

IN VIEW OF THE FOREGOING, the instant Petition is **DISMISSED** and the liability of petitioner Seaborne Carriers Corporation to private respondent is hereby affirmed. Petitioner Jerry Ronaldo Gatan is, however, exempted from said liability for lack of material proof on his culpability. Let the records of this case be remanded to the public respondent for immediate execution of judgment.

SO ORDERED.

**Romero and Vitug, *JJ.*, concur.
Feliciano and Bidin, *JJ.*, are on leave.**

[1] Industrial Finance Corporation vs. Tobias, No. L-41555, July 27, 1977, 78 SCRA 28.

[2] 153 SCRA 639.

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